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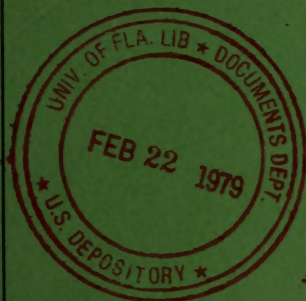
COMMITTEE PRINT

PANAMA CANAL TREATIES
[UNITED STATES SENATE DEBATE]
1977-78

PREPARED BY THE
SUBCOMMITTEE ON SEPARATION OF POWERS
OF THE
COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

PART 1

JANUARY 12, 1977 THRU FEBRUARY 24, 1978



Printed for the use of the Committee on the Judiciary

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WASHINGTON : 1978

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¹Senator James B. Allen died June 1, 1978. His widow, Maryon, was appointed to his office and subsequently to the chairmanship of Separation of Powers Subcommittee, Committee on the Judiciary on July 27, 1978.

LETTER OF TRANSMITTAL

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
SUBCOMMITTEE ON SEPARATION OF POWERS,
Washington, D.C., December 1, 1978.

Hon. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: At the direction of the late chairman of the Subcommittee on Separation of Powers, Senator James B. Allen of Alabama, I respectfully submit on behalf of the subcommittee the following three-volume compilation of Panama Canal Treaty debates and related material consolidated from the records of the 95th Congress.

As you particularly know through your close friendship with the late Senator, our chairman felt very strongly that the debate of these treaties was perhaps the most significant national decision facing our country during this decade, and he expended great personal energy and thought during consideration of all aspects of the proposed cession of the Canal Zone to the Republic of Panama. In directing this consolidation of the Senate debate, Senator Allen hoped to provide a single, major source document for future research by historians and for convenient use by the Congress in the continuing review of this issue—a review which will undoubtedly be resumed in the immediate future in connection with proposed legislation to authorize and implement the treaties. In my judgment, this work will well serve that intended purpose and will prove valuable to future generations in enabling an accurate understanding of what actually transpired during this important time in the history of the United States and of the U.S. Senate.

With kindest regards, I am

Very respectfully,

QUENTIN CROMMELIN, Jr.,
Chief Counsel and Staff Director,
Subcommittee on Separation of Powers.

CONTENTS

BILLS, RESOLUTIONS, AMENDMENTS, AND RESERVATIONS

Amendments:	Page
1 (Dole)	229
2 (Dole)	229
3 (Dole)	229
4 (Dole)	230
5 (Dole)	230
6 (Dole)	230
7 (Dole)	532
8 (Dole)	532
10 (Dole)	760
11 (Dole)	760
12 (Dole)	760
13 (Bentsen)	764
14 (Bentsen)	765
15 (Dole)	902
16 (Hatch)	906
17 (Hollings)	912
18 (Hatch)	945
19 (Hatch)	975
20 (Robert Byrd)	1029
21 (Robert Byrd)	1029
28 (Scott)	1389
29 (Scott)	1389
30 (Stevens)	1299
31 (DeConcini)	1391
32 (DeConcini)	1392
33 (Allen)	1575
35 (Hatch)	1660
36 (Hatch)	1660
37 (Hatch)	1660
38 (Hatch)	1660
39 (Hatch)	1660
40 (Allen)	1739
41 (Bartlett)	1739
42 (Hatch)	1866
43 (Bartlett)	1866
Reservations:	
1 (Dole)	230
2 (Dole)	230
3 (Bartlett)	1866
4 (Bartlett)	1869
S. 1444, a bill to provide that the U.S. Canal Zone shall be represented by a Delegate to the House of Representatives	44
S. Res. 268	233
Amendment incorporating in article IV of the Neutrality Treaty the rights of defense set forth in Carter-Torrijos joint statement	1545

STATEMENTS

	Page
Adams, Hon. Brock, Secretary of Transportation	296
Ahumada, Labor Minister	310
Alexander, Hon. Clifford L., Secretary of the Army	282
Allen, Senator James B. 138, 329,	853
Aragon, Mrs. Rose Marie, Panamanian Committee for Human Rights	476
Arias, Dr. Arnulfo, last constitutional President of the Republic of Panama	630
Barletta, Minister Nicolas Ardito	177
Barletta, Dr. Nicolas Ardito, Planning Minister	309
Bartell, Robert M., Liberty Lobby	457
Baughner, Peter Vincent, Ripon Society	879
Bauman, Hon. Robert E. 1	888
Baxter, Richard R., Harvard University	801
Bell, Hon. Griffin B., Attorney General, Department of Justice	276
Bendetsen, Karl R., former Under Secretary of the Army and Chairman of the Panama Canal Company	687
Berger, Raoul, professor (constitutional expert)	666, 907
Bethancourt, Escobar	307, 414, 596
Boehm, Kenneth, Young Americans for Freedom	475
Brandes, Ely M., International Research Association	821
Brown, Gen. George S., USAF, Chairman, Joint Chiefs of Staff	261
Brown, Hon. Harold, Secretary of Defense	259
Bunker, Hon. Ellsworth	246
Byrd, Senator Robert C. 765,	938
Canal Zone Citizen Representatives	427
Case, Senator Clifford P	1121
Casey, Howard F., Deputy Assistant Secretary for Maritime Affairs, Commerce Department	302
Christopher, Hon. Warren, Deputy Secretary of State	737
Compilation of statements on treaties by U.S. military leaders	1857
Cooper, Richard N., Under Secretary of State for Economic Affairs	298
Corrada, Hon. Baltasar, Puerto Rico	339
Crowe, Guthrie, Federal district court judge for the Canal Zone (25 years)	648
Davids, Jules, Georgetown University	787
Dole, Senator Robert	373
Dominguez, Jorge I., professor, Center for International Affairs, Harvard University	436
Dozer, Donald Marquand, professor, University of California	440
Eisenmann, Richard, Panamanian Committee for Human Rights	480
Fabrega, negotiator	314
Falk, Richard, Princeton University	796
Fish, Hamilton, former Congressman from New York	520
Flood, Congressman Daniel J	336
Fraser, Congressman Donald M	392
Gerber, Martin, United Auto Workers	494
Geyelin, Henry R., Council of the Americas	824
Goldwater, Senator Barry M.	734
Graham, Alfred J., Canal Zone Central Labor Union & Metal Trades Council .	499
Gravel, Senator Mike	358
Griffin, Donald G., Transportation Association of America	828
Griffin, Senator Robert P	932, 990
Hansell, Herbert J., legal advisor, Department of State	279
Hansen, Senator Clifford P	587
Harman, Phillip, Canal Zone Non-Profit Public Information Corp	447
Hatfield, Background: The Panama Canal	46
Helms, Senator Jesse	382
Hollings, Senator Ernest F	215
Hughson, Patrick N., Association of American Chambers of Commerce in Latin America	825
Humphrey, Senator Hubert H	1589
Jackson, Rev. Jesse L., Operation PUSH	886
Jarmin, Gary L., The American Conservative Union	509
Jones, Col. Phelps, U.S. Army (retired), Veterans of Foreign Wars	553
Jordan, Hon. William, Ambassador to Panama	987

	Page
Jorden, Hon. William J., U.S. Ambassador to Panama	287
Kirkland, Lane, AFL-CIO	493
Kissinger, Henry A., former Secretary of State	537
Krol, John Cardinal, Archbishop of Philadelphia	468
Laxalt, Senator Paul	367
Leopold, Rivhard W., Northwestern University	793
Leggett, Congressman Robert L	396
Levinson, Morris, Synagogue Council of America	471
Linowitz, Hon. Sol M.	243
Lioeanjie, Rene C., Central and South America National Maritime Union	506
Lodge, Hon. Henry Cabot	1663
Lopez, Franklin Delano, Puerto Rico Democratic Party	454
Lowenthal, Dr. Abraham F., Woodrow Wilson Center	436
McAuliffe, Lt. Gen. D. P., Commander in Chief, U.S. Southern Command	262
McCullough, David, author	785
McDonald, Hon. Larry P.	393
McGrath, Archbishop Marcos, of Panama	1935
Miller, Donald E., prof., Church of the Brethren	473
Milnor, Maj. Gen. J., U.S. Army (Reserves), Reserve Officer Association	549
Milstein, Seymour, United Brands Co.	844
Moore, John Norton, University of Virginia	810
Moorer, Adm. Thomas H., U.S. Navy (retired).....	421, 927
Moorer, Adm. Thomas H.	87
Morison, Elting, Massachusetts Institute of Technology	792
Mott, Dr. George Fox, Mott Research Group	868
Murphy, Congressman John M.	385
Oliver, Covey T., University of Pennsylvania	815
Parfitt, H. R., U.S. Governor of the Canal Zone	283
Pollak, Dean Louis, University of Pennsylvania	919
Portell-Vila, Dr. Herminio, American Security Council	517
Remarks of Hon. Angier Biddle Duke to graduates of the Ravenscroft School in Raleigh, N.C.	56
Revilla, Foreign Minister Gonzalez	306
Reynolds, James J., American Institute of Merchant Shipping	836
Riggs, Leland L., Jr., retired special agent in charge, the Drug Enforcement Administration	1644
Rogers, Hon. William D., Committee of Americans for the Canal Treaties	877
Royo, Education Minister	313
Rudd, Hon. Eldon	868
Ruggiero, Frank D., AMVETS	548
Rusk, Dean, former Secretary of State	535
Schlaflly, John Fred, American Council for World Freedom	506
Schmitt, Senator Harrison H.	775
Scott, Senator William L.	378
Report of Senator William L. Scott of Virginia on Panama Canal trip.....	70
Sheffey, Col. John P., National Association for Uniformed Services	892
Shore, Melvin, American Association of Port Authorities	839
Small, Dennis, U.S. Labor Party.....	485
Smith, Robert Charles, American Legion	541
"Soviet Threat to the Panama Canal," address by Ambassador Spruille Braden .	31
Solomon, Hon. Anthony M., Under Secretary of the Treasury for Monetary Affairs	300
Stratton, Congressman Samuel S.	333
Tambs, Lewis, professor, Arizona State University	443
Tausch, Egon Richard, U.S. Industrial Council	895
Taylor, Gen. Maxwell D., U.S. Army (retired)	425
Thompson, Dr. William P., National Council of Churches	466
Thurmond, Senator Strom	326, 592
Torrijos, General	316
A position paper, presented by U.S. Civic Councils to the House	81
Vance, Hon. Cyrus R., Secretary of State	240
Wasylik, Dr. John, Veterans of Foreign Wars	555
Wayne, John, actor	603
Williams, Capt. J. R., Panama Canal Pilots' Association	503
Zumwalt, Adm. Elmo R., Jr., U.S. Navy (retired)	420

ARTICLES AND EDITORIALS

	Page
"The Panama Canal—Columbian Discusses Its Operation", by John A. Mitchell, State, Columbia, S.C.	1
"Canal's Gaillard Cut Is Named For Army Engineer From S.C.", by John A. Mitchell	3
"Carter Confidant Is Ruled Subject To Conflict Curbs", by Morton Mintz, Washington Post	15
"Report Could Upset Panama Talks", by Jack Anderson and Les Whitten	16
"Panama Plans Intense Publicity Effort To Push New Treaty", by Don Oberdorfer, Washington Post	18
"Panama Canal Vital to U.S. Interests", by Hanson W. Baldwin, Waterbury Sunday Republican	20
"Decision on Canal's Future at Hand", by Hanson W. Baldwin, Waterbury Sunday Republican	22
"Britain Once Ruled Sea and So Must Approve Panama Transfer", by Desmond Wettern, London Daily Telegraph	24
Hay-Pauncefote Treaty	25
"Panama Has Reaped Huge Benefits from the Canal", by Reed Irvine, Accuracy in Media, New York Times	28
"Dredging in the Panama Canal", by Maj. Robert L. Herndon, Corps of Engineers, U.S. Army	37
Letter to the Editor, Christian Science Monitor, from Donald M. Dozer, professor, University of California	41
"Canal Talks: Back To Bargaining", Christian Science Monitor	42
"Defense Department Calls Canal 'Defensible'", by Virginia Prewett, Hemisphere Hotline Report	54
"A Panama Summary", by John J. Kern, the Military Engineer	72
"Panama Canal Giveaway Violates Constitution", by Orrin G. Hatch, Conservative Digest	98
"In National Public Opinion Referendum U.S. Public Closely Divided on Panama Treaty; 39 Percent Approve; 46 Percent Disapprove", by George Gallup	101
"The Canal Terms, Argued From Different Premises", by Paul B. Ryan, New York Times	122
"The Case Against the Canal Treaties", by Philip Crane, Washington Post	123
"The Alternative to the Carter Proposals", by Jesse Helms, Washington Post	125
"Out on a Limb", by Tom Wicker, New York Times	142
"The Panama Canal: Sovereignty and Security", by Hanson W. Baldwin, AEI Defense Review	180
"Using the Chiefs", editorial, Army Times	203
"Guantanamo Surrender Next", by John Chamberlain, Jacksonville (Fla.) Times-Union	206
"Communists Welcome Panama Canal Treaty", by Henry J. Taylor	231
"Conservation Support", by Emmett B. Ford, Jr., Washington Post	249
"Panama Canal Issue", Cleveland Press; response by Reed I. Irvine	291
"Senate Remains Skeptical About Panama Canal Treaty", Human Events	356
"U.S., Panama Differences Cited: Canal Treaties Get A Jolt", by John M. Goshko, Washington Post	400
"Dole Says U.S. Cable Shows Differences With Panama on Treaties", by Graham Hovey, New York Times	402
Letter from Dale Bell to Editor Lawrence Brown, Nation's Center News, Buffalo, S. Dak., with response	403
"Canal Toll Plan Sours Lykes Chief—Support for Pact Dropped Because of Toll Increase, by Anita Schrodtt, Journal of Commerce	410
"Panama Canal Treaty", editorial, Daily Dispatch, Moline, Ill	460
"United States Indicted Brother of Torrijos, Source in Justice Department Says", Washington Star	525
"House Member Charges Narcotics Smuggling Inquiry Touches 'Highest Levels' of Panama Government", by Benjamin Welles, New York Times	526
"Panama: Torrijos Returns, Says Nothing Signed in Washington", Foreign Information Broadcast Service	563
"Gen. Omar Torrijos Denies Signing New Canal Pact", Washington Post	563
"Scare Talk and the Canal", by Roger W. Fontaine, Wall Street Journal	574
"Harris Survey: Why Public Rejects the Canal Pact, by Louis Harris, Chicago Tribune	576
"The Panama Canal: Who'll Pay The Freight?", by Joseph S. Helewicz and James A. Fousmaniere, Jr., Baltimore Sun	611
"Panama Can't Operate Canal", by Ron Hendren, Greenville News	619

	Page
"That Troublesome Panama Canal Treaty", by Edwin Warner, Time Magazine .	620
"How Canal Treaties Would Benefit Iowa Farmers", by Lauren Soth, Des Moines Register	622
"Canal Treaties Are Enhanced By Information," by George Gallup, Washington Post	631
"Report From Panama: The Americans Who Operate America's Canal", by Egon Tausch, U.S. Industrial Council	636
"Choosing Up Sides On Panama", by Harvey Jacobs, Indianapolis News	657
"The Case For the Panama Treaty", by William F. Buckley, Jr., Washington Star	658
"Defense Of The Canal," by Anthony Harrigan	659
"Defending the Canal in the Age of Terrorism", by Arthur S. Collins, Jr., Baltimore Sun.....	663
"Admiral Opposes Canal Treaties", by Adm. Horacio Rivero, San Diego Evening Tribune	684
"We Have Again Studied the Treaty; We Still Say 'No' ", American Legion magazine	743
"Native Son Has Large Stake in Panama Canal Project", by Greg Hageman, New Holstein Reporter (Wis.)	767
"The Panama Canal Treaties—Should the U.S. Ratify Them?", by Senator Thurmond, The Retired Officer.....	771
"The Case for Acceptance", by Senator Hubert Humphrey, The Retired Officer .	773
"Threatened by the Treaties Panama's Blacks: A U.S. Responsibility", by Steve C. Ropp, New Leader magazine.....	783
"Canal Treaties Gain Support in State Poll", by Mervin D. Field, Los Angeles Times	852
"Why We Must Keep the Canal", by M. Northrup Buechner, American Security Council's Washington Report	915
"The Canal: A Rampart", by John Davis Lodge, New York Times	947
"American Benevolence in Panama", letter by Martin D. Tullai, Baltimore Sun	1030
"Panama Canal Treaties: Answering Questions on Main Street America, by Donald E. Messer, Christian Century	1198
"U.S. Public Opinion Shifts to Support of Panama Treaties", by George Gallup .	1256
Letter to the editor of the Huntsville News (Ala.) by Kenneth N. K. Able	1574
"Moscow's Helping Hands", Time Magazine.....	1625
"UPI Investigation of Drug Trafficking in Panama", by Nichols Daniloff and Cheryl Arvidson (3 parts).....	1646
"The Secret War Against Dope", by Andrew Tully, (Chapter 10 of book).....	1654
"Communist Cuba to Back Panama", Diario Las Americas, Miami, Florida	1661
"The Panama Bug-Out", by Jenkin Lloyd Jones, Los Angeles Times	1872
"Panama Invites Probe by OAS Rights Group", by Lewis H. Diuguid	1937
"Senate Should Ratify Treaties", Argus-Leader, Sioux Falls, S. Dak	1988
"Remember Panama?", Washington Post	1989
"Violation of Human Rights and Civil Liberties in Panama", by Dr. Gustave Anguizola, prepared for the Council for International Security	1993
"A Situation Report and Position Paper by U.S. Civic Councils, Canal Zone" ...	2001

CORRESPONDENCE AND MEMORANDUMS

Letter to President Carter from four former Chiefs of Naval Operations on the strategic value of the Panama Canal	60
Reply of Secretary of State John Hay to Senor de Obaldia, Oct. 24, 1904	147
Letter to Senator Allen from J. P. Willis, Sr., historical background	295
Letter to President Carter from Senator Jesse Helms, urging Mr. Escobar to appear before congressional committees to explain understanding of treaties..	414
Letter to Senator Jesse Helms from James C. Luitweiler, former Secretary of the Joint United States-Republic of Panama Land Commission	677
Letter to Forbes Magazine from Senator Dole, citing problems if the canal were closed	741
Letter to the Organization of American States from the International League for Human Rights.....	745
Letter to President Carter from David McCullough (author of "The Path Between The Seas")	755
Letter to Senator Stone from Cyrus R. Vance, U.S. financial obligation under proposed treaty	946
Letter to Cyrus Vance from Senator Mathias, also detailed response to questions raised about the treaty	1013
Letter to Senator Baker from NAACP in response to report of discrimination..	1027

	Page
Memorandum: Raoul Berger's response to Dean Pollak's paper.....	1032
Letter to the Drug Enforcement Administration from Senator Dole inquiring of alleged involvement in drug-trafficking by Gen. Omar Torrijos, with response	1425
Letter House Speaker and Senate Leader from Congress George Hansen, concerning H. Con. Res. 347.....	1445
Cosponsors.....	1448
Letter to Senator Church from Harold Brown, Cyrus Vance, and Clifford L. Alexander, Jr., about financial viability of the canal, with enclosures.....	1477
Exchange of letters between Senator Sparkman and the State Department, dealing with the legal authority for the appointment of Mr. Linowitz as Ambassador, and with conflict-of-interest question	1618
Letter to Senator Helms from George J. Eder, on the meaning of "neutrality" ..	1691
Letter to Senator Case from Herbert J. Hansell, State Department, concerning police authority of the United States under the proposed treaty	1872
Letter to Senator Sparkman from Gen. M. B. Ridgway, with supporting statement	1973
Letter to the Comptroller General from Senator Domenici, concerned that the proposed treaty does not assure sufficient revenue to run the canal	2013

CHARTS AND TABLES

Total excavation of the Panama Canal, including construction, maintenance, and auxiliary.....	38
Comparative survey of freedom—table of nations	92
Approve or disapprove Panama Canal Treaty, Gallup poll.....	102
Major trade routes in Panama Canal traffic: 1975.....	269
Panama Canal traffic by commodities, 1975	269
Effect of 50 percent tolls increase on commodity movements through Panama Canal in 1985	270
Rearrangement of sources and markets resulting from 50 percent tolls increase.	271
Division of commodities from Panama Canal to Suez or Cape of Good Hope resulting from 50-percent increase in Panama Canal tolls, 1985	271
Cargo diversions involving voyages of decreased length via Suez Canal or Cape of Good Hope.....	271
Diversion of cargo to Far East Minibridge by 50-percent increase in Panama Canal tolls, 1985	272
Distance Yokohama to New York on all-water routes via Panama Canal	272
The Panama Canal—commercial ocean traffic.....	297
U.S. oceanborne cargo through Panama Canal	297
Major trade routes in canal traffic.....	298
Increase in ship size	298
Future traffic predictions also suggest canal reaching capacity—projected canal transits	298
Transportation alternatives Alaskan crude west coast surplus, January 1977 ..	367
Sea-level canal savings	367
U.S. bank claims on Panama	607, 710-715
Intersea usage share assignments	779
Intersea initial Board of Governors	781
Preliminary estimate of Panama Canal cost for fiscal 1978	832
Estimate of Panama Canal toll burden on U.S. economy	833
Impact of TAA recommendations on toll-increase needs, fiscal 1979	833
Panama Canal costs: first year operation under 1977 treaty compared to 1978 budget	974
Summary of unexpected costs	1173
A comparison of U.S. interests with our present status and with the goal of the treaties	1206
Effect of treaty-imposed changes on fiscal year 1979 President's budget	1246
Services and force by citizenship	1248
Personnel compensation by citizenship	1249
New book value of facilities and equipment.....	1250
Military Sealift Command traffic distribution	1301
List of major U.S. concessions to Panama	1367
Loans approved by the World Bank, International Finance Corp., Inter-American Development Bank, Export-Import Bank, and AID.....	1386
Loans approved by private banks	1387
Total payments as a result of the 1903 Treaty	1605

	Page
Illustrations of potential Panama Canal operating deficits	1811
Estimated value of assets transferred to Panama by 2000 A.D.	1813
Potential cost to United States for items not covered by Panama Canal tolls until 2000 A.D.	1814
Original cost value of the Panama Canal enterprise	1836
Book value of the Panama Canal enterprise	1836
Acquisition and improvement costs of military facilities to be turned over to Panama	1837
Replacement value of canal operations	1837
Possible direct cost to United States	1837
Payments to Panama out of toll increases	1838

MISCELLANEOUS

Biographic data of the Honorable Sol M. Linowitz	9
Republic of Panama 10-year Eurodollar loan	10
Budget policy for 1977 (Panama)	11
Economic study of the state of the Panamanian economy and projections for its future	12
Isthmian Canal Convention, November 18, 1903	75, 1269
Text of Panama Canal treaties	102, 1065
The Treaty Power and Congressional Power in Conflict: Cession of U.S. Property in the Canal Zone to Panama, research by Kenneth Merin, legisla- tive attorney, American Law Division, Library of Congress	160
U.S commercial bank loans to the Government of Panama, research by David Hoyt, analyst in banking and capital markets, Library of Congress	254
Dole: "Confidential" cable proves Panama Canal Treaty flawed. And cable to Secretary of State	341
"Panamanian Negotiator Denies U.S. Right to Intervention" (television report in Panama City)	412
Poll: 97 percent say don't give control of canal to Panama	561
Statement of understanding from White House	562
Telegram to commanders from General Jones	568
309 generals, admirals against Panama Canal treaties, ROA survey shows	578
Questions and answers on the Panama Canal treaties plebiscite	661
List of members of the Committee of Americans for the Canal Treaties, Inc.	680
Study by the Senate Republican policy committee	717
Transportation Association of America board of directors	834
Resolution from the Georgia House of Representatives	848
Spanish text analysis of treaty, prepared by Sylvia Costellanos, Senate steering committee	861, 1730
Distinctions between treaty amendments, reservations, and understandings, prepared by the Senate steering committee	935
Treaty ratification provisions of the Panamanian Constitution	937
Two resolutions passed by the National Black Caucus	958
Study by W. M. Whitman, special consultant to the House Committee on Merchant Marine and Fisheries, projected deficiencies in the canal operating costs under the new treaty	966
Economic and financial implications of the new Panama Canal treaties, eco- nomic data from Department of State	975
Parliamentary inquiries of Senator Allen as to Senate procedure for considera- tion of Panama Canal treaties	1025
Excerpts from the report of the Committee on Foreign Relations on the Panama Canal treaties	1083
Communist support in Panama for canal treaties, supplied by the State Department	1139
The Trilateral Commission	1520
Analysis and comparison of Department of State draft of the treaty dated July 11	1637
Overview of the Narcotics Problem in Panama, excerpts from report of Com- mittee on Merchant Marine and Fisheries	1657
Protocol Agreement of 1914	1685
Treaty provisions relevant to narcotics trafficking issues	1728
Study on Panama Canal financial data, by Committee on Armed Services	1809
Memorandum commenting on staff study by Cyrus Vance	1814
Freedom House urges approval of canal treaties despite Panama's "deplorable" human rights record	1932

COLLOQUY

	Page
Abourezk, James (Democrat of South Dakota).....	235
Allen, James B. (Democrat of Alabama).....	121-122, 126-127, 129, 138, 168-177, 200-204, 208-214, 238-239, 251-254, 264-276, 293-295, 343-347, 350-356, 415-419, 462-466, 523-525, 564-568, 570-574, 615-619, 623-629, 633-636, 641-645, 666, 681-684, 687, 860-861, 959-960, 1025, 1041-1051, 1053-1056, 1059, 1197-1198, 1267-1268, 1275, 1284-1286, 1339-1340, 1535-1544, 1546-1548, 1550-1578, 1604-1607, 1660, 1665-1666, 1672, 1677-1683, 1685, 1688-1696, 1701-1702, 1742-1758, 1846-1854, 1879-1880, 1885, 1892-1894, 1925-1932, 1937-1949, 1953, 1981-1983, 1990-1992, 2001, 2004-2005, 2008-2011, 2014-2023
Baker, Howard H., Jr. (Republican of Tennessee)	350-351, 351, 528-529, 734, 959-960, 1026-1027, 1038-1040, 1046-1047, 1050-1051, 1057-1058, 1254-1257, 1284-1298, 1426-1427, 1429-1431, 1438, 1440, 1666-1667, 1702-1703
Bartlett, Dewey F. (Republican of Oklahoma)	1739-1740, 1796-1797, 1822-1826, 1828-1841, 1866-1871
Bayh, Birch (Democrat of Indiana)	657, 1434-1439, 1668, 1670, 1672-1673, 1954-1963
Bellmon, Henry (Republican of Oklahoma)	1052
Bentsen, Lloyd (Democrat of Texas)	1789
Brooke, Edward W. (Republican of Massachusetts)	1705-1717
Byrd, Harry F., Jr. (Independent of Virginia)	128-129, 132-138, 179-180, 231, 306, 342, 356, 405-407, 460, 927, 949-950, 1053, 1716-1717, 1817-1821, 1824-1825
Byrd, Robert C. (Democrat of West Virginia)	128-131, 202, 225, 233-235, 237-238, 407, 529, 603, 629, 641, 938, 944, 950-952, 957, 959, 1027-1029, 1038-1041, 1045-1059, 1186, 1191-1192, 1195-1198, 1251-1263, 1265-1269, 1275-1284, 1292, 1298, 1393, 1400, 1402-1419, 1429, 1431, 1433-1434, 1438-1439, 1443-1445, 1517, 1536-1537, 1590, 1599, 1602-1612, 1665-1666, 1668-1669, 1696-1697, 1699-1705, 1878-1879, 1948, 2014-2019, 2021-2023
Cannon, Howard W. (Democrat of Nevada)	977-982, 1052, 1056, 1204
Case, Clifford P. (Republican of New Jersey)	1052, 1115-1121, 1266, 1332-1334, 1427-1428, 1431, 1871
Chafee, John H. (Republican of Rhode Island).....	101, 225, 1705, 1715, 1881-1903, 1905
Church, Frank (Democrat of Idaho)	1052, 1116-1120, 1133-1337, 1146-1151, 1161, 1276-1278, 1338-1340, 1351-1358, 1405-1406, 1455-1477, 1481, 1541-1542, 1544, 1546-1547, 1550-1552, 1562-1563, 1577-1578, 1685-1690, 1704, 1786-1787, 1789, 1795, 1854-1858, 1890-1891, 1972-1973, 1975-1977, 1979-1980
Clark, Dick (Democrat of Iowa)	919, 1133, 1192-1196, 1500-1517
Cranston, Alan (Democrat of California)	141-142, 178-179, 214-215, 236-239, 248-249, 492, 620, 630-631, 645-647, 660-661, 678-680, 754-755, 765, 848, 852, 913, 1186-1188, 1704, 2019, 2023
Culver, John C. (Democrat of Iowa)	622
Curtis, Carl T. (Republican of Nebraska)	717, 1543-1544, 1568-1573, 1790-1795, 1970-1972, 1990-1991
Danforth, John C. (Republican of Missouri)	1133, 1325-1331, 1334-1336
DeConcini, Dennis (Democrat of Arizona).....	1390-1392, 1918
Dole, Robert (Republican of Kansas)	220-229, 348-350, 408-409, 411-412, 527-529, 530-532, 629, 746-748, 759-764, 900-902, 933-935, 952-954, 1053, 1176-1186, 1255, 1297-1298, 1408-1411, 1419-1434, 1436-1437, 1439-1441, 1444, 1662-1663, 1676-1677, 1709-1711

	Page
Domenici, Pete V. (Republican of New Mexico)	2011-2013
Ford, Wendell H. (Democrat of Kentucky)	648, 1716-1717
Garn, Jake (Republican of Utah)	96-97, 1149-1151, 1364-1366, 1480-1495, 1670, 1949-1955, 1957-1969, 1975-1977, 1990, 1992, 2004
Glenn, John (Democrat of Ohio)	951, 1517-1518
Goldwater, Barry (Republican of Arizona)	736, 1385-1386, 1393-1402, 1430-1432, 1439, 1482, 1486, 1488-1491, 1520, 1661, 1668, 1799-1805, 1872-1873, 1924-1927
Gravel, Mike (Democrat of Alaska)	1278, 1285-1286, 1306, 1346-1366, 1677-1678, 1889-1890, 1892, 1894-1895, 1899-1901, 1903-1932, 1937-1954
Griffin, Robert P. (Republican of Michigan)	932, 990, 1005, 1051, 1122-1133, 1137-1139, 1141-1142, 1307-1308, 1326-1328, 1336-1337, 1339, 1400-1401, 1544, 1548-1550, 1552, 1555, 1611-1618, 1623, 1666-1670, 1674-1675, 1892
Hansen, Clifford P. (Republican of Wyoming)	629, 636, 1841-1846
Hatch, Orrin G. (Republican of Utah)	529-530, 770-771, 782-783, 847, 853, 902-906, 915, 944-945, 961-966, 1029-1032, 1176-1177, 1260-1263, 1266, 1305, 1308-1338, 1406-1407, 1411-1413, 1415-1417, 1441-1444, 1637, 1660, 1772-1784, 1905-1919
Hatfield, Mark O. (Republican of Oregon)	46
Hayakawa, S. I. (Republican of California)	1769-1773, 1775-1776
Heinz, H. John, III (Republican of Pennsylvania)	1705
Helms, Jesse (Republican of North Carolina)	4-8, 20, 24, 28, 30-31, 36-37, 41, 43-44, 54-54, 59-68, 119-120, 412-414, 610-611, 676, 954-957, 1053, 1163-1174, 1204-1205, 1261-1262, 1321-1322, 1366-1368, 1638-1644, 1696-1697, 1705, 1711-1712, 1714-1730, 1824, 1904-1905, 1922-1924
Hodges, Kaneaster, Jr. (Democrat of Arkansas)	1599-1602
Hollings, Ernest F. (Democrat of South Carolina)	912, 1161-1163, 1738-1739, 1748-1752, 1755, 1758-1769
Huddleston, Walter D. (Democrat of Kentucky)	235, 1053, 1414, 1419, 1445, 1464-1465
Humphrey, Hubert H. (Democrat of Minnesota)	662-663, 748-754
Humphrey, Muriel (Democrat of Minnesota)	1875-1881
Javits, Jacob K. (Republican of New York)	1188-1192, 1296-1297, 1428-1429, 1666, 1670-1671, 1712-1714, 1905
Johnston J. Bennett (Democrat of Louisiana)	2005-2011
Kennedy, Edward M. (Democrat of Massachusetts)	736, 957-958, 1663
Laxalt, Paul (Republican of Nevada)	1052, 1142-1149, 1151-1163, 1176-1177, 1196, 1258-1260, 1268, 1277-1278, 1280-1286, 1295, 1356-1358, 1457-1464, 1479-1480, 1487, 1495, 1673-1674, 1744-1747, 1754-1756, 1821-1822, 1826, 1856-1857, 1881, 1883-1889, 1896-1904, 1931
Leahy, Patrick J. (Democrat of Vermont)	942-944, 1052, 1670-1672, 1819-1824, 1943-1948
Lugar, Richard G. (Republican of Indiana)	1053, 1323-1325
Mathias, Charles McC., Jr. (Republican of Maryland)	291, 1013-1014, 1714-1715
Matsunaga, Spark M. (Democrat of Hawaii)	1462-1463, 1590-1597, 1602, 1921-1922, 1924-1926
McClure, James A. (Republican of Idaho)	407-408, 741, 1518-1520, 1666, 1675-1676
McGovern, George (Democrat of South Dakota)	403, 1198, 1962, 1967-1973, 1975, 1977-1988, 1991-1992
McIntyre, Thomas J. (Democrat of New Hampshire)	1052
Melcher, John (Democrat of Montana)	1697
Moynihan, Daniel Patrick (Democrat of New York)	902, 1133, 1767-1768, 1771-1774, 1784-1799
Muskie, Edmund S. (Democrat of Maine)	102, 1133
Pearson, James B. (Republican of Kansas)	983-987
Pell, Claiborne (Democrat of Rhode Island)	56
Percy, Charles H. (Republican of Illinois)	849-852, 1265-1266, 1306-1308, 1539-1540, 1597-1599, 1604-1605
Proxmire, William (Democrat of Wisconsin)	605-607, 708, 715-716, 766-767
Riegle, Donald W., Jr. (Democrat of Michigan)	1956, 1963-1967

XIV

	Page
Sarbanes, Paul S. (Democrat of Maryland)	1052,
1136-1137, 1139-1142, 1174, 1177, 1263, 1293-1294, 1311, 1332, 1334, 1365,	
1385, 1416-1417, 1432-1433, 1460-1462, 1469, 1489-1491, 1496-1500,	
1553-1555, 1564-1565, 1589, 1597, 1612-1618, 1631-1637, 1693, 1697-1698,	
1715-1716, 1773-1774, 1828-1831, 1879-1881, 1888-1889, 1891-1892	
Schmitt, Harrison H. (Republican of New Mexico)	775,
1451-1455, 1542, 1562-1563	
Scott, William L. (Republican of Virginia)	69-70,
144-147, 168, 171-173, 568-569, 743, 1054, 1151-1152, 1251-1252, 1254,	
1623-1632, 1634-1637, 1696, 1699, 1702	
Sparkman, John (Democrat of Alabama)	212-214,
240, 259, 276, 296, 326, 358, 419-420, 436, 466, 492, 532-535, 595, 785,	
820-821, 868, 975, 1051-1052, 1059-1065, 1263-1265, 1431-1432, 1575-1576	
Stennis, John C. (Democrat of Mississippi)	1805-1809, 1817-1818, 1821-1822
Stevens, Ted (Republican of Alaska)	130-132,
238-239, 1047, 1298-1305, 1704, 1826-1828	
Stevenson, Adlai E. (Democrat of Illinois)	1387-1389
Stone, Richard (Democrat of Florida)	744-746, 945-946
Talmadge, Herman E. (Democrat of Georgia)	848
Thurmond, Strom (Republican of South Carolina)	1,
16, 18, 90-91, 94-96, 205, 235, 340, 342, 400, 409-410, 529, 560-562, 574,	
577-578, 586-587, 619, 659, 947, 1051-1052, 1328, 1338, 1340-1346	
Tower, John (Republican of Texas)	748
Wallop, Malcolm (Republican of Wyoming)	902
Weicker, Lowell P. Jr. (Republican of Connecticut)	1577-1589

NINETY-FIFTH CONGRESS
FIRST SESSION

THE PANAMA CANAL

Mr. THURMOND. Mr. President, on November 21, 1976, John A. Mitchell, business editor of the State, Columbia, S.C., wrote a very interesting and informative article on the Panama Canal.

The Mitchell article provides an excellent background for understanding the recent problems in Panama. He has also written a companion article which appears in the same edition of the State entitled, "Canal's Gaillard Cut Is Named for Army Engineer From South Carolina," which gives the historical background of the Gaillard Cut.

Both of these articles are very informative and exceedingly well written. It is my feeling that the Panama Canal issue is one of the most important issues before the American public. The article by John A. Mitchell, in which he interviews Hugh M. Chapman, a member of the Board of Directors of the Panama Canal Company, and chairman of the board of the Citizens and Southern National Bank of South Carolina, is an excellent piece which I would commend to all my colleagues in the Senate.

Mr. President, in order to share the article on the Panama Canal and its operation, as well as the historical article on the Gaillard Cut, with my colleagues, I ask unanimous consent that they be printed in the Record.

There being no objection, the articles were ordered to be printed in the Record, as follows:

THE PANAMA CANAL—COLUMBIAN DISCUSSES ITS OPERATION

(By John A. Mitchell)

Little, if any, change in the operation of the Panama Canal is likely under the (Jimmy) Carter administration, according to a member of the corporate board of directors of the Panama Canal Co., which runs the business side of the canal.

"Carter the candidate is not Carter the President, and we're not sure he'll be much different (from past Presidents)," Hugh M. Chapman, chairman of The Citizens & Southern National Bank of S.C. and a member of the canal company board since last May, told The State.

"However, I might not be on the board after next Jan. 20 (inauguration date for Carter)," Chapman said.

The 11 directors serve at the pleasure of the secretary of the Army and "In effect, that's at the pleasure of the President, who appoints the secretary," he said.

The unique company was set up to run a government-owned facility, the Panama Canal, as if it were a private business and the board reports to the sole stockholder, the secretary of the Army.

Although the governor of the Canal Zone—an Army major general assigned for a four-year term—is ex-officio president of the Panama Canal Co., the business operation of the canal is entirely separate from the civil government of the zone, and both are separate from the administration of the Army base in the zone, Chapman said.

The board "tries to run the canal like a business and at least break even," Chapman said, but that the company has had a deficit for the past few years.

For fiscal 1975, the company had a net loss of \$8.9 million, down a little from the net loss of \$11.8 million for fiscal 1974.

The company foots the bill for all operations in the Canal Zone, pays interest charges on the U.S. investment—\$14.8 million in fiscal 1975—and repays the U.S. Treasury the net cost of civil government, including health and medical services—\$23.55 million in fiscal 1975.

The operation doesn't cost the U.S. taxpayer anything and Chapman says the board wants to keep it that way.

There was a toll increase in 1974—first since 1914—and another is likely to go into effect soon as a result of toll hearings held by the board in August, Chapman said.

Opposition to the toll hikes comes from the shipping lines, but "65 per cent of the ships using the canal are under foreign flags and they should pay, not the U.S. taxpayer," he said.

The company itself runs one ship, carrying mostly government cargo and some government personnel, between New Orleans and Panama. "This is a tie and a lifeline to our personnel there," Chapman said.

Until 1961 the company operated the Panama Line, which had several 10,000-ton ocean liners carrying government and commercial cargo and passengers between New York City and Panama. It was phased out after President Eisenhower in 1960 ordered the line to stop competing with private ships.

"Our job is primarily maintaining the locks and seeing that ships move efficiently through the canal," Chapman said. Basic design and operation haven't changed since the canal opened, Chapman said, although some sections have been widened to allow passage of larger ships and more two-way traffic.

There has been some trouble with Panama, mostly because of the dictator (Gen. Omar Torrijos), Chapman said, but the board "is not the party that negotiates treaties. However, the Secretary of State does keep us informed on the progress of such negotiations."

In the original treaty, signed 1903, the Republic of Panama granted the U.S. "in perpetuity the use, occupation and control" of the Canal Zone and the right to act as "if it were sovereign" in the zone, and that is what Panama primarily objects to now, Chapman said.

"They want an expiration date on the treaty," he said. (In 1974 Secretary of State Henry Kissinger signed an agreement to guide negotiation of a new treaty that would eventually return the Panama Canal to Panama.)

Chapman said a treaty could be negotiated "without giving up our solid rights" and that this would not be the first time the 1903 treaty had been amended. Article II of the 1903 treaty was modified in part by a 1936 treaty between Panama and the U.S. but did not change the basic rights granted the U.S., he said.

"It's not a natural resource. It's an engineering marvel that we built on land we bought and paid for," he said.

Under the 1903 treaty, the U.S. guaranteed Panama's independence (from Colombia) and paid her \$10 million. In 1904, the U.S. bought the French Canal Co.'s rights and properties for \$40 million and began construction.

The idea of Panama Canal goes back to 1524, when Charles V of Spain ordered the first survey of a proposed route. The French Canal Co., headed by Ferdinand DeLesseps, builder of the Suez Canal, began the effort in 1880 to build the waterway across Panama and tried for 20 years but didn't make it.

The U.S. Army Engineers began work on the Panama Canal in 1904 and it was completed and opened by late 1913 at a cost of about \$387 million. The purpose was to aid U.S. defense and to expedite world shipping.

"Since then, our people have poured millions back into Panama," Chapman said. In addition to the country of Panama getting revenue from the canal, a number of Panamanians are employed in the operation, he said.

In fiscal 1975 \$83,685,357 was paid to 8,549 non-U.S. citizens working in the Canal Zone. The 2,236 U.S. citizens employed there got \$75,645,086.

The canal was opened to commercial traffic in August, 1914, when the SS Ancon made the first official ocean-to-ocean transit. In 1974 there were 15,269 transits and the ships paid \$121,319,791 in tolls and toll credits. The pre-World War II traffic peak was 7,479 vessels in 1939.

The largest toll, \$49,208.04, was paid by the Tokio Express in November, 1974, and the smallest, 36 cents, was paid by the adventurer Richard Halliburton for swimming the canal in 1928.

The tolls are cheaper than sailing the vessels around the tip of South America, Chapman said.

Panama Canal traffic picked up somewhat while the Suez Canal was closed, following the 6-day Israeli-Arab War in 1967, but declined when the Suez Canal reopened last year, he said, because a lot of shippers from northern Europe like to go

through the Mediterranean Sea, the Suez and around India to reach Far East destinations like Japan.

This also contributes to competitive toll pricing, he said. In negotiating a Panama Canal treaty, a changing world and national interests must be considered, he said. Current treaty negotiations began under the late President Johnson.

"Most people don't realize that it's not a natural asset," Chapman said. "It takes precise engineering to make it work, not only the locks but also in piloting ships through, for if one ran aground, it would delay all."

South American economic problems, with resulting unrest and strife, as well as massive unemployment in Panama under its dictator, have contributed to the situation, he said.

"We understand and sympathize with these problems, but we shouldn't give up what is ours," Chapman said.

"The issue becomes the canal itself, and we've got to have qualified people to run it and keep it open."

CANAL'S GAILLARD CUT IS NAMED FOR ARMY ENGINEER FROM S.C.

(By John A. Mitchell)

The deepest canal cut in the world is named for a South Carolinian who supervised the slash through the Continental Divide, where the Panama Canal passes between banks exceeding 300 feet in height in some areas.

Originally the Culebra Cut, this section was renamed the Gaillard Cut in 1915 after Col. David DuBose Gaillard, who was born at Spring Grove Plantation in 1859 near the Clarendon County Town of Remini.

In 1928, a bronze plaque, 8 by 10 feet and weighing 1,200 pounds, was erected high on the rock face of Contractor's Hill, overlooking the cut, in Col. Gaillard's honor.

Gaillard attended Mount Zion Academy in Winnsboro and took the examination for an appointment to West Point while a clerk in the store of J. Fleming McMaster there, where he started work at 14.

Although he won, there was some question about his appointment because it was from Sumter County and he lived in Winnsboro (Fairfield County). However, Secretary of War Robert T. Lincoln ruled that a son under 21 was considered a resident of the place where his father lived (Sumter County) and Gaillard got the appointment.

He was graduated from West Point in 1884 and assigned to the U.S. Army Engineering Corps.

Gaillard was a lieutenant colonel when he was appointed a member of the Isthmian Canal Commission and made a director of the Panama Railroad in March, 1907.

He was supervisory engineer in charge of dredging the harbors, building breakwaters and all excavation except that which had to do with lock and dam construction.

In July, 1908, he was made division engineer of the Central Division, which included the "famous and terribly difficult" Culebra Cut, which was plagued by numerous mud and land slides.

When he took over, he cut the cost of moving dirt so that it would cover the extra work caused by the slides, and still had a surplus when the work was finished.

Average cost of moving dirt was \$1.50 a cubic yard during the 12 months before he took over, and Gaillard cut that to 47 cents a cubic yard.

"Engineers say it will go into history as one of the great labors of the age. Gaillard made his way fighting. Literally he was forced to shackle the feet of the mountains. He did it and the chains is for all time," according to accounts in a book written by Helen K. Henning.

The jungle took its toll on Gaillard and in July, 1913, he was stricken with a severe illness brought on by overwork and the trying weather of tropical Panama, the book says.

He was unconscious when President Woodrow Wilson pressed the button on Oct. 10, 1913, to blow up the dam at Gamboa, letting the waters of the Atlantic into the cut to merge with the waters of the Pacific.

Gaillard, who was made a full colonel by act of Congress while he was ill, died Dec. 5, 1913, 26 days after the canal opened.

"Colonel Gaillard was the real builder of the canal * * *" the book says, and few will disagree.

[From the Congressional Record—Senate, Feb. 22, 1977]

SOL LINOWITZ: BANKER AND TREATY NEGOTIATOR—A CONFLICT?

Mr. HELMS. Mr. President, I am greatly concerned that Mr. Sol Linowitz, who is presently in Panama as a chief negotiator of the proposed new Panama Canal treaty, is, at the same time, a director of Marine Midland Banks, Inc., and Pan American Airways, Inc. Both of these institutions have a direct financial interest in the support of the Torrijos dictatorship in Panama because of their activities there and their need to curry favor with the Panamanian Government. Indeed, Marine Midland has made risky loans directly to the Republic of Panama.

The proposed treaty, a treaty which Mr. Linowitz has long advocated, would give away billions of dollars of the American taxpayers' investment in the Canal Zone, vastly increase payments to the Republic of Panama, and strengthen the Torrijos regime, which is tottering both financially and politically.

There is no indication that Mr. Linowitz, who was not confirmed by the Senate, has taken steps to avoid the appearance of conflict of interest by resigning his directorships or private business associations. Until this matter is clarified, Mr. Linowitz should step aside; he may already have irrevocably tainted any treaty which is the product of his negotiations.

Mr. President, allow me to go into detail on these issues.

For the past week, a U.S. negotiating team has been in the Republic of Panama for the purpose of negotiating a new treaty regarding the Panama Canal. The negotiators at the head of that team are Ambassador-at-Large Ellsworth Bunker, a career ambassador, and Ambassador Sol Linowitz, a businessman and lawyer sworn in on February 9 as special representative of the President, with the personal rank of ambassador.

The nomination of Mr. Linowitz was not presented to the Senate for advise and consent. I am informed by the Department of State that it is not the custom to seek advise and consent on appointments which are expected to be of less than 6 month's duration. The administration is of the opinion that the new treaty will be completed in less than 6 months.

Thus the Senate has not had the opportunity to investigate Mr. Linowitz' suitability for the post, nor to inquire into what many would judge to be, on the face of it, a gross impropriety and conflict of interest. It is a case which hardly seems suited to our post-Watergate morality.

According to the best information which I have been able to find, Mr. Linowitz sits on the board of directors of two large corporations which have a compelling financial interest in the outcome of events in Panama. There is no indication that he has resigned from these boards.

Indeed, press accounts from the period before he was sworn in quote Mr. Linowitz as saying that he would not take the job if he had to give up his private business associations. Biographic data furnished last week by the Department of State indicates that he is

presently a member of both these boards. And both institutions have informed me that he is presently a member of their boards.

Mr. President, I ask unanimous consent that the biographic data furnished by the State Department be printed in the Record at the conclusion of my remarks.

The VICE PRESIDENT. Without objection, it is so ordered.

(See exhibit 1.)

Mr. HELMS. Mr. President, the two corporations are Pan American World Airways, and Marine Midland Banks, Inc.

Pan American, of course, has an office in Panama, and uses Panama City as a convenient midway stop on its Carribean and South American flights. It is of both logistical and financial interest to Pan American to maintain landing rights in Panama, which is seeking to develop its tourist business further.

The Marine Midland connection, however, is far more immediate. Mr. Linowitz serves not only on the board of directors of Marine Midland Banks, but also on its executive committee. And Marine Midland has, over the past few years, participated in a number of loans to the Government of Panama's dictator, Omar Torrijos. Because commercial banks regard such information as proprietary information, I have been unable to document completely the extent of Marine Midland's participation and financial exposure in Panama. But I have found an advertisement from the Wall Street Journal of November 20, 1973, announcing a loan of \$115,000,000 to the Republic of Panama consummated on October 19, 1973. I am told that there are other such loans. Perhaps Mr. Linowitz could give the details.

In the usual format of such advertisements, the amount of exposure of each participating bank is not listed. However, Marine Midland is listed as a participant, along with Chase Manhattan, Bankers Trust, First National City Bank, First National Bank of Chicago, and others.

Mr. President, I ask unanimous consent that the advertisement from the Wall Street Journal of November 20, 1973, be printed in the Record at the conclusion of my remarks.

The VICE PRESIDENT. Without objection, it is so ordered.

(See exhibit 2.)

Mr. HELMS. Mr. President, the mere fact of the existence of Marine Midland's financial commitment to the Government of Panama would be sufficient to question the propriety of a man who sits on Marine Midland's executive committee participating in the negotiations. It is unfortunate that the Senate had no opportunity to question Mr. Linowitz. But when one inquires into the actual situation in Panama, far deeper questions arise.

For the fact is that the Panamanian Government is presently in a deep financial crisis as a result of its own mismanagement, and the international banking community has grave doubts whether the outstanding indebtedness incurred by Torrijos can be paid. Moreover, if the Torrijos government fails because of its financial crisis, it could well mean the end of the bankers' paradise created by Torrijos which provides the United States and other banks with a haven for international financial transactions outside the United States.

To be brief, Mr. President, when Omar Torrijos took over Panama in a military coup, he reorganized the banking laws of the country in 1970, following the advice of the New York banking community. The new laws were so favorable that the banking industry in Panama went through a startling expansion from what was then a few banks with assets of a few millions of dollars, serving only Panama's small economy. Today, only 6 years later, there are 73 banks in Panama, with assets of \$8.6 billion, involved in transactions throughout the world. In Panama, such transactions are free of taxation and enjoy other advantages. A banking office in Panama is like the flag of convenience which Panama offers to the world merchant marine.

Needless to say, Mr. President, Marine Midland is among those banks which take advantage of those transactions with an office in Panama.

It is inconceivable, Mr. President, that the longevity of the regime of the dictator who set up this bankers' paradise is a matter of some concern to the executive committee of Marine Midland Banks, and to their colleagues in associated banking institutions?

Of course, even in a paradise, there have been some drawbacks. The principal drawback has been the insatiable appetite of the Torrijos regime for money. The indebtedness of the Republic of Panama has risen from some \$167 million when Torrijos took over to an estimated \$1.5 billion today. Not all of that is from commercial banks, of course. A great deal is from bilateral and multilateral lending institutions. Again it is difficult to obtain accurate figures for the current year. But the most recently available statistics from the World Bank show that at the beginning of 1975, commercial banks provided half the lending.

Moreover, a document leaked recently from Panama's Department of Planning, states that debt service alone will take 39 percent of Panama's budget in 1977—versus 7 percent in the United States—that the deficit alone may be as high as \$139 million and that to refinance loans falling due, combined with the deficit, will require \$324 million this year. The key paragraph in the memorandum states, in translation:

We feel it will be extremely difficult to syndicate loans with the commercial banks in the amounts previously mentioned, taking into account that during the present fiscal period we must contract for a total of B/323.6 million (\$323.6 million) with those sources, who in turn have become more demanding each time that an accord has to be finalized. Besides the relation between servicing the debt and current revenues of between 38.9% and 39% suggest a deteriorated capacity to service this debt and thus will increase the risk as realized by the lending institutions.

The financial crisis in Panama has been aggravated by governmental intervention into the economy with counterproductive measures, such as minimum wages, rent control, and price supports, all of which have priced Panama's exports out of the world market. A confidential memorandum sent to the Department of State by the U.S. Embassy in Panama last October had this to say:

Economic conditions in Panama worsened steadily during the 1976 first half. There were decreases from a year ago in key indicators * * * overall growth is likely to be near zero for 1976.

Moreover, even the extraordinary upsurge of Panama's worldwide indebtedness has failed to prop up a sagging and mismanaged economy. The confidential State Department memo points out that the increase in foreign loans has made matters worse, not better:

Increased external financial flows per se, regardless of concessionality, permit Panama to defer grappling with the core problem of low productivity until a later date when the problem will probably have worsened, unless such financing bears specifically on some aspect of costs. Indeed, much of the capital inflow of the past three years has aggravated Panama's economic malaise by exacerbating its debt service burden without enhancing overall productivity.

Mr. President, I ask unanimous consent that a translation of the memorandum from the Ministry of Planning of Panama and a copy of the State Department memorandum of October 26, 1976, be printed in the Record at the conclusion of my remarks.

The VICE PRESIDENT. Without objection, it is so ordered.

(See exhibits 3 and 4.)

Mr. HELMS. Mr. President, the interest of Marine Midland goes beyond the normal proprietary interest which a lending institution has in a loan it has extended. The series of loans from private banks has been used to prop up an incompetent dictatorial regime; the regime for its part has returned the favor by providing a haven for the banks to expand their international operations. But the whole mutual arrangement depends upon the personal favor of the dictator who has complete control, General Torrijos. If Torrijos falls, no one can tell what kind of a government will follow.

But the banks have just about reached the limit in the amount of credit they can extend. New sources of funding the Torrijos government must be found if the present beneficial environment for the bank is to continue. The treaty negotiations have been talking about a \$40 million annual payment from the United States to Panama under the new treaty.

Mr. President, is it beyond reason that the members of the banking fraternity involved in Panama are looking to the proposed surrender of U.S. sovereignty and territory in the Canal Zone as a way of propping up the Torrijos regime and providing increased revenues to his government? Is it not fair to ask whether the short range interests of those financial institutions might not be subordinated to the long-term interests of the United States?

I have many friends in the banking industry, and was closely associated for a time with the industry in my State, and I am not trying to impugn their motives. But in international situations, it is no easy matter to separate personal interests and national interests, and to make objective judgments.

For example, I think that anyone who thinks that the best way to assure stability in Panama is to give away the Panama Canal is making a disastrous mistake. Similarly, anyone who thinks we can defend the Panama Canal if we only have a status-of-forces treaty with Panama is making a big mistake. Moreover, anyone who thinks that appeasement of a left-wing dictator will provide a base for enduring relations with Panama is making a terrible mistake.

But these are judgments that will ultimately come to the Congress of the United States for debate. Meanwhile, it seems to me that it is a grave error to have a banker who is in bed with Torrijos

negotiate the proposed treaty. I regret that Mr. Linowitz' nomination bypassed the usual path of advise and consent in the Senate.

Had Mr. Linowitz' nomination come before the Senate, there would have been the opportunity to question Mr. Linowitz about 18 U.S.C. 208, which says in part:

Whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special government employee, participates personally and substantially as a government officer or employee, through decision, approval, disapproval, recommendations, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person, or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than \$10,000 or imprisoned not more than two years, or both.

Had such questioning been possible, perhaps the Nation would have learned what steps Mr. Linowitz intended to take to avoid a conflict of interest, or the appearance of conflict of interest, as the case may be. He certainly is an employee, or a special employee; he is participating personally and substantially; he is making decisions and recommendations and rendering advice; it is a particular matter in which an organization of which he is a director has a financial interest—in fact two organizations of which he is a director. The American people deserve to know how he will avoid a conflict.

It is worth pointing out that only a week ago, U.S. Attorney General Griffin B. Bell quite properly informed Mr. Charles Kirbo, the close friend and confidant of the President, that he would be classified as a "special employee" of the government whenever he gave advice to the President—even though he was receiving no compensation from the Government. General Bell's opinion was that the conflict-of-interest statutes prohibited Mr. Kirbo, as a "special employee", from giving advice to the President on any matter in which he had a financial interest.

If this is true of Mr. Kirbo, who is not even officially employed by the Government, is it not proper to ask whether it applies to Mr. Linowitz, who has been sworn in as an ambassador and "special representative" of the President?

Mr. President, until these matters are resolved, it is inappropriate for Mr. Linowitz to participate in the negotiations. Indeed, because of press reports that substantive progress has been made during the past week toward a treaty draft, it could well be that any treaty draft ultimately produced, even if Mr. Linowitz resigns, will be fatally flawed. A controversial treaty that has the appearance of being tainted by special interests does not deserve the consideration of the Senate. Mr. Linowitz should voluntarily stand aside, and offer an explanation to the American people and the Congress.

Mr. President, I ask unanimous consent that an article from the Washington Post, "Carter Confidant Is Ruled Subject to Conflict Curbs," of February 15, 1977, be printed in the Record.

The VICE PRESIDENT. Without objection, it is so ordered.

(See exhibit 5.)

EXHIBIT 1

BIOGRAPHIC DATA: THE HONORABLE SOL M. LINOWITZ

Age: 62, b. Trenton, N.J.

Marital Status: Married; four daughters (Mrs. Kenneth Mozersky, Mrs. Gabriel Gerstenblith, Jan, Ronni).

Senior Partner of the international law firm of Coudert Brothers, One Farragut Square South, Washington, D.C. 20006; 200 Park Avenue, New York, N.Y. 10017.

Co-Chairman (formerly Chairman), National Urban Coalition.

President, Federal City Council.

Chairman, National Council of Foreign Policy Association.

Chairman, Commission on U.S.-Latin American Relations.

Chairman of the Board, Jewish Theological Seminary of America.

MEMBER

Board of Directors, Time, Inc. (also Chairman of Audit Committee).

Board of Directors, Pan American World Airways (also member of Executive Committee).

Board of Directors, Marine Midland Banks, Inc. (also member of Executive Committee).

Board of Trustees, Mutual Life Insurance Company of New York.

Board of Trustees, Center for Inter-American Relations.

Board of Directors, International Executive Service Corps.

National Commission on Critical Choices for Americans.

Council on Foreign Relations.

National Board on Graduate Education.

FELLOW

American Academy of Arts and Sciences.

Royal Society of Arts.

PREVIOUS POSITIONS

U.S. Ambassador to the Organization of American States (Nov. 1966-May 1969).

U.S. Representative to the Inter-American Committee of the Alliance for Progress (Nov. 1966-May 1969).

Chairman of the Board, Xerox Corporation; previously Chairman of Executive Committee and General Counsel (1955-1966).

Senior Partner, Harris, Beach, Wilcox, Dale and Linowitz (Rochester, New York, 1958-1966).

Chairman, National Committee for International Development (1964-1966).

Vice Chairman, J. F. Kennedy Center for the Performing Arts (1965-1970).

Chairman, State Department Advisory Committee on International Organizations (1963-1966).

Assistant General Counsel, Office of Price Administration (1942-1944).

Lieutenant, U.S. Naval Reserve (1944-1946).

EDUCATIONAL

A.B. Degree (1935): Hamilton College (Salutatorian); Phi Beta Kappa; Delta Sigma Rho; Phi Delta Epsilon.

J.D. Degree (1938): Cornell Law School (Editor in Chief, Cornell Law Quarterly; Phi Kappa Phi; Order of Coif).

HONORARY DOCTORATE DEGREES (LL.D. AND L.H.D.)

Allegheny College.

American University.

Amherst College.

Babson Institute.

Bucknell University.

Colgate University.

Curry College.

Elmira College.

Ithaca College.

Marietta College.

Notre Dame University.

Oberlin College.

Pratt Institute.

Roosevelt University.
 St. John Fisher College.
 St. Lawrence University.
 Syracuse University.
 University of Judaism.
 University of Michigan.
 University of Missouri.
 Washington University.
 Wooster College.
 Yeshiva University.

TRUSTEE

Cornell University.
 Hamilton College.
 The Johns Hopkins University.
 The American Assembly.
 The Salk Institute.

EXHIBIT 2

REPUBLIC OF PANAMA: \$115,000,000

(Ten Year Eurodollar Loan)

Managed by Citicorp International Bank Limited, Dillon, Read & Co. Inc., Smith, Barney & Co. Incorporated, and Banco Nacional de Panama.

And provided by—Asia Pacific Corporation Ltd.

Banco de Santander Y Panama.

Bank of America NT & SA.

San Francisco, California.

Bank of Montreal.

The Bank of Nova Scotia.

The Bank of Tokyo, Ltd.

Bankers Trust Company.

Banque Ameribas.

Banque Nationale de Paris

The Chase Manhattan Bank, N.A.

Citicorp International Bank Limited.

Compagnie Luxembourgeoise.

De Banques A.

Dresdner Bank Group.

The First National Bank of Boston.

Panama Branch

The First National Bank of Chicago.

First National City Bank.

The Fuji Bank, Limited.

The Industrial Bank of Japan Limited.

Interunion-Banque.

Lloyds & Bolsa International Bank Limited.

London & Continental Bankers Limited.

The Long-Term Credit Bank of Japan Limited.

Marine Midland Bank New York.

The Mitsui Trust and Banking Company Limited.

National and Grindlays Bank Limited.

Republic National Bank of Dallas.

Rothschild Intercontinental Bank Limited.

The Roal Bank of Canada.

Security Pacific National Bank.

The Sumitomo Bank, Ltd.

The Tokai Bank, Limited.

Toronto Dominion Bank.

Agent: First National City Bank.

October 19, 1973.

EXHIBIT 3

MEMORANDUM

To Eng. Demetrio B. Lakas, President of the Republic, Presidency of the Republic.
From Nicolas Ardito Barletta, Planification Minister.

Matter Financial perspectives for 1977.

The purpose of this Memorandum is to call attention to the financial basis upon which will be defined the budget policy of 1977 thus permitting to show the pertinent limitations that are being detected in this year's budget.

(a) The current revenues should increase between B/ 43.6 million and B/ 44.2 million with respect to this year's revised income figures thus reaching totals of B/ 339.7 million or B/ 333.3 million; dependent on whether or not there is a recuperation in the economic activity during the last six months of this year.

(b) The increase in current revenues assumes an economic upturn of 3% and an inflation rate of 5% throughout 1976.

(c) It also assumes a B/ 21.0 million package increase of taxes which should not interfere significantly in the desired economic recuperation process.

(d) The technical group involved in this evaluation has concluded that the following are the tributary measures that would fill the above requirements:

A consumer tax designed in such a manner as to minimize its effect on prices and on lower income groups. This type of taxation tends to divert private expenditure towards investments, thus stimulating economic development.

Reform import duties in order to replace specific value taxes by value added duties. This measure will adjust the increase of tax income to the increased cost of imported goods, and will thus help to stimulate internal production.

Limit the tax deduction permitted on interest paid for mortgage loans used to buy homes for one's personal use.

Consolidate the progressive tax structure for corporations into one tax rate in order to avoid the use of numerous companies to lower the effective tax rate.

(e) At the same time, operational expenses are estimated to increase from between B/ 50.3 million and B/ 50.7 million and will reach totals of B/ 340.6 million or B/ 341.0 million, depending on how the economy is reactivated during the second semester of this year.

(f) The fact that the increase in revenues will be inferior to the increase in expenses suggest that there will virtually be no new resources to augment the coverage of public services.

(g) The significance of the rigidity to which the new budget elaboration will be subjected will be understood when one observes that only B/ 3.1 million will correspond to net reincorporations of previously frozen expenditures, while the remaining B/ 47.2 million correspond to commitments of an obligatory nature.

(h) These commitments of an obligatory nature can be broken down in the following manner:

(1) From between B/ 42.3 million to B/ 42.7 million for servicing the foreign debt which will increase from between B/ 87.5 million to B/ 129.8 million or B/ 130.2 million in 1977, depending on whether or not the economy recuperates during the last semester. Interest will increase from between B/ 24.8 million or B/ 25.2 million, depending on the above observation, while the amortizations will be increased by B/ 17.5 million. Due to the tendency required to service the foreign debt, its ratio in respect to current revenue increases from 29.6% to between 38.2% and 39.0% which significantly deteriorates our capacity for further indebtedness.

(2) B/ 2.3 million of the amortization of salaries are for:

Education—B/ 1.4 million.

Health—0.4 million.

Housing—0.1 million.

Other institutions—0.4 million.

(3) B/ 1.3 million of current transferences which reflects the increase in subsidy to the National University, the payment of Balboa notes subscribed to BID and the increased consumption of water.

(4) E/ 0.4 million in salary increases to:

Health—0.3 million.

Government and Justice, Labor—.

Presidency—0.1 million.

(5) B/ 0.3 million for the XIII the month of public functionaries.

(6) B/ 0.2 million for inclusion in the MIDA budget for personnel frozen in its investment portion of said budget and for the hiring of new auditors for the Finance Ministry.

(7) B/ 0.4 million in order to bolster the supply budget of the Health Ministry and other compulsory expenditures.

(i) Since, for the above reasons, all other expenses must be maintained at the budgeted fiscal 1976 level, it is convenient to eliminate from the budgeting process all programmed budgeting meetings in order that the respective institutions and our analyst can dedicate the most amount of their time possible to formulate, evaluate and turn in punctually their budget by program.

(j) As to the Central Government contribution towards the public investment program, we calculate that it will be B/ 78.0 million which represents an increase of B/ 18.0 million over the B/ 60.0 million that is estimated will have been contributed this year.

(k) As a result, the global deficit will be between B/ 131.9 million and B/ 138.7 million, depending on how well the economy recuperates during the second semester.

(l) To finance this deficit we will require B/ 15.6 million from the Venezuelan Investment Fund, B/ 5.0 million in Internal Bonds, and from B/ 111.3 million to B/ 118.7 million from the private banks.

(m) Thus, the amounts that must be financed as well as the amounts that must be obtained, create very concrete problems which in turn reiterate the need to increase expenses and investments only in those areas of an obligatory nature and to dedicate the most of time possible to the conscientious elaboration of a budget by programs in order to execute the largest possible amount of services required by our society with the scarce resources that are available.

(n) On the one side, the required new financing of between B/ 131.9 million and B/ 138.7 million implies that there will be pressure on the liquidity and solvency of the National Bank which must provide the Central Government the monetary resources while the 3 previously mentioned financial operations can be formalized, all of which should take at least four months. During this period, the National Bank will have to recur to its lines of credit as well as to its internal reserves which have been practically saturated during the present year by having to finance the global deficit of B/ 99.3 million which in turn is between B/ 32.6 million and B/ 39.4 million less than what has been estimated for 1977.

(o) On the other hand, we feel it will be extremely difficult to syndicate loans with the commercial banks in the amounts previously mentioned, taking into account that during the present fiscal period we must contract for a total of B/323.6 million with those sources, who in turn have become more demanding each time that an accord has to be finalized. Besides, the relation between servicing the debt and current revenues of between 38.9% and 39% suggest a deteriorated capacity to service this debt and thus will increase the risk as realized by the lending institutions.

(p) In short, 1977 lines up as extremely delicate due as much to current expenses increasing more than current revenues, as well as to the amount and structure of the new financing that must be contracted which reaches the limits available to the Nation as such.

(q) As a result of the above, I respectfully request your backing in eliminating the budgeting meetings and in demanding from the institutions that they pay the most attention to formulating and elaborating a budget by program. Also, I ratify the need for you to back the approval and execution of the taxing measures that we have presented for your consideration, once that we have finalized the pertinent studies.

With by highest consideration and appreciation.

EXHIBIT 4

(Sent by United States Embassy in Panama to the State Department on Oct. 26th, 1976)

Tags: ECON, EFIN.

Subject: Panama's Recession Is Structural—A Result of Low Productivity.

1. This message is part of a continuing series of mission economic studies of the State of the Panamanian economy and projections for its future.

2. Summary: Panama's recession, which deepened during the first half of 1976, is either cyclical nor primarily a product of economic conditions outside Panama. In our view the economy is floundering mainly because its high cost output is not competitive in the world market and few opportunities exist for available private investment. To establish a basis for renewed sustainable growth will require actions

that lead to lower costs and improved productivity. These could include easing the labor code, reducing subsidies, boosting domestic savings, and directing resource flows more toward the international service sector where Panama has natural advantages, however, most such actions would cut back social benefits granted to the working classes under the "revolution", and might not be politically acceptable under the present government, inflows of foreign capital have not been getting at the core problem of high costs (low productivity). Lack of access to relevant Canal Zone sites is delaying GOP development of infrastructure which is prerequisite to the growth of various commercial services industries by the Panamanian private sector. End summary.

3. Economic conditions in Panama worsened steadily during the 1976 first half. There were decreases from a year ago in key indicators—manufacturing, construction, external trade, unemployment, (increase), and sales to the Canal Zone (see reftel), overall growth is likely to be near zero for 1976.

4. Failure of the economy to respond to a variety of stimulants indicates that the recession is more than a cyclical maladjustment. Credit has remained relatively plentiful, with preferential rates available from the government for both agricultural and industrial projects. There are tax subsidies for new exports, and tax benefits for reinvested profits. No basic changes have been made in the "rules of the game" under which business operates, such as the labor code or tax laws, since before the onset of recession, in fact, the GOP in recent months has actively sought by various direct means to improve the business climate. A large boost in 1975 public sector spending had little effect on either private investment or aggregate demand.

5. Also, Panamanian economic problems do not seem to be caused primarily by worldwide economic trends or world trade. In contrast to Panama's continuing decline, other developing countries (LDC's) have been experiencing a quickening economic tempo so far this year in response to rapid recovery by the industrialized countries, plus some correction of structural maladjustments, LDC exports have been generally increasing as a part of the marked improvement in 1976 first half world trade (plus 10 percent) while the value of Panamanian exports remained at its 1975 level (excluding an abnormal decline in petroleum products exports), changes in Panama's economy also differed from the worldwide pattern both during the 1974-75 world recession and the years immediately preceding it. Despite sharp 1974-75 recession among the industrialized countries (zero growth), LDCs' gross domestic product (GDP) increased 5.5 percent in 1974 and 1.7 percent in 1975. Growth had begun tapering off in 1971 whereas during 1971-73 the rest of the world including Latin America experienced unprecedented boom.

6. Private investment in Panama reached a peak in 1971. Growth in manufacturing began to fall off in 1971 with a decline in the number of attractive import substitution possibilities, little increase has subsequently taken place in the volume of manufactured exports, output of both construction materials and intermediate goods stopped expending in 1973. Expansion of construction activity began slowing in 1972 and has actually been declining since 1974. Imposition of rent controls in 1973 brought private investment in low cost housing to a standstill. On the other hand, growth of the important services sector remained near 8 percent annually through 1974 (plus 3 percent in 1975) due in part to the major expansion of the foreign banking sector since 1971, growth in agricultural output has remained sluggish since 1970 at about 3 percent annually, much slower than during the 1960's.

7. Panama's basic economic weakness in our view and the reason behind current stagnation is its non-competitiveness in the world market—a structural problem involving primarily high cost production (coupled with a lack of resources) in both agriculture and industry. The export potential for Panamanian agriculture is extremely limited at present, the main exports, bananas, is in the hands of foreign plantation operators, and has probably reached its peak in an increasingly competitive world market. In general, land is of poor quality and farm labor costs are high—the \$3 per day minimum wage is estimated to be at least double the rate anywhere else in Central America. The government encourages high cost production, including rice, the principal crop, by subsidizing producers through support prices typically set above the world market. Thus, Panama cannot profitably export major crops such as rice and corn and is further precluded from developing any profitable export potential for various lesser crops by the small domestic market base in Panama. Accessible forests have been cut over and there is little potential for meat exports while access to the U.S. market is restricted. Panama's sugar industry is likewise non-competitive due to high costs of both cane production and refining operations.

8. As with agriculture, Panama's manufacturing industry currently has little export or overall growth potential because of high production costs coupled with a dearth of natural resources (copper deposits have not yet been determined to be economically exploitable). Minimum wages and the general wage and benefit structure in Panama are estimated to be the highest in Central America and among the highest in all Latin America. Higher wages and benefits in the Canal Zone exert upward pressure on wages in the republic as employers compete for the generally better qualified workers attracted by Zone wages. The dominance of the service sector in Panama's central urban areas with its higher skill levels also creates upward pressure on the entire wage and benefit structure. Employee benefits under Panama's labor code add to direct employment costs. The code exerts indirect pressures on costs through subsidies such as firing restrictions imposed on employers and, by strengthening the trade union movement, bolsters the trend toward costlier contract settlements. High labor costs encourage the substitution of capital for labor, thus boosting structural unemployment throughout the economy. Also, relative capital costs—mostly foreign sourced—are likely to rise as Panama's already high debt service burden worsens and the economic outlook for other LDCs improves relative to Panama.

9. Establishing the basis for renewed growth and improved economic well being that can be sustained will require actions that lead to a lower cost structure. One widely discussed possibility is an easing of the labor code, although its real impact on costs remains uncertain (it did not bring on recession although it may have stood in the way of needed private sector adjustments). Changes probably would not induce an immediate surge of private investment, however, the business community has made clear its conviction that changes are essential, giving them an additional psychological importance that bears importantly on the general investment climate. Changes might be a convincing sign of GOP concern over the private sector's economic plight.

10. Appropriate belt tightening also could include lowering subsidies as well as the wage/benefit structure to reduce relative production costs, and increasing personal taxes to curb consumption (particularly imports) and expand domestic savings. These effects are usually achieved indirectly by currency devaluation. Since Panama's currency is the U.S. dollar, such actions must be taken directly, in addition, resources may need to be more heavily concentrated in the internationally-based services sector where Panama has more natural advantages, with proportionately less in agriculture and the non-productive social sectors.

11. Comments:

(A) Panama's high wages, subsidies, and consumer imports—together with a moderate tax burden and little public saving—permit a standard of living which no longer appears to be supportable by Panama's inefficient domestic production.

(B) Increased external financial flows per se, regardless of concessionality, permit Panama to defer grappling with the core problem of low productivity until a later date when the problem will probably have worsened, unless such financing bears specifically on some aspect of costs. Indeed, much of the capital inflow of the past three years has aggravated Panama's economic malaise by exacerbating its debt service burden without enhancing overall productivity. Moreover, total inflows greatly exceeded the current account deficit of Panama's balance of payments, resulting in large negative "errors and omissions" (around \$100 million annually) most of which probably represented outflows of domestically-owned capital.

(C) The types of actions mentioned above for addressing Panama's high cost structure run headlong into the "revolution"—the social and economic benefits granted to the urban and rural working classes over the past eight years which would need to be reversed in part in short, the "revolution" has collided with growth and one or the other must yield, whether or not actions of sufficient scope to be economically meaningful along the above lines are politically possible for the present government is questionable.

(D) Panama's best economic prospects lie in the development of its potential as a sub for servicing international commerce, various aspects of cargo handling are an essential part of the picture. Thus, the GOP has a valid case in urging early access to relevant canal zone sites needed to develop the infrastructure on which growth of various transport, storage and other commercial services.

EXHIBIT 5

[From the Washington Post]

CARTER CONFIDANT IS RULED SUBJECT TO CONFLICT CURBS

(By Morton Mintz)

SEATTLE, February 14.—Attorney General Griffin B. Bell said today that presidential confidant Charles Kirbo is subject to federal conflict-of-interest laws because under a strict, 14-year-old statute, he is a "special employee" of the government.

Kirbo "is a special employee every time he advises the President," Bell told a news conference here, where he is attending the American Bar Association's winter meeting. No one can give the government advice "as a friend," Bell said; in this context, "there's no such thing as a friend."

Bell also said it makes no difference under the statute that Kirbo, a partner in King and Spalding, the Atlanta law firm Bell left to become Attorney General, is not paid for advising President Carter.

Bell said he told Kirbo last November that he is in special-employee status, which prevents him from advising Carter or anyone else in government about any matter in which he or the law firm has a financial interest.

So far as is known, no friend of a past President who has provided unpaid advice in the White House has been formally classified as a special employee. The statute making such an employee subject to the conflict-of-interest laws took effect in January, 1963, during the Kennedy administration.

Charles G. (Bebe) Rebozo, for example, was a close confidant of President Nixon, but was not known to have been classified as a special employee.

In Atlanta, Kirbo confirmed to reporters that he is in special-employee status, although he collects neither a possible \$100-a-day consultant's fee nor expenses when he comes to Washington.

When he comes to the White House, he said, he tries to help Carter carry out his campaign commitments and proposals, although at times he simply listens to the President.

The primary restraint of his special-employee status, he said, is that "you can't give any advice on any matter you have an interest in."

Bell, responding to reporters' questions, said that to avoid any possible conflict from arising out of his former partnership in King and Spalding he will, within a few days, provide Justice Department officials with a list of all of the law firm's clients. He said reporters will be able to see the list, which includes numerous large corporations.

Bell, who met with reporters after speaking briefly to the ABA's House of Delegates, said that Carter soon will issue an executive order creating commissions to propose candidates, on the basis of merit, for vacancies on U.S. courts of appeals.

Bell said the order will allow the commissions to propose their own candidates, rather than be bound to names submitted by senators from affected states.

The number of vacancies shortly will reach six. For each one, a commission will propose five names to the President, who will choose one for final nomination to the Senate. Each affected state will be represented on the commissions, each of which will have 11 members.

Some members will be laymen. Bell said that the draft White House order does not prohibit judges from being members, but that he doesn't know if Carter will agree with a suggestion for inclusion of judges that was made to the ABA Sunday by Chief Justice Warren E. Burger.

All told, there will be 13 commissions—one for each of nine circuits, and two each for the huge fifth and ninth circuits in the South and Far West.

In his talk to the House of Delegates, Bell pleaded for a delay until the August meeting of the ABA's policy-making body on pending resolution to overhaul the federal grand jury system.

By August, Bell said, he will have completed a review of the proposals. One of them would allow counsel to accompany witnesses in the grand jury room. At least tentatively, Bell said, he feels that this proposal would convert grand jury proceedings into secret trials, with the result that prosecutors would try to bypass grand juries and file charges by themselves.

PANAMA CANAL NEGOTIATIONS

Mr. THURMOND. Mr. President, a column appeared Saturday, February 19, 1977, in the Washington Post written by Jack Anderson and Les Whitten entitled "Report Could Upset Panama Talks."

The column refers to a report prepared by Representative John M. Murphy, Democrat, of New York, about torture and murder of opponents in Panama of the current military dictator, Omar Torrijos.

As I have warned in the past, the United States is making a serious mistake by attempting to negotiate a treaty on the Canal with a government which was not freely chosen by the people of Panama.

Further, this particular government has denied its citizens many of the basic political and human rights promoted by President Carter.

By negotiating a treaty with Torrijos the Carter administration is giving more power to the current Panamanian government which Congressman Murphy's report claims has tortured and murdered up to 32 political opponents.

Mr. President, I ask unanimous consent that this article be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

REPORT COULD UPSET PANAMA TALKS

(By Jack Anderson and Les Whitten)

The United States must soon decide whether to give up the Panama Canal Zone, a colonial strip that is offensive to all Latin America.

We warned on Nov. 20, citing secret intelligence reports, that the canal issue was a "ticking time bomb" about to explode.

President Carter gave it top priority after he took charge of foreign affairs. He dispatched a crack negotiating team, headed by the veteran diplomat Ellsworth Bunker, to Panama this week. Its secret instructions are to seek a reasonable formula that will permit the United States to relinquish sovereignty over this strip of Panamanian territory.

But there are some flies in the diplomatic ointment. Ominous cracks have appeared, for example, in the Panamanian economy. Dictators habitually try to divert public attention from their domestic failures by stirring up emotional issues. There is concern that Panama's military dictator, Omar Torrijos, might forego a reasonable settlement and use the canal as a political issue.

Carter, for his part, has pledged to restore morality to U.S. foreign policy and to take a stand against nations that abuse human rights. He has just received a confidential report from Rep. John M. Murphy (D-N.Y.) about torture under Torrijos. Murphy pointedly urged the President not to surrender the Panama Canal until the allegations have been cleared up.

The disturbing report, written and translated in Panama under extreme duress, was smuggled out of the country. Some of its allegations have been confirmed by diplomatic sources.

The report charges that Torrijos' political opponents have been shot, drowned, beaten, sexually abused and electrically shocked. It names 32 persons who allegedly have been murdered by the Torrijos government.

For example, a Roman Catholic priest, Hector Gallegos, was arrested by the Panamanian National Guard in June, 1971. He had been organizing agricultural cooperatives in his impoverished parish. Apparently he found himself working against the interests of some local relatives of the Panamanian dictator. Diplomatic sources confirm that Gallegos has not been heard from since.

"The usual pattern," states the report, "is that a person is arrested without a warrant and without accusation, and then the authorities deny any knowledge of

their whereabouts. Sometimes the victim is released after questioning or torture or both, and sometimes nothing more is heard about the victim."

The state police seldom allow relatives to claim the victims' abused bodies. But the report alleges that four bodies—those of student Marlene Mendizabal, student Dorita Moreno, lawyer Ruben Miro and Eduardo White—were recovered and showed evidence of torture.

There are no individual rights in Panama, where, the report alleges "the unwarranted search of homes by the military police is an everyday happening." The report includes affidavits and details about the torture that is inflicted.

It also charges, as we reported in 1973, that members of Torrijos' family are involved in international narcotics smuggling.

The allegations could upset the delicate negotiations for a new Panama Canal treaty.

Footnote: A Panamanian embassy spokesman said the charges were fabricated by American opponents of a new canal treaty and Panamanian opponents of the Torrijos regime. He invited us to visit Panama to see whether there is torture, an invitation we will be happy to accept if we can be guaranteed access, unannounced, to any prisons we wish to inspect, without government escort. Only proven terrorists, agitators and subversives have been exiled rather than being jailed, said the spokesman.

[From the Congressional Record—Senate, Mar. 25, 1977]

NEW PANAMA CANAL TREATY

MR. THURMOND. Mr. President, the March 24, 1977, edition of the Washington Post contained an article by Don Oberdorfer entitled, "Panama Plans Intense Publicity Effort To Push New Treaty."

This article points out that Panama has hired an American public relations firm to mount a drive within the United States to back a new Panama Canal Treaty.

I am deeply concerned that there is a strong move to win the American people to support any new treaty without regard to whether or not it is in the best interest of this country.

Mr. President, I ask unanimous consent that this article be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

PANAMA PLANS INTENSE PUBLICITY EFFORT TO PUSH NEW TREATY

(By Don Oberdorfer)

Panama has hired former presidential campaign aides of Sen. Barry Goldwater (R-Ariz.) and Sen. Hubert H. Humphrey (D-Minn.) to plan and execute a nationwide public relations drive backing a new Panama Canal treaty.

The contract between Panama's United Nations Mission and Public Affairs Analysts, a New York firm, became effective in January. F. Clifton White, who was the architect of Goldwater's 1964 bid for the White House, is president of the firm. Joseph Napolitan, who was the Humphrey campaign's media director in 1968 and has worked on many other political drives, is chief executive officer. Former Democratic National Chairman Lawrence F. O'Brien is an owner of the firm, though not active on a day-to-day basis.

Napolitan, in a telephone interview, estimated that Public Affairs Analysts would charge Panama \$150,000 to \$200,000 for its services over the first six months. He said the firm will send pro-treaty information to some 6,000 influential politicians, journalists, academicians and business people as well as monitor the activities of groups opposing a canal treaty. He said the firm will not engage in lobbying or "propaganda" activities.

Panama's new public relations advisers represent only one facet of growing activity by groups on all sides of the canal issue, which may well become one of the major political controversies of 1977. The Carter administration is seeking to conclude negotiations with Panama on a new treaty by this summer, hoping for Senate ratification before 1978, a congressional election year in which the controversial treaty could become an issue.

Senate Democratic Whip Alan Cranston (Calif.) has been quietly conducting a headcount since Carter identified the canal treaty as a high-priority matter in a talk with legislators before Inauguration Day. Cranston said yesterday that 22 to 25 senators are "apt to be negative" to a new treaty, 38 senators are "firmly for a sensible treaty" and up to 20 more senators appear amenable to consideration of a new treaty, with the positions of the rest unknown.

Sen. Strom Thurmond (R-S.C.) last year mustered 38 senators on an anti-treaty resolution. This is more than the one-third of the Senate, which can block ratification of a treaty by a two-thirds vote. Cranston's figures show improved chances for treaty ratification, but a tough political battle likely, is still likely.

Congressional sides report continuing heavy mail on the Panama Canal treaty issue, mostly from groups opposing what they maintain is a U.S. "giveaway." Some of the mail is generated by conservative publications, such as headlined articles in the current issues of Liberty Lobby's "Spotlight" and National States Rights Party's "Thunderbolt" attaching a new canal treaty.

The Council of the Americas, made up of 220 major U.S. corporations with investments in Latin America, asked each senator in a Jan. 28 letter to reject any resolution that would block negotiations for a new canal treaty. The letter, signed by council president Henry R. Geyelin, said successful solution of U.S.-Panamanian differences would have "a very positive impact" on U.S. relations with Latin America.

The council has established a "work group" of senior executives from 45 corporations to counter opposition to a canal treaty. Officials said an initial budget of \$31,000 for year's work has been far exceeded by actual operations, including publication and distribution to 6,000 people of a 36-page pamphlet on the arguments for and against a new treaty.

The council's research arm has compiled a list of 20 organizations that have taken anti-treaty positions, ranging from the American Legion and Veterans of Foreign Wars to the Canal Zone Police Lodge.

Among the active anti-treaty groups are:

Task Force on the Panama Canal, a project of the American Council for World Freedom, a Washington-based conservative group. In a fund-raising letter for the project last September, council president Fred Schlafly claimed his organization in 1975 "spent just under \$100,000 to stay the surrender of the Panama Canal."

Committee on Latin American Policy, a previously independent conservative group that last year became an "autonomous" division of the John Birch Society. It recently sent out an appeal for funds featuring a five-page pamphlet titled, "Who Owns the Panama Canal Anyway?"

Canal Zone Non-Profit Public Information Corp. whose director of public information is Phillip Harman, a tireless anti-treaty figure who calls himself "the grandson-in-law of the founder of the Republic of Panama." Harman in 1953 married a granddaughter of Jose Aranga, a member of the junta that established the first Panamanian government.

U.S. officials expect perhaps the most important sales campaign of all to be launched within a month or two, if negotiations with Panama proceed favorably. President Carter has committed himself in private to a major drive backing the new treaty, including a televised "fireside chat" devoted to the issue.

[From the Congressional Record—Senate, Mar. 29, 1977]

U.S. CANAL ZONE AND PANAMA CANAL: CONTROL WITHOUT SOVEREIGNTY IS DOUBLE-SPEAK

Mr. HELMS. Mr. President, as Members of Congress are becoming increasingly aware, the question of the continued sovereign control by the United States of the U.S. owned Canal Zone and Panama Canal has become a matter of both national and international interest. One feature of this interest has been the publication of perceptive articles by eminent authorities, among them Hanson W. Baldwin, a distinguished military historian, outstanding strategist, and former military editor of the New York Times.

In the first of a recent series of two articles in a Waterbury, Conn., newspaper, he stresses the strategic value of the Panama Canal, emphasizes the Caribbean-Gulf of Mexico as our "soft underbelly," and refutes some of the current criticisms of the canal's "continuing and far-reaching importance" to the United States.

In the second article of this series, Mr. Baldwin condemns the 1974 Kissinger-Tack "agreement of principles" under which the current diplomatic negotiations for a new Panama Canal Treaty are being negotiated, emphasizes some of the ruthless violations of human rights by "neo-Marxist dictatorship" of Panama, describes Panamanian threats of violence as "overdrawn," asks whether it is more important to avoid "confrontation and condemnation" than to "retain control of the canal," and concludes that "if we refuse to defend highly important or vital interests merely to avoid the blackmail threat of violence we are finished before the crisis erupts."

Mr. President, the United States is a great and powerful Nation and Panama is small and weak. What is needed in the current Isthmian situation is a combination of courage and caution, because surrender of U.S. sovereignty over the Canal Zone means loss of control over the Panama Canal. As Mr. Baldwin says, "control without sovereignty is double-speak."

Mr. President, as the two indicated articles by Mr. Baldwin should be of unusual interest to all Members of Congress and the Nation at large, I ask unanimous consent to have them printed in the Record.

There being no objection, the articles were ordered to be printed in the Record, as follows:

[The Waterbury Sunday Republican, Feb. 6, 1977]

PANAMA CANAL VITAL TO U.S. INTERESTS

(By Hanson W. Baldwin)

The future of what should be America's "Mare Nostrum"—the Caribbean Sea-Gulf of Mexico—will be profoundly affected by one of the first crucial foreign policy decisions of the Carter Administration.

That issue is the Panama Canal—its security and control, and its sovereignty.

Not since Fidel Castro took over Cuba and established a Russian-supported and Russian-armed Communist bastion within 60 miles of our shores has there been any foreign policy issue so close to home and so important to basic American political and strategic positions as the current and long-continuing negotiations with the Republic of Panama about a new Canal treaty.

The terms of such a treaty will have significance that will extend far beyond the operation of the canal, the status of the narrow strip of land around it—the Canal

Zone (until now considered U.S. sovereign territory), or its effects upon Panama itself or other Latin-American nations. The ultimate stakes could well be control of a vital sea area—all of that vast, island-dotted watery space to our south across which most of the main north-south, east-west air and sea trade routes of the Western Hemisphere flow.

Not since the Monroe Doctrine was first enunciated 150 years ago has there been such a major threat to its validity as there is today. Ever since Castro came to power, the Doctrine has been more honored in the breach than in the observance. Soviet MIGs flying from Cuban fields, Soviet submarines calling at Russian-built Cuban bases, Cuban troops armed with Russian weapons, transported by Russian planes to African Angola, and Russian-trained Cuban guerrillas, infiltrators, agents provocateurs, and "training" and "aid" missions in various Latin-American countries, including Panama, Guyana, Jamaica and Puerto Rico are all signs of a spreading infection.

The area that Alfred Thayer Mahan and all succeeding generations of strategists have considered in the vital interest of the United States to control is now often laced by the vapor trails of Russian jets or the unseen passage of Soviet submarines.

IMPORTANT FOR TRADE

There is no doubt about it; the Monroe Doctrine today is in considerable peril.

The Caribbean Sea-Gulf of Mexico is an area of tremendous geographical and economic, and hence of strategic, importance to the United States. Across its waters, or through its skies flows a very sizable portion of the lifeblood of U.S. industry and commerce—coffee and manganese from Brazil, bananas and tropical fruits from Central America and the islands; copper from Peru and Chile; bauxite from Jamaica and Surinam; oil from Venezuela.

Some 13 major global trade routes funnel through the Canal. About 16.8 per cent of U.S. trade passes through the Canal and it has been estimated that of all cargoes transiting Panama in ships of all flags, some 70 per cent is bound to or from U.S. ports.

The Canal-Caribbean-Gulf area provides access by sea and air to our vital Gulf Coast ports and the increasingly important off-shore oil and gas fields in the Gulf, to the mighty Mississippi, jugular vein of the nation, and to the "soft underbelly"—the very soft underbelly—of the United States.

The present-day military importance of the Canal is too often dismissed. Two principal criticisms of its alleged lack of utility are made: It could, it is said, be instantly destroyed in a nuclear war, and its locks are not wide enough to accommodate "modern" vessels.

Both statements are false, irrelevant or over-simplified. In a nuclear war, the Canal and for that matter, many other areas in the United States and overseas would simply have no relevance, either as targets or as positive military assets. But the Canal does have major and continued importance in non-nuclear conflicts or confrontations, which are, by far, the most likely contingencies of tomorrow.

During the Cuban missile crisis, Marines and supplies from the West Coast were ferried through the Canal to the Caribbean; if they had had to pass around Cape Horn they would never have arrived in time to influence the outcome. During the Vietnam War, one-third of all sea-borne cargoes bound for Vietnam transited the Canal, after loading at Gulf or Atlantic ports.

ADEQUATE FOR NAVY

Today, with our Navy greatly reduced in numbers, we face the same situation we did before World War II—a one-ocean fleet with two-ocean responsibilities.

Contrary to impression, every vessel of the United States Navy, except for 13 first-line aircraft carriers, can transit the Canal, including all our missile-firing and attack submarines, all our anti-submarine and escort forces, our amphibious vessels and our support and supply craft—a factor of great importance when a crisis is brewing.

There has long been, moreover a once-started, but still dormant plan to build, within the present zone a third set of locks (or a sea-level Canal), wider than the 110-foot width of the present locks and possibly of greater depth, which would accommodate, at some future time, when and if traffic needs demand it, not only the world's largest naval vessels, but some of the huge ore carriers and supertankers.

Contrary, therefore, to popular impression, the Canal does have continuing and far-reaching importance to the United States. And the new Panama Canal Treaty, at least in the terms in which it is being discussed, would be bound to have major

political, strategic and psychological effects upon the entire Caribbean Sea-Gulf of Mexico area and upon our relations with Latin America.

This is because, for the first time since the Panama Canal was built in the early part of this century by U.S. engineers and with U.S. money and the Canal Zone was bought outright with taxes provided by U.S. citizens, we propose to transfer sovereignty over the Canal and the Zone to Panama in the biggest "give-away" in our history.

The basic treaty—the Isthmian Canal Convention of 1903—explicitly ceded a 10 mile strip of territory across the isthmus from the new Republic of Panama to the United States, "in perpetuity." The treaty provided that in the Zone, the United States would exercise "all the rights, power and authority . . . which it would possess and exercise if it were the sovereign of the territory . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority."

This fundamental provision, which ceded full sovereignty over the Canal and the Canal Zone to the United States (an interpretation which has been twice supported by the U.S. Supreme Court and was, initially, fully accepted by Panama) still stands, although other provisions of the original treaty have been revised or modified many times, always at the expense of the American taxpayer and for the benefit, not of the United States—but of Panama.

[From the Waterbury Sunday Republican, Feb. 20, 1977]

DECISION ON CANAL'S FUTURE AT HAND

(By Hanson W. Baldwin)

We have now reached, because of the "waffling" of past administrations and long continued concessions, a point-of-no-return, when we must put up or shut up.

In 1974 Henry Kissinger unwisely signed a "statement of principles" to govern negotiations for a new Panama Canal zone treaty. Kissinger agreed that the concept of perpetuity should be eliminated and, in effect, that the new treaty should end—after a fixed but undecided period of time (the year 2000 is generally mentioned)—U.S. sovereignty and control over the Canal and the Zone.

Ever since, negotiations with Panama have been conducted—despite strong and strengthening protests in Congress and among many sections of U.S. public opinion—within the framework of these limitations.

After a virtual hiatus most of last year because of the presidential campaign and the interjection of the Canal issue into it, the negotiations are to resume momentarily under the auspices of a new administration. Our protagonist, however, is still the same radical demagogic dictator, who has ruled Panama's 1.5 million people for the past eight years.

Omar Torrijos seized power in a coup and has retained it by armed force (the support of the Panamanian National Guard, the only military-police power in the country) and by the bland promises of pie-in-the-sky—ultimate sovereignty over the Canal and the Zone. He has not hesitated to rule roughshod; he has exiled some dissident business men, completely controls a fully censored press and he has outlawed all political opposition. His government has become a kind of neo-Marxist dictatorship, not only in its domestic policies, but in its close and cordial relationships with Castro and Moscow. Only one party—Torrijos' "Peoples Party"—is permitted; there are numerous known communists among its leaders.

Torrijos has staked his political future on taking over the Canal and he may well have unleashed forces he cannot control. His bargaining style continues in the Latin Political tradition of making Uncle Sam a whipping boy; it is a mixture of open threat and nationalistic bluster. But what he considers his aces in the hole are the prediction—indeed the promise—that unless a treaty ceding ultimate sovereignty to Panama is concluded this year, the United States will face armed confrontation (i.e. rioting mobs, terrorist and sabotage activity, guerrilla war, even a kind of low-key Panamanian "Vietnam"); and we shall also face the united condemnation of all the Latin-American nations.

Both threats are, in my view, overdrawn—particularly the latter. But the question still remains:

Is it more important to avoid confrontation and condemnation than it is to retain control of the Canal, a security asset of tremendous importance in its own right but of even greater significance to the future of that vital area—the Caribbean Sea-Gulf of Mexico?

DISASTROUS CONSEQUENCES

The psychological and political consequences of the abandonment of sovereignty by the United States in the Zone—in the face of repeated threats by a minor dictator openly backed by Castro and Russian communism—to our naval base at Guantanamo Bay, Cuba, to other U.S. base rights overseas and to our strategic position in the Caribbean could be disastrous. The questions that would inevitably be asked are:

Is the United States a paper tiger?

Where, after Vietnam and Angola and now, Panama, would we draw the line, if not at our own back door?

It is certainly true that rioting mobs tomorrow, as in the past, are an ever present possibility in Panama; Latin volatility and Communist provocateurs, aided by trained Cuban infiltrators, insure that. Sabotage and terrorism, if supported by Cuba and/or Russia, could become serious; some bombing incidents involving the automobiles of Zone residents who oppose the transfer of sovereignty have already occurred. But serious sabotage of the Canal itself, even if it could be accomplished, would be an irrational act. For Panama, it would kill the goose that laid the golden egg.

A large-scale guerrilla war, another Vietnam, is highly unlikely. We want no more Vietnams, but surely Panama does not want a Central American Vietnam either, and the great majority of Panamanians are not the dedicated and disciplined fanatics that we faced in the jungles of Southeast Asia.

In any case, if we are to avoid confrontation all over the world by concession and retreat, if we refuse to defend highly important or vital interests merely to avoid the blackmail threat of violence we are finished before the crisis erupts.

RISK IS NECESSARY

As to Latin-America, we must risk its rath. But it will be far from unanimous—no matter what some Latin American spokesman say, pro forma, for public consumption. Fundamentally the nations of Latin-America and the Southern Hemisphere have always respected strength. Many of them are highly dependent on the waterway, and some of them, quite satisfied with the low rates and efficiency of American operation of the Canal, mistrust the probable instability and uncertainty of Panamanian rule.

There is, too, very considerable uneasiness about Communist influence in Panama and the close ties Torrijos has established with Castro. The memories of Angola and the fears of Russian imperialism within the Western Hemisphere are vivid.

During last Fall's political campaign, both President Ford and Jimmy Carter avoided the real issue in the Panama negotiations which is the question of U.S. sovereignty and the security of our "soft underbelly." Neither of them referred to the major problem of the Canal issue—the strategic importance of the Caribbean, and both of them said they would maintain "control" of the Canal.

The exact words of now President Carter, which are today most germane, were: "I would never give up complete control or practical control of the Panama Canal Zone. But I would continue to negotiate with the Panamanians."

In other words have your cake and eat it, too. Give up sovereignty, perhaps, but maintain security and control. It's a nice trick, if you can do it.

We lost our great airfield in Libya and our entire military investment there after a change of regime. We were denied overflight or refueling bases during the last Mid-East war, even by our allies. After the Cyprus crisis both Turkey and Greece either limited U.S. operations at our bases in those countries or closed them down.

Sovereignty means control. Control without sovereignty is double-speak.

[From the Congressional Record—Senate, Apr. 4, 1977]

PANAMA CANAL: BRITISH PRESS ALERT TO DISREGARD OF THE 1901 HAY-PAUNCEFOTE TREATY

Mr. HELMS. Mr. President, during the last decade, various Members of the Congress have repeatedly stressed that one of the principal treaties governing the operation of the Panama Canal is the 1901 Hay-Pauncefote Treaty with Great Britain, which applied the rules for the Suez Canal to the Panama Canal.

The projected surrender of U.S. sovereignty over the Canal Zone is an obvious disregard of this treaty, the principles of which have been accepted by canal users and strictly observed by the United States. So far as can be ascertained, no effort has been made to secure the approval of the British Government, which is one of the largest users of the Panama Canal with a total of 1,148 transits out of 13,786 oceangoing transits during fiscal year 1975. In fact, relatively recent efforts by serious students of the canal problem to obtain information from State Department sources revealed that its responsible officials knew nothing about the Hay-Pauncefote Treaty until alerted to its existence by being questioned.

In the United Kingdom the situation is different, for an important London newspaper is alert to the canal subject now being debated in the United States. It has stressed that—

American plans to transfer sovereignty of the Panama Canal to Panama * * * will have to be approved by the British Government.

Mr. President, the failure of the State Department to take up this matter with the British Government as a party to the Hay-Pauncefote Treaty is indeed difficult to comprehend. The Panama Canal and its protective frame of the Canal Zone is not a shopping center convenient for use as a diplomatic plaything but one of the greatest works of man that serves the shipping of the entire world. The surrender of its sovereign control by the United States would probably be followed by worldwide consequences of malign character, especially for Latin American nations dependent upon it.

Mr. President, in order that the Congress, especially the Senate, may be fully informed, I ask unanimous consent that the article from the Daily Telegraph and the text of the 1901 Hay-Pauncefote Treaty be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the London Daily Telegraph, Mar. 3, 1977]

BRITAIN ONCE RULED SEA AND SO MUST APPROVE PANAMA TRANSFER

(By Desmond Wettern)

American plans to transfer sovereignty of the Panama Canal to Panama, which the Carter Administration intends to effect soon to rid America of the last vestiges of "colonialism," will have to be approved by the British Government.

This results from Britannia having once ruled the waves—or at least having had the world's largest merchant navy. The matter was decided in 1901.

The Hay-Pauncefote Treaty of that year requires that Britain be consulted before there is a change in the control of the Canal.

The treaty was signed on Nov. 18, 1901, by the British Ambassador in Washington, Lord Pauncefote, and the American Secretary of State, John Hay.

It superseded the earlier Clayton-Bulwer Treaty of 1850 and provided for unhindered passage of the Panama Canal, when it was completed by the shipping of all nations.

OBJECTION UNLIKELY

It also gave the United States Government the "exclusive right for the regulation and management of the canal" and stipulated that "no change of territorial sovereignty or of the international relation of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralisation or the obligation of the High Contracting Parties (Britain and America) under the present Treaty."

Although this would seem to preclude any loop-hole for the Americans to transfer the Canal's sovereignty to another power, the Foreign and Commonwealth Office is reserving its position.

From a legal point of view the British Government is unlikely to object to any transfer of sovereignty though, at least concerning the treaty provisions, Whitehall's acquiescence would seem to be based on turning a blind eye rather than a close interpretation of the Treaty's five articles.

Britain's involvement in the Treaty derives from the days when it was Government policy to ensure free navigation around the world for the benefit of the British Merchant Navy, then easily the world's largest.

The Americans alone are entitled to "maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder."

British shipping is now a close second to that of America in the use of the Canal. In 1973-74, the last year for which figures are available, 1,258 British merchant ships went through the Canal carrying 13,800,000 long tons of cargo compared to 1,322 American ships carrying 10,500,000 long tons.

The biggest users were Liberia, with 1,798 transits, and Japan with 1,348. Russian use amounted to only 242 transits involving 1,500,000 long tons of cargo.

BANKING INTERESTS

The use of the Panama Canal by British warships is now small. In 1976 a task group of some nine ships used it returning from a nine-month series of exercises and visits east of Suez, but since then no British warship has navigated the canal either way, I understand.

Apart from political considerations the Carter Administration is also believed to be under pressure from American banking interests to hand the canal over to Panama.

ACCESS TO PROFITS

American and international banks, including the London branch of Chase Manhattan, are believed to have lent the Left-wing regime of President Torrijos of Panama large sums and are anxious to obtain interest on their loans. It is felt that interest payment will be possible only if Panama has access to profits from canal dues.

British banks believed to have provided loans include the Orion Bank, William Brandts' and Son and Lloyds, and Bolsa International.

[Appendix C]

TREATY BETWEEN THE UNITED STATES AND GREAT BRITAIN TO FACILITATE THE CONSTRUCTION OF A SHIP CANAL

(Hay-Pauncefote Treaty)¹

[Signed at Washington, November 18, 1901; ratification advised by the United States Senate, December 16, 1901; ratified by the President, December 26, 1901; ratified by Great Britain, January 20, 1902; ratifications exchanged at Washington, February 21, 1902; proclaimed at Washington, February 22, 1902.]

[Articles]

- I. Convention of April 19, 1850.
- II. Construction of canal.

¹ Manuscript, United States Department of State, Archives, Treaty Series, No. 401. Also S. Doc. No. 474 (63d Cong., 2d Sess.), pp. 292-94; W. M. Malloy, *op. cit.*, I, 782-84 (US).

III. Rules of neutralization.

IV. Change of sovereignty.

V. Ratification.]

The United States of America and His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King and Emperor of India, being desirous to facilitate the construction of a ship canal to connect the Atlantic and Pacific Oceans, by whatever route may be considered expedient, and to that end to remove any objection which may arise out of the Convention of the 19th April, 1850, commonly called the Clayton-Bulwer Treaty, to the construction of such canal under the auspices of the Government of the United States, without impairing the "general principle" of neutralization established in Article VIII of that Convention, have for that purpose appointed as their Plenipotentiaries:

The President of the United States, John Hay, Secretary of State of the United States of America;

And His Majesty Edward the Seventh, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, and Emperor of India, the Right Honourable Lord Pauncefote, G.C.B., G.C.M.G., His Majesty's Ambassador Extraordinary and Plenipotentiary to the United States;

Who, having communicated to each other their full powers which were found to be in due and proper form, have agreed upon the following Articles:—

ARTICLE I

The High Contracting Parties agree that the present Treaty shall supersede the aforementioned Convention of the 19th April, 1850.

ARTICLE II

It is agreed that the canal may be constructed under the auspices of the Government of the United States, either directly at its own cost, or by gift or loan of money to individuals or Corporations, or through subscription to or purchase of stock or shares, and that, subject to the provisions of the present Treaty, the said Government shall have and enjoy all the rights incident to such construction, as well as the exclusive right of providing for the regulation and management of the canal.

ARTICLE III

The United States adopts, as the basis of the neutralization of such ship canal, the following Rules, substantially as embodied in the Convention of Constantinople, signed the 28th of October, 1888, for the free navigation of the Suez Canal, that is to say:

1. The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

2. The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it. The United States, however, shall be at liberty to maintain such military police along the canal as may be necessary to protect it against lawlessness and disorder.

3. Vessels of war of a belligerent shall not revictual nor take any stores in the canal except so far as may be strictly necessary; and the transit of such vessels through the canal shall be effected with the least possible delay in accordance with the Regulations in force, and with only such intermission as may result from the necessities of the service.

Prizes shall be in all respects subject to the same Rules as vessels of war of the belligerents.

4. No belligerent shall embark or disembark troops, munitions of war, or warlike materials in the canal, except in case of accidental hindrance of the transit, and in such case the transit shall be resumed with all possible dispatch.

5. The provisions of this Article shall apply to waters adjacent to the canal, within 3 marine miles of either end. Vessels of war of a belligerent shall not remain in such waters longer than twenty-four hours at any one time, except in case of distress, and in such case shall depart as soon as possible; but a vessel of war of one belligerent shall not depart within twenty-four hours from the departure of a vessel of war of the other belligerent.

6. The plant, establishments, buildings, and all works necessary to the construction, maintenance, and operation of the canal shall be deemed to be part thereof, for the purposes of this Treaty, and in time of war, as in time of peace, shall enjoy

complete immunity from attack or injury by belligerents, and from acts calculated to impair their usefulness as part of the canal.

ARTICLE IV

It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before-mentioned canal shall affect the general principle of neutralization or the obligation of the High Contracting Parties under the present Treaty.

ARTICLE V

The present Treaty shall be ratified by the President of the United States, by and with the advice and consent of the Senate thereof, and by His Britannic Majesty; and the ratifications shall be exchanged at Washington or at London at the earliest possible time within six months from the date hereof.

In faith whereof the respective Plenipotentiaries have signed this Treaty and thereunto affixed their seals.

Done in duplicate at Washington, the 18th day of November, in the year of Our Lord one thousand nine hundred and one.

JOHN HAY.
PAUNCEFOTE.

ACCURACY IN MEDIA CORRECTS NEW YORK TIMES ON PANAMA CANAL

Mr. HELMS. Mr. President, there is a great deal of misinformation going around about the role of the United States in creating and developing the Panama Canal. There appears to be an organized effort to convince the American people that there was something shameful and dishonorable about our actions, which we have to remedy today by surrendering our rights, property, and sovereignty in the Canal Zone.

Typical of such deliberate misinformation is the recent statement in a New York Times editorial which said, in reference to the canal:

We stole it and removed the incriminating evidence from the history books.

Nothing could be further from the truth, as the unbiased work of many distinguished historians can attest. The New York Times has no right to make such a demagogic assertion if it wishes to maintain itself as a respectable purveyor of journalism.

Mr. Reed Irvine, chairman of Accuracy in Media, Inc., has taken the Times to task in a letter published on its editorial page today. Mr. Irvine patiently recounts the basic international structure that supported our role in creating the canal, and effectively rebuts the absurd contention of the Times. Mr. Irvine is to be congratulated for once again forcing the media to correct its inaccuracies, particularly when such inaccuracies can have a pernicious effect on public opinion and public policy.

Mr. President, I ask unanimous consent that Mr. Irvine's letter from the New York Times of April 5, 1977, be printed in the record at the conclusion of my remarks.

There being no objection, the letter was ordered to be printed in the Record, as follows:

PANAMA HAS REAPED HUGE BENEFITS FROM THE CANAL

TO THE EDITOR: In discussing the Panama Canal, a recent Times editorial said: "We stole it and removed the incriminating evidence from the history books."

The Panama Canal was built by the U.S. at a cost of \$375 million. It obviously was not stolen. Perhaps your editorial writer meant to say that the 10-mile-wide strip of territory through which the canal was built was stolen. But that too is false.

From whom was it stolen? Panama? Colombia? Individual landowners?

The U.S. paid Panama \$10 million for the rights to the zone. We paid nearly \$5 million to individual landowners for title to their property in the zone. We paid \$25 million to Colombia in satisfaction of its claims. In addition, we paid \$40 million to the French canal company for its concession and equipment. Some theft!

The U.S. has been charged with having helped Panama gain its independence from Colombia. If true, would that be theft? Panama had legitimate claims to independence. Panama had revolted and won its complete independence as early as 1840. It was induced to join the Confederation of New Granada subsequently. The constitution provided that Panama would retain its sovereignty and right to secede. This right was taken away when a new constitution was proclaimed in 1885. Panama contended that it was still a sovereign state temporarily under another government under duress.

Panama's declaration of independence in 1903 charged that Colombia had treated the isthmus as a colony, milking it of revenue and not building a single bridge, a single road, a single college or any public building.

If it is alleged that the U.S. imposed the Hay-Bunau-Varilla treaty on Panama against the will of the people, you have to believe that the people of Panama were not eager to have the canal built through their territory. Without the canal, the

isthmus would have been relegated to the status of permanent backwater. There was a real possibility that the canal would go to Nicaragua. A bill passed both houses of Congress in 1902 providing for the construction of the canal through Nicaragua if the necessary right could not be obtained for the isthmian canal. Was it robbery to insist on terms that provided for the security of the huge investment the U.S. proposed to make? The alternative was to carry out the requirements of the Spooner Act and arrange to build the canal through Nicaragua. That would have cost the Panamanians dearly, and they knew it.

Panama has reaped huge benefits from the canal. Payments by the Canal Company to Panamanian citizens are around \$100 million a year. Panama has also received about \$300 million in aid from the U.S. in the past 22 years. All this has helped to give it one of the highest per capita incomes in Latin America.

REED IRVINE,
Chairman, Accuracy in Media, Inc.

WASHINGTON, March 29, 1977.

[From the Congressional Record—Senate, Apr. 6, 1977]

AMBASSADOR SPRUILLE BRADEN'S PERCEPTIVE ANALYSIS OF UNITED STATES-LATIN AMERICAN RELATIONS

Mr. HELMS. Mr. President, Ambassador Spruille Braden is America's foremost senior diplomat. His public career spans more than four decades; and that followed many years of success in the private sector.

Ambassador Braden's accomplishments are legion. He has done more than any living American to improving relations between our neighbors in Latin America and the United States.

As Assistant Secretary of State for American Republic Affairs, as Ambassador to Argentina and Cuba, as a resident of Chile—in so many capacities—he has gained a first-hand working knowledge of Latin America. He knows the people, their individual national heritages, the issues that unite them—as well as divide them.

He has negotiated with them. His success with the negotiations that ended the Chaco War is well known, to cite only one example.

He knows Latin America in all of its diversity, its cultural richness, and its potential.

Knowing Ambassador Braden's background and his continuing interest in United States-Latin American relations, I was interested to read recently his speech to the Belair Council of the Navy League of the U.S.A. I want to share this perceptive analysis of a number of current areas of interest in United States-Latin American relations with my colleagues.

Ambassador Braden points out four major critical areas in the Western Hemisphere. The first is Argentina, which exemplifies, Ambassador Braden points out,

How a superior, educated, wealthy and religious nation, possessing virtue and great mental and physical assets, for over three decades has suffered a deluge of evils as her government sank into the depths of degradation, corruption, venality and irresponsibility. Murder, torture, kidnapping, terrorism and guerrilla warfare ensued.

But Ambassador Braden sees hope for Argentina under its new government. I note a recent Time magazine assessment of the Argentine Government's first year in power. On the whole, Time seems to feel that stability is returning to the country. From my own visits there, both during the Peron government, and during the new government's administration, I am inclined to agree that Argentina is on the road to recovery. But dangers still abound, as Ambassador Braden so ably shows.

Another critical area that Ambassador Braden mentions is Chile. In Chile, the situation deteriorated much further than in Argentina, as the Ambassador points out:

Unfortunately, the Chileans, overly confident in their dedication to democracy, credulously did not awaken to the threat of communism and loss of freedom until their backs were against the wall.

But now, the Ambassador continues.

Despite the catastrophic economic and social results of the Marxist regime, the Chilean people have tightened their belts and are repairing the damage. Their record on "human rights" is now better than the majority of the countries in the United Nations who accuse them.

Putting the issue into a proper perspective, Ambassador Braden states that:

On reflection, we must see that Chile and Argentina are major battlegrounds between East and West, between the forces of communism and freedom.

The Ambassador is correct, of course. Too often, I am afraid, we overlook this simple but irrefutable fact.

Ambassador Braden names Cuba and the Panama Canal as two other areas of Hemispheric concern. "Cuba as a full-fledged Soviet satellite and Soviet-occupied fortress, is a major danger to the United States," he says, pointing also to Cuba's intervention in Africa as a blatant act against the interests of the free world.

Regarding the Panama Canal, Ambassador Braden reminds us that:

Our sovereignty and ownership of the Canal Zone in perpetuity twice has been reaffirmed by U.S. Supreme Court decisions, by many leading Panamanian statesmen, Presidents and Ministers, as well as by lower U.S. Courts.

Mr. President, there is much more important information in this excellent statement of Ambassador Braden. So that Senators may have the benefit of Ambassador Braden's years of experience, I ask unanimous consent that his speech before the Belair Council of the Navy League, entitled "Soviet Threat to the Panama Canal," be printed in the Record.

There being no objection, the speech was ordered to be printed in the Record, as follows:

SOVIET THREAT TO THE PANAMA CANAL

(Address by Ambassador Spruille Braden)

It is an honor to be invited by Mr. David Gill Evans, President of the Belair Council of the Navy League of U.S.A. to address this distinguished and knowledgeable audience. I am grateful indeed, just as I am proud of life membership in the Belair Council of the Navy League of the U.S.A.

During many years of an active life throughout the Americas, I have accumulated many convictions and I hope perspicacity, in keeping with the old Spanish saying: "The devil knows more by reason of his age, than because he is a demon".

One of my strongest persuasions is that the greatest threat to "our civilization" is a world-wide breakdown in morality. This we witness in and out of government penetrating every strata of society.

I further believe that the most widely destructive of all immoralities is that centered in and emanating from Moscow. Vide:

(1) The unending and outrageous cruelties perpetrated on the Russian people, as described by Solzhenitsyn;

(2) The so-called "liberation" movements propagated everywhere by Soviet agents, foreign Communists and misguided dupes;

(3) Russian ambitions for world hegemony.

The Soviet already is progressing by strides in its plans to convert the American republics into a conglomeration of satellite and slave states.

Today I shall summarize only the four most critical areas in the Western Hemisphere.

First: Argentina exemplifies how a superior, educated, wealthy and religious nation, possessing virtue and great mental and physical assets for over three decades has suffered a deluge of evils as her government sank into the depths of degradation, corruption, venality and irresponsibility. Murder, torture, kidnapping, terrorism and guerrilla warfare ensued.

The cause of all this was the breakdown in morality and Communist infiltration.

As far back as 1945, when I served as Ambassador in Buenos Aires, the then vice president and dictator, Peron, while pretending opposition to Communists, actually was intriguely closely with them; they had replaced the Nazis in his esteem.

Simultaneously he, his mistress, later wife, Evita, and his henchmen, enriched themselves on a vast scale.

When Peron died, his third wife and heir, Isabelita (a former bar girl) suddenly found herself the nominal head of a government which had fulfilled 85% of the program laid down by Karl Marx and Friedrich Engels. Presently she is imprisoned for stealing public funds.

As Argentina was about to fall completely into Communist hands, the armed forces, under General Jorge Rafael Videla (a man of highest character) seized power. They enlisted in their government some patriotic and experienced civilians, such as the new Minister of Economy, Martinez De Hoz. As a result of the military's firmness and courage, Communism, terrorism and corruption gradually are being eradicated. Argentina at long last now may hope eventually to retrieve its old position as a responsible, respected and prosperous nation. Realistic reforms may recapture Argentina's idealism.

From 1922 through 1938 I knew Argentina at the apex of its prosperity, political and social well-being. But in 1945, when I returned as Ambassador, I witnessed the beginnings of the decomposition, Communism and its twin, terrorism, later almost leading that pitiable nation into the jaws of destruction.

What I saw beginning 30 years ago in Argentina, I now observe starting in the U.S.A.—traditionally cherished ideals are attacked, while disintegrating corruption is tolerated and exotic ideologies are circulated through our schools, the media, and pretty much everywhere.

Second: The collapse of Chile into Communism was more precipitous and complete than Argentina's; First came the election to power of the Social-Democrats (actually Socialists); four years later they helped the Marxist, Allende, to the Presidency, with only a 35 percent constitutional vote.

This accession to power with his Socialist-Communist cohorts, was planned, incited and aided by the Soviet Union. Moscow was anxious to create another Communist satellite in Latin America, and in so doing, to obtain a naval base at Talcahuano on Chile's South Pacific coast, just as it had acquired its naval bases, underground submarine pens, missile sites, encampments and other facilities in Cuba.

Unfortunately the Chileans, overly confident in their dedication to democracy, credulously did not awaken to the threatening communization and loss of freedom until their backs were against the wall.

For more than a year the populace, deceived and helpless, allowed matters to drift. Finally, they were awakened with a bang by the killings and tortures, imprisonments and property confiscations, plus the influx of trained commissaries and guerrillas from the Soviet Union, Cuba and elsewhere, along with shiploads of arms and munitions for the Allendistas, fierce fighting broke out between Communists, both national and foreign, and patriotic Chileans.

The first mass protest was staged by women from all walks of life demonstrating in the streets and surrounding the Presidential palace, banging pans and kitchenware. Some were arrested; others physically abused. There followed a paralyzing strike by truck drivers.

In the nick of time, the military intelligence discovered that Allende and his co-conspirators had developed a so-called "Z plan" to assassinate within one week all top military officers and leading citizens.

Immediate counter-action was imperative. It was taken and thousands of Communists, guerrillas and criminals were arrested; Allende committed suicide.

The new military government had to fight fire with fire. Some ill-treatment even of innocent people, was unavoidable if Chile were to be saved from Moscow-controlled communism.

Please believe me when I assert that:

(1) The only thing the Communists respect or fear is physical force greater than their own.

(2) A Communist commitment or pledge is very rarely fulfilled.

Chile is the only nation, with scant aid from abroad, which has been able, by the courage and sacrifice of its citizenry, to overthrow a firmly established Communist dictatorship which had seized power nefariously and by trickery. Chile still has to defend her independence from armed Communist bloc attacks from within and without her borders; it also must clear away the lies and deceit disseminated throughout the world, by Communists and too often believed by the guileless.

Despite the catastrophic economic and social results of the Marxist regime, the Chilean people have tightened their belts and are repairing the damage. Their record on "human rights" is now better than the majority of countries in the United Nations who accuse them.

On reflection, we must see that Chile and Argentina are major battlegrounds between East and West, between the forces of communism and freedom.

Third: Cuba, as a full-fledged Soviet satellite and Soviet-occupied fortress, is a major danger to the United States.

At Moscow's command, Havana dispatched 15,000 or more troops to fight for communism in Angola, Mozambique, and elsewhere in Africa. The USSR maintains at least 10,000 of its own military, KGB and intelligence services in Cuba. It directs that island's forces, provocateurs and espionage services in and out of Cuba. It operates the missile, naval and submarine bases I have mentioned.

Castro first attracted notice as a gangster and murderer. Under his regime, thousands have been tortured and killed, 20,000 to 40,000 political prisoners are suffering or perishing in prisons today.

Yet despite all of these horrors and the threat to the U.S.A. from only 90 miles off our shores, there are those high in government, even business, who advocate renewing diplomatic relations with Cuba. How blind or callous can they get?

Fourth: It suffices to say about Panama that our sovereignty and ownership of the Canal Zone in perpetuity twice has been reaffirmed by U.S. Supreme Court decisions, by many leading Panamanian statesmen, presidents and ministers, as well as by lower U.S. courts. As recently as December 17, 1976, District Judge Guthrie F. Crowe stated that he believes the U.S.A. owns the Canal Zone. "I think the United States is the owner of this property by reason of the treaties with Panama and Colombia, payments to the French (Canal Co.) and the creation of the land commission in which people from Panama and the United States functioned as a court with thousands of claimants. (The land) was paid for with United States money."

Our title is every bit as secure legally as are our territorial acquisitions from France, Spain, Mexico, Denmark and Russia.

The total U.S. investment in Panama is estimated at nearly \$7 billion.

The arguments by our State Department and its representatives as to why we should negotiate a new treaty ceding our full rights to the Canal and the Zone are largely fallacious in substance and logic.

The illegally constituted dictator, Torrijos, threatens that unless we deliver the Panama Canal Zone and operations of the canal to his government within a limited period, we will have to wage another Vietnam war in that area.

Castro reportedly has several thousand troops now in Panama, and, of course, could bring back his armies from Africa, already trained in Angola. The State Department and our negotiators supinely agree that Torrijos will precipitate guerilla warfare and sabotage.

Actually Torrijos fears if we do not sign the new treaty, he will be thrown out of power. In this event, he knows Moscow and Castro could not rescue him. On the other hand, if, with the help of the latter two, he can deliver the canal, even indirectly to the comintern, he will be assured of his job for life, just as is Castro.

We have defended the canal for 70 odd years, through two world wars, countless riots and attempted sabotage. Are we so weak and timid that we must now run away from Torrijos' and Castro's Soviet-inspired threats and blackmail?

The real issue for the U.S.A. is not vis-a-vis Panama, but the U.S.S.R.

If we lost the Panama Canal Zone to the Soviets, even indirectly, this humiliation would be disastrous indeed. It might well cause our friends and allies, especially in Latin America; to lose all respect for and confidence in us and abandon our leadership, in order to play with the Soviet. Everybody wants to be with the winner.

The following bits of history are pertinent:

A. Phillip II of Spain declared that whoever controls the Caribbean will dominate the western hemisphere. President Jefferson expressed the same thought. Admiral Mahan, one of our greatest strategists, warned that any enemy of the U.S.A. controlling the Caribbean could invade our gulf coast and so proceed up the Mississippi Valley to capture the heartland of the United States.

B. Lenin listed in sequence the following "musts" for the Soviets to make effective their world dominion:

- (1) Secure U.S.S.R.'s western borders through absorption or Moscow rule;
- (2) Communize and control the Far East, especially Southeastern Asia;
- (3) Proceed similarly in Africa;
- (4) The same for Latin America;
- (5) The United States, thus surrounded, would fall like over-ripe fruit.

Lenin's successors raised point 6; to build their naval forces to overwhelming strength, accompanied by widely dispersed and fully equipped bases. Their objectives include the domination of all sea lanes, passages and routes; among these the Panama Canal is paramount.

Self-evidently the aforementioned six points are well on the way to successful fruition. The security of Russia's western frontier, including Latvia, Lithuania, Estonia, the Ukraine, and Eastern European countries has been ratified by the Helsinki agreement signed August 1, 1975, by the United States and other western governments.

Moscow and Havana jointly have violated the Helsinki Agreement in Angola, Mozambique and elsewhere. Communists have ignored concessions obtained by the free world at Helsinki stipulating greater freedom of movement for western journalists and promises to insure human rights throughout the Warsaw Pact Nations.

The Soviet Union's hankering to control the Panama Canal Zone was openly stated by Major Sergei Yuworov in an article published in the Soviet military organ "Red Star", reproduced by the Cuban magazine "Bohemia" on March 17, 1957 in respect of the canal:

"Due to its privileged location at the juncture between South America and the rest of the continent, including the Canal, which permits U.S.A. warships to operate simultaneously in the Atlantic and Pacific, must for the Soviet Union be considered as a 'priority zone'."

He adds that Panama can be attacked from Central America, Colombia or from Cuba, Puerto Rico and other Caribbean islands. He intimates that some or all of these can serve as Soviet naval bases.

It is essential for us to remember that for over a quarter of a century, we have been beset by one humiliation after another, each of them contrived, usually financed, militarily aided and equipped by Moscow.

Our major blunders or defeats in policy and/or action were:

MacArthur prohibited from crossing the Yalu or bombing the bridge;

The inconclusive falsely labeled U.N. action in Korea;

Failure to lend help by air to the Hungarian uprising against Russian troops;

Non-resistance to the Berlin Wall;

No aerial help at the Bay of Pigs;

The Cuban missile crisis—tearing up the Monroe Doctrine;

Our shameful commitment to Khrushchev neither to invade Cuba nor permit others to do so;

The "no-win" war in Vietnam; and

The so-called "Paris Peace Treaty with honor," with which North Vietnam never complied.

This series of surrenders only become explicable when one reads National Security Council Report No. 68 (NSC-68) of April 14, 1950, drafted after President Truman's orders as a statement of our basic policies with respect to the U.S.S.R.

The study, opinions and conclusions of NSC-68 were based on reports from the Secretaries of State and Defense; they also were considered in at least one council meeting by the Secretary of Treasury and the heads of the other three top economic agencies of the Government.

The content and portent of this super "top secret" 65-page document has been kept completely unknown to the public, Congress, and even senior Army, Navy and Air Corps officers commanding at the time of the aforelisted humiliations.

The "top secret" classification, pursuant to law, terminated in April, 1975. On September 30, 1976, a brilliant journalist, Alice Widener, began publishing her exposé and analysis of NSC-68. She sums up its principal aims as follows:

1. "To avoid nuclear war but to accept a Soviet nuclear first strike against us if necessary, hoping to ward it off by building up our own and our allies' military, economic, and social strength as a deterrent.

2. "To confine U.S. military action to strictly limited counter-actions.

3. "To seek co-existence with the Soviet Union in the hope that democracy will win out eventually against dictatorship, that time would be on our side, and that the U.S.S.R. would undergo changes eventually leading to abandonment of its goal of world domination.

4. "To try to contain the expansion of the Soviet Union beyond its territory, but not to do anything directly challenging Soviet prestige.

"In conceding Soviet prestige as untouchable, NSC-68 seeks to protect the Soviets from any kind of effective attack—be it military, ideological, or psychological."

NSC-68 is a self-contradictory document, at times dove-ish and weak; at others hawkish and vigilant. On the one hand, it accurately sets forth the objectives of the U.S.A. for peace and freedom, as laid down by the Constitution and the Founding Fathers.

On the other hand, it describes the fundamental and unchangeable program of the U.S.S.R. as follows:

"The design, therefore, calls for the complete subversion or forcible destruction of the machinery of government and structure of society in the countries of the non-Soviet world and their replacement by an apparatus and structure subservient to and controlled from the Kremlin. To that end, Soviet efforts are now directed toward the domination of the Eurasian land mass. The United States, as the principal center of power in the non-Soviet world and the bulwark of opposition to Soviet expansion, is the principal enemy whose integrity and vitality must be subverted or destroyed by one means or another if the Kremlin is to achieve its fundamental design."

Later, NSC-68 states:

"With particular reference to the United States, the Kremlin's strategic and tactical policy is affected by its estimate that we are not only the greatest immediate obstacle which stands between it and world domination, we are also the only power which could release forces in the free and Soviet worlds which could destroy it. The Kremlin's policy toward us is consequently animated by a peculiarly virulent blend of hatred and fear."

NSC-68 continues to characterize all the evils of totalitarian dictatorship and the latter's determination to dominate the world only limited by expediency. It says:

"It is estimated that, within the next four years (i.e. from 1950), the U.S.S.R. will attain the capability of seriously damaging vital centers of the United States, provided it strikes a surprise blow and provided further that the blow is opposed by no more effective opposition than we now have programmed."

The first time I read NSC-68, I said:

"In each assumption the authors establish a series of ideals as definite possible objectives to be carried out, then turn around and prove that these ideals are utterly impossible of accomplishment. The ink on NSC-68 was no sooner dry than the outbreak of the Korean war made a mockery of this dogooding optimism."

The Comintern's leaders—perhaps due to blood and inheritance—possess a strain of oriental innate cruelty, dishonesty and a shrewd depravity. They follow the precepts of Sun Tzu, who in China 600 to 500 years before Christ, wrote the following in a military textbook:

"Undermine the enemy first, then his army will fall to you. Subvert him, attack his morale, strike at his economy, corrupt him, sow internal discord among his leaders; destroy him without fighting him."

This is precisely the formula Moscow successfully has pursued and is directing against the U.S.A.

As a result, we are drawing nigh to the finish line. Yet there has been no perceptible inclination by either Democratic or Republican administrations to get rid of the NSC-68 policy recommendations, which so often have imperilled and still are entrapping United States' security with an apparently endless chain of humiliations.

If, due to our innate kindness of spirit and our legions' teachings of peace, we endure and add to the list I have already given you one more humiliation, one more breach of a solemn agreement, one more surrender of our rights and sovereignty under the 1903 treaty with Panama, then indeed the Caribbean, adjoining waters and sea lanes will become part and parcel of a huge Soviet lake.

If this happens, we then may have three options:

- (1) If possible, to rebuild a definitive superiority in military power and defenses.
- (2) To await a Soviet blackmailing ultimatum for surrender.
- (3) Nuclear war.

May God save us from the last two alternatives.

PANAMA CANAL: EXCAVATION, 1881-1975, STRESSES MAGNITUDE OF MAINTENANCE PROBLEM

Mr. HELMS. Mr. President, the splendid record of the Panama Canal Company in keeping the Panama Canal open and safe for traffic has caused many Americans to underrate the complexity of the operations involved. Just because the canal has been running smoothly, some advocates of the giveaway of the Panama Canal tend to minimize the skills necessary to keeping the canal open.

Such skills include both management skills and technical skills. They involve questions of judgment of experience. For their proper exercise they require independence and freedom from political interference. The Panama Canal Company organization has, over the years, created a unique cadre of skilled workers, both United States and Panamanian, who have functioned as a team for the proper operation of the canal.

Thus, in attempting to solve the diplomatic issues involved in the treaty negotiations, some critics downplay the fact that the canal organization is an organic unity that could be mortally wounded if the present management is disrupted. Indeed, the attitude of the State Department has already grievously affected the morale of the Canal Company employees. If the mere threat of a giveaway has had a deleterious effect, how much more so would a new management situation, subject to outside political influence and corruption, affect the canal's operation? Only a major power can guarantee that the canal will continue to function efficiently.

The problem of maintenance, for example, illustrates only one facet of the complexity of operations.

When testifying before a congressional committee during the construction era of the Panama Canal, Chief Engineer George W. Goethals, in response to a Member's question as to when the Panama Canal would be completed, replied, "The canal will never be completed." By this he meant that the time would never come when more work would not be necessary for its efficient maintenance, operation, sanitation and protection.

The truth of Goethal's statement is well illustrated by the record of the canal's wet excavation. More than twice as much material has been dredged from the canal since 1915 than was excavated during the entire U.S. construction period.

Among the problems that require continuous dredging are silting, bank sloughing, erosion, and land slides, all of which reduce channel depths. Siltation is increasing as a result of the urbanization of parts of the Gatun Lake watershed.

In regard to the protection of the crucially important watershed of Gatun Lake, it is interesting that this danger was apparently forseen long ago by Gen. Clarence Edwards, while in command of the U.S. Army on the Isthmus. He actually made the recommendation that the boundaries of the Canal Zone be extended to include that entire watershed of the Chagres River. In the light of later events, it is unfortunate that his recommendations were not followed.

As to slides, it is still possible for such bank disturbances to close the canal. Meeting this danger requires eternal vigilance on the part of canal engineers and geologists, and timely preventive measures. With completion in 1970 of the enlargement of Gaillard Cut from 300 to 500 feet, the summit level channels have a minimum width of 500 feet. This improvement was an important step toward the major modernization of the existing canal as provided in measures now before the Congress under existing treaty provisions and on which over \$171,000,000 has already been expended.

In a recent article, Maj. Robert L. Herndon, Corps of Engineers, U.S. Army, summarizes the history of excavation in the Panama Canal, 1881-1975, both dry and wet. A reading of his article shows with startling data the magnitude of the "maintenance problem" that only a great and powerful nation can support. It also serves to reveal the naiveté of proponents of the giveaway of the Panama Canal to a small, weak country on the verge of a financial collapse.

Just as predicted by Colonel Goethals, Major Herndon concludes that in the future the canal will require increased excavation to maintain it as one of the world's safest waterways and to increase its capacity.

Mr. President, as the article by Major Herndon is timely as well as illuminating, it should be of interest to all Members of Congress seeking reliable information on the problem of maintenance of the Panama Canal, and I ask unanimous consent that it be printed in the Record.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

DREDGING IN THE PANAMA CANAL

(By Maj. Robert L. Herndon)

The successful completion of the Panama Canal by the United States stands as a milestone of engineering achievement. Yet, the United States engineers did not originate the dream of an interoceanic canal nor did they turn the first shovel towards its construction. The French, under Comte Ferdinand de Lesseps, were the first to excavate along the route of the present canal. In the 22 years the French spent in Panama, they excavated over 78 million cubic yards of earth and rock. As a result of minor alignment changes and the required rehandling of much of the original excavation material, only 30 million cubic yards excavated by the French proved to be useful to the construction of the present canal. It was estimated that 7 million cubic yards of this were removed by French dredges.

The two types of dredges used by the French were the ladder, or endless-chain bucket dredge, the the suction dredge. Of the 51 pieces of dredging equipment acquired from the French Company, only seven were rebuilt and placed in service by American forces. All of the rebuilt French dredges survived the American construction period with the exception of a ladder dredge which sank in 1911.

AMERICAN CONSTRUCTION DREDGING

To the seven rebuilt French dredges, the American construction forces, under Col. George W. Goethals, added 16 dredges and a variety of support equipment. This equipment was divided between the Atlantic and Pacific divisions where all dredging was performed prior to late 1913. On October 10, 1913, President Woodrow Wilson pressed a button installed on his desk at the White House and sent a signal that detonated eight tons of dynamite which breached the Gamboa Dam and flooded the cut through the continental divide. The dredges then entered the cut for the final work phase.

By December 1914, a total of 115,720,000 cubic yards of material had been excavated by dredges for the construction of the canal. This amounted to approximately 47 percent of the total material excavated by Americans. Over twice as much

material has been dredged from the Panama Canal since 1915 than was excavated during the entire U.S. construction period. This is attributed to the maintenance dredging required to remove the siltation in the channels, the large slides that still plague the canal, and construction dredging for channel improvement projects.

MAINTENANCE DREDGING

The Panama Canal requires continuous dredging to maintain the navigable depth. Siltation, bank sloughing, erosion, and landslides all decrease channel depths. An average of 2.25 million cubic yards of material is removed annually to maintain the current bottom elevation. Siltation from the watersheds contiguous to the canal provides the greatest bulk of the material encumbering the channel. Over 5.7 square miles of channels, harbors, and anchorages are subjected to as much as 1½ feet of silt accumulation per year. One foot of siltation over this area amounts to 5.9 million cubic yards of dredge excavation. Siltation is increasing as Panama develops and urbanizes the previously forested areas on the Gatun Lake watershed. Bank erosion is also a major concern due to the erosive action of wakes from larger vessels and the increased hydraulic wash from the tugs that are required to maneuver these vessels safely. This will necessitate additional maintenance dredging in the future to maintain the current depth.

TABLE 1.—TOTAL EXCAVATION OF THE PANAMA CANAL, INCLUDING CONSTRUCTION, MAINTENANCE, AND AUXILIARY

Project	Period	Dry ¹	Wet ²	Total ¹
French canal	1881-1903	59.8	18.3	78.1
American canal	1904-7	8.6	4.4	13.0
Do.....	1908-14	121.7	111.3	233.0
Total construction excavation	1881-1914	190.1	134.0	324.1
Cut widening (300 ft to 500 ft)	1918-70	13.5	37.2	50.7
Maintenance dredging	1915-75	.6	459.3	459.9
Grand total	1881-1975	204.2	630.5	834.7

¹ Excavation times 10⁶ yd³.

² Excavation (dredging) times 10⁶ yd³.

Much of this maintenance dredging has been necessitated by the infrequent but massive slides in the Gaillard Cut. During construction, landslides were one of the principal concerns of canal officials. There were 22 slides during the dry excavation of the Gaillard Cut ranging in size from 3,300 cubic yards in the Pedro Miguel slide to over 9 million cubic yards in the West Culebra slide. Approximately 25 million cubic yards, or 25 percent of the total removed by steam shovels in the dry from the cut, were excavated from these slides. Since the introduction of water into the Gaillard Cut, 32 slides have occurred, the largest being over 36 million cubic yards in the 1914-1915 East Culebra/Zion Hill slides which completely closed the canal for seven months. Because of the quantity of large boulders and rock in these slides, suction dredges were of little use in excavating the material. Canal authorities anticipated this problem and acquired three 15-cubic-yard dipper dredges in 1914-1915 to excavate the encroaching material. Dipper dredges are still the primary means of removing material from the cut.

Slides even today could close the canal. The most recent slide occurred on October 10, 1974, in Culebra Reach—the largest slide in 41 years. Over 600,000 cubic yards of earth and rock were displaced over 200 feet, thus restricting the channel to 300 feet. The Panama Canal dredging fleet immediately began clearing the slide and in 3 weeks had removed over 183,000 cubic yards of material and had cleared the channel prism to a width of 437 feet. Subsequent dredging restored the channel to its full 500-foot width.

CANAL IMPROVEMENTS

In 1918, only four years after the opening of the Panama Canal, the Dredging Division began widening Gaillard Cut. From 1918 to 1951, the dredges removed 16 million cubic yards of rock and soil in cutting off spits and bends in the cut to assist navigation. After World War II, it became apparent that the 300-foot Gaillard Cut channel would soon become inadequate for the growing volume and size of commercial ships.

From 1952 to 1970, excavation contractors and the Dredging Division removed 35 million cubic yards of material in widening the 8.5-mile-long Gaillard Cut from 300 to 500 feet. The total program from 1918 to 1970 included removal of 50.7 million cubic yards of material.

The Panama Canal Company is presently involved in a channel-deepening program. In August 1974, the Dredging Division officially reached elevation 40 feet Precise Level Datum (PLD) within the center 300 feet of the channel in the Gaillard Cut and Gatun Lake, which means ships have 45 feet of water with the lake at elevation 85 feet PLD. The Dredging Division then initiated a major dredging program which will lower the channel to elevation 37 feet PLD. This additional 3 feet of depth will allow for silt accumulation and dredging or surveying inaccuracies resulting in less frequent maintenance dredging. It will increase the possibility of allowing deeper drafts for transiting vessels than has been previously acceptable. This additional depth will also provide extra water during the annual dry season for either lockages or the generation of hydroelectric power by permitting Gatun Lake to be drawn down to elevation 80 feet PLD without further restricting drafts on transiting ships.

The introduction of large Panamax class ships (so classified because their dimensions are the maximum the Panama Canal's locks can accept on routine transits: 950 feet by 106 feet by 40 feet) has accentuated a maneuverability problem as these ships pass through the restricted channels. To increase the safety of these ships, a program has been initiated to improve the conditions which contribute to difficult passage. This involves widening certain confined reaches of the canal and relieving restricted turns, thereby increasing the level of safety for vessels negotiating these turns. The majority of the widening improvements will involve dredging.

The most recent widening effort was to improve the San Pablo-Tabernilla Curve. This 67-degree curve is the largest change-of-course turn in the canal. The work involved removing the material from the inside apex of the curve by both suction and dipper dredging which widened the turn to 2,500 feet at the point of intersection. This project was completed in February 1975.

Gamboa Reach, presently 500 feet wide, was the second project in the canal-widening safety program. Gamboa Reach, at the north end of the Gaillard Cut, is a meeting point for ships requiring a "clear-cut" transit. A "clear-cut" vessel is of such large size and limited maneuverability to require one-way traffic through the Gaillard Cut. Because of the queuing of these vessels to enter Gaillard Cut and the meeting of vessels at this juncture, the 3.1-mile-long reach is to be flared at both ends to 800 feet and the channel widened to 650 feet. The initial phase of this project is scheduled for accomplishment in late 1976 and the completion of the entire project in 1978.

Other projects included in this safety-oriented program are the widening and realigning of Mamei and Bohio Curves. These two areas form the only reverse curves in the Gatun Lake portion of the canal. Maneuverability through these curves is further encumbered by the presence of several small islands adjacent to the channel prism which create complicated hydrodynamic forces on transiting vessels which can cause a vessel to uncontrollably shear across the channel. A study and computer simulation of this confined channel phenomenon are being conducted by the Panama Canal's engineers and consultants from the Swedish State Shipbuilding Experimental Tank in Goteborg, Sweden. Based on the preliminary findings, a tentative design has been prepared for alleviating the major maneuverability encumbrances in Mamei Curve. Improvements on this curve are scheduled for 1979.

DREDGED MATERIAL DISPOSAL

As material is dredged from the canal, it must be disposed of rapidly and efficiently. Positioned throughout the length of the canal are dump areas for the deposition of dredged material. Many of these dumps are located in Gatun Lake, a sufficient distance from the canal prism to preclude resiltting of the canal. Several dredge dumps are located on the banks of the canal in diked areas. Due to the accumulation of dredged material in these land dumps over the years, the freeboard on the confining dikes has gradually disappeared. As a result, the Panama Canal Company will upgrade and maintain the dikes so that the impoundment of the dredged material will be of sufficient time to allow the solids to precipitate prior to the water overflowing the spillway.

The material dredged from Panama Canal waters is uncontaminated by industrial and agricultural pollutants. Therefore, the disposal of the material in land and water dumps has not generated the adverse environmental impact prevalent in other areas of the world. Sixty years of observation plus a recent study by consultants on the environmental effects of dredging and disposing of spoil material have

indicated that the effects of such operations on this largely man-made environment are benign.

DREDGING FLEET

In 1913, the Panama Canal's dredging fleet was centralized under one division and headquartered at Paraiso, near Pedro Miguel Locks. In September 1936, the Dredging Division relocated to Gamboa, at the north end of the Gaillard Cut on the east bank of Gatun Lake, in order to have the reserve dredging fleet north of any serious slide that might occur in the Gaillard Cut. Gamboa is the geographic center of the canal and thus the logical center for dredging operations. With the dredging dumps used in dipper dredge operations located in Gatun Lake and the equipment moored at Paraiso, such equipment would have been useless if a slide had interrupted traffic through the cut.

The present Panama Canal dredging fleet consists of two large dredges, a clamshell dredge, and a drill boat. The U.S. *Mindi* is a cutterhead suction dredge capable of moving 1,200 cubic yards of earth per hour. She is operated an average of eight months each year in maintenance and capital improvement projects. The *Mindi* is employed primarily in the Gatun Lake channels, the ocean approaches, the harbors and anchorage areas, but is occasionally used to sweep the Gaillard Cut. The *Mindi* is 295 feet long, 50 feet in beam, and can dig to a 72-foot depth. She was built in 1942 and is scheduled to be repowered with diesel-electric engines and modified with the addition of a ladder pump in 1978.

The U.S. *Cascadas* is a 15-cubic-yard steam-powered dipper dredge with a normal production expectation of 500 cubic yards per hour. The *Cascadas* was built in 1915 and, despite her age, remains a reliable and productive member of the dredging fleet. She is operated an average of four months each year in dredging blasted rock and earth, primarily from Gaillard Cut. Both of these dredges are operated 24 hours per day, 7 days per week when they are in service.

A contract was awarded in 1976 for a new 15-cubic-yard diesel-electric dipper dredge to replace the inoperable and decommissioned dipper dredge U.S. *Paraiso* which has been out of service since 1971. When the new dredge is delivered in 1977 it will greatly increase the efficiency of operations and provide the Panama Canal with added dredging capability which is critical in clearing slides. It will also provide a back-up dipper dredge for slide clearance, which is required when one dredge is out of service during a major maintenance period.

Dipper dredges are dependent upon scows to transport the dredged material from the digging site to the dump area. The Dredging Division operates a fleet of nine 1,000-cubic-yard, bottom-dumping scows. A new series of hydraulic, self-dumping 1,500-cubic-yard scows is scheduled to begin replacing the old scows in 1978.

The crane barge/clamshell dredge U.S. *Goliath*, which is equipped with a 7½-cubic-yard clamshell bucket, was built in 1969 and is the most recent addition to the dredging fleet. She is primarily used for removing large boulders and small shoals in the Gaillard Cut and also provides a floating heavy-lift capability of up to 90 tons.

The drill boat U.S. *Thor* is a diesel, pneumatic-powered drill platform capable of mounting up to four drill towers. The *Thor* is employed in subaqueous drilling and blasting. Such blast fracturing is required in rock areas in order for the dipper dredge to excavate the material. The explosive currently used in these underwater blasting operations is 60 percent ammonium nitrate gelatin dynamite. Water-gel explosives are being tested to determine if they are adaptable to the underwater blasting operations in the canal. The most efficient and economical rock breakage in the Gaillard Cut is achieved by drilling on 9-foot-by-9-foot centers and using a power factor of 1.5 pounds per cubic yard.

Supporting this dredging fleet is a variety of tugs, launches, work floats, and lighter barges. The frequent movements of this support equipment and the continuous operations of the dredges and drill boat proceed without interference to transiting vessels.

CONCLUSION

In the future, the Panama Canal will require increased dredging to maintain the channel depth. Additional dredging will be required by the channel-improvement projects necessary to maintain the Panama Canal as one of the world's safest waterways and to increase the canal's capacity. The current dredging fleet has a record of successfully completing such projects. When augmented with a new dipper dredge, the new self-dumping scows, and a repowered and modified suction dredge in 1978, the dredging fleet will increase its efficiency and emergency capability for maintaining one of the most economically critical and militarily strategic waterways in the Western Hemisphere.

U.S. CANAL ZONE SOVEREIGNTY: CHRISTIAN SCIENCE MONITOR EDITORIAL CONFUSION CLARIFIED

Mr. HELMS. Mr. President, one of the features in the current massive propaganda campaign to win the support of the American people and Congress to accept the surrender of U.S. sovereign control over the Panama Canal and its protective strip of the Canal Zone has been editorials in some of our leading newspapers based on erroneous information. A recent example was published in the February 15, 1977, issue of the *Christian Science Monitor*, which supported the State Department's program for giving up the canal but perpetrated a serious error of fact on the legal status of the Canal Zone as an unincorporated territory of the United States. As such, the canal cannot be surrendered without the authorization of Congress (U.S. Constitution, Article IV, section 3, clause 2). Efforts for surrender without such authorization are attempted usurpations of executive authority, which must not be permitted.

Fortunately, such editorials as that cited are subject to the scrutiny of many authorities well informed on canal matters. One of the most outstanding is Dr. Donald M. Dozer, professor of history emeritus of the University of California, Santa Barbara, and an eminent authority on Latin America whose numerous writings are authoritative.

In a letter to the editor of the *Christian Science Monitor* on February 16, 1977, he stresses one major error in the editorial as regards the status of the United States as sovereign over the Canal Zone.

As to such status, it should be noted that there was no doubt in the minds of eminent contemporary observers of the early 20th century Isthmian events. The British Ambassador, Lord James Bryce, in 1906 stated that the 1903 Treaty "ceded perpetuity" the Canal Zone to the United States—James Bryce, "The American Commonwealth," revised edition, page 408.

Mr. President, because the letter of Dr. Dozer should be of interest to all Members of the Senate at this time when the time for submission of a new canal treaty seems approaching, I ask unanimous consent for it and the *Monitor's* editorial to which it refers to be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

SANTA BARBARA, CALIF.,
February 16, 1977.

THE CHRISTIAN SCIENCE MONITOR,
Boston, Mass.:

I call attention to a serious error of fact about the legal status of the United States Territory of the Canal Zone in your editorial, "Canal talks: back to bargaining," in the *Monitor* of February 15.

A little research in easily accessible source materials would have shown your editorial writer that in Articles II and III of the Hay-Bunau-Varilla treaty of 1903 Panama granted all sovereign rights over the Canal Zone "in perpetuity" to the United States for the price of \$10 million to the entire exclusion of the exercise of any such sovereign rights by the Republic of Panama. Since the purchase was a clean bill of sale, the treaty contained no provision for a later renegotiation. So eager was Panama to provide the site for the benefit of her national economy that the Panama National Assembly ratified the treaty before the United States Senate

gave its consent. In addition the Panama National Assembly adopted other acts recognizing that they had ceded the Canal Zone to the United States.

Both the United States Congress and the Supreme Court have recognized the transfer of the Canal Zone as a cession of sovereign rights to the United States in perpetuity. The leading case is *Wilson v. Shaw* 104 U.S. 24 (1907) in which the United States Supreme Court held that with the exchange of ratifications of the purchase treaty of 1903 "ceding" the Canal Zone title to it passed to the United States. This decision was reaffirmed as recently as 1972 when the Supreme Court denied certiorari in the case of *United States v. Husband* (R) 406 U.S. 935, 1972. This confirmed the ruling of the United States Circuit Court of Appeals for the Fifth Circuit which ruled that the Canal Zone is unincorporated territory of the United States and as such is subject to the plenary authority of the Congress. Article IV, Section III (2) of the Constitution, specifically gives Congress "power to dispose of and to make all needful rules and regulations respecting the territory and other property belonging to the United States."

The status of the United States as sovereign over the Canal Zone has not been altered in any of the provisions of subsequent treaties between the two countries.

Sincerely,

DONALD M. DOZER.

[From the Christian Science Monitor, Feb. 15, 1977]

CANAL TALKS: BACK TO BARGAINING

A determined and commendable effort to work out a new treaty with Panama, covering the Canal Zone and the interocean waterway, now is getting under way. This represents the Carter administration's first venture into the sphere of international negotiations, and the new President naturally is anxious to see it succeed. The U.S. team, headed by veteran diplomat Ellsworth Bunker, has been augmented by Washington lawyer Sol M. Linowitz, a man likewise dedicated to achieving a new agreement with Panama.

Intermittently since 1964, the quest for an agreement has dragged on, but now Mr. Carter is hoping a new treaty can be completed by this coming June. This may prove optimistic on his part, considering the difficulties still ahead, but at least the mentioning of such a target date lends stimulus and encouragement to the delegations to get on with the task.

Panama meanwhile has injected a note of uncertainty into the talks by suddenly removing its chief negotiator, Foreign Minister Aquilino Boyd, and replacing him with Nicolas Gonzales Revilla, the young Panamanian Ambassador to the United States, who has not had much direct contact with the discussions hitherto.

Two major questions now remain to be ironed out. One is the final termination date for the new treaty, which means the date on which control of the canal and its zone passes to Panama. The two parties are not very far apart on this. The second is more difficult: U.S. access to, and defense of, the waterway once it is under Panama's control.

This matter of future American rights in the area inevitably involves an element of national pride on both sides, with resultant domestic political implications. One proposal, by Panama, is that guarantees of access and Canal Zone neutrality ought to be vested in the United Nations, but this may not go down well with the U.S. Senate which must ratify the treaty.

Indeed, unless the negotiators are skillful in working out provisions acceptable to both sides, and unless the Carter administration is adept at justifying the settlement to the American people, treaty ratification could become a major issue. Lots of hard bargaining plainly looms ahead.

Working in favor of a settlement that both capitals can approve, however, is the sheer need to solve the problem. Ambassador Bunker is not alone in believing that a new Panama treaty is imperative if future American relations with Latin America as a whole are to be warm and credible. Moreover, Panama never ceded sovereignty over the Canal Zone, so a mutual arrangement now must be found that enables Panama eventually to resume control, without impairing U.S. strategic interests or Panama's integrity as an independent nation. The temper of the times clearly requires revision of the 1903 pact, and the United States should not shrink from taking the essential steps to bring it about.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. HELMS:

S. 1444. A bill to provide that the U.S. Canal Zone shall be represented by a Delegate to the House of Representatives; to the Committee on Armed Services.

Mr. HELMS. Mr. President, one result of the Panama Canal negotiations which some of us have been long predicting is the deterioration of the morale of the U.S. workforce in the Canal Zone. We must have U.S. citizens able and willing to fulfill the key positions if we hope to maintain the safety and practical operational capability of the canal for strategic and commercial maritime traffic. It does us no good to have sovereignty over the canal if we do not have a workforce that is ultimately loyal only to the United States.

I regret to say that these predictions are becoming true. At a recent hearing of the House Subcommittee on the Panama Canal, held in the Zone, Canal Zone Gov. Harold R. Parfitt reported as follows:

The Panama Canal workforce has always been characterized by a high degree of stability, but in 1976 the resignation rate was 30 percent over the average for the previous 9 years and 57 percent over the average for the previous three years. Prospective employees are wary in seeking employment with the Panama Canal when doubt exists as to the future security and tenure of their positions and the conditions which might prevail under a new treaty.

One way which would contribute to a hopeful atmosphere in the Canal Zone, and a greater feeling of security, would be to provide for a nonvoting delegate to the U.S. House of Representatives from the Canal Zone. At the present time, U.S. citizens living in the Canal Zone—some of whom have lived there all their lives—have no representative in Congress to whom they can turn for a prompt hearing of Canal Zone problems. The bill which I am introducing would provide such a representative.

The Canal Zone with its various installations and the canal are territory and property of the United States. Congress has always treated it as such and made all needful rules and regulations for the Canal Zone under article IV, section III of the Constitution. Congress has approved a Canal Zone Code, and has passed other legislation affecting the Canal Zone countless times. The U.S. Supreme Court has upheld this legislation down through the years. There is no reason, therefore, why Congress, by legislation, cannot provide a nonvoting delegate to the House, just as it has done with the District of Columbia, Guam, and the Virgin Islands.

At the present time, Congress has provided that the Government of the Canal Zone is headed by the Governors appointed by the President for terms of 4 years, its judicial branch is headed by a U.S. district judge for the Canal Zone. Its legislative branch is the Congress. This government is called upon to perform many duties of the State, city, and county government but has no permanent representative in Congress.

The Canal Zone has a land area of 362 square miles. Its population is 44,198 of whom 39,200 are U.S. citizens. In contrast, the District of Columbia has an area of 61 square miles, and a popula-

tion of 756,510; the Virgin Islands have an area of 132 square miles and a population of 62,468; Guam has an area of 209 square miles and a population of 84,996. Only the Canal Zone does not have a nonvoting delegate.

The Canal Zone has a strategic importance far greater than either the Virgin Islands or Guam, or even Alaska, or Hawaii, which for many years before becoming States had delegates in the Congress. Citizens living in the zone pay U.S. income taxes—thus creating a situation of taxation without representation.

The Congress as the legislature for the Canal Zone faces many problems, some of them intricate. Arriving at wisely reasoned decisions requires the continuous presence of an elected delegate from the zone territory, familiar with the problems of its citizens.

The bill which I am introducing today is virtually identical with S. 2570 which I introduced in the 94th Congress. It is identical with H.R. 1588, introduced in the House by Congressman Daniel Flood of Pennsylvania, who has long been a champion of the rights of the United States and of U.S. citizens in the zone.

Mr. President, I ask unanimous consent that the text of the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 1444

A bill to provide that the United States Canal Zone shall be represented by a Delegate to the House of Representatives

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

DELEGATE FROM THE CANAL ZONE

SECTION 1. The first section of the Act entitled "An Act to provide that the unincorporated territories of Guam and the Virgin Islands shall each be represented in Congress by a Delegate to the House of Representatives", approved April 10, 1972 (48 U.S.C. 1711), hereinafter in this Act referred to as the "Act", is amended by striking out "and the territory of the Virgin Islands" and inserting in lieu thereof the following: ", the territory of the Virgin Islands, and the Canal Zone".

ELECTION

SEC. 2. Section 2(a) of the Act (48 U.S.C. 1712(a)) is amended—

(1) in the first sentence thereof, by inserting "from Guam and the Delegate from the Virgin Islands" immediately after "The Delegate";

(2) by inserting immediately after the first sentence thereof the following new sentence: "The Delegate from the Canal Zone shall be elected by the citizens of the United States residing in the Canal Zone at a general election held in November 1978, pursuant to regulations established under section 4(b), and at a general election every second year thereafter."; and

(3) in the second sentence thereof, by striking out "The Delegate" and inserting in lieu thereof "Each Delegate".

ELIGIBILITY

SEC. 3. Section 3(c) of the Act (48 U.S.C. 1713(c)) is amended by inserting "or possession" immediately after "territory".

ELECTION PROCEDURE

SEC. 4. Section 4 of the Act (48 U.S.C. 1714) is amended—

(1) by inserting "(a)" immediately after "Sec. 4.";

(2) by striking out "The legislature of each territory" and inserting in lieu thereof the following: "The Legislature of Guam and the Legislature of the Virgin Islands"; and

(3) by adding at the end thereof the following new subsection:

"(b) The Governor of the Canal Zone shall prescribe regulations for conducting general elections for the office of Delegate from the Canal Zone, and shall submit a copy of such regulations to each House of the Congress not later than January 1, 1978. Such regulations shall take effect on March 1, 1978, unless either House of the Congress passes a resolution before such date which specifically disapproves of all or part of such regulations."

PRIVILEGES OF DELEGATE

SEC. 5. Section 5 of the Act (48 U.S.C. 1715) is amended—

(1) by striking out "and the Delegate from the Virgin Islands" and inserting in lieu thereof the following: ", the Delegate from the Virgin Islands, and the Delegate from the Canal Zone"; and

(2) by striking out "the Delegate from each territory" and inserting in lieu thereof the following: "each Delegate".

SPECIAL ELECTION

SEC. 6. The Governor of the Canal Zone shall conduct a special election for the office of Delegate from the Canal Zone not later than thirty days after the date of the enactment of this Act. Such Delegate shall be elected by the citizens of the United States residing in the Canal Zone on the date of such special election. The term of such delegate shall commence not later than ten days after the date of such special election and shall end upon the commencement of the term of the person elected Delegate in the general election in 1978.

[From the Congressional Record—Senate, May 24, 1977]

THE PANAMA CANAL

Mr. HATFIELD. Mr. President, in a continuing effort to keep Oregonians apprised of major issues being debated in Congress, I have developed a series of background statements which attempt to objectively review each topic in some detail. Recently we have heard of continuing developments in the negotiations governing a new treaty with Panama over the canal issue. With the idea that it might be of some interest given the timeliness of the subject, I ask unanimous consent that the backgrounder I have just recently completed on the Panama Canal issue be printed in the Record.

There being no objection, the backgrounder was ordered to be printed in the Record, as follows:

HATFIELD BACKGROUNDER: THE PANAMA CANAL

Few controversies in the history of our country have been as prolonged, complex, or emotional as that surrounding the Panama Canal issue. For over half a century, arguments have raged over the way the U.S. came to build, own and control this unique passage between the seas. Now, as Congress approaches considerations of a new treaty governing the Panama Canal, it is important that concerned citizens be informed of the major issues surrounding this historic controversy. This backgrounder is an effort to review those issues and to lend perspective to the debate over a new Panama Canal treaty.

HISTORY

On a cool Washington evening at 6:40 p.m. on November 18, 1903, Secretary of State John Hay took a pen from an inkstand that had belonged to Abraham Lincoln and signed a treaty with the Envoy Extraordinary and Minister Plenipotentiary of the new Republic of Panama. The pact authorized the construction and operation of a most remarkable project—a canal linking the Atlantic and Pacific Oceans to stretch across and intersect the fledgling nation of Panama. The signing of the Hay-Bunau-Varilla treaty was the final act of an extraordinary series of historical events which bear importantly on efforts to negotiate a new treaty. More than anything else, it was the political and diplomatic posture of the United States during this period which has resulted in the Panamanian demands during this century for a new, more equitable treaty.

French Panama Canal Co.

The U.S. was not the first to attempt to build a passage between the Atlantic and the Pacific. Twenty years earlier the French Panama Canal Company had been organized under the leadership of Ferdinand de Lesseps, known worldwide as the architect of the Suez Canal. After seven years of work, 14,000 workers had dug some eleven miles of canal—half the total necessary—through the Isthmus of Panama, then a part of Colombia. But the company failed in its efforts, after a series of disasters, including outbreaks of malaria, yellow fever, floods, landslides, and finally charges of political corruption and bribery. Financing of the company collapsed.

The New Panama Canal Company was formed to liquidate the machinery, buildings and contracts of its predecessor. By December, 1898, a strong interest had developed in the United States for an interoceanic canal. The Company's directors sought to find a market in the United States for these properties and for the vision of joining the oceans together to facilitate American trade.

For the next four years the U.S. Senate deliberated over the route of a new canal. Many thought that the disastrous conditions encountered by the French in the Isthmus of Panama should be avoided at all costs in favor of a new canal through Nicaragua. By the spring of 1901 it appeared that the pro-Nicaragua forces in the Senate would prevail in the debate.

At this point a young Frenchman, Philippe Bunau-Varilla, who had worked as an engineer in the ill-fated French canal effort, became a key figure in the maneuverings. Relentless and single-minded, he set about to convince the U.S. that not only was the route through Panama the appropriate one, but that the \$40 million worth of abandoned French equipment should be purchased to continue the Panamanian effort.

The Hay-Herrán Treaty

On June 19, 1902, a heated debate began in the U.S. Senate over the respective merits of the Panama and Nicaragua routes. Thanks in part to the legislators' concern over volcanic activity in Nicaragua, and in even larger measure to the tireless urging of Bunau-Varilla and his supporters, the Senate approved the Panama route. The action directed President Theodore Roosevelt—a strong advocate of an interoceanic canal—to seek an agreement with Colombia for “perpetual control” of a canal zone in Panama.

But Colombia had her own negotiating position. Among other demands, she wanted to lease the zone to the U.S. for one hundred years and to keep a specific acknowledgement of her sovereignty in the area. Moreover, she wanted the canal zone to be neutral, with Colombia responsible for its defense (the U.S. would only be allowed to land troops at Colombia's request). Finally, she sought separate Colombian and American courts to deal with Colombians in the zone who violated American laws.

On March 17, 1903, the Senate ratified the Hay-Herrán Treaty which encompassed some (but by no means all) of the Colombian demands. The Treaty was soundly condemned in the Colombian Congress as a sellout of Colombian interests. Colombia demanded more money as an initial payment and more rights in the zone. President Roosevelt responded in a heated note to Secretary Hay in the summer of 1903:

“Make it as clear as you can to Beaupré (U.S. Minister of Colombia). Those contemptible little creatures in Bogota ought to understand how much they are jeopardizing things and endangering their own future.”

The Colombian Senate was unintimidated. Calling it a shameful sellout, the Hay-Herrán Treaty was rejected on August 12, 1903.

Panamanian revolt

Although the rejection of the Treaty infuriated Roosevelt, Bunau-Varilla was determined that the prospects for a Panamanian route be kept alive. For the next four months he met with various American leaders, including Roosevelt and Hay. He became convinced that a “revolt” was necessary to break the thin political cord which connected Panama and Colombia—and set out to create one.

Some 500 Colombian soldiers stationed on the Isthmus had not been paid in months. For the sum of \$100,000 (\$200 per soldier), Bunau-Varilla persuaded the military to go along with the planned uprising. On the designated day—November 3, 1903—insurgents and soldiers declared the revolution in Panama City. While not officially endorsing the coup, U.S. officials had been forewarned. U.S. vessels had been dispatched to the harbor of Colón. With the guns of the U.S.S. *Nashville* trained on them from the harbor, the remaining loyal Colombian troops withdrew and the bloodless revolt ended with scarcely a shot being fired.

Many historians believe that the U.S. cooperation with Bunau-Varilla in initiating the successful secession of Panama from Colombia was in clear and direct violation of the 1846 compact between the U.S. and Colombia. While Roosevelt's part in the revolt is not entirely clear, he later took credit for the coup, asserting that it was a necessary step toward building the canal. The Panamanian flag of independence (sewn together some weeks before by Mme. Bunau-Varilla in Highland Falls, N.Y., with silk purchased at Macy's) was raised in Panama City. The nation of Panama was promptly recognized by the U.S. Immediately thereafter Bunau-Varilla (still in the U.S.) created the title of Envoy Extraordinary, and then assumed it himself.

Using his self-conferred title, Bunau-Varilla proceeded to draft the treaty which largely governs the Panama Canal to this day. The terms were essentially those of the Hay-Herrán Treaty, which had been flatly rejected by Colombia four months before. The differences were much more beneficial to the U.S. Under the Hay-Bunau-Varilla Treaty of 1903 the size of the Canal Zone was increased by 60 percent, to a width of ten miles. The U.S. was allowed to station armed forces where it wished. To define jurisdiction in the Zone, Bunau-Varilla drafted a simple formula:

“The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned . . . which the United States would possess and exercise if it were sovereign of the territory . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.”

With this document, the 12-day-old country of Panama signed away a portion of itself to the United States. No Panamanian was present at the historic moment. The cost to the U.S. was \$10 million initially, followed by an annual sum of \$250,000.

The energetic Frenchman, Bunau-Varilla, had realized his dream. A passage between the oceans would be finished at last. But the manner in which the U.S. gained rights to the Panama Canal under the treaty remains one of the great controversies—and dramas—of U.S. history.

Negotiations

Given the questionable circumstances surrounding the establishment of the Canal Zone, it is not surprising that the Panamanians have been seeking a new treaty. In 1936 and again in 1955 the U.S. agreed to revise the agreement, increasing Panama's annual fee and relinquishing the right of the U.S. to intervene in the internal affairs of Panama.

These revisions, however, did not remove Panama's most fundamental objection to the 1903 treaty—its allowance for the U.S. to exercise power as "if it were sovereign" over some 500 square miles of Panamanian territory. Dissatisfaction with the present situation erupted in demonstrations in 1959. Again in 1964 riots broke out in Panama in which three United States servicemen and 21 Panamanians were killed.

Negotiations toward a new Panama treaty begin in January, 1965, and have continued under Presidents Johnson, Nixon, Ford and Carter with little progress thus far. In February, 1974, Secretary of State Kissinger and Foreign Minister Tack of Panama signed a statement of principle which provides the basis for the present negotiations.

REASONS FOR NEGOTIATIONS

Panama's interests

Panamanians view the 1903 treaty as an anachronism—one of the last vestiges of U.S. "gunboat diplomacy" and colonialism. Their main objections to the 1903 treaty are as follows:

The U.S. exercises power as "if it were sovereign" over the most valuable section of Panamanian territory.

The U.S. maintains a full-fledged government in the Zone including its own police force, courts and jails to enforce U.S. laws on Panamanian as well as U.S. citizens.

The Zone divides the country in half, seriously hindering Panama's urban and economic growth.

Panama has no voice in the operation of the Canal and does not receive an equitable share of the economic benefits from the Canal operations.

The U.S. continues to maintain a formidable military presence in the Zone.

The U.S. controls all facilities servicing Panama's deep water ports and limits Panamanian participation in commercial enterprises in the Zone.

U.S. interests

The goals of the U.S. in the negotiations are to develop a new treaty relationship with Panama which would:

Provide a long-range assurance of a secure, efficient canal that is open to world shipping without discrimination.

Reduce sources of friction between the U.S. and Panama over past policies.

Clearly show to the rest of Latin America U.S. interest in cooperation rather than confrontation in solving differences of opinion which affect U.S.-Latin American relations.

STATUS OF NEGOTIATIONS

The U.S. and Panamanian negotiations have reached agreement on three main points. As described by Ambassador Ellsworth Bunker, the chief U.S. negotiator, the provisions agreed upon are:

(1) Jurisdiction over the Canal Zone will pass to Panama through an agreed transition, with the United States returning the right to use those areas necessary for the operation, maintenance and defense of the Canal;

(2) Operation of the Canal during the duration of the treaty will be primarily the responsibility of the United States—with growing participation by Panamanians at all levels in the day-to-day operations of the Canal in order to prepare for Panama's assumption of this responsibility at the time the treaty terminates;

(3) Defense of the Canal will be primarily the responsibility of the U.S. during the life of the treaty, with Panama granting "use rights" for this purpose and with Panamanian participation in accordance with its capabilities.

Details have yet to be worked out on numerous unresolved issues:

(1) The duration of the treaty, which the Panamanians have been unwilling to extend beyond the year 2000;

- (2) The amount of economic benefit to be derived by Panama;
- (3) The right of the U.S. to expand the size of the Canal in the future if it wishes to do so;
- (4) A formula acceptable to both Panama and the U.S. concerning the ongoing neutrality of the Canal after the treaty ends; and
- (5) The size and location of the land and water areas needed for defense and operation of the Canal.

MAJOR ISSUES

If these issues could have been resolved easily, a new treaty would have been signed long ago. But strong arguments can be made on both sides on a number of points.

The economic issues

The Panama Canal has long been of great value to U.S. commerce and is a vital artery for world trade. In recent years about 17% of all U.S. export and import ocean-going business have used the Canal. Of the total cargo tonnage transiting the Canal each year, about 35% goes to, or comes from, ports in the U.S.

The Canal is even more important to the commerce of Panama and other Latin American nations. More than 30% of Panama's foreign exchange earnings and 13% of its Gross National Product are attributed today to the Canal. More than 50% of the foreign trade of Nicaragua, El Salvador and Ecuador moves through the Canal. In recent years, however, the share of Panama's GNP attributable directly or indirectly to the Canal has slightly diminished as other sectors of Panama's economy have expanded. At one time, for example, over one-third of Panama's GNP was derived from the Canal.

While the Canal continues to be an important avenue of international trade, two factors may affect the future importance of the Canal for world trade. First, tolls for the use of the Canal must be increased in the future for the waterway to continue to be economically viable. Tolls were little changed until 1974 when they were increased 20%. It is expected they will have to be increased again in the years ahead, thus making the Canal less competitive with other international trading routes, such as transcontinental railroad shipments.

The second factor affecting the future economic importance of the Canal is the increasing size of ships. Neither supertankers nor large container ships can presently use the Canal. As a result, the Canal may become less important in recent years as the trend in larger shipping continues. It is clear for the present, however, that any prolonged disruption in Canal traffic would cause serious disruption in world trade and would be a serious economic blow to Panama.

Opponents

Critics of a new treaty claim that the best way to insure the continued economic importance of the Canal is for the U.S. to maintain its control over the waterway. The U.S. should begin a modernization program to expand the Canal, thus increasing the economic benefits.

Opponents go on to point out that the Canal is a highly sophisticated operation which requires U.S. technological expertise. It can never be adequately maintained by a small, underdeveloped country with few technical experts and inadequate financial competence. Nor could Panama undertake the task of modernizing the Canal, opponents claim. Left to control the Canal, Panama would probably be forced to increase tolls, thus driving away carriers by making alternative world routes more feasible. Bankruptcy and political unrest would follow. According to opponents, a Canal closure would have serious repercussions on various sectors of the U.S. economy, such as the coal industry in West Virginia or the grain belt in the Midwest.

Proponents

Those who advocate a new treaty point to a recent report indicating that only 1 percent of the U.S. GNP passes through the Canal. Moreover, a Library of Congress study states that "Many alternative trade routes exist for the most important commodities, and more would become economically competitive if the Canal were closed."

Proponents of a new treaty claim that continued U.S. dominance over the Canal will not insure long-term economic stability. On the contrary, if the U.S. insists on maintaining the status quo it runs the risk of creating increased political discontent in the region. This could result in damage to, or the closing of, the Canal. A cooperative management of the Canal, resulting from a new treaty, would best

assure the continuing economic stability of the waterway and at the same time neutralize present resentment in Panama over U.S. dominance in the region.

Advocates also point out that Panamanians already comprise more than 80 percent of the employees of the U.S.-owned Panama Canal Company (which has the responsibility to operate the Canal). While only a small number of these individuals are presently in management positions, after a period of U.S. training Panamanians will be able to share more equally in the technical burden of operating the Canal. By being reasonable, proponents claim, a new treaty can symbolize a new economic partnership between the U.S. and Panama which insures world carriers of an open, neutral Canal for many years.

The legal issues

Ever since the signing of the 1903 treaty, questions have arisen over the rights the U.S. is entitled to exercise within the Canal Zone. Some have attempted to compare U.S. interests in the Zone with our historical claims to Alaska and the Louisiana Purchase. The debate over the question of U.S. sovereignty has become more pronounced as the final outline of a new treaty becomes clearer.

Opponents

Critics of present negotiations argue that the Canal Zone and the Canal itself are legally acquired territory, paid for and developed by the United States. With the 1903 treaty and the payment of \$10 million, the U.S. replaced Panama "in perpetuity" as sovereign in the Zone. Both the 1936 and 1955 treaties reaffirm this U.S. control over the Zone.

Moreover, opponents claim, conveying rights to the Canal to Panama would be comparable to returning Alaska to Russia or the Louisiana Purchase to France. Indeed, U.S. courts have held on a number of occasions that the Canal is U.S. territory. In the 1907 case of *Wilson v. Shaw*, for example, the Supreme Court of the U.S. said: "It is hypercritical to contend that the title of the United States to the Canal Zone is imperfect and that the territory described does not belong to this nation because of the omission of some of the technical terms used in the ordinary conveyances of real estate."

Proponents

Advocates of a new treaty strongly disagree with this view. They believe that a careful reading of the 1903 treaty reveals that the U.S. clearly does not have sovereignty over the Panama Canal. The \$10 million payment was not for the purchase of the Canal Zone, but in compensation for rights, power, and authority the U.S. would exercise there. Moreover, the 1903 treaty is clearly different from the conveyance of the Louisiana Purchase or the buying of Alaska because in the Canal Zone the U.S. acts under the treaty only as "if it were sovereign."

If the U.S. were sovereign, advocates point out, anyone born in the Zone, regardless of the nationality of his or her parents, would be an American citizen. But persons born in the Zone of Panamanian parents are considered by our government to be Panamanians, not Americans. If the U.S. were sovereign, moreover, the American flag alone would fly in the Zone, and the Canal Zone would have delegates in the U.S. Congress. But our flag flies along with the Panamanian flag in the Zone, and there is no representation in Congress.

As for legal precedents, advocates point to other court decisions which make indefinite the question of ownership and sovereignty. For example, in *Luckenbach Steamship Co. v. United States* the Zone's ports are considered foreign ports for the purposes of transportation of the mail. And in a 1948 case (*Vermily Brown v. Connell*) the Supreme Court referred to the Zone as "admittedly territory over which we do not have sovereignty."

The strategic defense issues

The Panama Canal has long been considered by military experts as strategically important to the U.S. because of our dependence on the sea for large-scale logistical support. It has been used effectively for the rapid shifting on military forces and supplies between the oceans. The Canal, in short, has provided flexibility to our defense operations in the past.

The Canal's strategic importance has diminished, however, with the advent of aircraft carriers and nuclear submarines which are too large to use the waterway. In addition, the Canal's vulnerability to attack is one reason that U.S. policy planners have come to prefer alternative routes for the movement of military forces and equipment.

There is today in Panama an American military force of about 22,000 persons, including dependents. They are there to carry out the U.S. responsibility under the

1903 treaty to defend the Canal. The actual combat and support forces total about 9,400. For the use of 14 military bases in the Zone, the U.S. pays Panama \$1.9 million annually. By comparison, we pay \$20 million annually for three bases in Spain.

Opponents

Those opposed to a new treaty believe strongly that the only way to insure that the Canal remains open to international traffic is for the U.S. to retain responsibility for the defense of the Canal. They argue that the continuing importance of the Canal to U.S. interests is too vital to be left in the hands of the Panamanians.

History has shown time and again, they point out, the importance of flexibility in military maneuvers, and the Canal provides such versatility. In addition to such logistical considerations, the U.S. presence in the Canal serves as a strategic deterrent to increasing Communist influence in Latin America and as a stabilizing factor for pro-U.S. governments in the region. Moreover, opponents add, Panama's small National Guard is totally incapable of defending the Canal from attack.

Some opponents also assert that the present Panamanian regime of General Omar Torrijos is a Communist-oriented government dominated by leftist radicals and influenced by Castro's Cuba. Panama is a land of endless political intrigue and turmoil. To convey rights and defense of the strategic Canal—the "jugular vein of the Americas"—to an unstable, undemocratic government would be the height of folly, according to treaty critics.

Proponents

Those advocating a new treaty dismiss these arguments as holdovers of the "gunboat diplomacy" mentality. They claim the Canal is clearly not as strategically important as it once was. According to them, three factors remain the key to understanding the Canal's diminished importance:

(1) It is extremely vulnerable to attack, not only by the sophisticated power of modern weaponry, but by a few skilled saboteurs as well.

(2) The U.S. now relies less on naval mobility and more on fleets operating independently in the Atlantic and Pacific Oceans.

(3) The inability of large aircraft carriers and nuclear submarines—the backbone of our oceanic defenses—to transit the Canal.

Proponents point to Defense Department estimates that 100,000 U.S. troops and intense logistical support would be necessary to defend the 50-mile long Canal from direct attack. This commitment would have to be continuous—and would cost many billions of dollars. They add that because of the Canal's vulnerability to attack, alternative military routes have long since been established in the event of hostilities.

As for the political leanings of the Torrijos government, proponents disagree that the present government is Communistic. They point to the fact that no responsible U.S. official either in the Department of State or the Department of Defense have said that Torrijos is a Communist. The present government is strongly nationalistic and comprises a number of political elements of both the left and the right. Indeed, proponents point out, Panama encourages a thriving private sector in the local economy. Advocates believe that the Canal issue transcends the ideologies of Panamanian governments. All past governments, be they military or civilian, have made clear their dissatisfaction with the treaty. A new treaty with Panama, emphasizing shared responsibilities over defense of the Canal, is the surest way of removing the major issue being exploited by the Communists, proponents argue, thus strengthening U.S.-Latin American relations generally.

CONCLUSION

In recent years, the Panama Canal issue has unfortunately been a victim of oversimplified logic. Opponents of the present negotiations decry the "give-away" of the Panama Canal while others in Latin America threaten violence to destroy this last vestige of American imperialism. Nationalistic emotions on both sides have been overheated and exploited for political reasons. The resulting delay in negotiations has seriously threatened the shaping of a workable compromise which would protect interests of both the U.S. and Panama.

The choice for the U.S. is not between a new treaty and the status quo. The choice is between bringing the concessions extracted from Panama in 1903 into line with modern realities, or facing some unsettling and possibly violent alternatives.

Those who oppose a new treaty must then be asked to be held accountable for the possible radicalization of Panamanians and indeed other Latin American nations. Those opposed to a new treaty must be willing to commit potentially 100,000 troops and tens of billions of dollars to Panama indefinitely, in order to protect the Canal

from hostile elements in that region of the world. Those opposed to a new treaty must be prepared to deal with the growing estrangement of Latin American nations from an intransigent U.S. government—which encourages national independence on the one hand and yet stubbornly refuses to foster such independence in the case of Panama. Those who oppose the new treaty must ask themselves why they are unwilling to consider compromising with one of America's strongest historical allies in Latin America, and they must be held responsible if that alliance is broken by our inability to deal fairly with a former friend.

We live in a far different world than that of Teddy Roosevelt and Philippe Bunau-Varilla. As we approach the final decades of the 20th century the last of the major colonial empires—that of Portugal in Africa—has now been dismantled. As our industrial base has expanded, we have become more dependent on raw materials from other nations of the world and on constructive relationships which insure peace and guarantee the free flow of trade. We have become more dependent on alliances, and—in a nuclear age—less able to use the threat of force. In this modern age the 1903 treaty is an anachronism—a relic from a strangely attractive, yet vastly more simple, age.

But a new treaty, properly drafted, will not exclude the U.S. from operation or defense of the Canal. On the contrary, I believe it will help to insure an open, neutral Canal for many years into the future. Both the U.S. and Panama have a great deal at stake in the negotiations which are now being conducted. Both parties have an essential interest in keeping the Canal open. Both parties would clearly be hurt if the Canal were closed.

The present negotiations are a test of whether two nations can work as partners in an enterprise of great importance to each of them. If we ignore the opportunity for cooperative change, or if we simply oppose a new treaty through neglect of the facts, our future relations with Panama will become vastly more forbidding and complex. But if we grasp this opportunity for constructive change we can both protect our vital interests in the Canal and strengthen our political and diplomatic influence with the emerging nations of Latin America for decades into the future.

THE PANAMA CANAL CAN BE DEFENDED

Mr. HELMS. Mr. President, the U.S. Department of State has been carrying on an extensive propaganda campaign asserting that the Panama Canal is indefensible. The purpose of this campaign is to frighten U.S. citizens into supporting the surrender of our sovereignty and rights in the Canal Zone.

The tactics of the State Department are deplorable, especially inasmuch as the canal has been successfully defended throughout many wars. For example, during World War II, the Nazi government had spread its influence in many countries in Latin America, and its spies and operatives moved freely throughout the hemisphere. Yet proper precautions were taken in the Canal Zone, and the attempts at sabotage were thwarted.

There is no doubt today among the military men with whom I have talked that the canal can be defended successfully if the proper steps are taken. The canal is protected against nuclear attack by the same nuclear umbrella that protects our entire Nation; guerrilla attacks and rioting require only certain precautions and preparations of which we are fully capable.

Now the U.S. Defense Department has confirmed what has been known all along. The canal can be defended. In a statement to Virginia Prewett, one of the most knowledgeable and experienced reporters we have reporting on the Latin American scene, the Defense Department confirmed not only that we could defend the canal, but also that we are better prepared to do so today than we were in 1964 when Communist-inspired riots broke out.

In her "Hemisphere Hotline" released today, May 27, Miss Prewett reports:

Acting on a leak, Virginia Prewett last week formally asked the Defense Department to confirm or deny a report that U.S. forces there, commanded by Lt. Gen. Dennis McAuliffe, can indeed defend the Zone and Waterway from "guerrillas" and/or "rioters erupting into the Zone." After due consultation with the powers-that-be, the official spokesman told Prewett that Gen. McAuliffe's command indeed can and will do just that.

A hint at the Pentagon shift came when Gen. McAuliffe, in a recent interview in Mexico, was asked about the Canal's defensibility. He replied that his 193rd Brigade in the Zone, some 7,000 men, are better trained and equipped than U.S. forces there in 1964 at the time of outbursts in the area. And that they can defend the Zone and waterway from any attack.

Mr. President, Virginia Prewett also points out in her "Hotline" that another dubious treaty rationale put forward by U.S. officials has also been weakened—and this time by the Panamanian dictator, General Torrijos himself. The State Department has been claiming that the new treaty is needed because "all of Latin America" is demanding that the canal be handed over to Panama.

Mr. President, I know from my own personal experience in Latin America, and my private conversations with Presidents and foreign ministers of some of the most important countries in the southern continent that most of Latin America definitely opposes handing over the canal to a weak country like Panama. The idea that South America wants us out of the Canal Zone is a myth manufactured in the State Department.

But now, as Virginia Prewett points out, Torrijos himself has admitted that he is under pressure from South American governments that think the United States is giving away too much to him. Indeed, he is supported only by Mexico, Costa Rica, Colombia, and Venezuela—and incidentally, the last three have a special client status because of treaties with Panama by which they hope to get favorable concessions if Panama is given the canal.

Mr. President, since Miss Prewett's entire report contains many interesting details about the situation in Panama, I ask unanimous consent that it be printed in the Record.

There being no objection, the report was ordered to be printed in the Record, as follows:

[From Hemisphere Hotline Report]

DEFENSE DEPARTMENT CALLS CANAL "DEFENSIBLE"

WASHINGTON, D.C.—The Pentagon—which would have to have had approval from the Carter White House to do so, is reversing a long-standing State Department argument for a concessionary new Panama Canal treaty. The Department of Defense nowadays is quietly saying that the U.S. military can indeed defend the Canal and Zone against any attack.

Apparently, it has occurred to somebody in the administration that if Pres. Carter gets a new treaty including the U.S. right-to-defend, as he promised in his campaign, it should not be said U.S. forces are unable to defend the Canal. Henry Kissinger in 1975 got the Ford White House to make the Pentagon go along fuzzily with the State Department's opposite contention.

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Torrijos' personal Canal Treaty negotiator, Panama's Romulo Bethancourt, assailed Gen. McAuliffe, saying he had contradicted a 1976 stance of U.S. Joint Chiefs Chairman Gen. George S. Brown. In Hill testimony then, Brown had inferred grave perils from guerrillas or mobs.

But last week, exclusively, the DOD spokesman cheerfully told Prewett that McAuliffe's statement does not "run counter" to Gen. Brown's stance. As a by-product, the DOD destroys State's main rationale for making the new treaty.

Panama Strongman Omar Torrijos has threatened in many ways and on many occasions that if he doesn't get the treaty he wants, guerrillas or direct attack (which he himself might lead) will overwhelm the Zone. He threatened violence recently in his own interview in Mexico.

Kissinger put pressure on the White House to get Gen. Brown to head a very high-level U.S. mission to Panama in September 1975 to shore up the then-teetering Torrijos. From then on, State's thesis of Canal indefensibility had at least implied Pentagon concurrence.

TORRIJOS AND THE BANKERS

Prewett has also learned the following from a source many times proved reliable: Torrijos is heavily trying the patience of the big U.S. banking interests that have given major private-sector support for the Kissinger-type treaty.

Torrijos, it is learned, must have around \$65 million in new foreign loans by June 1, else important payrolls may go unpaid. Big New York banks already much exposed in Panama will arrange a package of some \$300 million to pay debt service, with some money in an early installment for payroll purposes, it is learned. That is, if Torrijos will sign the kind of treaty he is now being offered.

That treaty, it has been understood from the time Carter took office, must allow the U.S. to play a continuing defense role in Panama—to "guarantee the Canal's neutrality" for as long as the waterway has a useful life.

Carter named Amb. Sol M. Linowitz, energetic spokesman for the New York banks' point of view, as co-negotiator on a Kissinger-type treaty. After he began negotiating, it was pointed out that Linowitz held two high posts with the Marine Midland Bank of New York, which has made loans to the Torrijos regime. Under fire for a conflict of interests, Linowitz resigned the bank posts. But the New York banking community in effect has in Linowitz a representative of their viewpoint on the present negotiating team.

Ironically, a charge made by the pro-treaty camp is that the old treaty, made in the early 1900's, was too strongly influenced by U.S. financial interests.

ANOTHER TREATY RATIONALE WEAKENS

Another oft-heard rationale for concessions to Torrijos has been materially weakened by the Panamanian strongman himself.

In an interview with several foreign women journalists, Torrijos, expansive and indiscreet, confessed that only four Latin American presidents are willing to go to bat for him. (They are those of Mexico, Costa Rica, Colombia and Venezuela.) He said that "rightist" South American governments think the U.S. is giving away too much to him—and that under their pressure, he will allow the U.S. a continuing right to intervene for defense "against third nations". He said, however, he would never sign a "written" agreement to allow U.S. intervention "in Panama"—presumably against rioters or guerrillas, his repeated threat.

Torrijos' group has frantically tried, without success, to deny he ever made the statements. The Hotline has reported for some ten months that Torrijos was losing, and now has lost, most of Latin America's support. The State Department, in reference to Torrijos' admission that he now has real support from only four neighbor regimes, said that all Latin American governments are "on the record" as favoring the new treaty—at least "publicly".

So much for the second rationale for the Kissinger-type Canal treaty.

Torrijos' indiscretions to the lady reporters is of a piece with other private admissions and boasts his group has made on informal occasions, such as cocktail parties. When Rep. Robert Dornan (R, Cal.) was in Panama with a House Subcommittee earlier this year, a Torrijos official at a party boasted that when they get the Canal, they can "make a big profit" with preferential toll charges. If Japan ships Toyotas to New Orleans, the ship carrying them may pay very high, was the example. Russia and Cuba might get much better rates.

Such concerns are hardly ever broached in the U.S. national press, though Washington Post editorialists now admit that 48 "hard" votes in the Senate oppose the treaty. But protreaty legislators and their staff members are concerned.

Delta Lines Pres. J. W. Clark told the Institute on Foreign Transportation and Port Operations in New Orleans May 6 that "Communist shipping has become a real threat to U.S. flag lines and our Western trading partners."

"Their prime target seems to be the lucrative U.S. trades. Insidious rate-cutting practices, on a non-commercial basis, prompted even the chairman of the U.S. Federal Maritime Commission to initially endorse . . . giving the Communists rate advantages as a lesser evil to 'confrontation' between governments . . . Private steamship lines alone can hardly stand up to state-owned, politically motivated, raw maritime power."

Russia and Communist China each have 100 ships under Panamanian registry, Capt. Clark said.

[From the Congressional Record—Senate, June 22, 1977]

REMARKS OF THE HONORABLE ANGIER BIDDLE DUKE ON THE PANAMA CANAL TREATY

Mr. PELL. Mr. President on June 11, former Ambassador Angier Biddle Duke delivered the commencement address to the 1977 graduates of the Ravenscroft School in Raleigh, N.C. Ambassador Duke chose as his subject the Panama Canal negotiations and expressed his hope that, just as young people started us on the road out of Vietnam, so also would today's young people help crystallize national opinion in favor of a new Panama Canal treaty.

Ambassador Duke correctly recognizes the Panama Canal issue as a hemisphere-wide issue, not simply a bilateral matter with a small nation. Ambassador Duke, who served as Consul in Argentina and as Ambassador to El Salvador, knows Latin America extremely well and has done a great service in putting the canal issue in its proper perspective. I commend it to my colleagues and ask unanimous consent that the full text of Ambassador Duke's address be printed in the Record.

There being no objection, the commencement address was ordered to be printed in the Record, as follows:

REMARKS OF THE HONORABLE ANGIER BIDDLE DUKE

Thank you very much for that warm and friendly introduction. It is great to be back in North Carolina where my roots are and from whence many good memories have derived. When I was a boy every summer was spent with my grandparents in Durham and I still have so many friends and relatives in this state that this wonderful occasion is less like a visit than a homecoming.

Now as to memories, I can clearly recollect my own graduation day, from St. Paul's School in Concord, New Hampshire. I remember the dress my mother wore, the fact that I had on a white stiff collar and the school tie; but for the life of me I cannot recall who the commencement speaker was, nor a word of what he had to say. So I am comfortable with you, members of the Ravenscroft graduating class, in the sure knowledge that both the speaker and his message are an acceptable and forgettable part of the background noises as the gears of your life are shifted today.

I will try to keep you awake, and with that object in mind, I would like to share with you a concern of mine that within a matter of days will become an issue for our Congress and President to debate and decide. The outcome will affect your lives. Furthermore, the involvement of your generation may well be a determining factor in what evolves. It was the young people who started us on the road out of Vietnam; I am hopeful that the young today will help crystallize national opinion on the subject of the Panama Canal.

Now that the negotiations for a reasonable treaty with Panama over the future of the Canal are on the threshold of a successful conclusion, we are entering the critical period of Congressional consideration and decision. It would be tragic if at this very moment of breakthrough in achieving an equitable solution to this dangerous problem, there would be miscalculation as to where our true national interests lie.

As one who has been stationed in two Latin American posts, I was not surprised by Alan Reedy's May 22nd dispatch to the New York Times from Mexico City when he wrote that guerrilla wars in Central America owe much "to the unwillingness of ultraconservative and military oligarchies to contemplate even partial social reform." Similarly, there is danger here in the United States that we may shortsightedly permit our own ultraconservatives to determine what our policy is to be, thus foreclosing the golden opportunity for a fresh start in relations with our Latin and Caribbean neighbors. Upon this resolution of the Panamanian issue hinges the fate of our inter-American policy.

Virtually every nation in the Americas and in the OAS supports the Panamanian government's position. In vetoing the U.N. Security Council resolution supporting Panama, the United States stood alone in the Hemisphere. It is time we appreciated that the waterway is much more a hemispheric rather than solely a

U.S. resource. Nine Latin nations depend more heavily for their ocean cargo transportation on the Canal than we do: El Salvador, Nicaragua, Ecuador, Peru, Chile, Colombia, Guatemala, Panama and Costa Rica.

It is fair to state that most, if not all, U.S. companies that do business in Latin America want to see the Canal issue resolved. They realize that their trade and investment infrastructure all over the Southern continent would be seriously menaced by our failure to come to terms on this issue. Henry Geyelin, President of the Council of the Americas, based in New York, has stated that "a renegotiation of the treaty is the best way to create a more favorable investment climate."

On the other hand, we ought not to exaggerate the economic importance of Canal traffic, when it directly affects less than one percent of the U.S. gross national product. About one-tenth of all our exports and imports transit the isthmus. Less than four percent of the tonnage carried in U.S. intercoastal trade goes through the Canal, compared with 50 percent in 1924. More and more world traffic has been diverted from the facility, whose locks can accommodate neither supertankers nor giant container ships. The Canal's 1976 deficit was \$8 million. It has been losing money since 1973. In the light of these facts, it would do injury to our larger interests if we narrowed our policy to considerations of Canal revenues.

From the standpoint of professional military people, those who are responsible for our defense, know what is involved. On a recent visit to the Canal Zone, General George S. Brown, Chairman of the Joint Chiefs, emphasized the Defense Department's commitment to working out a new treaty. In this era of missiles and briefcase bombs, our strategy must reckon with "worst case" possibilities based on the Canal's nonavailability. The Pentagon recognizes that the Canal is vulnerable to sabotage by a single guerrilla with a few sticks of dynamite. Loss of one sluiceway could drain Gatun Lake, requiring two years to refill it.

Since the start of World War II we have maintained virtually two separate navies in the Atlantic and the Pacific. 24 U.S. aircraft carriers are too big to go through the Canal. Nuclear submarines can use it, but must surface when doing so.

Ought we not have learned from Vietnam that we can protect the Canal only if the Panamanian people accept our presence there? They would if the issue is defused with an agreement that both nations can feel is acceptable to their interests. To protect the Canal's operations against a hostile countryside, according to Helen C. Low of the Overseas Development Council, "would call for a fortress regime which would itself rapidly become untenable."

The point is that there is more likelihood of continuing passage in a friendly environment than under conditions of a growing state of siege.

I am sure that the visceral opposition to any change in Canal Zone arrangements ignores military, political and economic realities of American self-interest. Governor Reagan's position has been that we own the Canal: "We bought it, we paid for it, we built it, and we intend to keep it." These views convey the hard line advanced by U.S. citizens who reside in the Zone. Their lobby got 37 Senators (enough to prevent ratification of any treaty, even though some are no longer in the Senate) to co-sponsor a 1974 resolution, and win passage by 264 members of the House, for an amendment that would have withheld funds from an official negotiating team in 1975.

U.S. Canal Zone citizens have every right to be heard, but at this impasse in our hemispheric relations, they are our colonials who must not be allowed power of decision over the fortunes of the entire nation.

For the first time in a decade of drift, a solution is at hand. As I see it, those of us who support President Carter and believe that through this hard-won treaty he can demonstrate to all Latin American countries that mutually beneficial partnerships are possible, should do what we personally can to assure chances for ratification.

I hope you in North Carolina will do what you can to support ratification; and I assure you that it will make a difference if you let your Senators know how you stand.

It is in the kind of commitment to such issues as this that determines the personality of a generation. How will yours be classified?

As I look out over those of you gathered here to graduate, I wonder how many of you would call yourselves cynics—how many idealists, and how many a confusing mixture of both. I say confusing mixture, but for all I know that may describe the realists among you. As you probably already learned—there is a time for both attitudes: a time to question, punch holes and challenge ideas—I trust you will do that on the Canal issue—and, there is a time to believe, take that leap of faith and trust in others.

For many years, esoteric concepts of cynicism and idealism were the privileged postures of the skeptical but hopeful teens. But no more. Those postures have been

transformed into applied attitudes to the harsh and unavoidable realities of life which are introduced to students such as yourselves through creative new curricula, community service programs, work opportunities and the media. No longer are you simply shown the problems and told that you will be responsible for the shaping of a new world order * * * just as soon as you get through algebra and French! You are engaged right now. You have been given the tools necessary to recognize problems, but, more importantly, you have been encouraged to have the guts to imagine solutions; to dare to change; to create an alternative. It takes curiosity to open your eyes; application and discipline to learn; tenacity and perseverance to live what you believe; imagination to see past your own secure vision and a sense of humor to put it all into perspective.

It is now when you feel most keenly and painfully the need to *do* something—to have an impact on problems that you see; to get involved and feel that you are doing something meaningful with your life. On the other hand, it is also now when you feel the most overwhelmed by the magnitude and diversity of the world's problems and resort to withdrawal and apathy. It is now that you need encouragement, reinforcement and enlightenment as you find your way through this most confusing age in which you are growing, an age of dreams and hovering disillusionment. If you value yourself and believe you have something of importance to give others, then you will persist and strengthen your beliefs and values.

So much emphasis has been placed on "independence" in this country lately that has had the effect of virtually celebrating loneliness and isolation. The great cry goes out: "I don't want to get involved." For reasons of career and convenience many have opted not to engage or commit themselves and instead tend to accept what may come their way with no strings attached.

"Not getting involved" may solve the problem of immediate present time, but it will do little to enrich the quality of your lives, enhance your own growth or contribute to a better world around you.

In many ways, you are a part of the flipside of the sixties and early seventies, when the liberal arts phenomenon gripped the college along with a heavy dose of student involvement in politics and the running of their own campus community. The ingredients were creative curricula, social conscience, political indignation, radical outbursts, free love and free pot. Everyone wanted to be heard and everyone had something to say. Campuses buzzed with talk, ideas, emotions. Students spent hour upon hour sharing concepts, testing each other's views and listening. Some of it was nonsense. Some of it meaningful. The liberal arts experience was heralded on the campus greens even more than in the actual Art History or literature classes themselves. The more traditional professions of banking, law and party politics smacked of the "war-making" establishment, so English, Sociology, Psychology and Religion were the majors of the day.

Today, the secure professions are once more in demand and students seem to know from their first semester what they want to do and how they will major. Surely the uncertainty of changing world economics plays a part in this shift as well as a slight perspective on the casualties of the sixties; the liberal arts unemployed; the communal disasters; the burnt-out druggies; the war that went on anyway * * * You are indeed the flipside but I would make one suggestion—strike a balance. Set your sights for specific achievement goals but do not neglect time wellspent sharing ideas, learning about others, listening to the human voice as well as the click of the computer. Do not be tempted to measure yourself by grades alone but by the quality and sincerity of your striving. Be a critic or a cynic when it comes to pat ideas and learning by imitation. Be the idealist when only that mysterious act of faith in the human spirit will enable you to reach out your hand again and again in the face of rejection.

FORMER CHIEFS OF NAVAL OPERATIONS ASK PRESIDENT TO RETAIN SOVEREIGNTY IN PANAMA CANAL ZONE

Mr. HELMS. Mr. President, the post of Chief of Naval Operations is one of the most critical in our Defense Establishment. Those who hold that post must be responsible for the combined operations of all our fleets. They must be men of extensive knowledge, both in strategy and operations; and they must have wide experience in sea command. In recent history, that post has been held by men of particular distinction and decisive judgment.

The post of Chief of Naval Operations is indeed the highest naval position in our services. From its vantage point, the CNO must face the practical problems of strategy—the logistics of moving fleet and supply vessels, the problems of time and distance, and the strategic value of sea lanes and narrow waterways. That is why the advice given by a CNO has particular value when it concerns the Panama Canal.

Mr. President, four distinguished former Chiefs of Naval Operations have written to the President offering their combined judgment on the strategic value of the Panama Canal. In a period when armchair diplomats and guilt-burdened journalists are pronouncing the canal undefendable and of no strategic value, the voices of these distinguished public servants, who have given their lives and careers to the defense of our Nation, rise together to attest to the value—even the ever-increasing value—of the canal to the defense of this Nation and the free world.

The four distinguished naval men are the following: Adm. Robert B. Carney, Adm. George Anderson, Adm. Arleigh Burke, and Adm. Thomas H. Moorer. Their terms of service cover the years 1953–55, 1955–61, 1961–63, and 1967–69. Admiral Moorer, of course, also served as Chairman of the Joint Chiefs of Staff from 1970 to 1974, and is at present the director of the Center for Strategic and International Studies of Georgetown University.

This period of service lasting over 20 years covers one of the most important in our history, including two wars and times of peace. We have no reservoir of experience and judgment concerning naval strategy more valuable to us than this group of men.

This is what they say about the canal:

Contrary to what we read about the declining strategic and economic value of the Canal, the truth is that this interoceanic waterway is as important, if not more so, to the United States than ever.

The CNO's then go on to discuss the canal in the light of their experience in World War II, Korea, Vietnam, and the Cuban missile crisis. Moreover, they point out the importance of retaining sovereignty:

Sovereignty and jurisdiction over the Canal Zone and Canal offer the opportunity to use the waterway or to deny its use to others in wartime. This authority was especially helpful during World War II and also Vietnam. Under the control of a potential adversary, the Panama Canal would become an immediate crucial problem and prove a serious weakness in the over-all U.S. defense capability, with enormous potential consequences for evil.

The CNO's conclusion is especially important:

The Panama Canal represents a vital portion of our U.S. naval and maritime assets, all of which are absolutely essential for free world security. It is our considered individual and combined judgment that you should instruct our negotiators to retain full sovereign control for the United States over both the Panama Canal and its protective frame, the U.S. Canal Zone as provided in the existing treaty.

Mr. President, this letter by the former CNO's was transmitted to the President by four members of this distinguished body, who have also given their wholehearted endorsement to it. The Senator from North Carolina had the honor of joining with the most capable and distinguished chairman of the Appropriations Committee, Mr. McClellan, with the distinguished ranking minority member of the Judiciary Committee, Mr. Thurmond, and with my distinguished colleague on the Armed Services Committee, Mr. Byrd of Virginia. The letters have been brought to the personal attention of the President.

Mr. President, I ask unanimous consent that the letter of the former CNO's to the President, and the transmittal letter from the aforementioned Members of this body be printed in the Record.

There being no objection, the letters were ordered to be printed in the Record, as follows:

WASHINGTON, D.C.,
June 15, 1977.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: We are enclosing a most important letter from four former Chiefs of Naval Operations who give their combined judgment on the strategic value of the Panama Canal to the United States.

We think you will agree that these four men are among the greatest living naval strategists today, both in terms of experience and judgment. Their letter concludes:

"It is our considered individual and combined judgment that you should instruct our negotiators to retain full sovereign control for the United States over both the Panama Canal and its protective frame, the U.S. Canal Zone as provided in the existing treaty."

We concur in their judgment and trust you will find such action wholly consistent with our national interest and will act accordingly.

Sincerely,

STROM THURMOND,
JESSE HELMS,
JOHN L. MCCLELLAN,
HARRY F. BYRD, Jr.,
U.S. Senators.

JUNE 8, 1977.

The PRESIDENT,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: As former Chiefs of Naval Operations, fleet commanders and Naval Advisers to previous Presidents, we believe we have an obligation to you and the nation to offer our combined judgment on the strategic value of the Panama Canal to the United States.

Contrary to what we read about the declining strategic and economic value of the Canal, the truth is that this inter-oceanic waterway is as important, if not more so, to the United States than ever. The Panama Canal enables the United States to transfer its naval forces and commercial units from ocean to ocean as the need arises. This capability is increasingly important now in view of the reduced size of the U.S. Atlantic and Pacific fleets.

We recognize that the Navy's largest aircraft carriers and some of the world's supertankers are too wide to transit the Canal as it exists today. The supertankers

represent but a small percentage of the world's commercial fleets. From a strategic viewpoint, the Navy's largest carriers can be wisely positioned as pressures and tensions build in any kind of a short-range, limited situation. Meanwhile, the hundreds of combatants, from submarines to cruisers, can be funneled through the transit as can the vital fleet train needed to sustain the combatants. In the years ahead as carriers become smaller or as the Canal is modernized, this problem will no longer exist.

Our experience has been that as each crisis developed during our active service—World War II, Korea, Vietnam and the Cuban missile crisis—the value of the Canal was forcefully emphasized by emergency transits of our naval units and massive logistic support for the Armed Forces. The Canal provided operational flexibility and rapid mobility. In addition, there are the psychological advantages of this power potential. As Commander-in-Chief, you will find the ownership and sovereign control of the Canal indispensable during periods of tension and conflict.

As long as most of the world's combatant and commercial tonnage can transit through the Canal, it offers inestimable strategic advantages to the United States, giving us maximum strength at minimum cost. Moreover, sovereignty and jurisdiction over the Canal Zone and Canal offer the opportunity to use the waterway or to deny its use to others in wartime. This authority was especially helpful during World War II and also Vietnam. Under the control of a potential adversary, the Panama Canal would become an immediate crucial problem and prove a serious weakness in the over-all U.S. defense capability, with enormous potential consequences for evil.

Mr. President, you have become our leader at a time when the adequacy of our naval capabilities is being seriously challenged. The existing maritime threat to us is compounded by the possibility that the Canal under Panamanian sovereignty could be neutralized or lost, depending on that government's relationship with other nations. We note that the present Panamanian government has close ties with the present Cuban government which in turn is closely tied to the Soviet Union. Loss of the Panama Canal, which would be a serious set-back in war, would contribute to the encirclement of the U.S. by hostile naval forces, and threaten our ability to survive.

For meeting the current situation, you have the well-known precedent of former distinguished Secretary of State (later Chief Justice) Charles Evans Hughes, who, when faced with a comparable situation in 1923, declared to the Panamanian government that it was an "absolute futility" for it "to expect an American administration, no matter what it was, any President or any Secretary of State, ever to surrender any part of (the) rights which the United States had acquired under the Treaty of 1903," (H. Doc. No. 474, 89th Congress, p. 154).

We recognize that a certain amount of social unrest is generated by the contrast in living standards between Zonians and Panamanians living nearby. Bilateral programs are recommended to upgrade Panamanian boundary areas. Canal modernization, once U.S. sovereignty is guaranteed, might benefit the entire Panamanian economy, and especially those areas near the U.S. Zone.

The Panama Canal represents a vital portion of our U.S. naval and maritime assets, all of which are absolutely essential for free world security. It is our considered individual and combined judgment that you should instruct our negotiators to retain full sovereign control for the United States over both the Panama Canal and its protective frame, the U.S. Canal Zone as provided in the existing treaty.

Very respectfully,

ROBERT B. CARNEY,
GEORGE ANDERSON,
ARLEIGH A. BURKE,
THOMAS H. MOORER.

ARTICLE IV, SECTION 3, RESTRAINS U.S. NEGOTIATIONS ON PANAMA CANAL

Mr. HELMS. Mr. President, the issue of the Panama Canal is one of great complexity. Factors involved include international relations, defense, commerce, and both international and national strategic goals. But the fundamental issue is the important issue: whether the dismemberment of the integrity of U.S. territory can be initiated by the executive branch without the consent of Congress.

The framers of the Constitution wisely gave to "the Congress" the "power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," in article IV, section 3. I say "wisely," because there is no issue more sacred and important to the people of a nation than the territory of the nation itself. We all know that the idea of a nation is not necessarily defined by geography; yet the concept of the freedom and independence of nations is virtually identified with specific boundaries that can be defended against attacks of violence and other derogations of integrity.

Such is the doctrine of national sovereignty, that is, the possession of supreme and independent political authority. An attack upon a nation's sovereignty, whether it is a military attack or merely an erosion of authority, is an attack upon the very existence of the nation to whatever degree. Therefore, whenever proposals arise to alter national boundaries, the people themselves must be involved to the maximum degree provided by the constitutional processes.

If a nation is conquered in battle, then boundary changes can and have been imposed without the consent of the people; but a nation that is free and independent cannot permit such an imposition either by force or threat of force. The people rightly view such attempts with suspicion and hostility. I think that it is highly significant that, in the case of the Canal Zone, the overwhelming proportion of the American people are steadfastly opposed to giving up ownership and control of the Panama Canal.

AMERICAN PEOPLE OPPOSED

Moreover, the opposition is steadily rising. The respected polling organization, Opinion Research Corp., of Princeton, N.J., took a nationwide poll a few weeks ago for the Institute of American Relations. This poll showed 78 percent of the scientific sample opposed to the giveaway. The same poll 1 year ago showed only 75 percent opposed, and 2 years ago, only 68 percent. This is a statistically significant increase, and parallels the increasing public awareness of the proposed giveaway as indicated in the same poll.

This is not to say that national boundaries are immutable. Conceivably, there are times when the boundaries can be extended or diminished in the national interest. Yet the issue is so important that one man, the President of the United States, should not take upon himself the responsibility of initiating it. It is particularly important that the disposition of U.S. territory originate in Con-

gress, not in the Executive, because the interests of all the States are affected. The checks and balances which are built into the congressional system—the compromise between representation of States, and representation of population, the varying terms of office and political accountability, the interplay of political parties and philosophical coalitions—all serve to insure that a national consensus is achieved and that proper compromises are effected where necessary.

THE CONGRESS HAS POWER

This is why article IV, section 3, says that “the Congress” shall have power to dispose of territory belonging to the United States. “The Congress,” needless to say, includes both Houses. This is not a matter for the Executive to initiate or to decide, or even for the Executive with the consent of the Senate alone.

For the disposition of territory and property belonging to the United States is fundamentally a domestic matter, not primarily a matter of foreign relations. In a secondary sense, it is obvious that the territory, when disposed of, will devolve upon a foreign nation. But until it is disposed of, it remains domestic territory, and Congress retains not only the power to dispose of it, but also the power to make all needful rules and regulations respecting it. Indeed, Congress functions both in theory and practice as the legislature for unincorporated territories. In this case, clearly, Congress has continually acted as the legislature for the Canal Zone.

This fact is very important when viewed in the light of article IV, section 3, the first paragraph, which immediately precedes the language we have been discussing. This states that—

No new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned.

In that sentence, the Constitution is protecting the integrity of State boundaries by forbidding changes without the consent of the legislatures involved. In the next sentence, which is the basis of this hearing, the framers applied the same principle, by analogy, to unincorporated territories. The boundaries of such territories cannot be altered or diminished, or, in the ultimate, disposed of, without the consent of the legislature involved, that is to say, Congress. There is an obvious parallelism between the treatment of States and of territories, adapted to the specific conditions of each.

In short, article IV, section 3 is a limitation on the treaty-making power of the President. It is, of course, true that article II, section 2, says that the President “shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur.” But that sentence cannot be read in a vacuum. No one imagines, for example, that the President has the power to enter into a treaty, even with the consent of the Senate, which would abridge freedom of speech, freedom of religion, or any other aspect of the Bill of Rights. It is not enough to say that the Senate would never consent; the President has a sworn duty to uphold the Constitution in all of its parts. He does not have the authority to negotiate away part of it in the hope he can induce the Senate to go along.

NEGOTIATIONS ABRIDGE CONGRESSIONAL POWER

In the same manner, the President may not enter into negotiations that abridge the powers of the Congress. It is not just the outcome that abridges the powers of Congress; it is the very fact of entering into negotiations on matters within the powers of Congress that is an infringement on congressional authority. Any attempt to initiate the disposition of U.S. territory and property by the executive branch, without prior authorization, is a usurpation of power.

Why is it a usurpation? It is a usurpation, because the executive branch is acting on a domestic matter without congressional authorization. It is a usurpation, because the territory itself and the sovereignty over it would necessarily devolve upon the ratification of the treaty itself without the concurrence of the House. The House may be called upon to pass enabling legislation after the treaty is ratified; but the House would be constrained to act within the terms of the treaty. A fundamental principle which has been assumed in the negotiations is the abrogation of the 1903 treaty with its grant of sovereign powers. But sovereignty itself is a property right, and falls within the power of Congress in article IV, section 3. If a treaty were ratified by the Senate before the House acted, the House would have no opportunity to act on this transcendent question. It would be faced with an accomplished fact.

And even if the question were put to the House before the treaty were ratified by the Senate, the House would still be constrained by the overhanging treaty question. And indeed, the House could very well turn down the enabling legislation, or portions of it, only to find their action overridden by the passage of the treaty in the Senate.

Treaties ordinarily contain portions which are self-executing and portions which are not self-executing. The House would not be able to act on any item that is self-executing; and some of the fundamental issues might be considered self-executing. The House clearly would have its article IV, section 3 powers abridged; and of course if one House suffers, the whole Congress suffers in its prestige and authority. The Senate cannot smugly stand on its ratification power and imagine that its overall authority will not be derogated.

TREATY RATIFICATION DIFFERS FROM LEGISLATIVE POWER

Moreover, even the Senate itself will have the fullness of its article IV, section 3 powers abridged, if it chooses to rely solely on its article II, section ratification power. For the ratification power is fundamentally different from the legislative power in article IV. It should be obvious that ratification is after the fact; the terms have been established; no fundamental changes are possible in a practical sense. Slight modifications, such as reservations or understandings, may be attached, but the effect of these in international law is dubious. The only real alternative is complete rejection, which could have severe international repercussions. The Senate could very well find itself debating to determine the lesser of two evils, neither of which represent the best interests of the United States.

But if the disposition of U.S. territory and property is treated as a legislative matter under article IV, then Congress itself sets the basic principles of negotiation. It gives the Executive guidelines as to what is acceptable. It strengthens the hands of the negotiators, since the opposite parties would know the limits of the negotiable items. And if the negotiators are not able to get a detailed agreement within the terms laid down, then they can return to Congress to seek appropriate legislation to enlarge their mandate.

Moreover, the full play of the committee system can be brought into effect. If only a treaty is to be considered, only the Committee on Foreign Relations has jurisdiction. While I am sure that the distinguished members of that committee are experts in foreign affairs by virtue of their experience, the disposition of property, as I have already pointed out, is fundamentally a domestic matter, not a matter for foreign relations. The jurisdiction over the Canal Zone is split between the Commerce Committee and the Armed Services Committee. The Senators on those committees would not be able to bring their special expertise to bear on the markup and reporting process. The predominant concerns affecting the disposition of U.S. property would be those concerns relating to foreign affairs, and there would be no forum for the fundamental domestic concerns to receive committee review and to affect the final product reported to the floor.

It is clear, therefore, that the ratification process is no substitute for the legislative process, even so far as the powers of the Senate itself are concerned. The ratification process is a rubberstamp which can be given or withheld; the legislative process is the fullness of congressional power, allowing both Senate and House to work their separate and collective wills on shaping and developing the terms of any disposition of U.S. territory and property.

CANAL ZONE U.S. TERRITORY

Mr. President, there is no doubt but that the Canal Zone is unincorporated territory of the United States. Our instruments under international law have given us the rights of a sovereign; and of course, our domestic law has always treated the Canal Zone as U.S. territory, a fact established by the U.S. Supreme Court as early as 1907, and reaffirmed many times, including as recently as 1971 when the Court let stand a lower court decision based on the 1907 case.

Some have pointed to discrepancies between the way laws affect the 50 States and the way they affect the Canal Zone, as though to imply that the zone is something less than U.S. territory. But the fact is that Congress itself is the author of those discrepancies, using its authority to make all needful rules and regulations for the territory under article IV, section 3. Moreover, the fact that the zone is and always has been a U.S. Government reservation means that special circumstances apply. The fact that certain discrepancies exist enhances the power of Congress, because it shows that Congress is exercising the fullness of its article IV power. Indeed, such minor discrepancies strengthen, rather than diminish, the status of the Canal Zone as article IV territory.

It is clear, therefore, that the President and the Secretary of State are bound by oath under article VI, section 3 of the Constitution and the laws of the land, as interpreted by the U.S. Supreme Court. It should be unnecessary to make such a statement, but for 12 years the executive branch has been acting as though the power to conduct international relations superceded its obligations under domestic law.

PRESIDENT JOHNSON ACKNOWLEDGED U.S. SOVEREIGNTY

On September 24, 1965, President Johnson announced that the Treaty of 1903 would be abrogated and that negotiations would begin on new treaties. That in itself was an unauthorized usurpation of power. Congress had in no way provided authority by legislation or by resolution which would allow President Johnson to assume article IV powers. In fact, just the opposite was the case. Numerous actions, particularly in the House of Representatives, had indicated that the sentiment was against the abrogation of the sovereignty and perpetuity clauses of the 1903 Treaty.

Indeed, by the time that the treaties had been negotiated pursuant to the President's announcement and initiated in 1967, the sentiment in both Houses was strongly opposed to them. In fact, the executive branch felt that the sentiment was so strong that the treaties were not even sent up to the Senate.

KISSINGER-TACK AGREEMENT

Nevertheless, on February 4, 1974, then Secretary of State Henry Kissinger signed a so-called Agreement on Basic Principles with Panamanian Foreign Minister Juan Tack.

Now these basic principles were even more insidious than the straightforward announcement by President Johnson that he would seek to abrogate the 1903 treaty. For the basic principles implied, without ever saying so specifically, that the United States did not possess either territory or sovereign powers. Principle 4, for example, begins:

The Panamanian territory in which the canal is situated shall be returned to the jurisdiction of the Republic of Panama. The Republic of Panama, in its capacity as territorial sovereign, shall grant to the United States of America, etc.

The Kissinger-Tack agreement put the prestige of the executive branch behind a statement that is historically untrue, profoundly unconstitutional, and an illegal usurpation of power. Whereas the Johnson announcement implied per se that the United States did have sovereign powers, and that they should be abrogated, the Kissinger statement implicitly denied that the United States had sovereign powers, and hence there was no need to speak of abrogation. This was an attempt to end run the Constitution and the laws of the United States, and to create an accomplished fact. It amounted to a concession of the major point before the negotiations began.

The reaction in the Senate was very intense, as well as in the House. In the Senate, under the able leadership of the distinguished senior Senator from Arkansas (Mr. McClellan) and the distinguished senior Senator from South Carolina (Mr. Thurmond), 39 Senators cosponsored a resolution demand that our sovereignty

remain undiluted in the Canal Zone. As a very freshman Senator at that time, I was proud to be among that distinguished group of cosponsors.

Usurpation is a process which seems to blind the usurpers to the consequences of their actions. Now the very set of basic principles, odious as they were, were exactly the sort of thing which should have been brought to Congress for approval before they were signed. If Congress had chosen to adopt those principles as guidelines under article IV, then the negotiators could have safely assumed that they would get a treaty acceptable to the Senate and the House.

But the Secretary of State and the President were not willing to take the risk of submitting such basic principles to the Congress for fear that they would precipitate an intense debate resulting in rejection or amendment. They chose, therefore, to ignore article IV, and continue negotiations, despite the fact that a group of Senators large enough to block the treaty had declared themselves opposed to their work. They had set themselves upon a course that may well end in tragedy and disaster.

THE 1975 CONCEPTUAL AGREEMENTS

The direction of the negotiations soon became evident. In December 1975 another document emerged—so called “conceptual agreements” amplifying the Kissinger-Tack principles. These went into more detail, but confirmed the worst fears of those opposed to the surrender of sovereignty. For although the American people had been promised “practical control” in lieu of sovereignty, it was plain that even “practical control” would vanish almost immediately upon ratification, leaving only a mixed control for approximately 3 years. More recent news accounts confirm the extent to which the conceptual agreement has been carried out in the present negotiations.

Mr. President, on December 4, 1975, in a statement on the Senate floor, I made an extensive analysis of the hitherto “secret” conceptual agreements. It will make very interesting reading, I believe, when final drafts of the new treaty become available.

AMBASSADOR LINOWITZ AND ARTICLE II

Nothing, however, seemed to deter the Department of State, not even the change of administrations in the beginning of this year. The appointment of Ambassador Sol Linowitz as negotiator is a case in point. Ambassador Linowitz is not an impartial and professional negotiator. He has long been an advocate of surrendering the canal to Panama, and his business interests coincide with that advocacy. Unfortunately, the administration once again chose to avoid debate in the Senate by appointing him only to a 6-month term—a legal subterfuge which enabled him to bypass the confirmation process.

If the State Department had really been interested in consulting with the Senate, they would have used the opportunity to put their positions on the line. But instead they chose the bypass route. And as a result of avoiding the advice-and-consent procedures of article

II, a great embarrassment was created to the U.S. Government and to the State Department itself.

For after a Senate speech in which I pointed out that Ambassador Linowitz was on the board of directors of Pan American Airways, and on the board of directors of the Marine Midland Bank—and on its executive committee—both of which had extensive interests in Panama and needed to curry favor with the regime to maintain those interests—the Ambassador was forced to resign from at least one of them.

ENCROACHMENT AND USURPATION

What all this shows, Mr. President, is that encroachment follows upon encroachment. The failure of the Executive to abide by article IV, section 3 leads to the failure of the Executive to abide by the spirit of article II, section 2. What kind of a ratification process is it, when the Executive bypasses an essential part of it; namely, the advice and consent to ambassadors about to undertake a major negotiation? This is the only opportunity the Senate gets before a negotiation to officially instruct a negotiator on its views before a treaty is locked in; yet the State Department bypassed even that by nominating a candidate who proved to be unsuitable for that particular post.

As I indicated before, usurpation and irresponsibility lead to seizure of power and tragedy. For 12 years the State Department has been unconstitutionally raising the aspirations of the Panamanians, acting wantonly and without authority. If this treaty fails—and there are good reasons why it should—the blame will lie entirely with the executive branch, which has constantly refused to abide by its constitutional authority, and has failed to take the Congress into its confidence about actions which are solely in the field of congressional prerogative anyway. Unfortunately, it will be the Nation, and the American people who have to suffer the consequences.

I would like to close, therefore, with the very blunt warning of George Washington in the Farewell Address:

It is important, likewise, that the habits of thinking in a free country should inspire caution in those intrusted with its administration to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government a real despotism. If in the opinion of the people the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this in one instance may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use at any time yield.

[From the Congressional Record—Senate, Aug. 4, 1977]

SENATOR SCOTT'S REPORT ON HIS RECENT TRIP TO PANAMA, ARGENTINA, AND CHILE

Mr. SCOTT. Mr. President, earlier today I made a report to the Committee on Armed Services on a recent trip to Panama, Argentina, and Chile to ascertain information primarily for the committee with regard to the Canal Zone and the feeling of the people in the general area regarding the proposed transfer of title, of jurisdiction, and control to the country of Panama.

I ask unanimous consent, Mr. President, that a copy of the report and the enclosures contained therein be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.
(See exhibit 1.)

Mr. SCOTT. Let me add that three volumes of material filed with the committee are too voluminous to include in the Record, and that further information was provided to the Committee on Armed Services in executive session which would not be appropriate to be made public.

I would hope, Mr. President, that all Members of the Senate will obtain independent information with regard to the proposed transfer of the canal in addition to what may be made available from our own State Department.

My report may be helpful to Senators, and the enclosures include a brief summary of the history of the canal, a copy of the 1903 treaty, a position paper presented by the civic councils of several American communities within the area of the Canal Zone, and a recent statement by Adm. Thomas H. Moorer who retired from the Navy after service as Chairman of the Joint Chiefs of Staff for a 4-year period. This statement by a gentleman who was our top military officer from 1970 to 1974 expresses the same concern that I heard from more than 100 individuals, both Americans and foreign nationals, during the trip last month.

The Subcommittee on Separation of Powers of the Senate Judiciary Committee has also had rather extensive hearings primarily on constitutional questions relating to the status of the canal, the authority of the executive branch of Government to negotiate for a transfer of title in view of section 3 of article IV of the Constitution which provides that—

The Congress shall have power to dispose of and make all necessary rules and regulations respecting the territory or other property belonging to the United States

Our Subcommittee on Separation of Powers also discussed the treaty power of the President under article II, section 2, of the Constitution.

Based upon the facts as I have been able to ascertain them, Mr. President, from the hearings before the Judiciary Committee, from discussions with officials and private persons, both Americans and foreign, the contemplated transfer appears to be against the best interests of the United States from an economic, political and a national defense point of view. The Supreme Court has held that we own title to the Canal Zone and the fifth circuit court of

appeals has held that it is the unincorporated territory of the United States. Therefore, unless the Congress, or the American people can prevail upon the White House or the Department of State not to enter into a treaty to give away our property, the only recourse is for the Senate to refuse to ratify the treaty and for the Congress to refuse to appropriate funds specified in the proposed treaty.

EXHIBIT 1

REPORT OF SENATOR WILLIAM L. SCOTT OF VIRGINIA ON PANAMA CANAL TRIP

Mr. Conneely and I left Dulles airport near midnight on June 29th and arrived in Panama early the following morning. In order to obtain an overview we were provided with a helicopter flight over the entire Canal Zone with Lt. General Dennis McAuliffe accompanying us and explaining various details. Thereafter, we visited a set of locks on the ground and were provided with a film study of the history and the operation of the canal. Then we visited the American Ambassador William J. Jorden who discussed the proposed treaty with us. Later we visited the Governor of the Canal Zone. Governor Parfitt is a major general in the army and has general supervisory jurisdiction over the maintenance and operation of the canal, as well as executive oversight of the Zone and the Panama Railroad Company.

We arranged to have a detailed discussion with General McAuliffe and his staff, including a number of colonels and naval captains at a joint meeting. They were most cooperative in sharing their thoughts and responded freely to questions with the understanding that we were attempting to obtain general information to share with the committee and possibly with the full Senate. Each of the general's staff was asked his personal views on the future of the canal, whether it would be operated efficiently if turned over to the Panamanians; whether there was any danger of Communist influence, and whether there would be any policy changes regarding the use of the canal or the fees charged for its use.

Similar questions were put to Americans employed in the operation of the canal and later to businessmen, intelligence officials and staffs of the American Embassies in both Argentina and Chile. Argentine officials included the minister of defense, undersecretary of foreign affairs and assistant to the president. Chilean officials included the president, foreign minister, defense minister, other cabinet officials and the Chilean Ambassador to the United Nations. During the 10-day trip we obtained the views of more than 100 individuals, some American citizens and some foreign nationals.

Our Ambassador to Panama and a former Foreign Minister of Panama favored the proposed treaty. Others had a different point of view. The general consensus of these views was that the United States had constructed the canal and utilized it in the best interests of all countries of the world without profit, and with toll charges only to cover the cost of operation. In fact, it was suggested that the name "Panama Canal" should never have been used but it could better have been named the "American International Canal." Fear was expressed that the Panamanians would not have the necessary skills, or expertise to operate the canal, although they had waged a very successful propaganda effort in favor of obtaining control.

We were also told that there were Communists with important positions within the Panamanian Government and regardless of the terms of a treaty, the canal might be nationalized by the Panamanians and might come under the control of Communists dominated by Cuba and Russia. The committee might want to obtain the views of Admiral Turner and the C.I.A. in this regard.

There was a common belief that tolls would be raised substantially and statistics were cited that 70 percent of the ships using the canal either came from, or were destined for American ports.

In Argentina we were told that the canal was not as important to it and to other Atlantic nations as it was to countries on the Pacific side of the South American continent or nations closer to the canal.

Chilean officials stated that although they could go around Cape Horn more easily than more northern countries, it was more convenient and economical for their ships to utilize the canal and 95 percent of their shipping did pass through the canal.

In both Chile and Argentina surprise was expressed that we would solicit their views on the future of the canal as State Department officials had led them to

believe that the United States had lost interest in continuing its operation. They indicated, however, that the United States had always kept the canal in very good operational condition, but that it would deteriorate under the Panamanians; that Panama would have to obtain outside help to operate the canal and it would not be in the interest of other Nations for the operation or the control of the canal to be turned over to the Panamanians. We were advised that the Panamanian Government itself was inefficient and that the Government could not be expected to do any better in the operation of the canal.

Concern was expressed that terrorists' tactics might be employed if the United States did not execute a treaty under which control of the canal would be given to the Panamanians and that while our troops could successfully meet a direct threat against the canal, military personnel would probably have to board ships as they entered the canal and accompany them through the various locks and no guarantee could be made that a small group of terrorists, under cover of darkness and jungle growth, could not penetrate our defenses and plant explosives at vital spots which would make the canal inoperative. It was not believed, however, that this would happen as it would be very detrimental to the interest of the Panamanian people and their Government since their economic prosperity, to a considerable extent, depended upon uninterrupted operation of the canal.

Concern was expressed that the State Department was proceeding as if it had the full backing of the American people and without considering opposition in the Congress. We were told that Panamanians respected strength and resoluteness and in recent years our Government had shown little firmness and even encouraged Panamanians and others to believe that we intended to give up our rights to the Canal Zone. We were told it would be easier to maintain the security of the canal by continuing our control than it would be to guarantee its security in the event it was operated by Panamanians or to retain control once it was transferred to others.

Americans working and living in the Canal Zone were especially bitter about the prospects of transferring control to Panama. They indicated that all of our military ships but 13 could go through the canal; that war material of all kinds could transit it, including men and equipment; that over 96% of all ships afloat throughout the world could go through the canal; and that the fares paid by ships of any Nation flying any flag were the same with no discrimination, and in time of peace all Nations of the world are permitted to utilize the canal.

Americans living in the Canal Zone stated that the Panamanian Government was inefficient and ineffective; that it was socialistic in nature, headed by a dictator, with little freedom of the press, speech or other civil liberties. It was indicated that our government had been more than generous to the country of Panama not only with regard to the Canal Zone but in conveying to Panama American property outside the Canal Zone worth many million of dollars; property that had formally been used by our Government as quarters for U.S. employees, schools, hospitals and hotels, and for other purposes.

It might be well, Mr. Chairman, to insert, at this point in the Record, a short factual statement of the history of the canal, the American role in the establishment of the country of Panama, as well as a copy of the 1903 treaty. It is interesting to note that the width of the canal is 5 miles on each side of a center line and about 50 miles in length, containing somewhat more than 500 square miles, or more than 5 times the original size of the District of Columbia.

I would also like to make available other written material given to us but for committee use only, not to be made a part of the Record. This material was given to us by American citizens living in the Canal Zone and even a casual reading indicates the deep concern of our own citizens, who should be most familiar with conditions in Panama, about the proposed transfer. For example, a position paper to the House Subcommittee on the Panama Canal on April 12th of this year contains this statement: "The State Department is negotiating a treaty which it is willing to ratify. They make the assumption that they know what is 'in the best interest of the United States' and all other opinions are to be considered ill-informed, unenlightened, and out of step with modern times."

We were told military personnel would appear if requested by the committee and express their opinions in the same manner as they expressed them to us if the committee asked for an expression of personal opinion. My overall impression from the entire trip is that there is a variance between official opinions and private ones. Military and civilian Americans are hesitant to speak out against the transfer of the canal while our State Department is negotiating a transfer of ownership and control.

Moreover, there is little doubt that Pan American nations privately desire the United States to continue both operation and control but are hesitant to publicly

oppose the Panamanian position, especially when the United States has not attempted to cultivate a contrary view: I believe it would be against the interests of our Government to transfer control of the canal; that there is evidence of communist influence and that a transfer would have an adverse effect on both American commerce, and defense posture. Since our government did pay the Panamanians for the right to construct the canal, operate it in perpetuity, exercise the rights of sovereignty, paid the French and Colombian Governments for their interests, and purchased title to the property from private owners and even squatters on the property, the claims of the Panamanians do not appear reasonable.

There is also the question the effect the transfer of the control of the canal might have upon the size and composition of our navy and the committee might want to make inquiry in this regard of the Chief of Naval Operations or Chairman of the Joint Chiefs. A former chairman of the Joint Chiefs Adm. Thomas H. Moorer in recent testimony before the Subcommittee on Separation of Powers of our Senate Judiciary Committee spoke out very strongly against the transfer and in response to questions expressed the opinion that transferring the control of the canal to Panama could very well result in Communist control of the canal. I would like to insert a copy of his direct testimony at this point in the record.

I would ask for a short closed session that would take only a few minutes to go over some sensitive information and identify its sources.

[From the Military Engineer, July-August 1974]

A PANAMA SUMMARY

(By John J. Kern)

Then felt I like some watcher of the skies
When a new planet swims into his ken;
Or like stout Cortez when with eagle eyes
He star'd at the Pacific,—and all his men
Look'd at each other with a wild surmise—
Silent, upon a peak in Darien.

(John Keats, "On First Looking Into Chapman's Homer.")

In this sonnet Keats ascribes the discovery of the Pacific Ocean to Cortez. Although his sonnet is a masterpiece, Keats was historically inaccurate since it was actually Vasco Nuñez de Balboa who discovered the Pacific Ocean in 1513 while atop a mountain peak in the Darien province of eastern Panama.

EARLY EXPLORERS

Rodrigo de Bastidas of Seville discovered Panama in 1501 from the Atlantic side. Christopher Columbus explored the area on his fourth American voyage in 1502. Surprisingly, within 50 years of the discovery of Panama, all of the presently discussed possible canal routes across Central America had been identified, described, and to a certain extent surveyed. Alvaro de Saavedra Ceron, a cousin of Cortez, drafted the first plan for a transisthmian canal in 1529. In 1534, Charles V of Spain directed that a survey be made for a ship canal between the Chagres River and the Pacific Ocean.

EARLY HISTORY OF REGION

The Camino Real was in use by 1535 and over it millions of dollars worth of Peruvian and Mexican gold was transported for ocean shipment to Spain. The Panama area was subsequently incorporated into the vice-royalty of New Granada of Spain's western empire. A preliminary Spanish attempt to construct a canal in 1814 was interrupted by a revolt of her colonies. Panama severed political relations with Spain in 1821 and joined with Colombia in the Republic of Greater Colombia. In 1831, New Granada became an independent republic incorporating Panama as a state. Ten years later Panama seceded from New Granada and maintained its independence for thirteen months.

UNITED STATES INVOLVEMENT

The 1846 Treaty between the United States and New Granada gave the United States a transportation concession across the Isthmus in return for a guarantee to protect the sovereignty of New Granada. One year later the Panama Railroad Company was organized, and in 1848 gold was discovered at Sutter's Mill in Califor-

nia. This event soon brought to the Isthmus a tidal wave of immigrants seeking a better route to the gold fields of California rather than the arduous overland route. Congress co-operated in the same year and authorized steamship lines from New York and New Orleans to Chagres and from Panama City to California and Oregon. The economic pressure of an emerging nation was beginning to be felt on the Isthmus.

Difficulties again between Panama and New Granada resulted in Panama's temporary secession in 1853. In 1856 the United States Marines landed to protect the Panama Railroad during a riot. Thus began the military involvement of the United States.

In 1869 a diplomatic agreement between the United States and Colombia (which had changed its name from New Granada in 1861) provided for the construction of a canal. This was rejected by the Colombian Senate. This same year the opening of the Suez Canal focused international attention on a similar canal in Panama. The United States Congress, in 1872, authorized appointment of the first of many such committees—The Interoceanic Canal Commission—to determine the most practical route for a waterway between the Atlantic and the Pacific. Its report recommended construction of a lock canal across Nicaragua.

FRENCH INVOLVEMENT

In 1875 Ferdinand de Lesseps, the successful builder of the Suez Canal, proposed a sea-level canal at Panama. The Société Civile Internationale du Canal Interoceanique was organized in 1876 to make surveys and explorations. The negotiations in 1878 between Lucien Napoleon Bonaparte Wyse and the Government of Colombia for a canal concession and subsequent French proposals of de Lepiney for a lock canal, resulted in counteraction by the United States. On June 25, 1879, the United States Congress resolved that any attempt of a European power to establish a ship canal across the Isthmus would be considered "a manifestation of an unfriendly disposition towards the United States." Thus, politics and diplomacy joined previous United States economic and military pressures for action in constructing a canal across the Isthmus of Panama.

Nevertheless, in the same year, the Compagnie Universelle du Canal Interoceanique de Panama was organized with de Lesseps as president. The new company ceremoniously started digging a sea-level canal on January 1, 1880, on the Pacific side of the Isthmus. Excavation of Culebra Cut was started in ten days although it was not until one year later that sizable numbers of French construction gangs arrived at Colon. Within five months, the first deaths from yellow fever occurred among Canal employees.

FRENCH CONSTRUCTION DIFFICULTIES

In September 1882, a severe earthquake damaged the canal railroad and buildings. Internal security remained a problem and in May 1885, Colon was burned during a Panamanian revolution. The following year the status of Panama was changed from a Colombian state to a department governed by federal appointees. Corporate difficulties increased within the Compagnie Universelle. Philippe Bunau-Varilla was appointed canal engineer in 1885, only to be relieved one year later. Construction difficulties increased and it became apparent that a sea-level canal was beyond the capabilities of the French company. The plan was changed to a lock canal in 1887. In 1888, after further unsuccessful efforts, the Compagnie Universelle went into receivership.

Meanwhile, independent United States efforts to build a canal across Nicaragua continued. In 1889 the United States Congress incorporated the Maritime Canal Company which began an unsuccessful four-year effort to construct a canal over the San Juan route. These efforts coincided with the suspension of work by the French company on the Panama Canal. The latter company was replaced by the Compagnie Nouvelle du Canal de Panama, but little progress was made and efforts were further hindered by the start of a five-year revolt against Colombia by Panama in 1898.

ISTHMIAN CANAL COMMISSION

On March 3, 1899, the First Isthmian Canal Commission was created by President McKinley to examine all practicable routes across the Isthmus. A year later, this Commission determined from the engineering aspects that a Nicaraguan or a Panamanian route would be about equally feasible. With the expectation of difficulty in acquiring the assets of the French company and operating rights in Panama, the Commission recommended the Nicaragua route. In 1902 the Isthmian Canal Commission reversed its decision and favored adoption of the Panama route after the

French company reduced its demands to approximate the appraisal of its assets. United States attention finally settled on Panama as the site of the canal. The Compagnie Nouvelle then agreed to a sale of its canal assets for \$40,000,000. The United States Congress promptly granted broad powers to the President to construct the Panama Canal.

PANAMANIAN REVOLT AND THE HAY/BUNAU-VARILLA TREATY

On March 17, 1903, the Senate ratified the Hay-Herrán Treaty which would grant construction rights in a canal zone in return for payment of \$10,000,000 to Colombia and an annuity of \$250,000. This treaty was rejected by Colombia on August 12, 1903, and on November 3 the final Panamanian revolt against Colombia resulted in a declaration of independence. Three days later the new Government of Panama was recognized by the United States and within an additional 12 days the Hay/Bunau-Varilla Treaty was signed and ratified by both sides, granting United States occupation of the Canal Zone in perpetuity under similar financial terms as originally offered to Colombia. Relations between the United States and Panama were thus initiated, and assumed much of their later character.

In 1904 the French canal properties were transferred to United States ownership and in November of that year the first American construction effort began. Work was steadily pushed ahead for the next decade and on August 15, 1914, the SS *Ancon* transited the canal, officially opening the waterway to world commerce.

RECENT STUDIES

The 1929 Study.—Several years after the opening of the Panama Canal, concern that traffic demands would eventually exceed canal capacity led Congress, in 1929, to direct a survey in Panama and Nicaragua to decide the feasibility of adding additional locks to the existing canal, or of constructing another canal at some other location. The United States Army Inter-oceanic Canal Board of 1929-1931 was created and its report, submitted in 1931, proposed three long-term alternatives: a third set of locks for the existing canal; conversion of the existing canal to sea level; or construction of a new lock canal in Nicaragua.

The Third Locks Project Study (1936-1939).—Congress authorized the Governor of the Panama Canal to study the possibilities of increasing the capacity of the canal. The study report revised a concept which was considered in the original design of the canal and further revised in the 1929 study, and proposed a third set of locks separated from each of the existing locks. In 1939 the Congress authorized its construction, but the project was suspended in 1942 and has never been resumed.

The 1947 Report.—Congress again directed the Governor, in late 1945, to study methods of increasing canal capacity and defenses as well as to consider other alternative routes. Thirty possible routes from Mexico to Colombia were identified and numbered. The report recommended that the existing canal (Route 15) be converted to a sea-level canal by deepening and straightening the existing alignment along a new route called Route 14.

1957-1960 Ad Hoc Committee for Isthmian Canal Plans. The Board of Directors of the Panama Canal Company authorized this study in which recommendations included the first mention of nuclear excavation. The report recommended planning for construction of a sea-level canal using nuclear excavation along a route outside of the Canal Zone. If such plans were not available to implement by the early 1970's, the existing canal was to be converted to a sea-level canal.

1957-1960 Board of Consultants Study.—Concurrently with the Ad Hoc Committee's study, the House Committee on Merchant Marine and Fisheries appointed a Board of Consultants to prepare short- and long-range improvement plans. The report recommended that a sea-level conversion project should not be undertaken in the near future, but that the situation should be reviewed by 1970. In the interim, new studies should continue on conventional and nuclear construction methods.

1964 Isthmian Canal Studies.—This report was prepared by the president of the Panama Canal Company with the participation of the Atomic Energy Commission, the Corps of Engineers, and consultants. This comprehensive study summarized canal traffic projections and capacity, examined methods of improving lock canal facilities, provided a detailed analysis of the Third Locks Plan and a modification of this plan called the Terminal Lakes Plan, and proposed a sea-level canal within the Canal Zone. This report also set the number of lockages per year which could be accommodated at about 26,000. It also examined the technical feasibility of using nuclear excavation on sea-level canals in eastern Panama and northwestern Colombia.

Inter-oceanic Canal Studies 1970.—This Study Commission was required by Public Law 88-609 of the 88th Congress, September 22, 1964, to study the feasibility of, and

the most suitable site for, a sea-level canal connecting the Atlantic and Pacific Oceans. The Commission was appointed in April 1965 and presented its report to President Nixon on December 1, 1970. Concerning nuclear excavation, the report concludes that this technology will not be available because its technical feasibility and international acceptability has not been established. Using conventional construction means, a sea-level canal is physically feasible and the most suitable site is along Route 10 in the Republic of Panama. Construction cost was estimated at \$2.88 billion in 1970 dollars. A suitable treaty should be negotiated with Panama providing for a unified canal system (existing canal plus a sea-level canal on Route 10) to be operated and defended jointly by the United States and Panama. Construction should be started no later than 1985.

PRESENT LEGISLATIVE STATUS

House Resolution 1517 is pending before Congress and would authorize completion of a third lane of locks. Beyond this, there is no legislation pending which would provide for radically altering the existing canal or constructing another canal in some other location. Thus, future definitive action will apparently depend on an increase in the pressure areas (economic, military, political, and diplomatic) which originally combined to result in construction of the present canal.

ISTHMIAN CANAL CONVENTION, NOVEMBER, 18, 1903

(Convention between the United States and the Republic of Panama for the construction of a ship canal to connect the waters of the Atlantic and Pacific oceans. Signed at Washington, November 18, 1903; ratification advised by the Senate, February 23, 1904; ratified by the President, February 25, 1904; ratified by Panama, December 2, 1903; ratifications exchanged at Washington, February 26, 1904; proclaimed, February 26, 1904.)

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA

A PROCLAMATION

Whereas a Convention between the United States of America and the Republic of Panama to insure the construction of a ship canal across the Isthmus of Panama to connect the Atlantic and Pacific Oceans, was concluded and signed by their respective Plenipotentiaries at Washington, on the eighteenth day of November, one thousand nine hundred and three, the original of which Convention, being in the English language, is word for word as follows:

ISTHMIAN CANAL CONVENTION

The United States of America and the Republic of Panama being desirous to insure the construction of a ship canal across the Isthmus of Panama to connect the Atlantic and Pacific oceans, and the Congress of the United States of America having passed an act approved June 28, 1902, in furtherance of that object, by which the President of the United States is authorized to acquire within a reasonable time the control of the necessary territory of the Republic of Colombia, and the sovereignty of such territory being actually vested in the Republic of Panama, the high contracting parties have resolved for that purpose to conclude a convention and have accordingly appointed as their plenipotentiaries,—

The President of the United States of America, John Hay, Secretary of State, and the Government of the Republic of Panama, Philippe Bunauvarilla, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama, thereunto specially empowered by said government, who after communicating with each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I

The United States guarantees and will maintain the independence of the Republic of Panama.

ARTICLE II

The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land underwater for the construction, maintenance, operation, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the Canal to be constructed; the said zone beginning in the Caribbean Sea

three marine miles from mean low water mark and extending to and across the Isthmus of Panama into the Pacific ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant. The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said enterprise.

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco.

ARTICLE III

The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

ARTICLE IV

As rights subsidiary to the above grants the Republic of Panama grants in perpetuity to the United States the right to use the rivers, streams, lakes and other bodies of water within its limits for navigation, the supply of water or water-power or other purposes, so far as the use of said rivers, streams, lakes and bodies of water and the waters thereof may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal.

ARTICLE V

The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific ocean.

ARTICLE VI

The grants herein contained shall in no manner invalidate the titles or rights of private land holders or owners of private property in the said zone or in or to any of the lands or waters granted to the United States by the provisions of any Article of this treaty, nor shall they interfere with the rights of way over the public roads passing through the said zone or over any of the said lands or waters unless said rights of way or private rights shall conflict with rights herein granted to the United States in which case the rights of the United States shall be superior. All damages caused to the owners of private lands or private property of any kind by reason of the grants contained in this treaty or by reason of the operations of the United States, its agents or employees, or by reason of the construction, maintenance, operation, sanitation and protection of the said Canal or of the works of sanitation and protection herein provided for, shall be appraised and settled by a joint Commission appointed by the Governments of the United States and the Republic of Panama, whose decisions as to such damages shall be final and whose awards as to such damages shall be paid solely by the United States. No part of the work on said Canal or the Panama railroad or on any auxiliary works relating thereto and authorized by the terms of this treaty shall be prevented, delayed or impeded by or pending such proceedings to ascertain such damages. The appraisal of said private lands and private property and the assessment of damages to them shall be based upon their value before the date of this convention.

ARTICLE VII

The Republic of Panama grants to the United States within the limits of the cities of Panama and Colon and their adjacent harbors and within the territory adjacent thereto the right to acquire by purchase or by the exercise of the right of eminent domain, any lands, buildings, water rights or other properties necessary and convenient for the construction, maintenance, operation and protection of the Canal and

of any works of sanitation, such as the collection and disposition of sewage and the distribution of water in the said cities of Panama and Colon, which, in the discretion of the United States may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal and railroad. All such works of sanitation, collection and disposition of sewage and distribution of water in the cities of Panama and Colon shall be made at the expense of the United States, and the Government of the United States, its agents or nominees shall be authorized to impose and collect water rates and sewerage rates which shall be sufficient to provide for the payment of interest and the amortization of the principal of the cost of said works within a period of fifty years and upon the expiration of said term of fifty years the system of sewers and water works shall revert to and become the properties of the cities of Panama and Colon respectively, and the use of the water shall be free to the inhabitants of Panama and Colon, except to the extent that water rates may be necessary for the operation and maintenance of said system of sewers and water.

The Republic of Panama agrees that the cities of Panama and Colon shall comply in perpetuity with the sanitary ordinances whether of a preventive or curative character prescribed by the United States and in case the Government of Panama is unable or fails in its duty to enforce this compliance of the cities of Panama and Colon with the sanitary ordinances of the United States the Republic of Panama grants to the United States the right and authority to enforce the same.

The same right and authority are granted to the United States for the maintenance of public order in the cities of Panama and Colon and the territories and harbors adjacent thereto in case the Republic of Panama should not be, in the judgment of the United States, able to maintain such order.

ARTICLE VIII

The Republic of Panama grants to the United States all rights which it now has or hereafter may acquire to the property of the New Panama Canal Company and the Panama Railroad Company as a result of the transfer of sovereignty from the Republic of Colombia to the Republic of Panama over the Isthmus of Panama and authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties and concessions as well as the Panama Railroad and all the shares or part of the shares of that company; but the public lands situated outside of the zone described in Article II of this treaty now included in the concessions to both said enterprises and not required in the construction or operation of the Canal shall revert to the Republic of Panama except any property now owned by or in the possession of said companies within Panama or Colon or the ports or terminals thereof.

ARTICLE IX

The United States agrees that the ports at either entrance of the Canal and the waters thereof, and the Republic of Panama agrees that the towns of Panama and Colon shall be free for all time so that there shall not be imposed or collected custom house tolls, tonnage, anchorage, lighthouse, wharf, pilot, or quarantine dues or any other charges or taxes of any kind upon any vessel using or passing through the Canal or belonging to or employed by the United States, directly or indirectly, in connection with the construction, maintenance, operation, sanitation and protection of the main Canal, or auxiliary works, or upon the cargo officers, crew, or passengers of any such vessels, except such tolls and charges as may be imposed by the United States for the use of the Canal and other works, and except tolls and charges imposed by the Republic of Panama upon merchandise destined to be introduced for the consumption of the rest of the Republic of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the Canal.

The Government of the Republic of Panama shall have the right to establish in such ports and in the towns of Panama and Colon such houses and guards as it may deem necessary to collect duties on importations destined to other portions of Panama and to prevent contraband trade. The United States shall have the right to make use of the towns and harbors of Panama and Colon as places of anchorage, and for making repairs, for loading, unloading, depositing, or transshipping cargoes either in transit or destined for the service of the Canal and for other works pertaining to the Canal.

ARTICLE X

The Republic of Panama agrees that there shall not be imposed any taxes, national, municipal, departmental, or of any other class, upon the Canal, the rail-

ways and auxiliary works, tugs and other vessels employed in the service of the Canal, store houses, work shops, offices, quarters for laborers, factories of all kinds, warehouses, wharves, machinery and other works, property, and effects appertaining to the Canal or railroad and auxiliary works, or their officers or employees, situated within the cities of Panama and Colon, and that there shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, laborers, and other individuals in the service of the Canal and railroad and auxiliary works.

ARTICLE XI

The United States agrees that the official dispatches of the Government of the Republic of Panama shall be transmitted over any telegraph and telephone lines established for canal purposes and used for public and private business at rates not higher than those required from officials in the service of the United States.

ARTICLE XII

The Government of the Republic of Panama shall permit the immigration and free access to the lands and workshops of the Canal and its auxiliary works of all employees and workmen of whatever nationality under contract to work upon or seeking employment upon or in any wise connected with the said Canal and its auxiliary works, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Panama.

ARTICLE XIII

The United States may import at any time into the said zone and auxiliary lands, free of custom duties, imports, taxes, or other charges, and without any restrictions, any and all vessels, dredges, engines, cars, machinery, tools, explosives, materials, supplies, and other articles necessary and convenient in the construction, maintenance, operation, sanitation and protection of the Canal and auxiliary works, and all provisions, medicines, clothing, supplies and other things necessary and convenient for the officers, employees, workmen and laborers in the service and employ of the United States and for their families. If any such articles are disposed of for use outside of the zone and auxiliary lands granted to the United States and within the territory of the Republic, they shall be subject to the same import or other duties as like articles imported under the laws of the Republic of Panama.

ARTICLE XIV

As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars (\$10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars (\$250,000) in like gold coin, beginning nine years after the date aforesaid.

The provisions of this Article shall be in addition to all other benefits assured to the Republic of Panama under this convention.

But no delay or difference of opinion under this Article or any other provisions of this treaty shall affect or interrupt the full operation and effect of this convention in all other respects.

ARTICLE XV

The joint commission referred to in Article VI shall be established as follows:

The President of the United States shall nominate two persons and the President of the Republic of Panama shall nominate two persons and they shall proceed to a decision; but in case of disagreement of the Commission (by reason of their being equally divided in conclusion) an umpire shall be appointed by the two Governments who shall render the decision. In the event of the death, absence, or incapacity of a Commissioner or Umpire, or of his omitting, declining or ceasing to act, his place shall be filled by the appointment of another person in the manner above indicated. All decisions by a majority of the Commission or by the umpire shall be final.

ARTICLE XVI

The two Governments shall make adequate provision by future agreement for the pursuit, capture, imprisonment, detention and delivery within said zone and auxiliary lands to the authorities of the Republic of Panama of persons charged with the commitment of crimes, felonies or misdemeanors without said zone and for the

pursuit, capture, imprisonment, detention and delivery without said zone to the authorities of the United States of persons charged with the commitment of crimes, felonies and misdemeanors within said zone and auxiliary lands.

ARTICLE XVII

The Republic of Panama grants to the United States the use of all the ports of the Republic open to commerce as places of refuge for any vessels employed in the Canal enterprise, and for all vessels passing or bound to pass through the Canal which may be in distress and be driven to seek refuge in said ports. Such vessels shall be exempt from anchorage and tonnage dues on the part of the Republic of Panama.

ARTICLE XVIII

The Canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section 1 of Article three of, and in conformity with all the stipulations of, the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.

ARTICLE XIX

The Government of the Republic of Panama shall have the right to transport over the Canal its vessels and its troops and munitions of war in such vessels at all times without paying charges of any kind. The exemption is to be extended to the auxiliary railway for the transportation of persons in the service of the Republic of Panama, or of the police force charged with the preservation of public order outside of said zone, as well as to their baggage, munitions of war and supplies.

ARTICLE XX

If by virtue of any existing treaty in relation to the territory of the Isthmus of Panama, whereof the obligations shall descend or be assumed by the Republic of Panama, there may be any privilege or concession in favor of the Government or the citizens and subjects of a third power relative to an interoceanic means of communication which in any of its terms may be incompatible with the terms of the present convention, the Republic of Panama agrees to cancel or modify such treaty in due form, for which purpose it shall give to the said third power the requisite notification within the term of four months from the date of the present convention, and in case the existing treaty contains no clause permitting its modifications or annulment, the Republic of Panama agrees to procure its modification or annulment in such form that there shall not exist any conflict with the stipulations of the present convention.

ARTICLE XXI

The rights and privileges granted by the Republic of Panama to the United States in the preceding Articles are understood to be free of all anterior debts, liens, trusts, or liabilities, or concessions or privileges to other Governments, corporations syndicates or individuals, and consequently, if there should arise any claims on account of the present concessions and privileges or otherwise, the claimants shall resort to the Government of the Republic of Panama and not to the United States for any indemnity or compromise which may be required.

ARTICLE XXII

The Republic of Panama renounces and grants to the United States the participation to which it might be entitled in the future earnings of the Canal under Article XV of the concessionary contract with Lucien N. B. Wyse now owned by the New Panama Canal Company and any and all other rights or claims of a pecuniary nature arising under or relating to said concession, or arising under or relating to the concessions to the Panama Railroad Company or any extension or modification thereof; and it likewise renounces, confirms and grants to the United States, now and hereafter, all the rights and property reserved in the said concessions which otherwise would belong to Panama at or before the expiration of the terms of ninety-nine years of the concessions granted to or held by the above mentioned party and companies, and all right, title and interest which it now has or may hereafter have, in and to the lands, canal, works, property and rights held by the said companies under said concessions or otherwise, and acquired or to be acquired by the United States from or through the New Panama Canal Company, including any property and rights which might or may in the future either by lapse of time, forfeiture or otherwise, revert to the Republic of Panama under any contracts or

concessions, with said Wyse, the Universal Panama Canal Company, the Panama Railroad Company and the New Panama Canal Company.

The aforesaid rights and property shall be and are free and released from any present or reversionary interest in or claims of Panama and the title of the United States thereto upon consummation of the contemplated purchase by the United States from the New Panama Canal Company, shall be absolute, so far as concerns the Republic of Panama, excepting always the rights of the Republic specifically secured under this treaty.

ARTICLE XXIII

If it should become necessary at any time to employ armed forces for the safety or protection of the Canal, or of the ships that make use of the same, or the railways and auxiliary works, the United States shall have the right, at all times and in its discretion, to use its police and its land and naval forces or to establish fortifications for these purposes.

ARTICLE XXIV

No change either in the Government or in the laws and treaties of the Republic of Panama shall, without the consent of the United States, affect any right of the United States under the present convention, or under any treaty stipulation between the two countries that now exists or may hereafter exist touching the subject matter of this convention.

If the Republic of Panama shall hereafter enter as a constituent into any other Government or into any union or confederation of states, so as to merge her sovereignty or independence in such Government, union or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired.

ARTICLE XXV

For the better performance of the engagements of this convention and to the end of the efficient protection of the Canal and the preservation of its neutrality, the Government of the Republic of Panama will sell or lease to the United States lands adequate and necessary for naval or coaling stations on the Pacific coast and on the western Caribbean coast of the Republic at certain points to be agreed upon with the President of the United States.

ARTICLE XXVI

This convention when signed by the Plenipotentiaries of the Contracting Parties shall be ratified by the respective Governments and the ratifications shall be exchanged at Washington at the earliest date possible.

In faith whereof the respective Plenipotentiaries have signed the present convention in duplicate and have hereunto affixed their respective seals.

Done at the City of Washington the 18th day of November in the year of our Lord nineteen hundred and three.

JOHN HAY.
P. BUNAU-VARILLA.

And whereas the said Convention has been duly ratified on both parts, and the ratifications of the two governments were exchanged in the City of Washington, on the twenty-sixth day of February, one thousand nine hundred and four;

Now, therefore, be it known that I, Theodore Roosevelt, President of the United States of America, have caused the said Convention to be made public, to the end that the same and every article and clause thereof, may be observed and fulfilled with good faith by the United States and the citizens thereof.

In testimony whereof, I have hereunto set my hand and caused the seal of the United States of America to be affixed.

Done at the City of Washington, this twenty-sixth day of February, in the year of our Lord one thousand nine hundred and four, and of the Independence of the United States the one hundred and twenty-eighth.

THEODORE ROOSEVELT.

By the President:

JOHN HAY, *Secretary of State.*

A POSITION PAPER, PRESENTED BY U.S. CIVIC COUNCILS TO THE HOUSE
SUBCOMMITTEE ON THE PANAMA CANAL, APRIL 12, 1977

The Panama Canal was created by United States taxpayers' dollars, American ingenuity, engineering and medical expertise, and dedicated labor, transforming a sparsely populated, fever-infested jungle into the eighth wonder of the world. In fact, the Republic of Panama owes its very existence to the United States and the Panama Canal. Anyone who has seen the Nicaraguan area which was once considered for a Canal route can readily imagine what Panama would look like today had there been no Canal built here. Likewise, Panama owes its former prosperity to the United States and the Canal Zone, not just from the annual railroad annuity, but also from wages paid to Panamanian employees in the Canal Zone, from purchases made by U.S. citizens and agencies of the Canal Zone, and from the millions of dollars in foreign aid given so lavishly out of U.S. taxpayers' money.

The U.S. citizen work force in the Canal Zone is comprised largely of highly-skilled, dedicated, technical employees, who have left their homeland, not for service in a foreign country, but in the service of the United States government under the flag of the United States. Their outstanding record of accomplishments in keeping the Canal running smoothly and efficiently has been due largely to their sense of pride in their work, their sense of loyalty to the United States, and their attitude of concern for their country's welfare. These people believe strongly that the Panama Canal cannot operate effectively or efficiently without a Canal Zone which is under the jurisdiction of the United States—with U.S. laws, courts, postal system, police and fire protection, and schools with U.S. curriculum and U.S. citizen teachers. We believe that the U.S. government owes a strong legal and moral responsibility to these loyal employees to protect their job security, their lives, their property, and their families, while at the same time protecting the tremendous investment of taxpayers' money in the Canal.

For the past 3½ years, the U.S. Civic Councils in the Canal Zone have been preparing position papers and formal statements of community opinion for submission to Congressmen, Canal Zone officials, Department of Army representatives, treaty negotiators, and State Department officials. We have tried to maintain an attitude of rationality, calmness, and sensible perspective on the subject of a new Panama Canal treaty with the Republic of Panama. One of the many points we have tried to make so often, so much so that we feel like "broken records," is that the U.S. citizen in the Canal Zone feels very apprehensive about living under the type of "legal system" now in force in the Republic of Panama.

We live next-door to the Republic of Panama all year long! We use our eyes and ears to observe what is going on there and we are not naive enough to believe that the Guardia Nacional, that mistreats fellow Panamanians with arbitrary beatings, imprisonment, expatriation and murder, is going to give special treatment to those "hated colonialist gringos" who have finally come under their jurisdiction. (This attitude of hostility is encouraged and developed by the Government-controlled news media in the Republic of Panama.) The actions of the Panamanian government during the past year-and-a-half have done nothing to sell the U.S. employee in the Canal Zone on the idea of living under Panamanian jurisdiction. Let us cite a few examples:

1. In January, 1976, a group of Panamanian businessmen and professionals were exiled, contrary to the Panamanian constitution, for their opposition to the Torrijos regime.

2. The student riots in Panama City in September, 1976, were clumsily handled by the Guardia Nacional, so much so that the disorder continued almost daily for a week-and-a-half. When the Guardia finally took decisive action, it was brutal.

3. The October bombings in the Canal Zone have been credited to members of the G-2 of the Guardia Nacional, although members of the U.S. Embassy speculated informally that Bill Drummond might have bombed his own cars and participated in bombings at other sites in order to gain sympathy for his anti-treaty stand.

4. An Air Panama pilot, officially charged with possession of bombs to be used against the Panamanian government, told people at Paitilla Medical Center that the bomb that exploded in his car was tossed in there by a passing G-2 car. According to the Panamanian government's "official version", the man's wife was holding a bomb in her lap (a somewhat incredible tale) when the bomb exploded, injuring her seriously. Incidentally, his wife was sentenced to five years in prison.

5. Guardia Nacional escorted groups of students into the Canal Zone January 9, 1977, where American flags were burned and Panamanian flags were raised. (This last ritual seemed somewhat unnecessary because Panamanian flags are already flying in the Canal Zone.)

6. William Drummond, while passing through Tocumen Airport on February 11, 1977, en route to Washington on labor union business, was detained by G-2 agents and questioned for about three hours in the downtown Panama City office. When he tried to board another plane the following day, he was detained for 15 minutes at the foot of the boarding ramp, and seven friends who accompanied him to the airport were also detained and questioned because one of them took pictures of Mr. Drummond being stopped by G-2 agents. The film was confiscated by the G-2.

It seems inconsistent with the stated refusal of our government to deal with countries who have violated human rights that any negotiations should be carried on with a government which is in power illegally, and which has a record of frequent violation of human rights. The Torrijos dictatorship has used extreme repression against political, professional, business, student and labor groups. The expatriation of what is estimated to be about 1300 Panamanians and the murder of some 500 persons in a country of only 1,700,000 inhabitants would compare to 168,000 expatriations and 65,000 murders in the United States. (Definitive, authoritative figures on expatriations and political murders are difficult to obtain in Panama because of Government secrecy and suppression of information which the Government does not want its people to have.)

What exists now in the Canal Zone, after many attempts on our part to send out warning signals and indications of problems to come, is a "seige mentality" and crisis atmosphere. Now that one of the Civic Council presidents whose signature appears at the conclusion of this paper (Harold Green of Gamboa) has had recent experience with arbitrary detention, arrest, interrogation and search in the Republic, we are having real difficulty in maintaining an attitude of composure and calm rationality.

In short, our people have told us that they are more rigidly opposed than ever to living under Panamanian jurisdiction. The list of 15 assurances, recently released by Governor Harold R. Parfitt, spelled out for them the cold hard reality that Panamanian law would go into effect when the treaty was inaugurated, and many, many of our people now tell us that "the day that the Canal Zone Police go, we go," and also, more alarmingly, "When the U.S. workers see the day getting closer when jurisdiction will be handed to Panama, you can expect to see the Canal shut down."

Last year Dr. Richard Cheville addressed your committee not long after the March sick-out, and he explained in his testimony some of the factors that led up to the closing of the Panama Canal. Morale at that time was extremely low; this year we have to say honestly that our people are so demoralized that they are ready to give up and quit—a shutdown of the Canal, if it occurs, will not happen over a labor issue. It will result from apprehensive employees, who in their fear for their physical security, will simply leave their jobsites, go home and pack their suitcases for repatriation. We do not say this lightly; we do not say it as a threat. But we must make the honest observation that our people feel so thoroughly discouraged and so exhausted after several years' worth of worry and insecurity (with nothing much to look forward to), that it would not take much to get some of them to join a job action.

In contrast to our position as year-round residents and as elected representatives of U.S. citizens living in the Panama Canal communities, the treaty negotiators and State Department officials have little at stake themselves personally, other than to successfully negotiate a treaty which will, in their minds, ease hemispheric tensions and get rid of chronic problems in our relations with Panama. When they finish their assignment, they will move on to other missions, leaving us to live with what they have arranged in treaty form. Generally, the treaty negotiators came to Panama for short periods of time, followed by journalists who become experts after a three-day tour that includes standard briefings by the Panamanian and Canal Zone governments.

These negotiators for the most part stay in isolation on the island of Contadora, and when they have consented to meet with Canal Zone labor and civic representatives, they have said relatively nothing of any significance on the treaty issue. We sincerely resent the fact that our services and the future security of our nation are being negotiated under a cloak and dagger atmosphere, particularly since the secrecy is unilateral. Secrecy, in recent years, has been closely linked with dishonest, illegal or shady dealings. We in the Canal Zone are hard pressed to accurately define the secrecy attached to the Panama Canal negotiations. (Imagine our chagrin to daily read in the Panama papers that a Panamanian government spokesman is briefing Panamanian student, professional, business or labor groups on the "progress of the negotiations." And the presidents of Costa Rica, Colombia, Venezuela seemed to be briefed regularly by General Torrijos about treaty matters. Does the

U.S. State Department believe that the American people are not mature enough to properly accept and assimilate such highly important information?)

Let us make clear that we are American citizens deeply concerned with the present and future well-being of our nation. Our opinions on what the U.S. has at stake in the negotiation of a new Canal treaty are also affected by our conversations with Panamanian friends, our reading of Spanish-language and English-language newspapers in Panama, and our understanding of the behavioral traits of the Panamanian government (something which one does not arrive at overnight or even in three days). Because of the present situation in the Republic of Panama, many of us do not "cross the border" as often, as freely, or even as nonchalantly as we used to. Fear, apprehension, and deep concern for our personal safety brought about by a succession of events in Panama, have given us an increasing "looked-in" feeling in the Canal Zone. When Panamanians are deported, or arrested, tortured and even killed for having dissident opinions, and when even our own people are subject to arrest in Tocuman Airport, in violation of existing treaty agreements—the average U.S. citizen in the Canal Zone is not at all enthusiastic about arbitrarily being subjected to the legal jurisdiction of such a repressive government. As an additional item of evidence, we have had numerous conversations with many Panamanians that you will never be able to meet. Our impression from these conversations is that when the Panamanian government officials speak today, they are not speaking for all the people.

Let us cite a statement made recently by an educated businesswoman from Panama City. Speaking to a Civic Council president informally, she said, "The United States is a world leader and so is the Soviet Union. But the United States has the advantage of liberty and freedom. Yet your country is doing nothing to help promote the spread of liberty in Latin America today. I understand that your government cannot interfere in our internal affairs, but your government COULD withhold foreign aid and could stop giving military assistance to our government. Our people are growing in their resentment of the United States government because they see your government selling weapons, armored cars, and other equipment to this government that oppresses us." The Panamanian people seem to be overtly silent because they have no effective means that they can see with which to fight back. However, the ever increasing opposition to the dictatorial Government of Omar Torrijos became glaringly evident during the past September riots in Panama. Rumors have been rampant for months in the Canal Zone and Panama that more antigovernment riots may be imminent in the months of April and May.

What effect does all this have on the operation of the Canal? Right now it is having a disastrous effect on the quality of work being performed because workers are "uptight" constantly about physical and economic security. The pride in working on the Panama Canal that has been part of our historical heritage here since the Canal's construction is now giving way to constant preoccupation with one's personal welfare. The recent arrests of U.S. citizens at Tocumen Airport was not highly regarded by our people, many of whom wonder about their own safety in passing through this airport. The Panamanian government has not yet responded to the official protest concerning their violation of the Air Transport Service Agreement of 1949. Comments in the Panamanian press were that the Panamanian government did not like the agreement, a sentiment that does not augur well for any commitments made in a new treaty. The Panamanian government could decide, sooner or later, that they "don't like the agreement" again. On the subject of Tocumen Airport, let us add that our requests for use of Howard Air Force Base as the point of air departure and arrival from the Canal Zone were denied because "one arrest does not justify the civilian use of this military air terminal." U.S. residents who one year ago thought William Drummond was an eccentric who made his own problems, have been so jarred by events of the past year that now they identify fully with what happened to him at Tocumen Airport. The reason thusly: "If it can happen to Bill Drummond, then perhaps it can happen to me." Our people are now asking us, "How many arrests are needed for someone in our federal government to take steps to insure our protection in travel by air to and from the Canal Zone?"

Turning now to the subject of employee status under a new treaty with Panama, we would like to respond to the recent list of 15 items which the U.S. presumably proposes to submit at the negotiating table. In spite of the fact that the Panamanian government has said that this list of "assurances" would not be acceptable, we wish to let you know the reaction from the U.S. community in the Canal Zone. Assurances of U.S.-provided schooling and medical care, adequate housing, duty-free import and purchasing privileges and exemption from Panamanian income tax were good news to us, as you may be well aware. The language regarding job assurances

was somewhat vague and left us wondering if we would be given help or if we would not. The assurances seem to promise only what we already have: "all eligible employees are *guaranteed by current regulation* reduction-in-force and reassignment rights, transfer of function rights, and discontinued service retirement following involuntary separation." We were also told that "Civil Service Commission approval will be sought to provide any present U.S. citizen employee requesting such assistance with priority placement consideration for appropriate vacancies in federal government agencies." This is still vague and uncertain, and our people have had about all they can tolerate of uncertainty.

The irony of the list of 15 assurances is that, in spite of advantages which the U.S. citizen who might consider remaining here will have over the locally-hired Panamanian citizen employee, our people have such strong objections to the fifth item in that list, that they have little interest in the other somewhat positive assurances. The item which caught the exclusive attention of the U.S. community reads like this: "In connection with offenses arising from acts of omission punishable under the laws of the Republic of Panama, United States citizen employees and their dependents will be entitled to specific procedural guarantees, such as prompt and speedy trial, specific charges, cross-examination of witnesses and legal representation of choice."

Disregarding the fact that Panamanian government officials have announced in their local newspapers that they would never allow U.S. employees in the Canal enterprise to have a SOFA-type of agreement such as the U.S. military will have, and assuming for the sake of argument that the Panamanian negotiators agree to this assurance as part of the new treaty, who will guarantee that the Panamanian government will *consistently comply* with the request to give U.S. citizen employees these "procedural guarantees"?

After reviewing the list of assurances, we would like to hear something more specific and concrete, in language that we can understand, concerning priority transfers to government jobs in the United States. In addition, we would like to express concern for two particular job categories: teachers and policemen. At this point, teachers have no transfer rights from the Canal Zone into the U.S. Civil Service system, other than for jobs at Indian reservations. They have worked faithfully and well in educating our children, and we are distressed that they are left "out on a limb" when it comes to job transfers. Those who do not choose to participate in the DOD school system which will probably go into effect down here should be given first priority for employment in the U.S. and assistance in obtaining such employment. The men and women of the Canal Zone Policies Division are among those living under a "death sentence" because treaty negotiators have made it quite clear that law enforcement functions of the present Canal Zone Government will cease within three years after the new treaty goes into effect. The morale in this particular division continues daily at an all-time low because these employees only know that they will be out of a job soon; they know nothing about any future employment that will allow them to provide for their families.

In general, our people were appreciative of the attempt to give them some information about their status under a new treaty, even if that list of assurances is rejected by the Panamanian government. Nevertheless, our Personnel Bureau continues to have difficulty in recruiting pilots, doctors, nurses, marine engineers, electricians, tugboat masters, and other needed workers for the Canal enterprise. Our constituents tell us that June will witness another mass exodus from the Canal Zone, further magnifying the problem for our job recruitment specialists. During the past three to four years, while job security has been a major concern for our people, they have been receiving an "education" from the State Department concerning the treaty. In briefings, newspaper articles, and informal discussions, the State Department officials make clear these basic premises for their argument that a new treaty is needed:

1. A Canal Zone is not necessary for the successful operation of the Canal. (They tell us that we wouldn't WANT to live in the Canal Zone if Panama did not get the treaty it desires.)

2. The countries of Latin America give full support to Panama's claims for sovereignty over the Canal Zone and eventual control of the Canal operation.

3. The turnover of the Canal to Panama is in the best interests of the United States because not to do so would possibly involve our country in another Viet Nam-style guerrilla war.

4. Panama has a sincere interest in keeping the Canal open and would not do anything to jeopardize the efficient operation of the Canal.

5. The Canal Zone is an anachronism; it is a source of irritation. Once the U.S. citizens are scattered throughout Panama City and Colon, they will no longer be

identified as "Zonians," thus easing tensions and friction between the U.S. and Panama.

6. The economic growth of Panama depends on acquiring the lands in the Canal Zone so that Panama City and Colon can expand their business interests.

7. The denial of basic human rights within the Republic of Panama is not a matter that needs to be brought into the treaty negotiations. After all, Panama is one of the "developing countries of the world," and such behavior is normal for such countries.

8. The State Department would not negotiate a treaty which the U.S. Congress would not ratify.

The above concepts might be plausible to someone who has not lived here, to someone who has little or no dealings with the Panamanian government and its officials. They make the negotiation of a new treaty with Panama under the Kissinger-Tack conceptual principles as the most logical course to follow. Permit us to provide some responses to these concepts we have listed.

1. When the Canal Zone U.S.-based legal system ceases to exist, many, if not all U.S. employees will leave because they prefer to work and live under an orderly system of laws that guarantees them justice and fair play. They are becoming increasingly resistant to the thought of living under Panamanian legal system as it is now administered.

2. The countries of Latin America say one thing in public and another privately. In the newspapers they pledge full support for Panama's claims to the Canal. In private, to people such as former Under Secretary of State William Rogers, they say that they are satisfied with the course that the U.S. is taking in the Canal treaty negotiations. From observation of the political behavior and egocentrism of Latin American governments, one can safely say that Omar Torrijos could not depend on his Latin American neighbors for monetary or military support in an open conflict with the United States. Those other countries wish to preserve their own ties to the United States in foreign aid allotments and commercial ventures. They would not sacrifice their own interests for the sake of Torrijos' "just aspirations" concerning the Canal. Rhetorical support is about all that General Torrijos can expect from Central and South America.

3. Turning over the Canal to prevent "guerrilla warfare" is NOT in the best interests of the United States because:

a. construction of enough warships to provide a "two-ocean navy" would be necessary in case Panama became whimsical in permitting us access to the Canal for military vessels. The extra cost in fuel for sending these ships around the tip of South America would be astronomical.

b. The Moscow-Havana axis has been casting lustful eyes for a long time toward our Canal as well as at other straits and waterways of the world. Panama does not have the military strength (even with the armored cars new in their possession) to withstand an assault from ANY country that would choose to invade and occupy it. The Panamanian people are not "fighters" by tradition; they have never fought a war of liberation. The average campesino reasons in this way: "Why should I get myself killed for the sake of a dictator? What will it gain me or my family? Absolutely nothing. Therefore I will simply adjust to whoever is in power. One ruler is as bad as another."

c. The flow of Alaskan oil through the Panama Canal en route to eastern ports in the United States will be in serious jeopardy when Panama has control over access to the Canal and over the setting of tolls.

d. Our first line of defense in the western hemisphere would suddenly become Harlingen or McAllen, Texas (or perhaps Key West, Florida.)

e. The threat of "guerrilla warfare" amounts to nothing more than an attempt at political "blackmail" and appears to be contradictory in nature, based on the actions of the State Department. How valid is the threat if the State Department permits the sale and assists in the movement of armed personnel carriers to the Panamanian government? This military equipment was furnished in two installments, the first in October, 1976, and the second on March 5, 1977. The second installment, consisting of 12 armored vehicles, was delivered under Canal Zone police escort, to the Republic of Panama. What can justify the sale of military equipment to a potential enemy? How does one explain this situation to a U.S. soldier who may some day face his own death at the hands of an enemy who is using equipment built in the United States and delivered with the help of our own Government officials? (One rather weak explanation from the U.S. Embassy in Panama is "Well, if they don't buy from us, they'll buy from someone else. It's better that US industry gets the money and we can control the supply of replacement parts.")

4. The Panamanian government is not noted for rational, logical behavior, nor for extensive attention toward preventive maintenance of government equipment. At this point, the Panamanian government, nearly bankrupt, needs money so desperately that we agree they have a sincere interest in keeping the Canal open and operating efficiently. We further believe that the Canal will remain open and operating efficiently even if the Panamanian government does not gain control of the Canal and the Canal Zone. Panama presently derives about one-third of its national income (\$256,000,000 in 1976) from Canal sources and they are not about to jeopardize that income by foolishly attempting to sabotage the Canal. Any terrorist or guerrilla type action, if at all, will be aimed at targets other than the Canal. In short, U.S. taxpayers are being required to sacrifice their tax dollars, land and national security in order to protect the investment of multinational business corporations.

One of the differences between U.S. control and Panamanian control of the Canal and Canal Zone is the anticipated exorbitant increase in tolls which Panama would levy. Any such increase would seriously jeopardize the economic health of the Canal and increase the cost of products in countries that can ill afford such an increase. Sabotage and toll increases will hurt most of these Central and South American countries who are supposedly solidly behind the "just aspirations" of General Torrijos.

The lackadaisical attitude toward repairs and maintenance would contribute to the mechanical and structural breakdown of the Canal and appurtenances (unless the United States agreed to continue supplying parts and maintenance indefinitely).

5. The "gringo" as he is often called here in Panama will continue to receive harassment, whether he lives in Panama or the present Canal Zone. The United States has been a rather convenient whipping-boy for the Republic of Panama for years and years. Criticism of the U.S. has always been used to distract the Panamanian's attention from the incompetence, graft, corruption, and poor judgment of his government. Besides, the average Panamanian (when he permits himself to talk freely,) DOES NOT want a treaty signed under the regime of Omar Torrijos. Such a treaty would reinforce the already crushing power of the Torrijos government on the Panamanian people.

6. The economic growth of Panama will need more than a Canal to restore it to health. The repressive atmosphere has inhibited consumers from visiting stores and businesses; it has inhibited investors from putting their money to work in Panamanian enterprises. The acquisition of Canal Zone lands for use by Panamanian commercial interests still requires the intelligent use and exploitation of those lands by competent businessmen. Such people are not the ones in control in the Panamanian government today. The ones in power are military men without adequate training in economics and business management. At this point we will not even attempt to explore the plight of the businessman in Panama who is weighed down by a pyramid of government taxes and fees, a labor code full of headaches for everyone, and abundant government red tape necessary in order to operate a business in the Republic.

7. The denial of basic human rights within the Republic of Panama IS a matter that should be considered in the treaty negotiations. President Carter has expressed repeated interest in the matter of human rights. If our country is to participate in a metaphorical "marriage" by means of a treaty with another country, we should know just WHO that "spouse" is. Denial of human rights is bound to make further problems for Canal employees later on, no matter WHAT nationality they are. Rather than taking an amoral stance, our country should apply its influence on the Panamanian government, to the extent that U.S. citizens (who DO come under the legitimate concern of our federal government) will not be permitted to live under such repression. We cannot rightfully interfere in the domestic policies of another nation, but we can let them know that they will not receive what they want so desperately from us until they make some changes in those policies.

8. The State Department is negotiating a treaty which IT is willing to ratify. They make the assumption that they know what is "in the best interest of the United States" and that all other opinions are to be considered ill-informed, unenlightened and out of step with modern times.

In past years, civic leaders from the Canal Zone have presented to you concerns they had about day-to-day items such as health care, commissaries, substandard housing, and schools. We continue to have such concerns, but in an important hearing such as this, when your time is at a premium, we emphasize that our concern this year is the survival of the Canal and the physical well-being of the Canal operation.

U.S. citizens in the Canal Zone have been greatly disturbed in the past year with the direction in which the treaty negotiations seem to be going. They tend to feel powerless in the writing of a major agreement between two countries, an agreement which will have far-reaching effects on these workers as well as on the United States as a nation. Because of the political unrest in Panama today as opposition to the Torrijos regime mounts because of economic and political problems, we know we live and work here with a certain amount of risk. But at the same time we are concerned with the implications that the treaty being negotiated with Omar Torrijos will have on the United States. The behavior of the Panamanian government in the past year should be testimony enough in itself to give our Senators and Representatives some serious reservations about the wisdom of a treaty with a government that runs roughshod over its citizens' human rights and that drains the national treasury to supply a comfortable lifestyle for numerous high-ranking officials. A case in point is the current trip to Libya, during which General Torrijos and 49 other dignitaries will expend government funds while their nation is on the threshold of bankruptcy and the people at home are exhorted to make "sacrifices" for the national good.

While all these things have been going on in Panama, State Department officials have assumed that the Panama Canal worker would stay in his place and patiently await the verdict on the treaty. They can no longer make that assumption safely. If the U.S. Government wishes the Canal to continue operating efficiently for world commerce, it will need to supply employees who are willing to work under the present tense and uncertain conditions. The U.S. Government may find them, but with some difficulty and probably at great cost in financial enticements. It would seem to make more sense to respond to the needs of the current workforce and likewise to avoid any haste in ratifying a treaty with Panama that promises to bring even more headaches in the future.

For ourselves as U.S. citizens living and working thousands of miles from our homeland, we can say, "Pack us up tomorrow. We're ready to go." But for the sake of U.S. commerce and of U.S. national interests in general in the Western Hemisphere, we urge you to examine the proposed treaty (whenever it is announced) in minute detail. We urge you to visit here for more than three days, to observe the situation with your own eyes and not to depend solely on briefings by U.S. or Panamanian government officials. The new treaty with Panama will have long-range repercussions that coming generations will have to live with; we urge you not to ratify a new treaty solely because the State Department says that a treaty is the cure-all to problems with Panama. The Russia-Cuba axis and the American electorate are waiting to see which way the treaty goes. A hasty decision on the part of our Congressmen without giving deep and thoughtful study to the question would please the former and infuriate the latter.

Mrs. Charlotte Kennedy, President, Cristobal-Margarita-Brazos Heights Civic Council; Mrs. Patricia Fulton, President, Pacific Civic Council; Mr. Harold B. Green, Jr., President, Gamboa Civic Council; Mr. Dale Windle, President, Gatun Civic Council; Dr. Melvin Boreham, President, Coco Solo-France Field Civic Council.

STATEMENT BY ADMIRAL THOMAS H. MOORER

Mr. Chairman and Distinguished Members of the Subcommittee on the Separation of Powers,

I am honored to be here as a witness. I hope my testimony will prove helpful in these hearings regarding the U.S. Canal Zone and the Panama Canal.

My military experience during the last twelve years of active duty, from 1962 to 1974, offered me some extraordinary and unique opportunities to assess the importance of the Panama Canal to the United States, as well as its value to our Allies and friends and, indeed, to all maritime nations.

My evaluation of this waterway as an invaluable possession of the United States was intensified in 1962. At that time I was Commander Seventh Fleet operating in the Western Pacific. Frequently my fleet's capabilities depended on the prompt arrival of supplies from the Atlantic seaboard, supplies loaded aboard ships which were utilizing the Panama Canal.

From the Seventh Fleet I went to Commander-in-Chief, Pacific; from there to Commander-in-Chief, Atlantic, and NATO's Supreme Allied Commander, Atlantic; from there to Chief of Naval Operations and from there to Chairman of the Joint Chiefs of Staff. Each of these commands provided unique opportunities, and sometimes urgent reasons, to evaluate the Panama Canal. I saw this strategic waterway from many vantage points and under stressful circumstances.

As Commander-in-Chief, Pacific, I recall in some detail the Tonkin Gulf era of 1964. During that period I saw the Panama Canal as a conduit for rapid reinforcement from the Atlantic Fleet should the naval forces of the Soviet Union or mainland China become involved in the Vietnamese War. The U.S. high command was never sure during those early phases of the war of the intentions of either the Soviet Union or mainland China. We knew they had the naval and air capabilities to make trouble and therefore we had to draw up contingency plans for such eventualities. In order to equalize the wartime exposure and hardship throughout the entire Navy, large numbers of Atlantic Fleet units were continuously rotated through the Canal to the combat theatre in the Pacific. In addition, as the Pacific Fleet Commander, I looked to the Atlantic side for rapid logistics support. The U.S. Army, the U.S. Air Force, the U.S. Marine Corps and the U.S. Navy all required a continuous and heavy flow of logistic support; such necessities as fuel, ammunition, spare parts and food. Our allies fighting with us in Vietnam also required considerable support from the United States. If the Panama Canal had not been open and available, the war in Vietnam would have been much more difficult and costly to conduct. This conclusion is also true for the war in Korea.

To give you some idea of the magnitude of Panama Canal usage and its relationship to the war effort, in 1963 there was a total of 300 U.S. government transits through the Panama Canal. As the war escalated, the number of government ships transiting by 1966 had almost doubled. The records show for that year—1966—a total of 591 government ships transited the Canal. Most of these ships were carrying critically needed logistics support to the forces operating under my command.

As Commander-in-Chief, Atlantic, and NATO's Supreme Allied Commander, I saw the situation at Panama in another perspective. That was for the period 1965 to 1967. The war in Vietnam was still expanding, but now I was looking at the Canal not only as a means of sending support to the Commander-in-Chief, Pacific, but also from the Atlantic perspective. I saw the possible need to reverse the flow of ships through the Canal, particularly if the situation deteriorated in the Middle East or in the Caribbean during those volatile months of tension and conflict in both these areas.

Both in our U.S. planning and in our NATO planning we envisioned contingencies calling for reinforcements from the Pacific Ocean areas. We envisioned the need for combatant tonnage, Army and Marine Divisions, and particularly we saw the need for amphibious lift.

As Chief of Naval Operations I had to look at the Panama Canal as an essential means of equalizing the strength and providing the balance between the Atlantic and Pacific fleets. The Canal made it possible to preposition certain types and tonnages, but always with the knowledge that the balance could be shifted to meet unforeseen situations. The Panama Canal gives the naval planner much flexibility and versatility that he would be deprived of without it.

As Chairman of the Joint Chiefs of Staff I became even more sensitive to the strategic value of this U.S. Canal as a means of protecting the security of the United States. My job as Chairman involved all of the Armed Forces of the United States—their collective requirements—and I was primarily responsible to the President for their ability to carry out their roles and missions as assigned by the Congress. Any Commander acting in that capacity will immediately perceive that it is vital to United States interests to retain complete ownership and control of the Panama Canal.

It was at this juncture of my command responsibility that I became concerned about the proposals to surrender the Panama Canal to a leftist oriented government allied with Cuba. There existed the potential danger for giving this U.S. advantage to a man who might allow or might be persuaded that it was in his best interest to permit Soviet power and influence to prevail by proxy over the Canal, in much the same manner as happened in Cuba. I was convinced as Chairman of the JCS—and I remain convinced today—that if the Soviet Union ever gained even proxy sovereignty and control over the U.S. Canal Zone and Canal through Cuba, U.S. security as well as U.S. prosperity would be placed in serious jeopardy.

The United States would be placed in jeopardy because interocean mobility would be threatened. The mobility of allied commercial shipping and naval forces would face the same threat. The economic lifelines of the entire Western Hemisphere would be needlessly jeopardized, and the point is: there is *no point* in surrendering this vital interest. I have yet to see any solid justification advanced as to why the United States should willingly sacrifice the strategic advantages afforded to us by our possession of the Panama Canal. Also, by relinquishing control of the Canal Zone and the Canal, we would force all those nations who depend on our power and leadership to accommodate to the adverse implications of such action on our part.

The Canal Zone could become the satellite base of an adversary, and the advocates of "giveaway" do not appear to take this factor into account.

For the foregoing reasons and others not listed, I co-signed with three former Chiefs of Naval Operations a letter to President Carter. The key message in that letter was this: "Under the control of a potential adversary the Panama Canal would become an immediate crucial problem and prove a serious weakness in the overall U.S. defense with enormous potential consequences for evil."

The military and commercial considerations are obvious.

Although the large aircraft carriers and large supertankers cannot use the Canal, 97 percent of the world's commercial and naval fleets can use the Canal as it is. The Canal does need some modernization.

About two-thirds of all the current Canal traffic is bound to or from U.S. ports. When ships round the Horn instead of going through the Canal, they must travel about 8,000 extra miles, have 8,000 extra miles of wear and tear, need 8,000 extra miles of fuel. On an average it takes 31 extra days to round the Horn.

If we were denied use of the Canal, we would have to build a much larger Navy; much larger storage and harbor facilities on both the East and West Coasts of the United States, and provide more merchant ships as well as escorts.

Surrender of U.S. sovereignty over the Canal Zone would inevitably lead to the transformation of the entire friendly character of the Caribbean and the Gulf of Mexico. Everything would depend on the attitude of those who held sovereignty and ownership.

In military affairs there is no substitute for ownership of the territory and the ability to control or to deny the waters and the air space.

After having lived through three decades of conflict I don't believe it takes much imagination to envisage some of the pitfalls we might face in turning the U.S. Canal Zone and Canal over to any government that might see fit to use it against us. Mr. Chairman, I would like to include in the record the letter signed by four Chiefs of Naval Operations, including myself, and the forwarding endorsement signed by four distinguished members of the United States Senate as part of my statement.

Regarding the question of sovereignty, ownership and control of the U.S. Canal Zone and the Canal, I am not a lawyer, but I am satisfied with the Supreme Court's decision of 1907 in the famous *Wilson vs. Shaw* case that the United States does have legal sovereignty and ownership for the purposes enumerated in the Treaty of 1903. This ruling was reaffirmed as recently as 1972. Also, our Constitution states in Article IV, Section 3, Clause 2, that only Congress has the authority to dispose of U.S. territory and other property of the United States. The language in the Supreme Court's decision of 1907 is quite precise. It is not ambiguous. So is the language in our Constitution. Since the Supreme Court's decision of 1907 still stands—it has never been overruled—and since the Constitution, in my opinion, is still the best governing document in existence. I can only conclude that we would be well advised to abide by these documents in our negotiations with other countries.

Thank you, Mr. Chairman.

[From the Congressional Record—Senate, Sept. 7, 1977]

PANAMA CANAL TREATIES

Mr. THURMOND. Mr. President, after careful consideration and study over a number of years, I have concluded that the Panama Canal is of such vital importance to the United States that it would be a serious error to cede it to the Republic of Panama as contemplated in the treaties which will be signed later today.

I have made several trips to Panama to view firsthand the situation there. As recently as August 19-21 of this year, I traveled with Senator Helms of North Carolina and Senator Hatch of Utah on an inspection trip to view the canal. The more I learn about the situation there, and the more I am able to find out about the treaty to cede the territory and the neutrality treaty and their implications, the more convinced I am that the Senate should reject them.

There are a number of considerations I would like to discuss with you this morning, among them the defense, political, economic, and legal reasons to oppose ratification of the treaties.

First, I will discuss national defense considerations.

The canal permits a quick two-ocean response by our naval forces to any military emergency. As you are probably aware, four former Chiefs of Naval Operations have so attested in a personal letter to the President. These four great naval strategists, Admirals Anderson, Burke, Carney, and Moorer, have retired from the active service and speak with a free mind uninhibited by political considerations. Their assessment of a canal giveaway, as reflected in the warning to the President, is sobering to say the least. In their letter to the President they warned:

Loss of the Panama Canal, which would be a serious setback in war, would contribute to the encirclement of the U.S. by hostile naval forces and threaten our ability to survive.

Approximately 98 percent of our naval fleet can transit the canal. Only our larger aircraft carriers are unable to use it. It is well to bear in mind that the 8,000-mile journey around the Horn adds 3 weeks to interocean transit time and costs 10 times as much as passage through the canal. Clearly, movement of troops or supplies around the Horn is hardly an acceptable alternative to use of the canal. As long as the United States retains sovereignty over and title to the canal, our Government maintains practical control. Under the neutrality arrangement proposed in the treaty, we lose practical control. Not only that, but according to members of the State Department negotiating team who briefed me, we oblige ourselves to guarantee access to our enemies in time of war. For this reason alone, Mr. President, I would urge my colleagues to reject this treaty. Control of territory and access routes is one of the most important elements of successful military strategy. Unless we maintain control, we will be at the mercy of the government which controls Panama.

Now, Mr. President, I shall turn to the question of the political importance of the canal and to foreign policy considerations.

Closely related to the military importance of the canal is the strategic deterrence which our presence in the canal area provides against Communist initiatives in that part of the world. As our

treaty negotiators were reaching the agreement in principle on ceding American ownership and control, the ink was barely dry on a new economic and commercial agreement between Panama and the Soviet Union. Apparently, as our Government prepares to evacuate that part of the world pursuant to the proposed treaty, the Soviets are preparing to move in.

As might be expected, a canal giveaway has other implications as well for our foreign policy. Whether this means a further diminishing of U.S. influence throughout the world is of great concern to me. Is it part of a pattern of retreat which we have established in Southeast Asia, South Korea, Western Europe, and possibly Taiwan? This misguided direction of our foreign policy engenders consternation on the part of our allies and audacity on the part of our adversaries.

Mr. President, we cannot hope to deal effectively with other nations, and certainly not to play a leadership role, if we yield to blackmail. That is the only way to describe the threats of violence in Panama and in the Canal Zone, and threats of sabotage to the canal, which treaty proponents are broadcasting far and wide, and using as their chief argument for ratification. If the Senate were to ratify a treaty in the face of such threats, it would show the world a craven attitude which is entirely alien to our national character and our history and which would invite further exploitation by others.

Moreover, the present government in Panama is unstable and ill-prepared to run the canal. Panama has had 59 chief executives in 74 years. Under General Torrijos, who has ruled as dictator since 1968, public indebtedness has increased ten-fold, from \$167 million to \$1.5 billion.

Furthermore, the current government there has violated the present treaty 11 times within the past 2 years.

This is not a record which inspires confidence in those of us who are being asked to approve a new, more generous treaty. The aspect of the Torrijos government through, which may be most significant for our purposes, is that it is a repressive dictatorship. Freedom House, the respected organization which ranks countries on the basis of human rights, gives Panama the lowest rating in Latin America. Panama received the same 1977 rating on political and civil liberties as the Soviet Union, and was rated even lower than Cuba.

Freedom House is a nonpartisan organization which the State Department cites in its report to Congress pursuant to the provisions of the Foreign Assistance Act. At the time of its last report on January 30, 1977, Freedom House listed as members of its board such eminent citizens as Mr. Zbigniew Brzezinski, now Director of the National Security Council; former Senator Gale McGee, new Ambassador to the OAS; Senator Jacob Javits; Mr. Roy Wilkins, former executive director of the NAACP; and other notable Americans.

Mr. President, I ask unanimous consent that the Freedom House table of nations that sets out the comparative survey of freedom among the nations of the world be printed in the Record.

There being no objection, the table was ordered to be printed in the Record, as follows:

COMPARATIVE SURVEY OF FREEDOM—TABLE OF NATIONS

	Political rights	Civil rights ¹	Status of freedom ²	Outlook ³
Afghanistan.....	7	6	NF	0
Albania.....	7	7	NF	0
Algeria.....	*6	5	NF	0
Andorra.....	4	4	PF	0
Angola.....	6	6	NF	0
Argentina.....	6	5	NF—	+
Australia.....	1	1	F	0
Austria.....	1	1	F	0
Bahamas.....	1	2	F	0
Bahrain.....	6	4	PF	0
Bangladesh.....	7	4?	PF+	0
Barbados.....	1	1	F	0
Belgium.....	1	1	F	0
Benin*.....	7	7	NF	0
Bhutan.....	4	4	PF	0
Bolivia.....	6	*4	PF*	0
Botswana.....	2	3	F	0
Brazil.....	4	5	PF	0
Brunei.....	6	5	F	0
Bulgaria.....	*7	7	NF	0
Burma.....	6	6	NF	0
Burundi.....	7	6	NF	0
Cambodia*.....	7	7	NF	0
Cameroon.....	*7	*5	NF*	0
Canada.....	1	1	F	0
Cape Verde Islands.....	*6	*6	NF*	0
Central African Republic.....	7	7	NF	+
Chad.....	7	6	NF	0
Chile.....	7	5	NF	+
China (Communist).....	7	7	NF	0
China (National).....	*5	5	PF*	0
Colombia.....	2	3	F	0
Comoro Islands.....	5	*3	PF	0
Congo Republic.....	5	6	PF	0
Costa Rica.....	1	1	F	0
Cuba.....	7	*6	NF	+
Cyprus.....	3+	4	PF	0
Czechoslovakia.....	7	6	NF	0
Denmark.....	1	1	F	0
Dominican Republic.....	4	*3	PF	0
Ecuador.....	*6	4	PF	0
Egypt.....	5+	4	PF	+
El Salvador.....	3—	3	PF—	0
Equatorial Guinea.....	6	7	NF	0
Ethiopia.....	7	6	NF	0
Fiji.....	2	2	F	0
Finland.....	2	2	F	0
France.....	1	*1	F	0
Gabon.....	6	6	NF	0
Gambia.....	2	2	F	0
Germany (East).....	7	7	NF	+
Germany (West).....	1	1	F	0
Ghana.....	7	5	NF	0
Greece.....	2	2	F	0
Grenada.....	2	4	PF	0
Guatemala.....	4	3	PF	0
Guinea.....	7	7	NF	0
Guinea-Bissau.....	6	6	NF	0
Guyana.....	3+	3	PF	0
Haiti.....	6	6	NF	0
Honduras.....	6	3	PF	0
Hungary.....	6	6	NF	0
Iceland.....	1	1	F	0
India.....	3—	5	PF	0
Indonesia.....	5	5	PF	0
Iran.....	6	6	NF	0
Iraq.....	7	7	NF	0
Ireland.....	1	*1	F	0
Israel.....	2	3	F	0
Italy.....	*2	*1	F	0
Ivory Coast.....	6	6	NF	0
Jamaica.....	1	3—	F	0

COMPARATIVE SURVEY OF FREEDOM—TABLE OF NATIONS—Continued

	Political rights ¹	Civil rights ¹	Status of freedom ²	Outlook ³
Japan	2	1	F	0
Jordan	6	6	NF	0
Kenya	5	5	PF	0
Korea (North)	7	7	NF	0
Korea (South)	5	6—	PF?	0
Kuwait	6—	5—	NF—	0
Laos	7—	7—	NF—	0
Lebanon	4	4	PF	0
Lesotho	5	4	PF	0
Liberia	6	4	PF	0
Libya	7	6	NF	0
Liechtenstein	4	2	PF	0
Luxembourg	2	1	F	0
Malagasy Republic	6—	5	NF—	0
Malawi	7	6	NF	0
Malaysia	3	4	PF	0
Maldives	4	4	PF	0
Mali	7	7	NF	0
Malta	1	2—	F	0
Mauritania	6	6	NF	0
Mauritius	3	2	F	0
Mexico	4	4—	PF	0
Monaco	4	2	PF	0
Mongolia	7	7	NF	0
Morocco	5	5	PF	+
Mozambique	7—	7—	NF	0
Nauru	2	2	F	0
Nepal	6	5	NF	0
Netherlands	1	1	F	0
New Zealand	1	1	F	0
Nicaragua	5	*5	PF	0
Niger	7	6	NF	0
Nigeria	6	*4	PF	+
Norway	1	1	F	0
Oman	*6	6	NF	0
Pakistan	*4	5	PF	0
Panama	7	6	NF	0
Papua-New Guinea	*2	2	F*	0
Paraguay	2	6—	NF—	0
Peru	6	4	PF	+
Philippines	5	5	PF	0
Poland	6	6	NF	+
Portugal	2+	2+	F+	0
Qatar	*5	5	PF*	0
Rhodesia	6	5	NF	0
Rumania	7	6	NF	+
Rwanda	7	5	NF	0
San Marino	2	2	F	0
Sao Tome and Principe	5	5	PF?	0
Saudi Arabia	6	6	NF	0
Senegal	6	4	PF	+
Seychelles	1+	2	F	0
Sierra Leone	6	5	PF	0
Singapore	5	5	PF	0
Somalia	7	*7	NF	0
South Africa	4	5	PF	+
Spain	5	3+	PF	+
Sri Lanka	2	*3	F*	0
Sudan	6	6	NF	0
Surinam	2	2	F	0
Swaziland	6	4	PF	0
Sweden	1+	1	F	0
Switzerland	1	1	F	0
Syria	6	*6	NF	0
Tanzania	6	6	NF	0
Thailand	6—	6—	NF—	+
Togo	7	6	NF	0
Tonga	5	3	PF	0
Transkei	6	5	NF?	0
Trinidad and Tobago	2	2	F	+
Tunisia	6	5	NF	0
Turkey	2	3	F	0

COMPARATIVE SURVEY OF FREEDOM—TABLE OF NATIONS—Continued

	Political rights ¹	Civil rights ¹	Status of freedom ²	Outlook ³
Uganda	7	7	NF	0
U.S.S.R.	7	5	NF	0
United Arab Emirates	*5	5	PF*	0
United Kingdom.....	1	1	F	0
United States	1	1	F	0
Upper Volta	5+	5-	PF	+
Uruguay	6-	*6-	NF-	+
Venezuela.....	*1	2	F	0
Vietnam.....	7	7	NF	0
Western Samoa	4	2	PF	+
Yemen (North)	6	5	NF	0
Yemen (South)	7	7	NF	0
Yugoslavia.....	6	6	NF	0
Zaire	7	6+	NF	0
Zambia.....	5	5	PF	0

¹ The scales use the numbers 1-7, with 1 comparatively offering the highest level of political or civil rights, and 7 the lowest. A plus or minus following a rating indicates an improvement or decline in the rating since the last survey. A rating marked with an asterisk (*) has been changed since the last survey due to reevaluation by the author. This does not imply any change in the country. For further information on the scale and survey see "Freedom at Issue" Jan.-Feb. 1973, p. 2ff.

² A free state is designated by F, a partly free state by PF, and a not free state by NF.

³ A positive outlook for freedom is indicated by a plus sign, a negative outlook, by a minus, and relative stability of ratings by a zero. The outlook for freedom is based on the problems the country is facing, the way the government and people are reacting to these problems and the longer run political traditions of the society. A judgment of outlook may also reflect an imminent change, such as the expected adoption of a meaningful new constitution.

*The name of Dahomey has been changed to Benin. Cambodia is now officially Kampachea.

Mr. THURMOND. In fact, we are about to legitimize the regime of General Torrijos by awarding him the triumph of concluding this treaty.

If the administration were serious about human rights, it would not even negotiate with this man until he held free, open, and honest elections. This is selective morality at its worst.

Now, Mr. President, I shall turn to the economic considerations involved in the current debate. The economic interest which the United States has in the canal, like our defense interest, is so vital to us that we can ill-afford to gamble with it.

In 1975, approximately 14,000 ships transited the canal; 45 percent of which originated in the United States, and 23 percent of which were bound for the United States. No other nation has an equal economic stake in the canal. The canal, though, is important to all of the world's commercial nations, since 96 percent of the world's ocean-going vessels can transit it.

The canal is just this year assuming an additional commercial importance to the United States as Alaskan oil begins to flow. When the Alaskan pipeline reaches its full capacity, it will yield 1.2 million barrels of oil a day. The west coast of the United States can accommodate only 700,000 barrels a day. This means that approximately 500,000 barrels a day cannot be used on the west coast, and must be transported to the east. No pipeline has yet been constructed across the United States, and the trip around the Horn, as has been demonstrated, is not economically feasible. Unhindered use of the Panama Canal is critical until an adequate pipeline can be constructed.

At the present time, the United States has an overall investment in Panama of \$7 billion. By the year of our total evacuation under

the terms of the treaty, that interest will have grown to \$9.3 billion.

Contrary to popular argument, control of the canal by the United States serves the best economic interests of the people of Panama. In 1976, U.S. agencies purchased over \$29 million worth of goods in Panama, and we paid over \$108 million in wages, to non-U.S. citizens. U.S. private investments amount to 50 percent of the capital investment in Panama. And U.S. employees spent \$39 million there.

If we retain sovereignty and control over the canal, it is my suggestion that we propose a modernization which will mutually benefit the people of the United States and the citizens of Panama. In the past, I have supported the terminal lake-third lock plan. This would provide for approximately \$2.5 billion in capital investments over a 5- to 10-year period. In this effort, many Panamanian nationals would be used as subcontractors, and the result would be an infusion of American capital into the Panamanian economy. As the canal is modernized, any unneeded land in the zone can be ceded to Panama. It would also be appropriate to make a realistic adjustment in the annuity.

With the foregoing considerations in mind, Mr. President, I turn now to the legal question posed by the current debate.

Article IV, section III, clause 2 of the Constitution unequivocally gives Congress the "power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

Congress enacted the Spooner Act in 1902 to provide for the construction and defense of an interocean canal, and pursuant to this act the United States acquired its property rights in the Canal Zone in perpetuity. It is thus my belief that a treaty to cede property rights in the Canal Zone to the Republic of Panama requires prior authorization by Congress.

On the other hand, the State Department contends that under the treaty power clause contained in article II, section 2, the President holds concurrent authority to dispose of U.S. property. The counterargument is that the property clause in article IV limits the treaty power clause where the disposition of property is concerned. That seems to me to be obvious.

Since the Executive claimed the authority, however, to dispose of U.S. property without first seeking prior authorization from Congress, and actually proceeded to do so, I joined with a number of other Senators and Congressmen to seek a declaratory judgment on this significant separation of powers question.

Both the District Court for the District of Columbia and the Court of Appeals in the District refused to consider the merits of the case on the basis that the issue was premature. At that time, they said, we did not know the specifics of any proposed treaty. In June, the Supreme Court declined to grant certiorari.

Now, Mr. President, we do know the specifics of the treaties. We know, too, that the State Department continues to ignore the questions of prior authorization and the role of the House of Representatives in disposition of property by treaty.

The only way to settle the questions is to seek a determination by the courts. I am pleased, therefore, to inform the Senate this

morning that Senators Jesse Helms, James A. McClure, and I, together with Congressmen Daniel J. Flood, Lawrence P. McDonald and M. Gene Snyder, and William R. Drummond, a resident of the Canal Zone, will again file suit as soon as the President formally sends the treaties to the Senate.

I am further pleased to inform the Senate that five States will join as parties to the action, and that because of the importance and timeliness of the issue, we will seek original jurisdiction in the U.S. Supreme Court. We will be represented by the distinguished attorney, George S. Leonard, of the District of Columbia, who has so ably testified before the Subcommittee on Separation of Powers of the Senate Judiciary Committee on the legal problems raised in respect to the Panama Canal negotiations.

It is not the function of our courts to enforce public opinion. Nevertheless, it is worth noting that public opinion is strongly against a giveaway of the Panama Canal. The margin was 3 to 1 in a nationwide poll by Opinion Research Corp., and 9 to 1 in my own poll of South Carolinians.

Its individual members are also charged with the responsibility of responding to the public will. In this matter, the two responsibilities converge. The disposition of the Panama Canal under the proposed treaty is unwise, unwanted and unconstitutional. I urge the Senate to do all it can to prevent it.

This Senate is charged with the responsibility of protecting the interests of the legislative branch and of monitoring the separation of powers between the three coordinate branches of our Government.

Mr. President, I wish to thank the distinguished Senators who yielded time to me. I now yield the floor.

PANAMA CANAL GIVEAWAY VIOLATES CONSTITUTION

Mr. GARN. Mr. President, during the recess, President Carter announced the completion of negotiations with the Government of Panama over new treaties governing the management of the Panama Canal. Early indications were that the President would press for early ratification of the treaties by the Senate. In my opinion, that would be most unwise, Mr. President, and would lead to almost certain rejection by this body. More recently, the President appears to have moderated his haste, and seems ready to accept the fact that he has a big selling job to do if the American people are ever to accept these treaties.

Since his announcement, I have heard it argued that most Americans do not care very much about the Panama Canal, and are reacting emotionally to an issue which has little real significance. In my opinion, that is both true and not true.

Arguments can be made that our defense is not affected by the canal, though equally good arguments can be made on the other side. Arguments can also be made that the loss of the canal would not have serious impacts on the economy of the United States, though again, there are some serious arguments to be made on the other side, particularly in view of the need to move petroleum from one coast to the other.

But if we call those questions even, there is still a sense in which the American people are quite correct in calling the Panama Canal an important issue. The American people have a surer sense than the State Department does of the importance of psychological factors in international relations. In fact, as far as the State Department is concerned, Panama appears to be a riddle, wrapped in an enigma, stuffed in a burrito. The people recognize instinctively what is at play in Panama. It is a clear-cut case of international blackmail, and the American people do not like it.

It may very well be that the present state of affairs is less than fair to the Panamanians, though it must be said that the original treaty was not negotiated under duress. It may very well be that Panamanians should take a larger role in the operation of the canal itself. It may also be said that there should be less insulation of the American community from the local Panamanian economy and society. But saying all that is quite different from saying that the United States should turn over effective control of the canal to Panama, whatever language is used to disguise what is happening, and allow itself to be pushed out of an area of arguably critical importance to the rest of the world.

Some time ago, I published an article exploring the difference that a positive attitude in foreign policy might make in Panama, and in some other critical areas around the world. I will not now repeat the arguments, except to say that even at this date, if we would stop beating our breasts over the injustice and inequity that abounds in the world, stop accepting responsibility for evils for which we are not responsible, and start asserting ourselves as practically the only example of freedom and justice in the world, we would find it easier to deal with dictators like Omar Torrijos.

I have no doubt that, even now, the Senate can operate on this proposed treaty to make it acceptable to the American people. As it stands, its terms are not advantageous to the United States, and no amount of talking by the President can make them seem so. Unless it is made advantageous to the United States, and acceptable to our employers, the American people, it will fail, and I will be glad to help it fail.

Mr. President, there is one more aspect of the Panama Canal argument that needs to be made, and since I am not a lawyer, I will turn to my colleague from Utah, Senator Hatch. Senator Hatch has written, in the current issue of the *Conservative Digest*, an excellent analysis of the constitutional arguments against the proposed treaty. As Senator Hatch points out in his article, the proposed treaties will set precedents with implications far beyond the simple foreign policy defeat they will constitute. Ratification will constitute acquiescence in yet another usurpation of power by the executive. We must think twice before condoning this usurpation.

Mr. President, Senator Hatch's analysis should be read by every Senator prior to the vote. I ask unanimous consent that it be printed in the Record.

There being no objection, the analysis was ordered to be printed in the Record, as follows:

PANAMA CANAL GIVEAWAY VIOLATES CONSTITUTION

(By Senator Orrin G. Hatch)

Our venerable octogenarian, Ellsworth Bunker, veteran of more than 25 years service to the State Department, and Ambassador-at-Large directing negotiations with Panama for a new treaty, says that "the United States does not own the Panama Canal Zone." His assistant, Ambassador Sol Linowitz, claims that "the Panama Canal is a colonial enclave carried over from the early part of this century and which has caused bitter resentment and indeed hostility."

The story of the Panama Canal, as they tell it, is rather like the leftist folklore surrounding the history of capitalism. They would have us believe that "Yankee Imperialists" descended upon a helpless people, wrongfully took possession of the isthmus of Panama under the guise of a fraudulent treaty, and built a canal to exploit the Panamanians in the selfish interests of commerce and militarism.

Like the Greeks, Bunker and Linowitz now come bearing gifts. And what are these wondrous gifts? They are the gift of redemption for past crimes and sins against the people of Panama, and the prospect of better relations with our Latin American neighbors. To get them, we need only make a gift of the Panama Canal. Besides, America doesn't really need this Canal, we are told. What we really need, so far as the Canal is concerned, is a clear conscience, a cleansing of the American soul, a real purging of guilt and shame. What better way to do this than by simply giving the Panama Canal away? Just so there are no hard feelings, we'll even go so far as to pay the Panamanians for taking it off our hands.

And so, negotiations begun under Secretary Kissinger in 1974 for a new treaty with Panama are now in their final stages. On July 29, President Carter met with American and Panamanian negotiators in the White House, and stated that he was pleased with the progress of negotiations and with "Panama's very constructive attitude." Expressing hope that the accord could be signed in time to bring it to the Senate before the Fall recess, Carter declared that the United States "will cooperate to the fullest degree to rapidly conclude an agreement for a treaty."

The last remaining obstacle, it appears, is the question of "conscience money." In addition to the territory of the Canal Zone and the canal itself, which are valued at approximately \$7 billion, the Panamanians demand \$5 billion for our continued use of the canal and the rental of military bases. Forget, if you will, that we already own all of this free and clear, and that the Panamanians already enjoy the highest per capita income of any people in Central America because of the annuities and other benefits derived from our Canal. But \$5 billion is apparently too much even for our "hard-headed" diplomats, who have indicated that "more realistic amounts" will have to be agreed upon before the treaty is concluded.

In anticipation of the ratification struggle that lies ahead, the negotiators have been preparing the American people for acquiescence by attempting to discredit the treaty of 1903. One device relied upon rather extensively is the familiar one of rewriting history. The object of this ploy is to lay a moral foundation for the surrender of the Canal by creating guilt feelings and redefining the terms of the original treaty.

Thus the advocates of a new treaty have come up with the novel idea that we don't really own the Canal after all, and must return it to its "rightful owners." The original treaty, they say, simply transferred "rights" in the Canal Zone rather than full sovereign control—even though such an interpretation flatly contradicts the expressed intent of the 1903 negotiators and the terms of the treaty itself.

They have also expressed the curious view that the Canal Zone is "leased" territory and that the United States pays a "rental" for its use. In truth, of course, the Canal Zone is not a leased area but a "grant in perpetuity" for the perpetual maintenance, operation and protection of the canal. What Panama actually receives is an annuity, not a rental.

Article II of the 1903 treaty grants to the United States "in perpetuity" the use, occupation, and control of the Zone—meaning ownership. The word "lease" does not appear in the treaty with reference to the Canal Zone; but the word "grant" makes nineteen appearances. The phrase "in perpetuity" occurs seven times. The treaty, unlike a lease agreement, contains no provision for renegotiation and no terminal date for the obvious reason that it was intended to be a final and absolute transfer of sovereignty in perpetuity. Though an embarrassment to the negotiators, these are facts which they can easily manipulate, if not ignore; for once the treaty is signed, the question of U.S. sovereignty over the Canal will become moot.

What the supporters of the treaty cannot ignore, however, are the political, military and legal realities of the situation. For one thing, General Omar Torrijos of

Panama, who will take possession of the canal, is a dictator. His administration is riddled with Marxists. These realities not only cast a cloud of suspicion on his intentions, but raise the issue of whether the Canal can be insulated against the harsh winds of ideology and political instability which so often sweep across Latin America. If the Canal were in the hands of this petty tyrant, the United States would surely find itself increasingly embroiled in Panama's internal affairs in order to maintain the Canal's security and protect the flow of Commerce.

For another, the American people are overwhelmingly against the giveaway of the Panama Canal. The drumming insistence of the negotiators that we must lie down and be sheared like sheep in the name of Latin American "justice" has not been convincing. More persuasive are American military leaders such as Admiral Thomas Moorer, former Chairman of the Joint Chiefs of Staff, and three former Chiefs of Naval Operations, who recently informed President Carter that "under the control of a potential adversary the Panama Canal would become an immediate crucial problem and prove to be a serious weakness in the overall U.S. defense with enormous potential consequences for evil." Little wonder that recent public opinion polls show that the American people oppose a new treaty by a ratio of 5 to 1. They understand the realities of the situation, even if Bunker and Linowitz do not.

We may be thankful that many of our representatives in Congress are already antagonized by the Administration's methods and procedures. Resentment is widespread because the members have neither been informed of the substance of negotiations nor asked to authorize them—as is customary. Laboring at their self-appointed task in secrecy, the negotiators have defied our constitutional process, realizing that they lack congressional support and constitutional authority for their actions.

Though largely ignored by the press, constitutional issues of major proportions have recently surfaced in the Senate concerning the new treaty with Panama, adding another wrinkle to the controversy. One issue involves the economic assistance provisions of the treaty. The negotiators have not told Congress how much money will be given to Panama, or whether it will come in the form of a cash grant or loan package. But one matter is clear: a treaty cannot appropriate funds. The Constitution expressly provides that "No money shall be drawn from the Treasury but in consequence of Appropriations made by law." This means that the approval of both houses of Congress, and not just the Senate, must be given in order to validate this type of treaty. The Administration, however, has given no assurances to Congress that it will definitely seek implementing legislation regarding the economic and financial arrangements contained in the treaty.

The other issue is whether the President has the constitutional authority to transfer U.S. territory in the Canal Zone to the Republic of Panama by treaty and by-pass the House of Representatives. In hearings before the Separation of Powers Subcommittee of the Senate Judiciary Committee which I attended, legal advisors to the State Department argued that the President may make such a treaty because he possesses "concurrent" authority with Congress to give away U.S. property. Ratification of the treaty by the Senate, they stated, was all that was necessary. Under cross-examination, however, the witnesses were unable to give me a single valid judicial precedent for this extraordinary and unconstitutional view of the President's power.

My own studies lead me to the conclusion that the proposed treaty with Panama is unconstitutional, unless both Houses of Congress enact accompanying legislation authorizing the transfer of Canal territory. Article IV of the Constitution states, "The Congress shall have the power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." The courts have repeatedly ruled that this is an exclusive power of the full Congress. Any authority of the Executive to dispose of U.S. property, therefore, must first be derived from authority given by an Act of Congress.

In light of these considerations, a constitutional crisis is about to erupt between Congress and the President. There is no precedent in American history, to be sure, for the disposal by treaty, and without congressional authorization, of U.S. territory that has been acquired by purchase. Likewise, there is no precedent for the broad and sweeping exercise of the treaty-making power which the President is now claiming.

If he persists, and the Senate ratifies the treaty, Americans will lose more than the Canal, more than an important American territory, and more than a vital link in our strategic defenses and international trade. They will have lost another restraint on the powers of the President. "If the Executive is permitted to sidestep the House of Representatives on this vital constitutional issue of disposal of Canal property," John Murphy, Chairman of the House Merchant Marine Fisheries Committee recently observed, "it will try to sidestep the Senate on another issue, and

the Judiciary on still another. The very fundamental precepts of the Constitution are at stake and we have already had one instance in which the Executive Branch attempted to expand its powers, resulting in the worst scandal in our nation's history—Watergate."

[From the Congressional Record—Senate, Sept. 8, 1977]

POLL SHOWS CLOSE MARGIN ON PANAMA CANAL TREATY

Mr. CHAFFEE. Mr. President, the Panama Canal treaties have generated the most intense interest around the country and while polls are useful tools for analysis, the complexity of the issues before us demands more careful study on our own. However, in view of the largely one-sided margin that is shown in the mail that most of us have been receiving on the Panama Canal issue, I would like to call to the attention of my colleagues the recent Gallup poll on how Americans feel about the Panama Canal treaties on a nationwide basis.

The level of support indicated by this survey might be surprising to those who have suggested that Americans are opposed to the treaties by as much as a 3-to-1 margin.

While the issues involved in these treaties may not yet be readily familiar to many Americans, I am hopeful that in the course of our debates the American public will maintain an open mind.

Mr. President, I ask unanimous consent that this most recent Gallup poll be printed in the Record.

There being no objection, the Gallup poll was ordered to be printed in the Record, as follows:

IN NATIONAL PUBLIC OPINION REFERENDUM U.S. PUBLIC CLOSELY DIVIDED ON PANAMA TREATY; 39 PERCENT APPROVE; 46 PERCENT DISAPPROVE

(By George Gallup)

PRINCETON, N.J.—President Jimmy Carter's decision to go to the American people to win support for the Panama treaty comes at a time when the public is closely divided on this controversial issue.

In the first nationwide survey—in effect, a national referendum—39 per cent of those who have heard or read about the treaty express approval, while 46 per cent disapprove of the proposed new treaty between the U.S. and Panama, which calls for the U.S. to turn over ownership of the canal to Panama at the end of this century but to retain protective rights and responsibilities. Fifteen per cent of the aware group are undecided.

Sharp differences are found on the basis of population groups. Persons with a college background, for example, lean 49 to 40 per cent in approval of the treaty, Republicans disapprove by a 2-to-1 margin, while Democratic voters and independents are about evenly divided.

WHAT VOTERS ARE SAYING

Among those who approve of the new treaty is a 59-year-old stock speculator in Miami, Fla.

"It is important to have more cooperation with Latin America. People in Latin America feel the canal is just another example of American colonialism," he said.

Another who approves is a 54-year-old college professor in Knoxville, Tenn.

"By the year 2000, the canal will have little strategic or economic value to us. The supertankers of tomorrow won't be able to use it. There is more emotion than logic connected with it (the treaty) and we have done very well in making this treaty," he said.

A 60-year-old retiree in Washington, D.C., opposes the treaty.

"I disapprove of the treaty for two main reasons: First, we have billions of dollars invested in it and it has been our property for three-quarters of a century; second, Panama is a dictatorship with no freedom for its citizens—how could they control the canal better than we?"

This question was asked first in the survey:

"Have you heard or read about the proposed new treaty between the U.S. and the Republic of Panama regarding the Panama Canal?"

The results show three in four nationwide saying they have heard or read about the treaty. About 9 in 10 among the college-educated group express awareness. Awareness levels are lower among women than men, and younger persons than older, as seen below;

Have heard or read about

	Percent
National.....	76
Men.....	83
Women.....	69
18 to 29 years.....	65
30 to 49 years.....	76
50 and over.....	82
College.....	89
High school.....	71
Grade school.....	56
Republicans.....	84
Democrats.....	73
Independents.....	74

All persons in the survey were next asked this question: "The proposed new treaty between the U.S. and Panama calls for the U.S. to turn over ownership of the canal to Panama at the end of this century. However, the U.S. will maintain control over the land and installations necessary to operate and defend the canal. Do you approve or disapprove of this proposed new treaty?"

Here are the findings based on those who have heard or read about the treaty:

APPROVE OR DISAPPROVE PANAMA CANAL TREATY?

[In percent]

	Approve	Disapprove	No opinion
Nationwide.....	39	46	15
College.....	49	40	11
High school.....	32	52	16
Grade school.....	28	46	26
18 to 29 years.....	44	44	12
30 to 49 years.....	45	43	12
50 and over.....	30	51	19
East.....	43	42	15
Midwest.....	37	50	13
South.....	35	47	18
West.....	38	49	13
Republicans.....	31	58	11
Democrats.....	43	41	16
Independents.....	41	43	16

Note: The results reported today are based on interviews with 1,025 adults, out of a total sample of 1,356 adults, 18 and older, conducted in person in more than 300 scientifically selected localities across the Nation August 18-22.

PANAMA CANAL TREATY

Mr. MUSKIE. Mr. President, because of the broad interest of my constituents and, indeed, all Americans, in the provisions of the new Panama Canal Treaties, I believe the full text of those treaties should be available to as many people as possible.

Accordingly, I ask unanimous consent that a copy of that text be printed in the Record.

There being no objection, the treaty was ordered to be printed in the Record, as follows:

PANAMA CANAL TREATY

The United States of America and the Republic of Panama.

Acting in the spirit of the Joint Declaration of April 3, 1964, by the Representatives of the Governments of the United States of America and the Republic of Panama, and of the Joint Statement of Principles of February 7, 1974, initialed by the Secretary of State of the United States of America and the Foreign Minister of the Republic of Panama, and

Acknowledging the Republic of Panama's sovereignty over its territory,

Have decided to terminate the prior Treaties pertaining to the Panama Canal and to conclude a new Treaty to serve as the basis for a new relationship between them and, accordingly, have agreed upon the following:

ARTICLE I

Abrogation of prior treaties and establishment of a new relationship

1. Upon its entry into force, this Treaty terminates and supersedes:

(a) The Isthmian Canal Convention between the United States of America and the Republic of Panama, signed at Washington, November 18, 1903;

(b) The Treaty of Friendship and Cooperation signed at Washington, March 2, 1936, and the Treaty of Mutual Understanding and Cooperation and the related Memorandum of Understandings Reached, signed at Panama, January 25, 1955, between the United States of America and the Republic of Panama;

(c) All other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama, concerning the Panama Canal which were in force prior to the entry into force of this Treaty; and

(d) Provisions concerning the Panama Canal which appear in other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama which were in force prior to the entry into force of this Treaty.

2. In accordance with the terms of this Treaty and related agreements, the Republic of Panama, as territorial sovereign, grants to the United States of America, for the duration of this Treaty, the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the Canal. The Republic of Panama guarantees to the United States of America the peaceful use of the land and water areas which it has been granted the rights to use for such purposes pursuant to this Treaty and related agreements.

3. The Republic of Panama shall participate increasingly in the management and protection and defense of the Canal, as provided in this Treaty.

4. In view of the special relationship established by this Treaty, the United States of America and the Republic of Panama shall cooperate to assure the uninterrupted and efficient operation of the Panama Canal.

ARTICLE II

Ratification, entry into force, and termination

1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, six calendar months from the date of the exchange of the instruments of ratification.

2. This Treaty shall terminate at noon, Panama time, December 31, 1999.

ARTICLE III

Canal operation and management

1. The Republic of Panama, as territorial sovereign, grants to the United States of America the rights to manage, operate, and maintain the Panama Canal, its complementary works, installations and equipment and to provide for the orderly transit of vessels through the Panama Canal. The United States of America accepts the grant of such rights and undertakes to exercise them in accordance with this Treaty and related agreements.

2. In carrying out the foregoing responsibilities, the United States of America may:

(a) Use for the aforementioned purposes, without cost except as provided in this Treaty, the various installations and areas (including the Panama Canal) and waters, described in the Agreement in Implementation of this Article, signed this date, as well as such other areas and installations as are made available to the

United States of America under this Treaty and related agreements, and take the measures necessary to ensure sanitation of such areas;

(b) Make such improvements and alterations to the aforesaid installations and areas as it deems appropriate, consistent with the terms of this Treaty;

(c) Make and enforce all rules pertaining to the passage of vessels through the Canal and other rules with respect to navigation and maritime matters, in accordance with this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules;

(d) Establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment;

(e) Regulate relations with employees of the United States Government;

(f) Provide supporting services to facilitate the performance of its responsibilities under this Article;

(g) Issue and enforce regulations for the effective exercise of the rights and responsibilities of the United States of America under this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules; and

(h) Exercise any other right granted under this Treaty, or otherwise agreed upon between the two Parties.

3. Pursuant to the foregoing grant of rights, the United States of America shall, in accordance with the terms of this Treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America.

(a) The Panama Canal Commission shall be supervised by a Board composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.

(b) Should the Republic of Panama request the United States of America to remove a Panamanian national from membership on the Board, the United States of America shall agree to such a request. In that event, the Republic of Panama shall propose another Panamanian national for appointment by the United States of America to such position in a timely manner. In case of removal of a Panamanian member of the Board at the initiative of the United States of America, both Parties will consult in advance in order to reach agreement concerning such removal, and the Republic of Panama shall propose another Panamanian national for appointment by the United States of America in his stead.

(c) The United States of America shall employ a national of the United States of America as Administrator of the Panama Canal Commission, and a Panamanian national as Deputy Administrator, through December 31, 1989. Beginning January 1, 1990, a Panamanian national shall be employed as the Administrator and a national of the United States of America shall occupy the position of Deputy Administrator. Such Panamanian nationals shall be proposed to the United States of America by the Republic of Panama for appointment to such positions by the United States of America.

(d) Should the United States of America remove the Panamanian national from his position as Deputy Administrator, or Administrator, the Republic of Panama shall propose another Panamanian national for appointment to such position by the United States of America.

4. An illustrative description of the activities the Panama Canal Commission will perform in carrying out the responsibilities and rights of the United States of America under this Article is set forth at the Annex. Also set forth in the Annex are procedures for the discontinuance or transfer of those activities performed prior to the entry into force of this Treaty by the Panama Canal Company or the Canal Zone Government which are not to be carried out by the Panama Canal Commission.

5. The Panama Canal Commission shall reimburse the Republic of Panama for the costs incurred by the Republic of Panama in providing the following public services in the Canal operating areas and in housing areas set forth in the Agreement in Implementation of Article III of this Treaty and occupied by both United States and Panamanian citizen employees of the Panama Canal Commission: police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection. The Panama Canal Commission shall pay the Republic of Panama the sum of ten million United States dollars (\$10,000,000) per annum for the foregoing services. It is agreed that every three years from the date that this Treaty enters into force, the costs involved in furnishing said services shall be

reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.

6. The Republic of Panama shall be responsible for providing, in all areas comprising the former Canal Zone, services of a general jurisdictional nature such as customs and immigration, postal services, courts and licensing, in accordance with this Treaty and related agreements.

7. The United States of America and the Republic of Panama shall establish a Panama Canal Consultative Committee, composed of an equal number of high-level representatives of the United States of America and the Republic of Panama, and which may appoint such subcommittees as it may deem appropriate. This Committee shall advise the United States of America and the Republic of Panama on matters of policy affecting the Canal's operation. In view of both Parties' special interest in the continuity and efficiency of the Canal operation in the future, the Committee shall advise on matters such as general tolls policy, employment and training policies to increase the participation of Panamanian nationals in the operation of the Canal, and international policies on matters concerning the Canal. The Committee's recommendations shall be transmitted to the two Governments, which shall give such recommendations full consideration in the formulation of such policy decisions.

8. In addition to the participation of Panamanian nationals at high management levels of the Panama Canal Commission, as provided for in paragraph 3 of this Article, there shall be growing participation of Panamanian nationals at all other levels and areas of employment in the aforesaid Commission, with the objective of preparing, in an orderly and efficient fashion, for the assumption by the Republic of Panama of full responsibility for the management, operation and maintenance of the Canal upon the termination of this Treaty.

9. The use of the areas, waters and installations with respect to which the United States of America is granted rights pursuant to this Article, and the rights and legal status of United States Government agencies and employees operating in the Republic of Panama pursuant to this Article, shall be governed by the Agreement in Implementation of this Article, signed this date.

10. Upon entry into force of this Treaty, the United States Government agencies known as the Panama Canal Company and the Canal Zone Government shall cease to operate within the territory of the Republic of Panama that formerly constituted the Canal Zone.

ARTICLE IV

Protection and defense

1. The United States of America and the Republic of Panama commit themselves to protect and defend the Panama Canal. Each Party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it.

2. For the duration of this Treaty, the United States of America shall have primary responsibility to protect and defend the Canal. The rights of the United States of America to station, train, and move military forces within the Republic of Panama are described in the Agreement in Implementation of this Article, signed this date. The use of areas and installations and the legal status of the armed forces of the United States of America in the Republic of Panama shall be governed by the aforesaid Agreement.

3. In order to facilitate the participation and cooperation of the armed forces of both Parties in the protection and defense of the Canal, the United States of America and the Republic of Panama shall establish a Combined Board comprised of an equal number of senior military representatives of each Party. These representatives shall be charged by their respective governments with consulting and cooperating on all matters pertaining to the protection and defense of the Canal, and with planning for actions to be taken in concert for that purpose. Such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the armed forces of the United States of America or the Republic of Panama. The Combined Board shall provide for coordination and cooperation concerning such matters as:

- (a) The preparation of contingency plans for the protection and defense of the Canal based upon the cooperative efforts of the armed forces of both Parties;
- (b) The planning and conduct of combined military exercises; and
- (c) The conduct of United States and Panamanian military operations with respect to the protection and defense of the Canal.

4. The Combined Board shall, at five-year intervals throughout the duration of this Treaty, review the resources being made available by the two Parties for the protection and defense of the Canal. Also, the Combined Board shall make appropriate recommendations to the two Governments respecting projected requirements, the efficient utilization of available resources of the two Parties, and other matters of mutual interest with respect to the protection and defense of the Canal.

5. To the extent possible consistent with its primary responsibility for the protection and defense of the Panama Canal, the United States of America will endeavor to maintain its armed forces in the Republic of Panama in normal times at a level not in excess of that of the armed forces of the United States of America in the territory of the former Canal Zone immediately prior to the entry into force of this Treaty.

ARTICLE V

Principle of non-intervention

Employees of the Panama Canal Commission, their dependents and designated contractors of the Panama Canal Commission, who are nationals of the United States of America, shall respect the laws of the Republic of Panama and shall abstain from any activity incompatible with the spirit of this Treaty. Accordingly, they shall abstain from any political activity in the Republic of Panama as well as from any intervention in the internal affairs of the Republic of Panama. The United States of America shall take all measures within its authority to ensure that the provisions of this Article are fulfilled.

ARTICLE VI

Protection of the environment

1. The United States of America and the Republic of Panama commit themselves to implement this Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama. To this end, they shall consult and cooperate with each other in all appropriate ways to ensure that they shall give due regard to the protection and conservation of the environment.

2. A Joint Commission on the Environment shall be established with equal representation from the United States of America and the Republic of Panama, which shall periodically review the implementation of this Treaty and shall recommend as appropriate to the two Governments ways to avoid or, should this not be possible, to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the Treaty.

3. The United States of America and the Republic of Panama shall furnish the Joint Commission on the Environment complete information on any action taken in accordance with this Treaty which, in the judgment of both, might have a significant effect on the environment. Such information shall be made available to the Commission as far in advance of the contemplated action as possible to facilitate the study by the Commission of any potential environmental problems and to allow for consideration of the recommendation of the Commission before the contemplated action is carried out.

ARTICLE VII

Flags

1. The entire territory of the Republic of Panama, including the areas the use of which the Republic of Panama makes available to the United States of America pursuant to this Treaty and related agreements, shall be under the flag of the Republic of Panama, and consequently such flag always shall occupy the position of honor.

2. The flag of the United States of America may be displayed, together with the flag of the Republic of Panama, at the headquarters of the Panama Canal Commission, at the site of the Combined Board, and as provided in the Agreement in Implementation of Article IV of this Treaty.

The flag of the United States of America also may be displayed at other places and on some occasions as agreed by both Parties.

ARTICLE VIII

Privileges and immunities

1. The installations owned or used by the agencies or instrumentalities of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements, and their official archives and documents, shall be

inviolable. The two Parties shall agree on procedures to be followed in the conduct of any criminal investigation at such locations by the Republic of Panama.

2. Agencies and instrumentalities of the Government of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements shall be immune from the jurisdiction of the Republic of Panama.

3. In addition to such other privileges and immunities as are afforded to employees of the United States Government and their dependents pursuant to this Treaty, the United States of America may designate up to twenty officials of the Panama Canal Commission who, along with their dependents, shall enjoy the privileges and immunities accorded to diplomatic agents and their dependents under international law and practice. The United States of America shall furnish to the Republic of Panama a list of the names of said officials and their dependents, identifying the positions they occupy in the Government of the United States of America, and shall keep such list current at all times.

ARTICLE IX

Applicable laws and law enforcement

1. In accordance with the provisions of this Treaty and related agreements, the law of the Republic of Panama shall apply in the areas made available for the use of the United States of America pursuant to this Treaty. The law of the Republic of Panama shall be applied to matters or events which occurred in the former Canal Zone prior to the entry into force of this Treaty only to the extent specifically provided in prior treaties and agreements.

2. Natural or juridical persons who, on the date of entry into force of this Treaty, are engaged in business or non-profit activities at locations in the former Canal Zone may continue such business or activities at those locations under the same terms and conditions prevailing prior to the entry into force of this Treaty for a thirty-month transition period from its entry into force. The Republic of Panama shall maintain the same operating conditions as those applicable to the aforementioned enterprises prior to the entry into force of this Treaty in order that they may receive licenses to do business in the Republic of Panama subject to their compliance with the requirements of its law. Thereafter, such persons shall receive the same treatment under the law of the Republic of Panama as similar enterprises already established in the rest of the territory of the Republic of Panama without discrimination.

3. The rights of ownership, as recognized by the United States of America, enjoyed by natural or juridical private persons in buildings and other improvements to real property located in the former Canal Zone shall be recognized by the Republic of Panama in conformity with its laws.

4. With respect to buildings and other improvements to real property located in the Canal operating areas, housing areas or other areas subject to the licensing procedure established in Article IV of the Agreement in Implementation of Article III of this Treaty, the owners shall be authorized to continue using the land upon which their property is located in accordance with the procedures established in that Article.

5. With respect to buildings and other improvements to real property located in areas of the former Canal Zone to which the aforesaid licensing procedure is not applicable, or may cease to be applicable during the lifetime or upon termination of this Treaty, the owners may continue to use the land upon which their property is located, subject to the payment of a reasonable charge to the Republic of Panama. Should the Republic of Panama decide to sell such land, the owners of the buildings or other improvements located thereon shall be offered a first option to purchase such land at a reasonable cost. In the case of nonprofit enterprises, such as churches and fraternal organizations, the cost of purchase will be nominal in accordance with the prevailing practice in the rest of the territory of the Republic of Panama.

6. If any of the aforementioned persons are required by the Republic of Panama to discontinue their activities or vacate their property for public purposes, they shall be compensated at fair market value by the Republic of Panama.

7. The provisions of paragraphs 2-6 above shall apply to natural or juridical persons who have been engaged in business or nonprofit activities at locations in the former Canal Zone for at least six months prior to the date of signature of this Treaty.

8. The Republic of Panama shall not issue, adopt or enforce any law, decree, regulation, or international agreement or take any other action which purports to regulate or would otherwise interfere with the exercise on the part of the United States of America of any right granted under this Treaty or related agreements.

9. Vessels transiting the Canal, and cargo, passengers and crews carried on such vessels shall be exempt from any taxes, fees, or other charges by the Republic of Panama. However, in the event such vessels call at a Panamanian port, they may be assessed charges incident thereto, such as charges for services provided to the vessel. The Republic of Panama may also require the passengers and crew disembarking from such vessels to pay such taxes, fees and charges as are established under Panamanian law for persons entering its territory. Such taxes, fees and charges shall be assessed on a nondiscriminatory basis.

10. The United States of America and the Republic of Panama will cooperate in taking such steps as may from time to time be necessary to guarantee the security of the Panama Canal Commission, its property, its employees and their dependents, and their property, the Forces of the United States of America and the members thereof, the civilian component of the United States Forces, the dependents of members of the Forces and the civilian component, and their property, and the contractors of the Panama Canal Commission and of the United States Forces, their dependents, and their property. The Republic of Panama will seek from its Legislative Branch such legislation as may be needed to carry out the foregoing purposes and to punish any offenders.

11. The Parties shall conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State, and who are not domiciled therein, may elect to serve their sentences in their State of nationality.

ARTICLE X

Employment with the Panama Canal Commission

1. In exercising its rights and fulfilling its responsibilities as the employer, the United States of America shall establish employment and labor regulations which shall contain the terms, conditions and prerequisites for all categories of employees of the Panama Canal Commission. These regulations shall be provided to the Republic of Panama prior to their entry into force.

2. (a) The regulations shall establish a system of preference when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission. The United States of America shall endeavor to ensure that the number of Panamanian nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established for foreign enterprises under the law of the Republic of Panama.

(b) The terms and conditions of employment to be established will in general be no less favorable to persons already employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, than those in effect immediately prior to that date.

3. (a) The United States of America shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

(b) The United States of America will establish training programs for Panamanian employees and apprentices in order to increase the number of Panamanian nationals qualified to assume positions with the Panama Canal Commission, as positions become available.

(c) Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working for the Panama Canal Company immediately prior to the entry into force of this Treaty.

(d) The United States of America shall periodically inform the Republic of Panama, through the Coordinating Committee, established pursuant to the Agreement in Implementation of Article III of this Treaty, of available positions within the Panama Canal Commission. The Republic of Panama shall similarly provide the United States of America any information it may have as to the availability of Panamanian nationals claiming to have skills and qualifications that might be required by the Panama Canal Commission, in order that the United States of America may take this information into account.

4. The United States of America will establish qualification standards for skills, training and experience required by the Panama Canal Commission. In establishing such standards, to the extent they include a requirement for a professional license, the United States of America, without prejudice to its right to require additional professional skills and qualifications, shall recognize the professional licenses issued by the Republic of Panama.

5. The United States of America shall establish a policy for the periodic rotation, at a maximum of every five years, of United States citizen employees and other non-Panamanian employees, hired after the entry into force of this Treaty. It is recognized that certain exceptions to the said policy of rotation may be made for sound administrative reasons, such as in the case of employees holding positions requiring certain non-transferable or non-recruitable skills.

6. With regard to wages and fringe benefits, there shall be no discrimination on the basis of nationality, sex, or race. Payments by the Panama Canal Commission of additional remuneration, or the provision of other benefits, such as home leave benefits, to United States nationals employed prior to entry into force of this Treaty, or to persons of any nationality, including Panamanian nationals who are thereafter recruited outside of the Republic of Panama and who change their place of residence, shall not be considered to be discrimination for the purpose of this paragraph.

7. Persons employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, who are displaced from their employment as a result of the discontinuance by the United States of America of certain activities pursuant to this Treaty, will be placed by the United States of America, to the maximum extent feasible, in other appropriate jobs with the Government of the United States in accordance with United States Civil Service regulations. For such persons who are not United States nationals, placement efforts will be confined to United States Government activities located within the Republic of Panama. Likewise, persons previously employed in activities for which the Republic of Panama assumes responsibility as a result of this Treaty will be continued in their employment to the maximum extent feasible by the Republic of Panama. The Republic of Panama shall, to the maximum extent feasible, ensure that the terms and conditions of employment applicable to personnel employed in the activities for which it assumes responsibility are no less favorable than those in effect immediately prior to the entry into force of this Treaty. Non-United States nationals employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty who are involuntarily separated from their positions because of the discontinuance of an activity by reason of this Treaty, who are not entitled to an immediate annuity under the United States Civil Service Retirement System, and for whom continued employment in the Republic of Panama by the Government of the United States of America is not practicable, will be provided special job placement assistance by the Republic of Panama for employment in positions for which they may be qualified by experience and training.

8. The Parties agree to establish a system whereby the Panama Canal Commission may, if deemed mutually convenient or desirable by the two Parties, assign certain employees of the Panama Canal Commission, for a limited period of time, to assist in the operation of activities transferred to the responsibility of the Republic of Panama as a result of this Treaty or related agreements. The salaries and other costs of employment of any such persons assigned to provide such assistance shall be reimbursed to the United States of America by the Republic of Panama.

9. (a) The right of employees to negotiate collective contracts with the Panama Canal Commission is recognized. Labor relations with employees of the Panama Canal Commission shall be conducted in accordance with forms of collective bargaining established by the United States of America after consultation with employee unions.

(b) Employee unions shall have the right to affiliate with international labor organizations.

10. The United States of America will provide an appropriate early optional retirement program for all persons employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of this Treaty. In this regard, taking into account the unique circumstances created by the provisions of this Treaty, including its duration, and their effect upon such employees, the United States of America shall, with respect to them:

(a) determine that conditions exist which invoke applicable United States law permitting early retirement annuities and apply such law for a substantial period of the duration of the Treaty;

(b) seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided for by law.

ARTICLE XI

Provisions for the transition period

1. The Republic of Panama shall reassume plenary jurisdiction over the former Canal Zone upon entry into force of this Treaty and in accordance with its terms. In

order to provide for an orderly transition to the full application of the jurisdictional arrangements established by this Treaty and related agreements, the provisions of this Article shall become applicable upon the date this Treaty enters into force, and shall remain in effect for thirty calendar months. The authority granted in this Article to the United States of America for this transition period shall supplement, and is not intended to limit, the full application and effect of the rights and authority granted to the United States of America elsewhere in this Treaty and in related agreements.

2. During this transition period, the criminal and civil laws of the United States of America shall apply concurrently with those of the Republic of Panama in certain of the areas and installations made available for the use of the United States of America pursuant to this Treaty, in accordance with the following provisions:

(a) The Republic of Panama permits the authorities of the United States of America to have the primary right to exercise criminal jurisdiction over United States citizen employees of the Panama Canal Commission and their dependents, and members of the United States Forces and civilian component and their dependents, in the following cases:

(i) for any offense committed during the transition period within such areas and installations, and

(ii) for any offense committed prior to that period in the former Canal Zone.

The Republic of Panama shall have the primary right to exercise jurisdiction over all other offenses committed by such persons, except as otherwise provided in this Treaty and related agreements or as may be otherwise agreed.

(b) Either Party may waive its primary right to exercise jurisdiction in a specific case or category of cases.

3. The United States of America shall retain the right to exercise jurisdiction in criminal cases relating to offenses committed prior to the entry into force of this Treaty in violation of the laws applicable in the former Canal Zone.

4. For the transition period, the United States of America shall retain police authority and maintain a police force in the aforementioned areas and installations. In such areas, the police authorities of the United States of America may take into custody any person not subject to their primary jurisdiction if such person is believed to have committed or to be committing an offense against applicable laws or regulations, and shall promptly transfer custody to the police authorities of the Republic of Panama. The United States of America and the Republic of Panama shall establish joint police patrols in agreed areas. Any arrests conducted by a joint patrol shall be the responsibility of the patrol member or members representing the Party having primary jurisdiction over the person or persons arrested.

5. The courts of the United States of America and related personnel, functioning in the former Canal Zone immediately prior to the entry into force of this Treaty, may continue to function during the transition period for the judicial enforcement of the jurisdiction to be exercised by the United States of America in accordance with this Article.

6. In civil cases, the civilian courts of the United States of America in the Republic of Panama shall have no jurisdiction over new cases of a private civil nature, but shall retain full jurisdiction during the transition period to dispose of any civil cases, including admiralty cases, already instituted and pending before the courts prior to the entry into force of this Treaty.

7. The laws, regulations, and administrative authority of the United States of America applicable in the former Canal Zone immediately prior to the entry into force of this Treaty shall, to the extent not inconsistent with this Treaty and related agreements, continue in force for the purpose of the exercise by the United States of America of law enforcement and judicial jurisdiction only during the transition period. The United States of America may amend, repeal or otherwise change such laws, regulations and administrative authority. The two Parties shall consult concerning procedural and substantive matters relative to the implementation of this Article, including the disposition of cases pending at the end of the transition period and, in this respect, may enter into appropriate agreements by an exchange of notes or other instrument.

8. During this transition period, the United States of America may continue to incarcerate individuals in the areas and installations made available for the use of the United States of America by the Republic of Panama pursuant to this Treaty and related agreements, or to transfer them to penal facilities in the United States of America to serve their sentences.

ARTICLE XII

A sea-level canal or a third lane of locks

1. The United States of America and the Republic of Panama recognize that a sea-level canal may be important for international navigation in the future. Consequently, during the duration of this Treaty, both Parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama, and in the event they determine that such a waterway is necessary, they shall negotiate terms, agreeable to both Parties, for its construction.

2. The United States of America and the Republic of Panama agree on the following:

(a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree; and

(b) During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

3. The Republic of Panama grants to the United States of America the right to add a third lane of locks to the existing Panama Canal. This right may be exercised at any time during the duration of this Treaty, provided that the United States of America has delivered to the Republic of Panama copies of the plans for such construction.

4. In the event the United States of America exercises the right granted in paragraph 3 above, it may use for that purpose, in addition to the areas otherwise made available to the United States of America pursuant to this Treaty, such other areas as the two Parties may agree upon. The terms and conditions applicable to Canal operating areas made available by the Republic of Panama for the use of the United States of America pursuant to Article III of this Treaty shall apply in a similar manner to such additional areas.

5. In the construction of the aforesaid works, the United States of America shall not use nuclear excavation techniques without the previous consent of the Republic of Panama.

ARTICLE XIII

Property transfer and economic participation by the Republic of Panama

1. Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree.

2. The United States of America transfers, without charge, to the Republic of Panama all right, title and interest the United States of America may have with respect to all real property, including non-removable improvements thereon, as set forth below:

(a) Upon the entry into force of this Treaty, the Panama Railroad and such property that was located in the former Canal Zone but that is not within the land and water areas the use of which is made available to the United States of America pursuant to this Treaty. However, it is agreed that the transfer on such date shall not include buildings and other facilities, except housing, the use of which is retained by the United States of America pursuant to this Treaty and related agreements, outside such areas;

(b) Such property located in an area or a portion thereof at such time as the use by the United States of America of such area or portion thereof ceases pursuant to agreement between the two Parties.

(c) Housing units made available for occupancy by members of the Armed Forces of the Republic of Panama in accordance with paragraph 5(b) of Annex B to the Agreement in Implementation of Article IV of this Treaty at such time as such units are made available to the Republic of Panama.

(d) Upon termination of this Treaty, all real property, and non-removable improvements that were used by the United States of America for the purposes of this Treaty and related agreements, and equipment related to the management, operation and maintenance of the Canal remaining in the Republic of Panama.

3. The Republic of Panama agrees to hold the United States of America harmless with respect to any claims which may be made by third parties relating to rights, title and interest in such property.

4. The Republic of Panama shall receive, in addition, from the Panama Canal Commission a just and equitable return on the national resources which it has

dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal, in accordance with the following:

(a) An annual amount to be paid out of Canal operating revenues computed at a rate of thirty hundredths of a United States dollar (\$0.30) per Panama Canal net ton, or its equivalency, for each vessel transiting the Canal, after the entry into force of this Treaty, for which tolls are charged. The rate of thirty hundredths of a United States dollar (\$0.30) per Panama Canal net ton, or its equivalency, will be adjusted to reflect changes in the United States wholesale price index for total manufactured goods during biennial periods. The first adjustment shall take place five years after entry into force of this Treaty, taking into account the changes that occurred in such price index during the preceding two years. Thereafter successive adjustments shall take place at the end of each biennial period. If the United States of America should decide that another indexing method is preferable, such method shall be proposed to the Republic of Panama and applied if mutually agreed.

(b) A fixed annuity of ten million United States dollars (\$10,000,000) to be paid out of Canal operating revenues. This amount shall constitute a fixed expense of the Panama Canal Commission.

(c) An annual amount of up to ten million United States dollars (\$10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

ARTICLE XIV

Settlement of disputes

In the event that any question should arise between the Parties concerning the interpretation of this Treaty or related agreements, they shall make every effort to resolve the matter through consultation in the appropriate committees established pursuant to this Treaty and related agreements, or, if appropriate, through diplomatic channels. In the event the Parties are unable to resolve a particular matter through such means, they may, in appropriate cases, agree to submit the matter to conciliation, mediation, arbitration, or such other procedure for the peaceful settlement of the dispute as they may mutually deem appropriate.

ANNEX

Procedures for the cessation or transfer of activities carried out by the Panama Canal Company and the Canal Zone Government and illustrative list of the functions that may be performed by the Panama Canal Commission

1. The laws of the Republic of Panama shall regulate the exercise of private economic activities within the areas made available by the Republic of Panama for the use of the United States of America pursuant to this Treaty. Natural or juridical persons who, at least six months prior to the date of signature of this Treaty, were legally established and engaged in the exercise of economic activities in the former Canal Zone, may continue such activities in accordance with the provisions of paragraphs 2-7 of Article IX of this Treaty.

2. The Panama Canal Commission shall not perform governmental or commercial functions as stipulated in paragraph 4 of this Annex, provided, however, that this shall not be deemed to limit in any way the right of the United States of America to perform those functions that may be necessary for the efficient management, operation and maintenance of the Canal.

3. It is understood that the Panama Canal Commission, in the exercise of the rights of the United States of America with respect to the management, operation and maintenance of the Canal, may perform functions such as are set forth below by way of illustration:

- a. Management of the Canal enterprise.
- b. Aids to navigation in Canal Waters and in proximity thereto.
- c. Control of vessel movement.
- d. Operation and maintenance of the locks.
- e. Tug service for the transit of vessels and dredging for the piers and docks of the Panama Canal Commission.
- f. Control of the water levels in Gatun, Alajuela (Madden) and Miraflores Lakes.
- g. Non-commercial transportation services in Canal waters.
- h. Meteorological and hydrographic services.
- i. Admeasurement.
- j. Non-commercial motor transport and maintenance.
- k. Industrial security through the use of watchmen.

- l. Procurement and warehousing.
 - m. Telecommunications.
 - n. Protection of the environment by preventing and controlling the spillage of oil and substances harmful to human or animal life and of the ecological equilibrium in areas used in operation of the Canal and the anchorages.
 - o. Non-commercial vessel repair.
 - p. Air conditioning services in Canal installations.
 - q. Industrial sanitation and health services.
 - r. Engineering design, construction and maintenance of Panama Canal Commission installations.
 - s. Dredging of the Canal channel, terminal ports and adjacent waters.
 - t. Control of the banks and stabilizing of the slopes of the Canal.
 - u. Non-commercial handling of cargo on the piers and docks of the Panama Canal Commission.
 - v. Maintenance of public areas of the Panama Canal Commission, such as parks and gardens.
 - w. Generation of electric power.
 - x. Purification and supply of water.
 - y. Marine salvage in Canal waters.
 - z. Such other functions as may be necessary or appropriate to carry out, in conformity with this Treaty and related agreements, the rights and responsibilities of the United States of America with respect to the management, operation and maintenance of the Panama Canal.
4. The following activities and operations carried out by the Panama Canal Company and the Canal Zone Government shall not be carried out by the Panama Canal Commission, effective upon the dates indicated herein:
- (a) Upon the date of entry into force of this Treaty:
 - (i) Wholesale and retail sales, including those through commissaries, food stores, department stores, optical shops and pastry shops;
 - (ii) The production of food and drink, including milk products and bakery products;
 - (iii) The operation of public restaurants and cafeterias and the sale of articles through vending machines;
 - (iv) The operation of movie theaters, bowling alleys, pool rooms and other recreational and amusement facilities for the use of which a charge is payable;
 - (v) The operation of laundry and dry cleaning plants other than those operated for official use;
 - (vi) The repair and service of privately owned automobiles or the sale of petroleum or lubricants, including the operation of gasoline stations, repair garages and tire repair and recapping facilities, and the repair and service of other privately owned property, including appliances, electronic devices, boats, motors, and furniture;
 - (vii) The operation of cold storage and freezer plants other than those operated for official use;
 - (viii) The operation of freight houses other than those operated for official use;
 - (ix) Commercial services to and supply of privately owned and operated vessels, including the construction of vessels, the sale of petroleum and lubricants and the provision of water, tug services not related to the Canal or other United States Government operations, and repair of such vessels, except in situations where repairs may be necessary to remove disabled vessels from the Canal;
 - (x) Printing services other than for official use;
 - (xi) Maritime transportation for the use of the general public;
 - (xii) Health and medical services provided to individuals, including hospitals, leprosariums, veterinary, mortuary and cemetery services;
 - (xiii) Educational services not for professional training, including schools and libraries;
 - (xiv) Postal services;
 - (xv) Immigration, customs and quarantine controls, except those measures necessary to ensure the sanitation of the Canal;
 - (xvi) Commercial pier and dock services, such as the handling of cargo and passengers; and
 - (xvii) Any other commercial activity of a similar nature, not related to the management, operation or maintenance of the Canal.
 - (b) Within thirty calendar months from the date of entry into force of this Treaty, governmental services such as:
 - (i) Police;
 - (ii) Courts; and

(iii) Prison system.

5. (a) With respect to those activities or functions described in paragraph 4 above, or otherwise agreed upon by the two Parties, which are to be assumed by the Government of the Republic of Panama or by private persons subject to its authority, the two Parties shall consult prior to the discontinuance of such activities or functions by the Panama Canal Commission to develop appropriate arrangements for the orderly transfer and continued efficient operation or conduct thereof.

(b) In the event that appropriate arrangements cannot be arrived at to ensure the continued performance of a particular activity or function described in paragraph 4 above which is necessary to the efficient management, operation or maintenance of the Canal, the Panama Canal Commission may, to the extent consistent with the other provisions of this Treaty and related agreements, continue to perform such activity or function until such arrangements can be made.

AGREED MINUTE TO THE PANAMA CANAL TREATY

1. With reference to paragraph 1(c) of Article I (Abrogation of Prior Treaties and Establishment of a New Relationship), it is understood that the treaties, conventions, agreements and exchanges of notes, or portions thereof, abrogated and superseded thereby include:

(a) The Agreement delimiting the Canal Zone referred to in Article II of the Interoceanic Canal Convention of November 18, 1903 signed at Panama on June 15, 1904.

(b) The Boundary Convention signed at Panama on September 2, 1914.

(c) The Convention regarding the Colon Corridor and certain other corridors through the Canal Zone signed at Panama on May 24, 1950.

(d) The Trans-Isthmian Highway Convention signed at Washington on March 2, 1936, the Agreement supplementing that Convention entered into through an exchange of notes signed at Washington on August 31 and September 6, 1940, and the arrangement between the United States of America and Panama respecting the Trans-Isthmian Joint Highway Board, entered into through an exchange of notes at Panama on October 19 and 23, 1939.

(e) The Highway Convention between the United States and Panama signed at Panama on September 14, 1950.

(f) The Convention regulating the transit of alcoholic liquors through the Canal Zone signed at Panama on March 14, 1932.

(g) The Protocol of an Agreement restricting use of Panama and Canal Zone waters by belligerents signed at Washington on October 10, 1914.

(h) The Agreement providing for the reciprocal recognition of motor vehicle license plates in Panama and the Canal Zone entered into through an exchange of notes at Panama on December 7 and December 12, 1950, and the Agreement establishing procedures for the reciprocal recognition of motor vehicle operator's licenses in the Canal Zone and Panama entered into through an exchange of notes at Panama on October 31, 1960.

(i) The General Relations Agreement entered into through an exchange of notes at Washington on May 18, 1942.

(j) Any other treaty, convention, agreement or exchange of notes between the United States and the Republic of Panama, or portions thereof, concerning the Panama Canal which was entered into prior to the entry into force of the Panama Canal Treaty.

2. It is further understood that the following treaties, conventions, agreements and exchanges of notes between the two Parties are not affected by paragraph 1 of Article I of the Panama Canal Treaty:

(a) The Agreement confirming the cooperative agreement between the Panamanian Ministry of Agriculture and Livestock and the United States Department of Agriculture for the prevention of foot-and-mouth disease and rinderpest in Panama, entered into by an exchange of notes signed at Panama on June 21 and October 5, 1972, and amended May 28 and June 12, 1974.

(b) The Loan Agreement to assist Panama in executing public marketing programs in basic grains and perishables, with annex, signed at Panama on September 10, 1975.

(c) The Agreement concerning the regulation of commercial aviation in the Republic of Panama, entered into by an exchange of notes signed at Panama on April 22, 1929.

(d) The Air Transport Agreement signed at Panama on March 31, 1949, and amended May 29 and June 3, 1952, June 5, 1967, December 23, 1974, and March 6, 1975.

(e) The Agreement relating to the establishment of headquarters in Panama for a civil aviation technical assistance group for the Latin American area, entered into by an exchange of notes signed at Panama on August 8, 1952.

(f) The Agreement relating to the furnishing by the Federal Aviation Agency of certain services and materials for air navigation aids, entered into by an exchange of notes signed at Panama on December 5, 1967 and February 22, 1968.

(g) The Declaration permitting consuls to take note in person, or by authorized representatives, of declarations of values of exports made by shippers before customs officers, entered into by an exchange of notes signed at Washington on April 17, 1913.

(h) The Agreement relating to customs privileges for consular officers, entered into by an exchange of notes signed at Panama on January 7 and 31, 1935.

(i) The Agreement relating to the sale of military equipment, materials, and services to Panama, entered into by an exchange of notes signed at Panama on May 20, 1959.

(j) The Agreement relating to the furnishing of defense articles and services to Panama for the purpose of contributing to its internal security, entered into by an exchange of notes signed at Panama on March 26 and May 23, 1962.

(k) The Agreement relating to the deposit by Panama of ten percent of the value of grant military assistance and excess defense articles furnished by the United States, entered into by an exchange of notes signed at Panama on April 4 and May 9, 1972.

(l) The Agreement concerning payment to the United States of net proceeds from the sale of defense articles furnished under the military assistance program, entered into by an exchange of notes signed at Panama on May 20 and December 6, 1974.

(m) The General Agreement for Technical and Economic Cooperation, signed at Panama on December 11, 1961.

(n) The Loan Agreement relating to the Panama City water supply system, with annex, signed at Panama on May 6, 1969, and amended September 30, 1971.

(o) The Loan Agreement for rural municipal development in Panama, signed at Panama on November 28, 1975.

(p) The Loan Agreement relating to a project for the modernization, restructuring and reorientation of Panama's educational programs, signed at Panama on November 19, 1975.

(q) The Treaty providing for the extradition of criminals, signed at Panama on May 25, 1904.

(r) The Agreement relating to legal tender and fractional silver coinage by Panama, entered into by an exchange of notes signed at Washington and New York on June 20, 1904, and amended March 26 and April 2, 1930, May 28 and June 6, 1931, March 2, 1936, June 17, 1946, May 9 and 24, 1950, September 11 and October 22, 1953, August 23 and October 25, 1961, and September 26 and October 23, 1962.

(s) The Agreement for enlargement and use by Canal Zone of sewerage facilities in Colon Free Zone Area, entered into by an exchange of notes signed at Panama on March 8 and 25, 1954.

(t) The Agreement relating to the construction of the inter-American highway, entered into by an exchange of notes signed at Panama on May 15 and June 7, 1943.

(u) The Agreement for cooperation in the construction of the Panama segment of the Darien Gap highway, signed at Washington on May 6, 1971.

(v) The Agreement relating to investment guaranties under sec. 413(b)(4) of the Mutual Security Act of 1954, as amended, entered into by an exchange of notes signed at Washington on January 23, 1961.

(w) The Informal Arrangement relating to cooperation between the American Embassy, or Consulate, and Panamanian authorities when American merchant seamen or tourists are brought before a magistrate's court, entered into by an exchange of notes signed at Panama on September 18 and October 15, 1947.

(x) The Agreement relating to the mutual recognition of ship measurement certificates, entered into by an exchange of notes signed at Washington on August 17, 1937.

(y) The Agreement relating to the detail of a military officer to serve as adviser to the Minister of Foreign Affairs of Panama, signed at Washington on July 7, 1942, and extended and amended February 17, March 23, September 22 and November 6, 1959, March 26 and July 6, 1962, and September 20 and October 8, 1962.

(z) The Agreement relating to the exchange of official publications, entered into by an exchange of notes signed at Panama on November 27, 1941 and March 7, 1942.

(aa) The Convention for the Prevention of Smuggling of Intoxicating Liquors, signed at Washington on June 6, 1924.

(bb) The Arrangement providing for relief from double income tax on shipping profits, entered into by an exchange of notes signed at Washington on January 15, February 8, and March 28, 1941..

(cc) The Agreement for withholding of Panamanian income tax from compensation paid to Panamanians employed within Canal Zone by the canal, railroad, or auxiliary works, entered into by an exchange of notes signed at Panama on August 12 and 30, 1963.

(dd) The Agreement relating to the withholding of contributions for educational insurance from salaries paid to certain Canal Zone employees, entered into by an exchange of notes signed at Panama on September 8 and October 13, 1972.

(ee) The Agreement for radio communications between amateur stations on behalf of third parties, entered into by an exchange of notes signed at Panama on July 19 and August 1, 1956.

(ff) The Agreement relating to the granting of reciprocal authorizations to permit licensed amateur radio operators of either country to operate their stations in the other country, entered into by an exchange of notes signed at Panama on November 16, 1966.

(gg) The Convention facilitating the work of traveling salesmen, signed at Washington on February 8, 1919..

(hh) The Reciprocal Agreement for gratis nonimmigrant visas, entered into by an exchange of notes signed at Panama on March 27 and May 22 and 25, 1956.

(ii) The Agreement modifying the Agreement of March 27 and May 22 and 25, 1956 for gratis nonimmigrant visas, entered into by an exchange of notes signed at Panama on June 14 and 17, 1971.

(jj) Any other treaty, convention, agreement or exchange of notes, or portions thereof, which does not concern the Panama Canal and which is in force immediately prior to the entry into force of the Panama Canal Treaty.

3. With reference to paragraph 2 of Article X (Employment with the Panama Canal Commission), concerning the endeavor to ensure that the number of Panamanian nationals employed in relation to the total number of employees will conform to the proportion established under Panamanian law for foreign business enterprises, it is recognized that progress in this regard may require an extended period in consonance with the concept of a growing and orderly Panamanian participation, through training programs and otherwise, and that progress may be affected from time to time by such actions as the transfer or discontinuance of functions and activities.

4. With reference to paragraph 10(a) of Article X, it is understood that the currently applicable United States law is that contained in Section 8336 of Title 5, United States Code.

5. With reference to paragraph 2 of Article XI (Transitional Provisions), the areas and installations in which the jurisdictional arrangements therein described shall apply during the transition period are as follows:

(a) The Canal operating areas and housing areas described in Annex A to the Agreement in Implementation of Article III of the Panama Canal Treaty.

(b) The Defense Sites and Areas of Military Coordination described in the Agreement in Implementation of Article IV of the Panama Canal Treaty.

(c) The Ports of Balboa and Cristobal described in Annex B of the Agreement in Implementation of Article III of the Panama Canal Treaty.

6. With reference to paragraph 4 of Article XI, the areas in which the police authorities of the Republic of Panama may conduct joint police patrols with the police authorities of the United States of America during the transition period are as follows:

(a) Those portions of the Canal operating areas open to the general public, the housing areas and the Ports of Balboa and Cristobal.

(b) Those areas of military coordination in which joint police patrols are established pursuant to the provisions of the Agreement Treaty, signed this date. The two police authorities shall develop appropriate administrative arrangements for the scheduling and conduct of such joint police patrols.

Done at Washington, this 7th day of September, 1977, in duplicate, in the English and Spanish languages, both texts being equally authentic.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE
PANAMA CANAL

The United States of America and the Republic of Panama have agreed upon the following:

ARTICLE I

The Republic of Panama declares that the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty. The same regime of neutrality shall apply to any other international waterway that may be built either partially or wholly in the territory of the Republic of Panama.

ARTICLE II

The Republic of Panama declares the neutrality of the Canal in order that both in time of peace and in time of war it shall remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality, so that there will be no discrimination against any nation, or its citizens or subjects, concerning the conditions or charges of transit, or for any other reason, and so that the Canal, and therefore the Isthmus of Panama, shall not be the target of reprisals in any armed conflict between other nations of the world. The foregoing shall be subject to the following requirements:

(a) Payment of tolls and other charges for transit and ancillary services, provided they have been fixed in conformity with the provisions of Article III (c);

(b) Compliance with applicable rules and regulations, provided such rules and regulations are applied in conformity with the provisions of Article III;

(c) The requirement that transiting vessels commit no acts of hostility while in the Canal; and

(d) Such other conditions and restrictions as are established by this Treaty.

ARTICLE III

1. For purposes of the security, efficiency and proper maintenance of the Canal the following rules shall apply:

(a) The Canal shall be operated efficiently in accordance with conditions of transit through the Canal, and rules and regulations that shall be just, equitable and reasonable, and limited to those necessary for safe navigation and efficient, sanitary operation of the Canal;

(b) Ancillary services necessary for transit through the Canal shall be provided;

(c) Tolls and other charges for transit and ancillary services shall be just, reasonable, equitable and consistent with the principles of international law;

(d) As a pre-condition of transit, vessels may be required to establish clearly the financial responsibility and guarantees for payment of reasonable and adequate indemnification, consistent with international practice and standards, for damages resulting from acts or omissions of such vessels when passing through the Canal. In the case of vessels owned or operated by a State or for which it has acknowledged responsibility, a certification by that State that it shall observe its obligations under international law to pay for damages resulting from the act or omission of such vessels when passing through the Canal shall be deemed sufficient to establish such financial responsibility;

(e) Vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the Canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected, as a condition of transit, to inspection, search or surveillance. However, such vessels may be required to certify that they have complied with all applicable health, sanitation and quarantine regulations. In addition, such vessels shall be entitled to refuse to disclose their internal operation, origin, armament, cargo or destination. However, auxiliary vessels may be required to present written assurances, certified by an official at a high level of the government of the State requesting the exemption, that they are owned or operated by that government and in this case are being used only on government noncommercial service.

2. For the purposes of this Treaty, the terms "Canal," "vessel of war," "auxiliary vessel," "internal operation," "armament" and "inspection" shall have the meanings assigned them in Annex A to this Treaty.

ARTICLE IV

The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties.

ARTICLE V

After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory.

ARTICLE VI

1. In recognition of the important contributions of the United States of America and of the Republic of Panama to the construction, operation, and maintenance, and protection and defense of the Canal, vessels of war and auxiliary vessels of those nations shall, notwithstanding any other provisions of this Treaty, be entitled to transit the Canal irrespective of their internal operation, means of propulsion, origin, destination, armament or cargo carried. Such vessels of war and auxiliary vessels will be entitled to transit the Canal expeditiously.

2. The United States of America, so long as it has responsibility for the operation of the Canal, may continue to provide the Republic of Colombia toll-free transit through the Canal for its troops, vessels and materials of war. Thereafter, the Republic of Panama may provide the Republic of Colombia and the Republic of Costa Rica with the right of toll-free transit.

ARTICLE VII

1. The United States of America and the Republic of Panama shall jointly sponsor a resolution in the Organization of American States opening to accession by all States of the world the Protocol to this Treaty whereby all the signatories will adhere to the objectives of this Treaty, agreeing to respect the regime of neutrality set forth herein.

2. The Organization of American States shall act as the depositary for this Treaty and related instruments.

ARTICLE VIII

This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Panama Canal Treaty, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Panama Canal Treaty, six calendar months from the date of the exchange of the instruments of ratification.

Done at Washington, this 7th day of September, 1977, in duplicate, in the English and Spanish languages, both texts being equally authentic.

ANNEX A

1. "Canal" includes the existing Panama Canal, the entrances thereto and the territorial seas of the Republic of Panama adjacent thereto, as defined on the map annexed hereto (Annex B), and any other interoceanic waterway in which the United States of America is a participant or in which the United States of America has participated in connection with the construction or financing, that may be operated wholly or partially within the territory of the Republic of Panama, the entrances thereto and the territorial seas adjacent thereto.

2. "Vessel of war" means a ship belonging to the naval forces of a State, and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew which is under regular naval discipline.

3. "Auxiliary vessel" means any ship, not a vessel of war, that is owned or operated by a State and used, for the time being, exclusively on government non-commercial service.

4. "Internal operation" encompasses all machinery and propulsion systems, as well as the management and control of the vessel, including its crew. It does not include the measures necessary to transit vessels under the control of pilots while such vessels are in the Canal.

5. "Armament" means arms, ammunitions, implements of war and other equipment of a vessel which possesses characteristics appropriate for use for warlike purposes.

6. "Inspection" includes on-board examination of vessel structure, cargo, armament and internal operation. It does not include those measures strictly necessary for admeasurement, nor those measures strictly necessary to assure safe, sanitary transit and navigation, including examination of deck and visual navigation equipment, nor in the case of live cargoes, such as cattle or other livestock, that may

carry communicable diseases, those measures necessary to assure that health and sanitation requirements are satisfied.

PROTOCOL TO THE TREATY CONCERNING THE PERMANENT NEUTRALITY AND
OPERATION OF THE PANAMA CANAL

Whereas the maintenance of the neutrality of the Panama Canal is important not only to the commerce and security of the United States of America and the Republic of Panama, but to the peace and security of the Western Hemisphere and to the interests of world commerce as well;

Whereas the regime of neutrality which the United States of America and the Republic of Panama have agreed to maintain will ensure permanent access to the Canal by vessels of all nations on the basis of entire equality;

Whereas the said regime of effective neutrality shall constitute the best protection for the Canal and shall ensure the absence of any hostile act against it;

The Contracting Parties to this Protocol have agreed upon the following:

ARTICLE I

The Contracting Parties hereby acknowledge the regime of permanent neutrality for the Canal established in the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and associate themselves with its objectives.

ARTICLE II

The Contracting Parties agree to observe and respect the regime of permanent neutrality of the Canal in time of war as in time of peace, and to ensure that vessels of their registry strictly observe the applicable rules.

ARTICLE III

This Protocol shall be open to accession by all states of the world, and shall enter into force for each State at the time of deposit of its instrument of accession with the Secretary General of the Organization of American States.

THE TRANS-CANADIAN SYSTEM COULD COMPOUND A
FOLLY

Mr. HELMS. Mr. President, unfortunately, the Senate will eventually be obliged to take under consideration the ratification of the Panama Canal Treaty. I hope that it will not be ratified. I have been very open in my opposition of the treaty and have expressed this opposition from the floor on several occasions.

I do not know what your feelings may be or how you intend to vote on this important issue. However, there is a second and in someways similar matter concerning this Nation's relation with a foreign power which will also be considered by this body in the very near future. I am speaking of the selection of a system to deliver natural gas from Alaska. We have two proposals for consideration—a Trans-Canadian system or an all American system. Should we adopt a delivery system requiring agreements with Canada for an overland pipeline through that Nation, we cannot overlook the comparisons with the original Panama Canal agreement and particularly the safeguards accruing to this Nation at the time the agreement was adopted.

First, as to the Panama Canal, the United States exercised sovereign rights over the entire right-of-way. If we adopt a Canadian overland route we will enjoy no rights—sovereign or otherwise over any of the right-of-way.

Second, an American company built, owned, and operated the entire canal facility. The proposed Canadian overland route would

be built, owned and operated exclusively by companies which are foreign controlled.

Third, all tariffs and taxes relative to the Panama Canal were under exclusive U.S. control. Canada, on the other hand, would exercise full control over taxes and tariffs within its national boundaries. Because of the relationship between the Canadian central government and provincial authority, it is not clear how these taxes and tariffs would be levied or controlled. There is, in fact, considerable argument in favor of the right of the province to levy taxes regardless of the wording of any national agreement.

Fourth, the tariffs and all bills paid for the use of the canal by international shipping companies were paid by these international shipping companies. The U.S. consumer will pay all costs for the construction, operation, and maintenance of an overland pipeline through Canada.

Mr. President, I question the advisability of this Nation giving serious consideration to embarking on a new \$10 billion project across Canada which at the outset has none of the safeguards we found so necessary in the construction, operation, and maintenance of the Panama Canal. The decision we make will affect our natural gas delivery for at least 40 years. It does not make sense to place our dependence for this vital energy fuel in the hands of a foreign power when we have an alternative. I recommend that we approve the all American alternative thereby assuring that our natural gas will remain under our control.

[From the Congressional Record—Senate, Sept. 12, 1977]

THE PANAMA CANAL TREATY

Mr. ALLEN. Mr. President, in the September 11 issue of the New York Times appeared a most interesting and informative article by Capt. Paul B. Ryan, USN retired, a research associate at the Hoover Institute, Stanford University.

From this article it can be seen that there are two areas, at least, in the Panama Canal Treaty on which the American negotiators placed one construction and the Panamanians placed another construction.

Both of these provisions or the construction of both of these provisions is most important to the rights the United States would have in the event this treaty is approved by the Senate.

The first has to do with the right of the United States to defend the canal. The article points out:

But does this ostensibly forthright interpretation of treaty terms—

That is, the United States would have the right to defend the canal—

Which presumably protect vital United States strategic interests, coincide with that held by Panama? The answer is no, if you listen to its chief treaty negotiator, Dr. Romulo Escobar Bethancourt, who analyzed the treaty's provisions at a news conference in Panama City on Aug. 24.

Dr. Escobar's comments were broadcast by radio and subsequently published in the Daily Report of our Government's Foreign Broadcast Information Service. Surprisingly, Dr. Escobar's astonishing views, which directly contradict the White House's, appear to have been given very little publicity or entirely overlooked by the United States news media.

Dr. Escobar roundly rejects the Carter Administration's claim that the United States may send in troops.

Mind you, this was the chief negotiator on the part of the Panamanians.

Quoting from his interview:

"The treaty does not establish that the United States has the right to intervene [that is, send in troops] in Panama," he said. He denied that the treaty gives the United States the right to decide when neutrality is violated or not. Neither, in his view, do United States warships have the right of expeditious transit without conditions.

As Dr. Escobar inelegantly put it: "If the gringos—

Referring to the people of the United States—

with their warships say, 'I want to go through first,' then that is their problem with the other ships there." Presumably, Panamanian officials would look idly on while United States Navy captains, during an international crisis—

And that is a word for war or close proximity—

haggled with merchant skippers for a place at the head of the waiting line of ships. So much for the United States right to unimpeded transit and the defense of the waterway!

Faced with Panama's refusal to allow "privileged passage," the Americans finally accepted the term "expeditious transit," in order, said Dr. Escobar, to "sell" the treaty to the Pentagon. "Now they [the United States diplomats] could explain that this means privileged passage. * * * Do not believe that we mean that," he emphasized.

So you have two different constructions placed on two different sections of the treaty: one, the right of the United States to defend the canal, and Dr. Escobar says the United States will not have the

right to say when the neutrality is being violated nor, he says, does she have the right to send in troops.

How are we going to defend the canal if we do not have the right to say when neutrality is in danger or if we do not have the right to send in troops? So if they do not have a meeting of the minds, Mr. President, if the Panamanians and the United States negotiators differ on these two most important points, how is it we can say this treaty is in the best interests of the people of the United States?

So I am hopeful, of course, when this matter does come up—and I see the distinguished majority leader here on the floor—I am hopeful, even though the distinguished majority leader says he wants to carry this matter over until next year, it will be brought up this year, and that the Senate will be allowed to express its will, that is, decide to give or not to give its advice and consent to the treaty.

So I am hopeful we can have action on this treaty this year. But if we do not have a meeting of the minds between Panama and the United States as to what these important provisions mean—these are just two of them, I do not know how many other instances there are—but this is Dr. Escobar himself saying he has a difference of opinion with the U.S. negotiators, so if we do not know what the treaty means, if there is a sharp difference of opinion about what it means, how can the Senate be called upon to give its advice and consent to the approval of this treaty?

Mr. President, I ask unanimous consent that this article be placed in the Record, and also an article this morning in the Washington Post by Congressman Philip Crane "Our Standing in the World Would Diminish"; and an article by our distinguished colleague, Mr. Helms, in the Washington Post of this morning, "This Alternative to the Carter Proposals."

There being no objection, the articles were ordered to be printed in the Record, as follows:

[From the New York Times, Sept. 11, 1977]

THE CANAL TERMS, ARGUED FROM DIFFERENT PREMISES

(By Paul B. Ryan)

STANFORD, CALIF.—In his frenetic blitz to gain public approval of the two Panama Canal treaties, President Carter has stressed that he wishes to dispel misinformation by laying out the facts. Thus, he and his chief negotiators, Ellsworth Bunker and Sol M. Linowitz, repeatedly have assured the public that the United States would have the permanent right to defend the canal by sending troops into Panama in time of crisis. Additionally, the White House says that United States warships would have "the permanent right to transit the canal expeditiously and without conditions, for an indefinite period."

But does this ostensibly forthright interpretation of treaty terms, which presumably protect vital United States strategic interests, coincide with that held by Panama? The answer is no, if you listen to its chief treaty negotiator, Dr. Romulo Escobar Bethancourt, who analyzed the treaty's provisions at a news conference in Panama City on Aug. 24.

Dr. Escobar's comments were broadcast by radio and subsequently published in the Daily Report of our Government's Foreign Broadcast Information Service. Surprisingly, Dr. Escobar's astonishing views, which directly contradict the White House, appear to have been given very little publicity or entirely overlooked by the United States news media.

Dr. Escobar roundly rejects the Carter Administration's claim that the United States may send in troops. "The treaty does not establish that the United States has the right to intervene [that is, send in troops] in Panama," he said. He denied that the treaty gives the United States the right to decide when neutrality is violated or not. Neither, in his view, do United States warships have the right to expeditious transit without conditions.

As Dr. Escobar inelegantly put it: "If * * * the gringos with their warships say, 'I want to go through first,' then that is their problem with the other ships there." Presumably, Panamanian officials would look idly on while United States Navy captains, during an international crisis, haggled with merchant skippers for a place at the head of the waiting line of ships. So much for the United States right to unimpeded transit and the defense of the waterway!

Where these wildly different interpretations known to the United States negotiators during the talks? As Dr. Escobar told the newsmen, these points had been trashed out with the Americans but Panama had stood firm against their demands.

Faced with Panama's refusal to allow "privileged passage," the Americans finally accepted the term "expeditious transit," in order, said Dr. Escobar, to "sell" the treaty to the Pentagon. "Now they [the United States diplomats] could explain that this means privileged passage. * * * Do not believe that we mean that," he emphasized.

Placed side-by-side Mr. Carter's reassuring assessment and Dr. Escobar's belligerent and cynical evaluation present the apparent paradox of two Governments outwardly reaching an agreement but secretly retaining entirely different perceptions of its provisions. Or is it a case where both negotiating teams assumed that the "real" meaning of the terms could be safely debated after both nations had won ratification from their respective Governments?

Plainly, such a treaty is fraught with peril for future United States operations involving canal transits. The danger of jeopardizing the Navy's use of the waterway was apparent to Presidential candidate Carter and he implied as much during his televised debate on Oct. 6, 1976, with Gerald R. Ford. Mr. Carter said, "I would not relinquish practical control of the Panama Canal Zone at any time in the foreseeable future."

As a former naval officer, Mr. Carter understands, probably better than most people, the need for the United States to retain such "practical control" to permit its Navy to carry out missions worldwide in support of United States diplomatic policies and strategic objectives.

This is particularly true in an era when international tension, as well as mini-wars of the Angola type, are much more likely to occur than an all-out war.

In the light of Dr. Escobar's dismissal of United States treaty rights, can President Carter really mean what he says?

A poor treaty is worse than no treaty at all. United States diplomacy must serve the national interest, as we have recently been reminded. The Carter Administration should clear up these glaring ambiguities at once. As matters now stand, the American people have no guarantee for Panama for the protection of United States defense and security interests in the Canal Zone.

[From the Washington Post, Sept. 12, 1977]

THE CASE AGAINST THE CANAL TREATIES

OUR STANDING IN THE WORLD WOULD DIMINISH

(By Philip Crane)

I do agree with my colleague Paul Simon [op-ed, Aug. 30] on one point: The American people would be violently opposed to "giving away" the Panama Canal. But their opposition to what the treaties actually propose will be even greater. We are, in fact, paying the Panamanian government to take away our multibillion-dollar interest in Panama—to the tune of about \$50 million per year plus approximately \$350 million in economic and military aid!

One supporter of the treaties not mentioned by Simon is the U.S. banking community. Since they have huge sums of money in loans obligated to Panama, they cannot afford to oppose the treaties. Under Gen. Omar Torrijos, Panama's national debt has grown from \$167 million to \$1.5 billion. The debt service alone will consume 39 per cent of that country's budget this year. Panama's Department of Planning indicates that to refinance loans coming due, together with the \$139 million deficit, a total of \$323.6 million will be required. Obviously, Panama cannot

afford to have the treaties rejected either. In fact, Torrijos' initial request was for a payment of \$5 billion plus a \$300-million annuity—but he will have to settle for the smaller package now under discussion.

If, as Simon states, our primary interest is keeping the canal open, then he had better study the definition of "open" as understood by Panama. According to Dr. Romulo Bethancourt, head of the Panamanian negotiating team, in a report to the Panamanian National Assembly on Aug. 19, when the U.S. proposed that Panama be obliged to keep the canal permanently open and neutral, Panama cited these grounds for not keeping it open: because of an earthquake, because of a landslide or because the canal was not making money.

I question why we shouldn't be proud of the current treaty, approved by the U.S. Senate in 1904. It granted the U.S. "all rights, power, authority in the Zone * * * which the U.S. would possess and exercise if it were the sovereign" for an initial payment of \$10 million plus an annuity of \$250,000—an annuity that has now been increased to \$2.3 million. The Provisional Government of Panama ratified the treaty, as did the Constitutional Government of Panama when it took office in 1904 and reaffirmed all acts of the previous regime. The Supreme Court decision in 1907 on *Wilson v. Shaw* held that the United States does maintain legal sovereignty and ownership under the 1903 treaty, a ruling upheld in 1972.

Obviously, national pride—for both Panamanians and Americans—is still an issue. But if we base our return of the canal on the fact that the Panamanians "don't like" our having acquired the property, then we had better consider giving Louisiana back to France and Alaska back to the U.S.S.R.

I would truly like to believe that we know the position of the U.S. military brass on the treaty question. But the Singlaub affair has convinced military personnel that they jeopardize their military standing and job security by publicly opposing any administration policies. If military officials in a spot to accurately analyze the risks involved in ratifying a treaty with Panama were free to speak their minds, we could fully assess the validity of apparent U.S. military support for the treaties.

Torrijos' regime—created by a coup in 1968—is known for its friendliness with Castro and pro-Communist tendencies. In fact, the Soviets, who do not even have diplomatic relations with Panama, have recently concluded tentative economic and commercial agreements with the country—a foot in the door, as it were. Of course, Panamanian Communists oppose the treaties: They want control of the canal right now. Moreover, Torrijos as director has been a consistent violator of human rights in Panama. In light of President Carter's strident—and laudable—campaign for human rights, isn't signing the treaties a blatant act of hypocrisy?

The canal will be in much graver danger if a treaty is agreed to. First, sabotage is a remote possibility because of the economic importance of the canal to Panama. If we surrender the Zone, the entire isthmus becomes the focus of international envy and, possibly, combat. Bethancourt stated outright in his assembly address that "we are not giving the U.S. the right of intervention." Moreover, the neutrality agreed to is not one "so only the U.S. ships travel through peacefully" but it is one "so that all ships of all flags in the world travel through peacefully * * * communist * * * fascist * * * monarchy." Under these terms, Panama is simply inviting the wolf to dine at his own table. Simon is absolutely correct: The United States is a leader in the Free World. But, if we relinquish the canal our power and standing in Latin America and throughout the world would diminish. This is particularly true in light of recent retreats from other spots on the globe. How can it be termed "moral" to pull the rug out from under the Panamanian economy at a particularly feeble moment in its history? During 1976 the United States infused over \$29 million into Panama by direct purchases from U.S. government agencies; over \$108 million in wages to non-U.S. citizens employed in the Zone; over \$39 million in personal expenditures by U.S. employees—not to mention major construction, obliteration of yellow fever, and countless apprentice and job-training programs. In fact, per capita income in Panama is currently the highest in Central America—thanks to you-know-who. Actually, I do share Simon's sincere hope that the "sensible" answer to this crucial question holds forth. That sensible answer, in my opinion, is sound rejection of the proposed treaties.

[From the Washington Post, Sept. 12, 1977]

THE ALTERNATIVE TO THE CARTER PROPOSALS

(By Jesse Helms)

Let someone say it: What happens if the Panama Canal treaties fail? Does it mean the collapse of relations between the United States and our Latin American friends—or a new beginning?

I believe in the new beginning, one that can mean an end to the tortured distrust and falsity so characteristic of our relations with Latin America in the past 30 years. Not only have we failed to make good the promised unity of the Rio Treaty of 1947, but we also have ignored profound changes that have taken place in the past 10 years.

We have ignored, for example, the painful effort of most of the southern continent to exorcise the double menace of terrorism and Marxism. We have treated as pariahs those proud countries that have been engaged in the difficult task of restoring social justice to shattered civil societies and of recreating their authentic cultural traditions and religious values. And now, at the moment when President Carter's advisers suddenly feel the need to create a showpiece tapestry of unity against which to display the dubious transaction with Panama, these same nations are suddenly recognized and brought forward, much as dotty old relatives might be brought down from the attic for dinner on Christmas Day. This is the same kind of exploitation of which our Latin friends have complained in the past.

The very premises of the Panama treaties are based on the shaky foundations of outmoded ideologies. No one really believes that the United States can be convicted of that rhetorical offense of the 1950s, colonialism. Panama and the Panama Canal were born together as if Siamese twins, under separate sovereignties, but yoked together for life. Those who question the legitimacy of that joint birth must question the legitimacy of both.

The treaty proponents speak of "the year 2000," as though any transfer of power will take place in another era, or perhaps in another galaxy. The fact is, "the year, 2000" is only 23 years off. To imagine the dramatic shift in the world balance of power that can take place in the next 23 years, one need only reflect on the massive shifts of power in the past 23. One notes, for example, the dramatic rise in Soviet offensive strategic missiles and the Soviets' parallel effort to build a naval force capable of dominating the seas—not to speak of the strategic waterways that connect the seas.

Despite assurances to the contrary, the texts of the proposed treaties show that practical control passes to the Republic of Panama as soon as the United States gives up its sovereign rights. We would be, in effect, strangers in a strange land. Whoever controlled Panama would control our right to defend the canal. The power relationships in the treaty would be inverted. We would become a pyramid standing on its point.

Would the treaties be worth more than the paper they are written on? As the British found out, an agreement in principle to get out on a fixed date usually means that the date gets moved up in practice. Moreover, the task of supporting an inverted pyramid will crush any free Panamanian government. Terrorism and civic unrest are tools in the worldwide phenomena of subversion and do not depend upon reasonable pretexts. We must not imagine that Panama will be exempted from bloodshed and violence if we ratify these treaties, rather, we must expect intensified efforts to bring the pyramid down:

The United States would then be faced with a dilemma: whether to violate Panama's independence with another Dominican Republic-style incursion or whether to cut and run away from a handful of expiring treaty rights no longer workable in a revolutionary environment. Either way, Panama would lose, and so would we. That is why there is no overwhelming sentiment in the Senate to approve these treaties.

What is the alternative?

On June 30, I spent 40 minutes alone with President Carter discussing what might happen should the treaties he has proposed not be approved by the Senate. On Aug. 19, Sen. Strom Thurmond, Sen. Orrin Hatch and I had a similar discussion with President Lakes of Panama. I assured both Presidents that it would be a mistake to interpret a vote against the treaties as a vote against the people of Panama. On the contrary, those who oppose the treaties want to work with the Panamanian people in an even closer relationship, but there is no practical way to do this unless we retain our sovereign rights in the Canal Zone.

I proposed to both Presidents that a work such as the major modernization of the Panama Canal would provide an investment of substantial sums in our future relationship with Panama. It would be more than just an investment in our own sovereign territory; the terms of the program would be mandated to ensure broad Panamanian participation across the social spectrum, to upgrade education and skills-training for the people, to provide detailed managerial experience and to set up joint ventures with Panamanian firms.

Indeed, had this necessary modernization been adopted a dozen years ago, instead of stress and the threat of doomed aspirations, Panama would presently enjoy one of the most advanced environments for development and social progress in Latin America. Panama could now be ready to catapult forward as a model nonsocialist country.

Would this satisfy the hot demands of some Panamanian extremists? Neither Panama nor the United States can afford to cater to a miniscule minority, no matter how determined, that wants to use the name of nationalism to destroy a nation, rather than to build it. There is a cooler satisfaction that comes from pride in one's own achievement, from having worked at something and built it. If the treaties fail, that kind of satisfaction could be the basis of a better relationship with all of Latin America.

Mr. ALLEN. I yield the floor.

A MATTER CALLING FOR A MEASURED AND UNHURRIED DECISION

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. ALLEN. Mr. President, I thank the distinguished Senator for yielding.

I feel that the issue of the Panama Canal treaties is the most important issue that has come before the Senate during the some 9 years that I have been in the Senate.

Based on my reading of the treaties and my recognition of the importance of the Panama Canal to our economic security and our national security, I plan to vote against the treaties. I do not believe it is in the best interest of our Nation or our people that the treaties be entered into.

Personally, I had hoped that the matter could be disposed of this year and that the Senate and Congress would stay in session this year until the matter could be disposed of.

I might state that I feel that full and complete debate of these issues should be had in the Senate and I feel that under article IV, section 3, paragraph 2 of the Constitution it is requisite that the issue be determined by both Houses of Congress because it is necessary that there be congressional action to dispose of property of the United States.

Of course, I readily acceded to the wishes of the distinguished majority leader, but I would like to comment that I do not believe there is going to be any attempt to filibuster this issue. I think that it should come to a vote, and I feel that the arithmetic involved would indicate that there be no filibuster because it takes only 60 votes to invoke cloture and 67 votes to give advice and consent as to the treaty. Furthermore, a filibuster if successful would merely leave the treaty in a state of limbo and it could be brought up at any time. But I do feel that full, complete, and lengthy debate should take place on this issue. I had hoped that time would be found this year to dispose of the matter. The distinguished majority leader having stated that the matter will not be brought up until

next year, naturally, I would abide by his judgment and certainly make no effort to see that the treaties are brought before the Senate.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Alabama for his comments.

A MATTER CALLING FOR A MEASURED AND UNHURRIED DECISION

Mr. ROBERT C. BYRD. Mr. President, certain news reports this past weekend implied that pressures might be applied on the Senate to take up the ratification of the recently signed Panama Canal treaties before the adjournment of this session of the 95th Congress. I want to reiterate that, as I have stated several times in recent weeks, the full Senate will not begin consideration of the canal treaties before January.

The Constitution vests in the Senate a peculiar and unique responsibility for the ratification or rejection of treaties with foreign governments. Our duty therefore involves more than just making up our own minds on the future of the canal. Indeed, these new treaties with Panama carry ramifications that extend beyond our relations with one nation alone. The vital interests and the security of the United States, as well as our future relations with all the Latin American nations, will be among the many issues that must be examined in our future consideration of these treaties.

In order to do justice to the matter of the Panama Canal treaties, full and thorough consideration is necessary. As President Woodrow Wilson pointed out, the congressional responsibility for the dissemination of authoritative information on vital matters is as important as the legislative responsibility of Congress. By providing ample time for all Senators to make their decision in a calm and deliberative atmosphere, we are also assisting the public, so that citizens can reach a rational judgment on this important issue.

The Foreign Relations Committee will be conducting hearings on the Panama Canal Treaties. These hearings will provide an opportunity for responsible, concerned, and expert parties on both sides of this discussion to present their facts and opinions. Moreover, this process will allow each Senator access to information by which to weigh and sift the many elements and provisions of the complex treaties, and to give a measured and rational consideration of all sides of this issue.

I hope that the news media will give these hearings wide coverage, in order that the American people will receive a full understanding of this important concern.

The nature and the significance of this debate require an appropriate and reasonable length of time—not only for the benefit of the Senate but also for the benefit of the general public, which should have as clear an understanding as possible of the implications of these treaties for the United States.

Mr. HARRY F. BYRD, JR. Mr. President, will the distinguished majority leader yield at that point?

Mr. ROBERT C. BYRD. I yield.

Mr. HARRY F. BYRD, JR. Mr. President, regardless of whether one favors or opposes the Panama Canal Treaties, I think most will fully agree with the able majority leader in expressing hope that these treaties would have full and detailed consideration.

I think the majority leader is on very sound ground in stating that this matter will not be brought up until next year. The Senate

has much important legislation dealing with the vital question of energy for the American people to consider during the remainder of this session of Congress.

The able majority leader mentioned the hearings that will be held by the Foreign Relations Committee which are vitally important. As one Senator, I would hope that the Committee on Armed Services likewise would hold hearings on these treaties because the Panama Canal is vitally important to the defense of our Nation and I think the Committee on Armed Services has a responsibility to hold hearings and to give careful attention as a committee to these treaties.

So, I, as one Senator, am very pleased indeed at the action just taken by the distinguished majority leader and I believe it will be met with widespread approval throughout our Nation.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Virginia, Mr. Harry Flood Byrd, Jr., for his comment and his expression of support for the position I have enunciated.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. ALLEN. Mr. President, I thank the distinguished Senator for yielding.

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Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Alabama for his comments.

Mr. President, I have no additional time remaining. I thank the distinguished Senator from Alaska, the acting Republican leader, for his patience in waiting.

Mr. STEVENS. Mr. President, on behalf of those Senators from our side of the aisle who have not made up their minds on the treaties, I welcome again the statement of the majority leader. I am pleased to see that he is not prepared to lead a charge down San Juan Hill on this subject. Those of us who have not made up our mind want some answers.

Mr. ROBERT C. BYRD. Or up the hill at this point.

Mr. STEVENS. Or up it either. I would perceive it to be down at the present time.

We would like to know what are the implications in Guantanamo Bay, what are the implications with regard to the defense strategy of the United States, and what are the implications with regard to the bases that we have maintained around the world under various other treaties.

I am pleased to hear the statement of the Senator from Alabama who has indicated there would be no attempt on his part at least to prematurely bring up the consideration of these treaties because I am one who feels that the debate must take place out of this Chamber first. We have many national organizations, such as the League of Women Voters, the world affairs councils in the major cities of this country that should have the opportunity to explore this issue and to see whether the American people are willing to accept the treaties. I intend to make a statement in depth later this week, but it would seem to me that one of the things we must measure in fact is the maturity of the Panamanian Government. If the Panamanian Government does not recognize that it takes much more time for democracy to react to a change of policy such as contemplated by these treaties, then it is not mature enough to trust with the operation of this canal which is still vital at least to our economy if not to our defense.

I think it will take some time. I do not think Congress or the executive branch should move out so far ahead of public opinion that the concepts of democracy are lost in the area of foreign affairs.

It is time, I think, for a restoration of a bipartisan concept in foreign affairs and that can only come about through the deliberation that is necessary in review of treaties such as this.

If we were to precipitately consider the treaties I think that there would be no alternative but to reject them. If we are to take the time to explore them, explore all their ramifications, and to treat this change of policy with the depth of consideration that they deserve, then I think there may be a chance that the American people would recognize that the leadership of both President Carter and former President Ford, both of their Secretaries of State, and others, has told us that it is necessary.

I have just returned from my State, as other Senators have, and I would say that in my travels through Alaska, which has albeit a very small population, not one person asked me to support the treaties. Every person I discussed the Panama Canal treaties with

was vociferously opposed to them. That to me represents an unfortunate consequence of negotiations in secret and of change of position in secret.

This democracy of ours does not react to secrecy; it reacts to openness, and it is time now for us to open the complete negotiations, to know what our original proposal was to Panama, why it is we have changed some of the provisions, and why it is that some of the final provisions of the treaty are, in fact, in the national interest. If they are, I shall support them, but if I am not convinced they are, I shall oppose them.

I hope the action of the majority leader means not only that we are not going to take up these treaties this year, but that next year we will have sufficient time to explore in depth all the ramifications, including those mentioned by the distinguished Senator from Virginia, through the committee.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished acting minority leader may continue for 2 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. STEVENS. I am happy to yield.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished acting Republican leader for his considered and very thoughtful comments in respect of my statement anent postponing any Senate floor action on the treaties until next January.

I might say that I personally have not reached any position on the treaties, and will not reach a position thereon for a while. A check with my office has revealed that more than 4,000 communications have been received on the treaties, and only five or six letters support the treaties. Of course, Senators from larger States, I am sure, can produce more astounding figures than that. But I do not intend to be pressured into reaching any hasty judgment on the matter, pro or con. I am going to try to expose myself as fairly and thoroughly as possible to the facts that are adduced during the Foreign Relations Committee hearings and to other facts that may be adduced in other forums. I want to reach the right judgment when I reach it—one which will be in the best interest of our country, as well as I can fairly judge that interest to be.

I do not say this in criticism of any Senators who may already have made up their minds, but I think the Senate as a whole needs time; and it may very well be that some Senators who have made up their minds to go one way or the other at this point will change their minds later. But it is a matter on which the public should have the opportunity to reach its own judgment, based on the merits of the issue. I have long ago stated that this month and as much of the month of October as is necessary will be utilized in acting on the President's energy message, which I think is a matter of paramount importance, and he, too, has stated as much.

In the meantime, the Committee on Foreign Relations can begin and possibly complete its hearings, thus giving us all a better array of facts and knowledge on which to base our own decisions.

Mr. STEVENS. I thank the Senator. I assure him that I have not made up my mind, either.

I would hope one of the consequences of an early adjournment would be that the committees of the Senate that have jurisdiction over this matter might hold hearings throughout the country, and ask the administration witnesses and those who oppose the treaties to come in to a sort of regional forum, take testimony, and let the people from each area contribute to the dialog on each treaty. There must be a national consensus.

I just cannot believe that, as a body, we ought to react precipitately when there appears to be overwhelming opposition to the proposals before us, notwithstanding the fact that they have bipartisan support by very distinguished and capable leaders of this country.

I am thankful that we have a majority leader who is willing to take the heat for the period of time that is involved. I have seen some of the cartoons throughout the country depicting the Senate as the roadblock. I do not see the Senate as a roadblock; I think the Senate is an integral part of the foreign policy of the United States, and that our constitutional function is meaningless if we are to be somehow or other stampeded into reacting prematurely on a matter of such gravity as that involved in these two treaties.

Mr. ROBERT C. BYRD. I thank the Senator very much.

Mr. STEVENS. I thank the majority leader.

THE CANAL TREATIES: REASON OR RISK?

Mr. HARRY F. BYRD, JR. Mr. President, for weeks now the question as to whether the United States should surrender control of the Panama Canal has dominated the news.

It reached a crescendo last week when the President of Panama came to Washington and, along with President Carter, signed treaties which would end U.S. sovereignty over the canal and the Canal Zone.

The signing of the treaties and President Carter's many appeals for support of the treaties have received tremendous television coverage. The television commentators and others in the news media have joined the bandwagon in seeking to drum up support among the public.

It is time, I think, that the other side of the story be heard.

I have delayed public comment until the text of the new treaties were available. They became available only last week.

Careful reading has not reassured me that surrendering sovereignty over this important waterway is either wise or in the best military and economic interest of the United States.

I have reached the conclusion, however, that these treaties will be very expensive to the American taxpayer.

Fortunately, the signing of the new treaties by President Carter and by the Panamanian dictator, Gen. Omar Torrijos, does not put such treaties into effect.

Under our Constitution, any treaties negotiated by the President must be approved by the Senate of the United States by a two-thirds vote of that body.

So the final decision as to whether the United States shall surrender perpetual sovereignty over the vital link between the Atlantic and the Pacific will rest with the Senate of the United States.

At this point, I think some history is in order.

This is not the first time a President has proposed surrendering our sovereignty over the Panama Canal and Canal Zone.

In 1967, President Johnson put a head of steam behind Panama's resolve to wrest the canal away from undisputed American control. Draft treaties prepared in 1967 made concessions to Panama which many Members of Congress felt were unwise and which were, indeed, a submission to Panamanian political blackmail.

So great was the congressional opposition to the proposed treaty that President Johnson never submitted the proposal to the Senate for consideration. I am pleased to say that I took an active and firm role in opposition to the Johnson proposal.

I see no fundamental difference between the Johnson proposal and the Carter proposal. Each would surrender U.S. sovereignty. The only real difference is that the Carter proposal would be much more expensive to the American taxpayer.

The Congress was told in 1967 that there would be a series of anti-American riots in Panama if the U.S. Government did not give the Panamanians what they want. We are being told the same thing today.

It is vitally important that the United States maintain a position of strength in Latin America, and the pivotal point in our defense arrangements is the Panama Canal and the Canal Zone.

I am persuaded that new treaties compromising our rights in the Canal Zone would weaken our country's defense posture in the Western Hemisphere—and, in addition, could be costly to the American consumer.

After all the rhetoric is stripped away, the question of whether these treaties should be ratified boils down to three basic questions:

First, is it in the best economic and military interests of the United States?

Second, what will it cost the American taxpayer—this year, next year, and in many years to come?

And, third, should we abandon our sovereignty over this vital waterway.

The Panama Canal is a strategic waterway of considerable economic and military importance to the United States. Its uninterrupted and efficient operation in the years ahead is an important U.S. interest.

Proponents of the treaties insist that the treaties will safeguard our military and economic interests. But, in the same breath, these proponents argue that the canal is no longer important to the United States either economically or militarily.

Misleading figures are used to try to diminish the economic importance of the canal to the United States.

The Carter administration has publicized the figure of 8 percent as the amount of U.S. foreign trade that transits the canal. Yet, a figure which the administration neglects to cite is that 70 percent of all ships transiting the canal have the United States as their destination or their point of origin.

Equally misleading arguments have been made concerning the military value of the canal.

One argument is that U.S. aircraft carriers cannot transit the canal because of their size. This argument falls apart when one realizes that of the 461 Navy ships now in the active fleet, only the 13 aircraft carriers are unable to transit the canal. In other words, more than 97 percent of the U.S. Fleet is and will remain able to transit the canal.

History has clearly recorded how relatively quickly we were able to move elements of the Atlantic naval fleet to the Pacific after the attack on Pearl Harbor in 1941. We were able to make this quick transfer because American ships were given priority passage under the terms of the existing treaty. The canal was also heavily used during the Korean and Vietnam wars.

To make it even more current, present defense plans call for a large number of Navy ships to transit the canal in the event of an emergency. How can we assure ourselves we can do this if we do not control the canal?

Can these important U.S. interests be adequately protected under the terms of the proposed treaties?

The Carter administration maintains that they can, and points to the terms of the treaty which supposedly provide the United States with the permanent right to defend the neutrality of the canal from any threat for an indefinite period.

Further, the administration maintains that U.S. warships will have the permanent right to transit the canal expeditiously and without conditions.

However, upon close scrutiny of the actual texts of the treaties, the U.S. right to defend the neutrality of the canal is an implied right which is not clearly stated in the text.

There is no provision for how the United States might endeavor to defend the neutrality of the canal and, depending on how one interprets article V of the Treaty Concerning Permanent Neutrality, the United States might be precluded from taking actions which might be necessary to defend the neutrality of the canal.

Article V states that—

After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the canal and maintain military forces, defense sites and military installations within its national territory.

This could be interpreted as prohibiting the United States from ever deploying military forces to Panama to defend the neutrality of the canal.

Another point of concern is this: An unstable Panamanian government could make unwise decisions which might make more likely the need for sending U.S. troops to defend the canal.

There are other disturbing parts of the treaties which raise concerns for the protection of U.S. interests.

According to article II of the treaty concerning permanent neutrality, even in time of war there must be no discrimination against the vessels of any nation.

This sounds fine, except that it would require that warships of an enemy of the United States would not only be permitted to transit the canal but that a U.S. warship would have to wait its

turn for passage while the ships of other nations both commercial or combatant took their turn at entering the canal.

This provision alone raises serious doubts in my mind as to whether these treaties can adequately protect the interests of the United States.

Our ability to defend the canal and keep it operating would be severely compromised if enemy ships are to be permitted to enter the canal. An intentionally scuttled ship could close the canal for an extended period.

Another area of concern relates to the ability of a small, unstable, and economically weak country such as Panama to handle the responsibility for operating and maintaining the canal and operating it on a nondiscriminatory basis.

Panama has had a turbulent political history with a rapid succession of governments and several military coups, the latest of which brought Omar Torrijos to power in 1968.

It was only a few years before that that the President of Panama was assassinated; his First Vice President then assumed office, but was shortly deposed as having been involved in the assassination. The Second Vice President then became President; and he was thrown out the next year.

Panama's economy has been growing steadily worse in recent years despite the substantial boost to the economy resulting from the canal and the U.S. presence in the Canal Zone and despite the fact that the United States has provided \$368 million in economic assistance since 1945.

The country's indebtedness has grown from \$167 million when General Torrijos took power to approximately \$1.5 billion at present, causing a very heavy debt servicing burden on the already weak economy. It is estimated that debt service alone will consume 39 percent of Panama's budget this year.

These facts are cause for real concern over Panama's ability to operate and efficiently maintain the canal, especially in light of the growing deficits of the canal over the past several years.

Now let us look at the potential cost of these treaties.

Despite the fact that the Carter administration has claimed that the financial terms of these treaties will not involve any congressional appropriations, it is clear that these treaties will cost the American taxpayer many, many dollars.

The United States has invested an estimated \$7 billion of taxpayers' dollars in the canal and the Canal Zone since the construction of the canal began. Much of this money is in the form of real property and nonremovable improvements which would be turned over completely to Panama, according to the terms of the treaties.

The investment of \$7 billion in then-year dollars would, of course, be worth far more than that in 1977 dollars.

In addition, the terms of the treaties call for approximately a 2,000-percent increase in the annual financial compensation to Panama from the current amount of \$2.3 million per year to an estimated \$50 million. When multiplied by the 23 year period involved, this comes to a staggering \$1.15 billion.

According to the terms of the treaties this compensation is to come exclusively from canal revenues as follows: \$10 million per year from toll revenues; an additional share of 30 cents per ton

from toll revenues. (Note: This share of the tolls is tied to the U.S. wholesale price index so it is likely to rise substantially in the years ahead.) Up to an additional \$10 million per year only if canal traffic and revenues permit.

However, the canal has been operating at a deficit in recent years. The canal operated at a \$7.6 million loss in fiscal year 1976 and is projected to lose \$24 million more during fiscal year 1977.

Thus, when a greatly increased share of the tolls is paid to Panama the deficit will increase even further without a huge increase in toll rates.

Only last Friday, Ambassador Sol Linowitz, who negotiated the treaty for the United States, stated that the United States would have to raise shipping tolls for the canal by 25 to 30 percent, if the treaties are ratified.

These increased charges, of course, would be passed on to the American consumer.

In addition to the \$7 billion cost of the plant and equipment, the estimated \$1.15 billion Panamanian share of the tolls, and the additional cost to the consumers, there are two other costs that may be incurred as a result of these treaties.

The first potential cost is the Carter administration pledge to Panama to arrange for an economic program of loans, loan guarantees and credits which would be underwritten by U.S. taxpayers.

The second set of potential costs would be incurred if for some reason the canal were closed to U.S. traffic.

According to a Department of Commerce report issued in May of 1975 there would be:

A 71-percent increase in the average annual consumption of fuel by carriers of U.S. foreign trade;

A 31-day increase in average shipping time;

A \$932 million increase in the yearly total delivered price of all exports, which would price our farm products out of Pacific markets; and

A \$583 million increase in the yearly total delivered price of all imports including \$78 million for intercoastal deliveries, thus adding to U.S. inflation.

These costs would be borne by our citizens in the form of increased consumer costs and a higher rate of inflation, and also in the loss of jobs.

Any serious disruption in canal trade would result in serious dislocations in the U.S. economy.

In Virginia, for example, the Port of Hampton Roads would be seriously affected. A great deal of coal and coke is shipped from Hampton Roads through the canal to Japan and other countries.

Other States would suffer as well, as a great deal of American agricultural products are also exported through the canal.

Thus, the cost to the American citizen as a result of the treaties could be two-fold: First, the transfer of American property and foreign aid dollars to Panama; and second, increased inflation with a higher cost of living if canal trade is disrupted.

It is estimated that the overall cost of the Panama Canal treaties to the American taxpayer eventually will be roughly \$10 billion.

Based on this amount, that means we would be paying Panama more than \$24,000 an acre for the privilege of giving U.S. territory

to Panama. That would amount to approximately \$5,000 for every man, woman, and child in Panama.

Ironically, because of our past assistance, Panama already has the highest per capita income in Central America and one of the highest of all of the 25 Latin American nations.

The issue of sovereignty is the third great concern.

Contrary to the assertions of administration officials and others, the United States has a secure legal position as sovereign over the Canal Zone. This position has been upheld by the U.S. Supreme Court in 1907 and again as recently as 1972.

By article III of the 1903 treaty, full jurisdiction over the Canal Zone was granted to the United States "to the entire exclusion of the exercise by the Republic of Panama of any sovereign rights, power, or authority."

Since 1904 the United States has effectively controlled the territory and the inhabitants of the Canal Zone. The United States conducts the defense of the Canal Zone and performs all of the activities which are recognized in international law as the acts of a sovereign.

The U.S. rights of sovereignty in the Canal Zone are the foundation of our ability to remain there to operate and defend the canal.

Despite this clear record and unchallenged legal status, officials of the State Department continue to state and or imply that the Canal Zone is really Panamanian property and that the United States does not have full sovereignty over the Canal Zone.

However, on March 7 of 1974 under questioning by me in a Senate Finance Committee hearing, Secretary of State Kissinger admitted that the United States had sovereignty over the canal and the Canal Zone.

He stated that he had committed the United States "to negotiations leading to the transfer of sovereignty." That is a part of the official record.

The United States paid Panama for a territorial grant and is the sovereign power in the Canal Zone.

Now I want to discuss another disturbing provision of one of the proposed new treaties. I refer to article XII of the Panama Canal treaty.

Specifically, paragraph 2, section (b) of article XII states:

During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an inter-oceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

Article XII would, therefore, prevent the United States from negotiating with any other nation for the right to construct an inter-oceanic canal anywhere in the Western Hemisphere until the next century unless Panama agrees to permit such negotiations.

Only then could we even begin the long and tedious task of negotiating, and then constructing, a new canal.

This veto power by Panama would put the United States at the mercy of that nation, insofar as any waterway connecting the Atlantic and Pacific is concerned.

It is bad enough to give away the Panama Canal—and to pay the Panamanians for the privilege of giving it to them. But, I submit, it is even worse to block ourselves by treaty from having the opportu-

nity to negotiate with other nations for the right to construct an interoceanic canal in the Western Hemisphere.

In summary, I am convinced the proposed Panama Canal treaties:

First. Are totally inadequate in protecting the economic and defense interests of the United States;

Second. Would be very costly to the American taxpayer;

Third. Would surrender sovereignty over an extremely important international waterway and;

Fourth. Would deny to the United States the right to negotiate with any countries other than Panama for the construction of an inter-oceanic canal.

While the Foreign Relations Committee will hold hearings on the proposed treaties, it is vitally important that the Senate Armed Services Committee hold full hearings on the defense and security aspects of these treaties. I have strongly urged that such hearings be held.

I yield back the remainder of my time.

(Routine morning business transacted and additional statements submitted are printed later in today's Record.)

PANAMA CANAL TREATIES

Mr. ALLEN. Mr. President, on September 8, 1977, the Senate Committee on the Judiciary's Subcommittee on Separation of Powers conducted the third in a series of hearings it has scheduled to investigate constitutional and other issues related to the proposed Panama Canal treaties. As chairman, I opened the hearing with a statement which addressed my concern, and the concern of the overwhelming majority of Alabamians, over provisions of the treaties and over the ultimate effect they would have on the security of our country.

Mr. President, I believe these treaties are among the most important issues ever to come before the U.S. Senate. Certainly it is the most important single issue that the Senate has faced since I have been a Member. It is an issue that must be, and will be, debated at length, and all of the arguments must be clearly made and understood, not only by Senators but by all Americans. So that Senators may know of my position, I ask unanimous consent that my opening statement at the September 8 hearing be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT OF SENATOR JAMES B. ALLEN

The Subcommittee on Separation of Powers is convened this morning to continue the Subcommittee's investigation of Constitutional issues arising out of the new proposed Panama Canal Treaty. I am certain that most of those present this morning are aware of the central Constitutional issue under investigation; however, perhaps I should again reiterate the proposition which is the focal point of this inquiry.

Article IV, Section 3, of the Constitution of the United States provides that Congress "shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." The power given to Congress in that clause appears to be exclusive and, if it is an exclusive power, then the Executive is prohibited from entering into a treaty disposing of U.S. territory except with express Congressional authorization, that is, au-

thorization by both Houses of Congress in addition to Senate approval through the treaty ratification process.

Additionally, members of the Subcommittee are also deeply concerned that the Executive Department has reached certain financial agreements with the Panamanians for substantial financial assistance outside of the context of the provisions of the treaty itself. These financial agreements, if not embodied in the treaty, will not be subjected to the normal treaty ratification process which would otherwise be the case.

The Subcommittee has further learned that the Congressional appropriations process itself may in large measure be circumvented in the implementation of proposed financial arrangements with Panama but that nevertheless substantial sums of money are proposed to be made available to Panama by unilateral Executive Branch action. The Subcommittee will therefore diligently continue to seek testimony on the full intentions of the Executive Department with respect to separately negotiated financial and banking arrangements with the Republic of Panama.

Finally, in continuing its work the Subcommittee will seek to determine the extent to which the operative provisions of the Executive Department proposal are embodied in the executive agreements rather than in actual treaty language. There are, of course, in fact two treaties—the proposed Panama Canal Treaty itself and an additional treaty which purports to provide for the neutrality of the Panama Canal. Unfortunately, these treaties are in no way to be construed as the whole agreement. Both treaties are accompanied by very lengthy executive agreements which actually contain the substance of the deal struck with Panama. These executive agreements, once implemented, would be subject to renegotiation—and we find this astonishing—every two years.

This Subcommittee, I am sure, shares a concern of many that Congress will relinquish forever any control over this country's relation with the Republic of Panama if the Executive Department is authorized to enter into a plenary relation with Panama based not, in reality, on treaty law but rather based on executive agreements authorized by treaty law but subject to change at the whim of the Executive. In short, the Subcommittee wishes to establish by its inquiry the extent to which the Executive would be given a blank check by the new proposed treaties to amend, interrupt, abrogate, or replace entirely the lengthy accompanying substantive executive agreements.

I have just returned from Alabama where in the course of the August recess I met with citizens in 37 counties. These meetings were held in most instances at the County Court House; they were widely announced and well attended. One topic was invariably raised. Notwithstanding drought, unemployment, inflation, high energy prices, low farm prices, and a host of other subjects which could easily have been foremost in mind, virtually every group I encountered wished to know the answer to one question—would the United States, in fact, give away the Panama Canal Zone? Of the thousands I spoke with, almost no one favored a policy of surrender in Panama.

Many are saying that the people need education and that with education they will come to support the giveaway of the American Canal in Panama. In my judgment, the true state of affairs is the exact opposite. Further knowledge will only strengthen the resolve of the people, and in my judgment, our all-wise federal establishment could itself well stand some education from the American citizen who has the wisdom to see the obvious fact that the Panama Canal is vital to the economic stability and military security of the United States . . . from the American citizen who has the common sense to recognize the lunacy of paying billions to an unstable pro-Marxist dictatorship for taking over billions in property belonging to the United States . . . from the American citizen who has the clarity of thought to see the reality behind the sham, the shell game, and the traveling medicine show that has passed for an open discussion of the actual provisions of this proposed new arrangement with Panama.

Perhaps, however, Americans do need education in the fine points of the Panama Canal Treaty. That education has been hard to come by of late because throughout the treaty negotiations a veil of secrecy prevented any useful information being made available either to the public or, in large measure, to the Congress. Perfunctory briefings containing no real substance and seeking no advice, to be sure, were conducted. However, until yesterday most of the information this Subcommittee has been able to obtain on the new Treaty has come from translations of speeches made by the Panamanian negotiators in Panama.

By that method we have learned that the Panamanians expect to receive during the next 23 years at least \$2.262 billion in cash payments from the United States. The Department of the Treasury, when its representative testified, was apparently

unable to advise the Committee of the substance of any negotiations whatsoever with Panama, yet we could read from translated Panamanian documents that the Export-Import Bank plans to lend Panama \$200 million, that the Agency for International Development is to guarantee—and no doubt pay off—housing loans in the amount of \$75 million, and that the U.S. Overseas Private Investment Corporation is to guarantee \$20 million in loans for a new Panamanian development bank—everyone else has a bank in Panama, why shouldn't the Panamanians?

Finally, the Committee has learned not from the Department of Defense but from the Panamanians that \$50 million in military aid would be provided to prop up and guarantee the continuance of the military dictatorship now oppressing the people of the Republic of Panama.

But now that the proposed Panama Canal Treaty and neutrality treaty have finally been made public, there are disclosed even more items about which the American citizen should be educated. The American citizen should learn that in addition to all the other massive payments to be made to the Republic of Panama, as the ultimate insult, it is proposed that we pay to the Republic of Panama \$10 million a year for providing police services within the territory which would be ceded to Panama. We hope that during his education the American citizen will share our own disbelief and outrage that our great country proposes to cede United States territory to Panama and then to pay Panama for performing the normal functions of government within that same land.

We hope, too, that the American citizen will soon learn that out of 14 military bases now in the Canal Zone, only 4 would remain after implementation of this Treaty and that the 4 retained bases would be under direct Panamanian civil and political jurisdiction, subjecting thereby our Armed Forces to the dictatorial rule of the present Panamanian government. And although it is true that a status of forces agreement will provide some marginal protection to U.S. soldiers in the Canal Zone, the American citizen should learn that in essence our forces will be made subject to a code of laws based on the autocratic rule of one man and devoid of any Constitutional safeguards even remotely resembling those precious American rights now enjoyed within the Canal Zone.

Yes, there is much to learn about this proposal. Does the average citizen now know that the American flag will not be permitted to be flown in a place of honor, even at our military installations, and, according to the speeches of the Panamanian negotiators, will be permitted at our own bases only when inside and when displayed jointly with a Panamanian flag in the position of honor. Perhaps this latter point is trivial, but it typifies this entire proposed agreement . . . our flag in a broom closet and our vital Canal at the mercy of a banana republic.

So, the Subcommittee on Separation of Powers does intend to continue its investigation of these issues to insure that all the facts are made available both to the Congress and to the people. We will be, I am sure, greatly aided in our efforts by the witnesses scheduled to appear at today's hearings.

[From the Congressional Record—Senate, Sept. 14, 1977]

PANAMA CANAL TREATIES

Mr. CRANSTON. Mr. President, I spent some time this morning personally preparing some material in the form of remarks I wanted to make at this point in the Senate's proceedings dealing with the principal charge that has been brought against the Panama Canal Treaty relating to allegations that we are being blackmailed by Panama and that we are faced with a threat of violence if the treaty is by any chance not ratified by the Senate.

PANAMA: THE SPECTER OF VIOLENCE

Mr. President, the most clear-cut and devastating response I have yet seen to the "blackmail" and "violence" charges that have been raised against the Panama Canal Treaties was made by Tom Wicker in yesterday's New York Times.

The fact is that the specter of violence, and the predictions that violence will erupt in Panama if the treaties are rejected, have been raised not by responsible Panamanians but by Americans.

President Torrijos has specifically rejected violence. The following exchange took place at a news conference in Panama on August 26:

QUESTION. If the United States Senate does not ratify the treaty, what is the road to follow?

Answer by President Torrijos. The possibility does exist. It must be taken into consideration as one thing that could happen. That possibility would have to be interpreted as the greatest provocation in this struggle. And, in view of that possibility, we must have ready another type of answer, not a violent one.

My attendance at events connected with the signing of the treaties last week in Washington gave me an opportunity to question Panamanian officials, and American officials who know Panama intimately, about the blackmail and violence charges.

I asked them where violence would come from—if it did—in the event that the treaties were rejected by the Senate. The common response went this way:

The violence would not be instigated by responsible leaders in Panama, in or out of the Torrijos government.

If it came, it would probably start in one of two ways.

Either Panamanian students—whose demonstrations in the sixties led to the effort by the Johnson Administration to negotiate a new treaty with Panama—would launch new demonstrations leading, in the emotionalism and the excitement, to a march on the Canal Zone; leading to an effort by the U.S. military to prevent their entry; leading to confrontation and quite possibly to the shooting and the death of Panamanian students; leading on to a collision of unforeseeable dimensions.

Or a single Panamanian—with or without any fellow conspirators—would penetrate the Canal Zone and sabotage the Canal—an action that the American military acknowledges it would be hard-put to prevent, an action that could close down the Canal for a very substantial period of time. This act could be executed by one aroused, fanatical Panamanian, motivated by revenge, or by a desire to become a national hero or martyr, or by any other purpose imaginable or beyond imagination.

It is this sort of self-starting, spontaneous violence that, I believe, American proponents and opponents of the treaties alike really envisage and anticipate if the treaties were rejected by the Senate.

It is hardly the stuff of blackmail, lacking the faintest connection, spoken or unspoken, direct or indirect, with the Government

of Panama and the representatives of that Government with whom Ambassadors Bunker and Linowitz have been negotiating.

I am about to place the Wicker column in the Record, but I wish to point out that I am omitting two brief parts of it as I submit it.

Two sentences refer to two Senate opponents of the treaties, and I am striking those two sentences out.

One sentence refers to the cost to President Carter of Senate rejection of the treaties. I am dropping this to avoid any hint of partisanship in my action of inserting Wicker's column in the Record, and because what is important is not the cost of rejection to Carter but the cost of rejection to our country.

Whether the treaties are approved or disapproved is more a test of the Senate than of the President. It seems to me that the President and his negotiating team have already accomplished a very great deal in two respects: By bringing to a swift conclusion negotiations that dragged on inconclusively and fruitlessly through three preceding administrations representative of both of our major political parties, and by persuading Panama to accept a far smaller payment than she had for so very long demanded so strenuously.

Mr. President, I ask unanimous consent that my slightly abbreviated version of Tom Wicker's extraordinarily fine column from the September 13 New York Times appear at this point in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

OUT ON A LIMB

(By Tom Wicker)

If opposition to the new Panama Canal treaties is really going to become an organized effort of the American right, then conservatives are taking themselves far out on a limb all too likely to be sawed off behind them. Hanging on to the Canal may be a splendid whoop-it-up political issue now and in next year's elections, but what if conservatives actually defeat the treaties?

Ronald Reagan, the principal spokesman of the anti-treaty movement, predicted on a recent ABC-TV program, for instance, that if the treaties were ratified the Panamanian government would seize control of the canal just as Egypt took the Suez Canal from the British and the French.

With all due respect to Mr. Reagan, whose opposition to "giving up" the canal was an outspoken part of his Presidential campaign, this position doesn't make much sense. It's true enough that the Panamanian government might seize the canal if the treaty is ratified; but it's all but certain that Panama will seize it if the treaty is not ratified.

Mr. Reagan's point is misleading, anyway, because he and other well-informed conservative leaders know that it is Panama—not the Soviet Union, not Cuba, not China—that is the major threat to the current status of the canal. They must know this because of their repeated contention that the United States should not have negotiated the treaties "under duress" from its negotiating partner.

But if it's true to say that the treaty has been forced on the United States by the demands of Panamanians for greater control of their own territory and of a waterway that bisects that territory, it's an attempt to have it both ways to say that once the treaty has been ratified as demanded, the Panamanians will seize the canal anyway.

Elementary logic makes it obvious, instead, that if the Senate rejects the treaties now, an explosion of anger and frustration in Panama would result in rioting, sabotage, guerrilla warfare, leading inexorably either to Panamanian seizure of the canal or to a long, costly, losing American military effort to hang on to it.

In such a struggle, the Panamanians would have the full support—at least on the surface—of virtually every Latin American nation, certainly including Cuba. What better way to bring Castro into the Canal Zone, an eventuality Mr. Reagan and

others profess to fear, than a war in his backyard between Panamanians and gringos over an outpost of American colonialism?

What's more, if the canal problem ultimately produces that kind of conflict, not just the Third World but most other nations not bought or propped up by the United States would back Panama's national aspirations.

Now it may be that Ronald Reagan and other conservatives who oppose the treaties—not all do—are prepared to accept such consequences, if they succeed in mustering enough Senate votes to prevent ratification. It may be that their emotional identification with the notion of "an American Canal in Panama" is so strong that a bloody little Vietnam on the isthmus is an acceptable price to pay, even though winning such a war is unlikely.

Even if so, such opponents are not justified in standing the matter on its head by proclaiming that it is ratification rather than rejection that threatens loss of the canal. Cuban influence over it, a setback to American leadership and the like. The U.S. and Panama might have stumbled along peacefully for a few more years without agreement; but now the two sides have actually signed documents worked out over 14 years of negotiations, an American rejection of the treaties could have no other result than violence in Panama and political disaster in the hemisphere.

By comparison, what do treaty opponents have to gain if the Senate refuses to ratify? The emotional satisfaction, no doubt, of hanging on to the canal, of not being "pushed around"; but that will last only until the rioting, sabotage and fighting begin.

For such limited gains, if they are gains, do serious American conservatives really want to risk responsibility for frustrating legitimate Panamanian aspirations and for the guerrilla warfare likely to follow? It's hard to believe that most of them do.

Mr. CRANSTON. I thank the Senator.

TITLE TO THE CANAL ZONE AND PROPER METHOD OF TRANSFER

Mr. SCOTT. Mr. President, it appears that the proposed Panama Canal Treaties submitted by the President will be among the most important and controversial matters to be considered by the 95th Congress. Therefore, I believe we should attempt to review the treaties in detail to understand them fully and then vote the way we consider to be in the best interests of the people of the United States regardless of emotionalism, of pressure, or extraneous factors for or against the treaties. To that end, I have attempted to review the history of the Canal Zone, studied its status as a territory, reviewed legal authorities, listened to testimony of witnesses appearing before a subcommittee of the Senate Judiciary Committee, visited the Canal Zone and a number of South American countries to obtain the views of Latin American leaders. I have also read the correspondence coming into the office from constituents and am obtaining as much information as possible on this proposal.

Perhaps one of the basic matters to consider is the title and sovereignty of the United States to the property within the Canal Zone. The primary portions of the 1903 treaty with the Republic of Panama relating to these matters read as follows:

ARTICLE II

The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land underwater for the construction, maintenance, operation, sanitation and protection of said canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the canal to be constructed; the said zone beginning in the Caribbean Sea three marine miles from mean low water mark and extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant. The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said enterprise.

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco.

ARTICLE III

The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

However, the first article of the proposed new treaty with the Republic of Panama now before the Senate for its advice and consent would terminate and supersede the entire 1903 treaty.

Therefore, it would seem that we should first examine what the United States would lose by ratifying the new proposal. Article II indicates that the United States is granted in perpetuity the use, occupation, and control of the Canal Zone. Article III says that this grant is what the United States would possess if it were sovereign of the territory to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority. This language would appear to convey the entire title to the property contained within the Canal Zone and to grant sovereignty over the area. To support this position, we have the opinion of John Hay who was Secretary of State at the time of the ratification of the treaty. I ask unanimous consent, Mr. President, that a copy of Secretary Hay's letter of October 24, 1904, with its enclosure be included in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.
(See exhibit 1.)

Mr. SCOTT. Mr. President, you will note from the letter of Secretary Hay that in his opinion:

The United States at all times since the treaty was concluded has acted upon the theory that it had secured in and to the Canal Zone the exclusive jurisdiction to exercise sovereign rights, power and authority.

In argument before the Supreme Court in the case of *Wilson v. Shaw*, 204 U.S. 24 (1906), The Attorney General of the United States said:

Title to the canal strip having been acquired, this suit in effect seeks to restrain the Government from improving its property.

In the same case the Supreme Court states:

This new republic has by treaty granted to the United States rights, territorial and otherwise, acts of Congress have been passed providing for the construction of a canal, and in many ways the executive and legislative departments of Government have committed the United States to this work and it is now progressing.

Further on in its decision, the Court stated:

It is hypocritical to contend that the title of the United States is imperfect and that the territory described does not belong to this Nation because of the omission of some of the technical terms used in some of the ordinary conveyances of real estate . . . Alaska was ceded to us 40 years ago but the boundary between it and the English possessions East was not settled until within the last two or three years. Yet, no one ever doubted the title of this Republic to Alaska.

The question of sovereignty was also the subject of an opinion of the Attorney General on September 7, 1907 (26 Att'y Gen. 376). Then U.S. Attorney General Bonaparte stated:

In my opinion the sovereignty over the canal zone is not an open or doubtful question.

Article 3 of the treaty transfers to the United States, not the sovereignty by that term, but "all the rights, power and authority" within the zone that it would have if sovereign, "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign (sic) rights, power or authority."

The omission to use words expressly passing sovereignty was dictated by reasons of public policy, I assume; but whatever the reason the treaty gives the substance of sovereignty, and instead of containing a mere declaration transferring the sovereignty, descends to the particulars "all the rights, power, and authority" that belong to sovereignty, and negatives any such "sovereign rights, power, or authority" in the former sovereign.

The "rights" so transferred are to be enjoyed (Article 2) "in perpetuity," and no exception is made of any persons or things in the zone.

I am unable to perceive that this language is obscure or ambiguous or that we are warranted in resorting to any construction of it except by the first rule of construction—that plain and sensible words should be taken to mean what they say.

In 1971, the Fifth Circuit Court of Appeals in *United States v. Husband R. (Roach)* 453 F.2d 1054, stated:

The Canal Zone is an unincorporated territory of the United States. Laws applicable to the Canal Zone are enacted by the Congress—there is no local legislation
* * *

And later in the decision states:

Congress has complete and plenary authority to legislate for an unincorporated territory such as the Canal Zone, pursuant to article iv, paragraph 3, clause 2 of the Constitution, empowering it "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Certiorary was denied by the Supreme Court in 406 U.S. 935 (1972). 406 U.S. 935 (1972).

It should be noted, Mr. President, that under the 1903 treaty, the United States guaranteed the independence of the Republic of Panama, paid Panama the sum of \$10 million and agreed to the payment of an annuity of \$250,000. We also paid the Republic of Colombia the sum of \$25 million in consideration for which Colombia agreed that title to the Canal Zone was vested entirely and absolutely in the United States without any incumbrances or indemnities whatever. France was paid \$40 million for its interest in the canal and the Panama Railroad and our Government also paid private landowners and squatters for their interests in the land. We paid Panama, Colombia, France, private owners, and squatters for the property. We built the canal, conquered disease in the area, established water and sewage facilities, a system of highways, and constructed numerous improvements within the Canal Zone. Therefore, in my opinion the Canal Zone and all of the improvements within the zone are the property of the United States.

In order to resolve a question, however, of the proper manner of disposing of property in the event such disposition should be made, I requested the Congressional Research Service of the Library of Congress to study this matter and furnish an opinion regarding it.

After extensive research, the Library concluded that an exclusive grant of authority is given to Congress to dispose of property of the United States by article IV of the Constitution. The research paper does suggest, however, that the cooperation of all three branches of Government is necessary for the effective implementation of American foreign policy.

It is a well-reasoned and well-documented legal memorandum.

Mr. President, I ask unanimous consent that the entire research memorandum be printed in the Record at the conclusion of my remarks for the information of other Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

Mr. SCOTT. Mr. President, I realize this statement is somewhat legalistic and yet in a controversy that is so emotional it does appear reasonable to establish a solid foundation for further examination into the action that the Senate should take.

In connection with the proposed treaties, some have said we should be fair and I am in complete agreement that we should. But, fairness means doing what is right and proper not only for the

Republic of Panama, but to do what is in the best interest of the American people. There should be mutuality in any agreement.

I shall take some time within the near future to discuss the value of the canal to the United States from an economic, political, and military point of view, including some of the views expressed by leaders of South American countries.

From the manner in which the signing of the proposed treaty was glamorized, one might be led to believe that all of Latin America is wholeheartedly in favor of this proposal, but my discussions with Latin American leaders indicate that they have reservations. Therefore, each week during the remainder of the session I hope to share my thinking on some phase of the canal question with the other Members of the Senate.

EXHIBIT 1

REPLY OF SECRETARY OF STATE TO SENOR DE OBALDIA

DEPARTMENT OF STATE,
Washington, October 24, 1904.

MR. MINISTER: I have the honor to acknowledge the receipt of your communication dated August 11, 1904, advising this Department that you have received instructions from the Republic of Panama "to take steps looking toward the obtaining of a satisfactory settlement of the difficulties which have unexpectedly arisen between the authorities of the Republic and the governor of the Canal Zone, owing to the interpretation given by the latter to some of the clauses of the agreement concerning the isthmian canal concluded between the two countries on November 18 last."

The action of the Zone authorities, of which complaint is made, was taken pursuant to orders, copies of which are herewith transmitted, issued by direction of the President of the United States, and therefore it is inaccurate to attribute said orders to the governor of the Canal Zone.

I have read with the care and consideration its importance required the argument set forth in your communication in support of the contention that the United States is acting in excess of its authority (1) in opening the territory of the Canal Zone to the commerce of friendly nations; (2) in establishing rates of customs duties for importations of merchandise into the Zone; (3) in establishing post-offices and a postal service in said Zone for the handling of foreign and domestic mailable matter.

The right of the United States to adopt and enforce the provisions of said orders is dependent upon its rights to exercise the powers of sovereignty as to the territory and waters of the Canal Zone, and whether or not the United States is authorized to exercise sovereign powers in that territory is to be determined by the terms of the convention of November 18, 1903, between the Republic of Panama and the United States, referred to in your communication as the Hay-Varilla convention.

The United States can not accede to the proposition advanced by you as follows: "As an indispensable antecedent of the Hay-Varilla convention must be regarded the Hay-Herran treaty, concluded January 22, 1903."

Whatever could or would have been the effect of the stipulations of the proposed treaty with Colombia, known as the "Hay-Herran treaty," is rendered unimportant by the fact said treaty was not concluded, but was rejected by Colombia.

I note your reference to the provisions of said proposed treaty with Colombia (Art. IV):

"The Government of the United States * * * disclaims any intention * * * to increase its own territory at the expense of Colombia or of any of the sister republics of Central and South America; it desires, on the contrary, to strengthen the power of the republics on this continent, and to promote, develop, and preserve their prosperity and independence."

The policy thus announced did not originate with the proposed treaty with Colombia. It is the long-established policy of the United States, constantly adhered to; but said policy does not include the denial of the right of transfer of territory and sovereignty from one republic to another of the Western Hemisphere upon terms amicably arranged and mutually satisfactory, when such transfer promotes the peace of nations and the welfare of the world. That the United States may acquire territory and sovereignty in this way and for this purpose from its sister republics in this hemisphere is so manifest as to preclude discussion.

The Government of the Republic of Panama having seen fit to object to the exercise by the United States within and over the Canal Zone of the ordinary powers of sovereignty, this Government, while it can not concede the question to be open for discussion or the Republic of Panama to possess the right to challenge such exercise of authority, considers it fitting that the Republic of Panama should be advised as to the views on the subject entertained by the United States and the reasons therefor.

The United States acquired the right to exercise sovereign powers and jurisdiction over the Canal Zone by the convention of November 18, 1903, between the Republic of Panama and the United States.

The character and extent of the grant of governmental powers to the United States and the resulting right and authority in the territory of the Zone are set forth in a separate article as follows:

"ARTICLE III. The Republic of Panama grants to the United States all the rights, powers, and authority within the Zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II, which the United States would possess and exercise if it were the sovereign to the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such foreign rights, power, or authority."

Let us test the existing controversy by the provisions of this article. "If the United States * * * were the sovereign of the territory," would it possess the right and authority to regulate commerce therewith, establish customs-houses therein, and provide postal facilities therefor? This question must be answered in the affirmative.

If it were conceived that the abstract, nominal "rights, power, and authority of sovereignty in and over the Zone" are vested in the Republic of Panama, there would still remain the fact that by said Article III the United States is authorized to exercise the rights, power, and authority of sovereignty "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority."

If it could or should be admitted that the titular sovereign of the Canal Zone is the Republic of Panama, such sovereign is mediatized by its own act, solemnly declared and publicly proclaimed by treaty stipulations, induced by a desire to make possible the completion of a great work which will confer inestimable benefit upon the people of the Isthmus and the nations of the world. It is difficult to believe that a member of the family of nations seriously contemplates abandoning so high and honorable a position in order to engage in an endeavor to secure what at best is a "barren scepter."

Under the stipulations of Article III, if sovereign powers are to be exercised in and over the Canal Zone, they must be exercised by the United States. Such exercises of power must be, therefore, in accordance with the judgment and discretion of the constituted authorities of the United States, the governmental entity charged with responsibility for such exercise, and not in accordance with the judgment and discretion of a governmental entity that is not charged with such responsibility and by treaty stipulations acquiesces in "the entire exclusion of the exercise by it of any sovereign rights, power, or authority" in and over the territory involved.

Article II of the convention provides that "the Republic of Panama grants to the United States in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of said canal."

The Panamanian authorities now contend that the words "for the construction, maintenance, operation, sanitation, and protection of said canal," constitute a limitation on the grant; that is to say, that the grant is confined to the purposes so stated. The position of the United States is that the words "for the construction, maintenance, operation, sanitation, and protection of the said canal" were not intended as a limitation on the grant, but are a declaration, and appropriate words of conveyance. The compensation for the grant * * *.

A document evidencing a grant or transfer usually sets forth a description of the property granted, the inducement leading up to the grant, the compensation, and appropriate words of conveyance. The compensation for the grant under consideration is set forth in Article XIV of the treaty, as follows:

"As the price or compensation for the rights, powers, and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars (\$10,000,000) in gold coin of the United States * * *."

Article I of the treaty provides that "the United States guarantees and will maintain the independence of the Republic of Panama."

It would undoubtedly be offensive to the Republic of Panama to be placed before the world as having been induced to consent "to the entire exclusion . . . of any sovereign rights" in the territory of the Canal Zone by the payment of money or because of a want of ability to maintain its independence. It would, however, be highly honorable and entirely justifiable to consent to such exclusion of sovereign right when the moving cause or inducement is "the construction, sanitation, maintenance, operation, and protection" of a work of such stupendous magnitude and world-wide importance as the isthmian canal.

The grant to the United States provided for in said treaty included also property other than the territory of the Zone. Article VIII stipulates that—

"The Republic of Panama grants to the United States all rights which it now has or hereafter may acquire to the property of the New Panama Canal Company and the Panama Railroad Company, as a result of the transfer of sovereignty from the Republic of Colombia to the Republic of Panama over the Isthmus of Panama . . ."

If the grant is subject to the condition and limitation contended for by the Panama authorities, and the United States is not entitled to the revenues or benefits of the territory of the Zone, or to regulate its commerce with foreign nations, or to control its international relations, it also follows that the United States, while it may use the Panama Railroad "for the construction, maintenance, operation, sanitation, and protection of said canal," is not at liberty to regulate the use of said railroad by foreign commerce, and such revenue as is received by virtue of the rights conferred by the treaty, excepting for local traffic, belongs to the Republic of Panama. The proposition refutes itself.

The great object sought to be accomplished by the treaty is to enable the United States to construct the canal by the expenditure of public funds of the United States—funds created by the collection of taxes and moneys derived from the revenue measures of the United States. For many years after the adoption of our Constitution the belief prevailed that the funds of the National Government could not be expended in the construction of public improvements, excepting those required for the use of the National Government, such as the Capitol, Executive Department buildings, arsenals, forts, custom-houses, post-offices, etc. The construction of highways, railroads, etc., the improvement of rivers and harbors, etc., the protection and improvement of water powers, construction of canals, and similar undertakings for the use and convenience of the general public and private enterprises was considered to be outside the competency of the National Government, although said works were to be constructed in territory subject to the national sovereignty.

Finally it was established that the National Government had the authority to enter upon the construction of public works of the character referred to, and to devote the public funds of the nation thereto; and the reasons inducing such determination are all predicated on the fact that such public works are to be situated in territory subject to the national sovereignty. It is quite probable that this phase of the situation is not considered by the Panamanian authorities, and that they do not distinguish the difference between the Government of the United States and the French canal company. The French company was a private enterprise and derived its funds from individuals who voluntarily devoted their private means to promoting the endeavor. Such funds could be expended anywhere and for any purpose sanctioned by the contributors.

But the Government of the United States in building the canal does not expend private funds, but public moneys derived by public taxation for public purposes. Moneys so realized may be used for national purposes outside the territory subject to the national sovereignty, such, for instance, as the promotion of a war in foreign territory, for in time of war the war powers of the nations are called into activity, and those powers are coextensive with the nation's necessities, and the conduct of war is especially enjoined upon the National Government by our Constitution; so also these funds may be expended for the purchase of ground for the erection of embassies, coaling stations, etc., for those are instrumentalities of the National Government; but the isthmian canal is an instrumentality of commerce, a measure for the promotion of the purposes of peace. Commerce is the life of a nation, but it is conducted by individual citizens in a private capacity and not as a governmental institution.

That the plain and obvious meaning of Article II was the one originally intended by the parties to the treaty is further shown by the provisions of Articles IX, X, XII, XIII.

For the proper understanding of the provisions of said articles it is necessary to bear in mind that the city of Colon, on the Atlantic, and the city of Panama on the Pacific, each has a harbor in which are constructed wharves and piers suitable for landing cargoes and passengers. Both of these cities are in territory of the Republic of Panama. On the Pacific side the canal pierces the Isthmus at a point nearly 5 miles distant, following the short line, from the ships landing in the harbor at Panama, and about $2\frac{1}{2}$ miles distant straight across the peninsula. On the Atlantic side the canal pierces the Isthmus at a point half a mile across the bay from the piers in the harbor of Colon.

At the Pacific entrance to the canal the French company erected a large pier and dredged out a channel, so that vessels of deep draft might come up to the pier. This point is called La Boca. A branch of the Panama Railroad connects said pier with the main line. Vessels, however, continue to enter the harbor at the city of Panama and discharge their cargoes. The waters of this harbor are shallow, and deep-draft vessels anchor offshore and lighten their cargoes, as they did for more than a century before the pier was built and the city channel dredged at La Boca.

On the Atlantic side of the Isthmus the harbor and piers of the city of Colon are the ones of more convenient access to vessels. The entrance to the canal on the Atlantic side is called Cristobal, at which point there is a small temporary wharf, recently constructed, but a channel has not been dredged out. Consequently, practically all vessels sailing the Atlantic from the United States and elsewhere land at the Colon piers. The Panama Railroad Company has a line of steamers between Colon and New York, and there is also a steamship line between Colon and New Orleans. By far the greater portion of the commerce of Colon is with the United States, and it was obvious at the time the treaty was negotiated that a large quantity of materials and supplies and a large number of employees for the canal construction and the government of the Zone would arrive at Colon from the United States. Two piers in the Colon harbor belonged to the Panama Railroad Company and are now owned by the Government of the United States, but between said piers and the line of the Canal Zone there is a strip of land subject to the sovereignty of the Republic of Panama.

The provisions of Articles, IX, X, XII, and XIII are intended to provide for the proper exercise of governmental authority under these conditions of fact. Article IX relates to the exercise of authority by both Governments. When separated the provisions read as follows:

"The United States agrees that the ports at either entrance of the canal and the waters thereof shall be free for all time, so that there shall not be imposed or collected custom-house tolls, tonnage, anchorage, lighthouse, wharf, pilot, or quarantine dues, or any other charges or taxes of any kind upon any vessel using or passing through the canal, or upon the cargo, officers, crew, or passengers of any such vessels, except such charges as may be imposed by the United States for the use of the canal or other works."

If it were intended that the United States should not secure the right to regulate foreign commerce entering the Zone, why was it required to stipulate that it would not impose or collect custom-house tolls, tonnage, anchorage, light-house, wharf, pilot, or quarantine dues, or any other charges or taxes of any kind upon the cargo, officers, crew, or passengers of ships entering the canal? If the Republic of Panama is the sovereignty exercising jurisdiction over foreign commerce within the Zone, why was the exception respecting tolls and charges for the use of the canal and other works made in favor of the United States?

The stipulations of said Article IX respecting the exercise of authority by the Republic of Panama are as follows:

"The Republic of Panama agrees that the towns of Panama and Colon shall be free for all time, so that there shall not be imposed or collected custom-house tolls, tonnage, anchorage, light-house, wharf, pilot, or quarantine dues, or any other charges or taxes of any kind upon any vessel issuing or passing through the canal or belonging to or employed by the United States, directly or indirectly, in connection with the construction, maintenance, operation, sanitation, and protection of the main canal or auxiliary works, or upon the cargo, officers, crew, or passengers of any such vessels, except tolls and charges imposed by the Republic of Panama upon merchandise destined to be introduced for the consumption of the rest of the Republic of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the canal."

The expression "the rest of the Republic of Panama" must be held to refer to that portion of the territory of the Republic as existing at the time the treaty was negotiated, lying outside the boundaries of the proposed Canal Zone, unless it is insisted that it refers to that portion of the Republic which is not included in the

towns of Colon and Panama—a contention that would hardly find favor with the authorities of the Republic. Why this exception in favor of the Republic of Panama if that Government possesses the right to regulate foreign commerce with the territory of the Zone?

Article IX contains the further provision:

"The Government of the Republic of Panama shall have the right to establish in such ports [the ports at either entrance of the canal] and in the towns of Panama and Colon such houses and guards as it may deem necessary to collect duties on importations destined to other portions of Panama, and to prevent contraband trade."

Why this provision if the right existed?

For the proper understanding of Article X it is necessary to bear in mind that the French Canal Company owned and the United States purchased from it a large amount of real estate situated in the towns of Colon and Panama, which towns are subject to the sovereignty of the Republic of Panama. Among other pieces of property, the canal office building, a large structure in the center of the town of Panama, the railroad station and terminals at Colon and Panama, the large piers in the harbor at Colon, the steamships, tugs, and other water craft belonging to the Panama Railroad, and the canal company's warehouses filled with machinery, materials, and supplies.

Practically all the employees working in and around these structures, and many other employees of the government of the Zone, the Panama Railroad and the canal construction department, reside in Colon and Panama. To meet this situation the treaty provides as follows:

"ARTICLE X. The Republic of Panama agrees that there shall not be imposed any taxes, national, municipal, departmental, or of any other class upon the canal, the railways, and auxiliary works, tugs, and other vessels employed in the service of the canal, storehouses, workshops, offices, quarters for laborers, factories of all kinds, warehouses, wharves, machinery and other works, property and effects appertaining to the canal or railroad or auxiliary works, or their offices or employees situated within the cities of Panama and Colon, and that there shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, laborers, and other individuals in the service of the canal and railroad and auxiliary works."

Attention is directed to the fact that by the foregoing article the Republic of Panama foregoes the right to impose "any taxes, national, municipal, or departmental," on the property of the United States and its employees situated in the cities of Panama and Colon. If it had been contemplated that the Republic of Panama retained sovereign rights in the Zone or was at liberty to exercise those rights in that territory the United States would certainly have required the same exceptions for the large amount of its property in the Zone as it required for its property in the cities of Panama and Colon.

Perhaps no more complete refutation of the claims advanced by the Republic of Panama is necessary than to propound the inquiry, Is the Republic of Panama authorized to impose national, municipal, and departmental taxes on the property of the United States situated in the Canal Zone?

So well understood was it that the exercise of sovereign powers by the Republic of Panama was to be confined to the territory remaining to the Republic that in at least three articles referring to such exercise of power the territory of the Republic is not mentioned, although manifestly no other territory was under consideration.

The articles referred to are X, XII, and XIII.

Article X provides "that there shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, laborers, and other individuals in the service of the canal and railroad and auxiliary works."

Article XII provides: "The Government of the Republic of Panama shall permit the immigration and free access to the lands and workshops of the canal and its auxiliary works of all employees and workmen of whatever nationality, under contract to work upon or seeking employment upon or in any wise connected with the said canal, and its auxiliary works, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Panama."

It is perfectly plain that these stipulations relate to the exercise of governmental authority in the territory outside of the Canal Zone.

Let it be supposed that this treaty did not contain the provision "all such persons shall be free and exempt from the military service of the Republic of Panama." Would anyone contend, after reading Article III of the treaty, that a citizen of the United States employed on the canal and residing in the Zone owed such temporary

allegiance to the Republic of Panama as to be liable to military service for that Government?

Article XIII must also be considered as relating to the territory of the Republic of Panama. That article provides that "the United States may import" (pass through the territory of the Republic) "into the Zone and auxiliary lands, free of customs duties, imports, taxes, or other charges and without any restrictions," certain designated articles respecting which further provision is made, as follows:

"If any such articles are disposed of for use outside of the Zone and auxiliary lands granted to the United States and within the territory of the Republic, they shall be subject to the same import or other duties as like articles imported under the laws of the Republic of Panama."

Manifestly it is not until the goods are "outside the Zone" and "within the territory of the Republic" that they are subject to "import or other duties under the laws of the Republic of Panama."

The Panamanian authorities insist that it is by virtue of Article XIII that the property of the United States acquires the right of free entry into the Zone. Such contention is not warranted. Said article is intended to give the right of free transit across the territory of the Republic of Panama for goods belonging to the United States. The right of the United States to take its property into the Zone results from the provisions of Article XIII. The construction contended for by Panama makes Article XIII contradict, if not nullify, Article III, for by title terms of Article III the Republic of Panama grants to the United States "all the rights, power, and authority of a sovereign to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority" in the Canal Zone.

When due consideration is given to Article III it is apparent that Article XIII relates to the exercise of sovereign powers by the Republic of Panama in territory wherein such exercise is contemplated by the treaty, to wit, the territory of the Republic.

Under the construction of Article XIII contended for by Panama the right of that Republic to tax the goods in question depends upon the ownership of the property without regard to the place of final destination; if the goods are the property of the United States they enter free and remain exempt from tariff imposts so long as they continue to be the property of the United States; if, however, the United States parts with the ownership the sovereignty of Panama may impose on said goods the customs duties prescribed by the laws of that Republic.

If the Republic of Panama is authorized to exercise sovereign powers in the Canal Zone, and the sovereign right to impose customs duties is restrained only by the fact of ownership by the United States, it would follow that if the United States transferred the ownership of property deposited in the Canal Zone such property would be subject to said right, whether it remained in the Zone or not. But said Article XIII expressly declares that the right to impose customs duties on such property is to be exercised in the event only that "such articles are disposed of for use outside the Zone and auxiliary lands granted the United States and within the territory of the Republic."

Clearly the exercise by the Republic of Panama of the sovereign right to impose customs duties on goods of its character under consideration is dependent upon two facts: First, that the goods are owned by some one other than the Government of the United States; second, that the goods are to be used outside the Zone and within the territory of the Republic of Panama by some one other than the United States.

A careful examination of the provisions of Article XIII discloses that they combine definite description of specific articles and indefinite classification of property in general.

The article under consideration (XIII) reads as follows:

"The United States may import, at any time, into the Zone and auxiliary lands, free of customs duties, imports, taxes, or other charges, and without any restrictions, any and all vessels, dredges, engines, cars, machinery, tools, explosives, materials, supplies, and other articles necessary and convenient in the construction, maintenance, operation, sanitation, and protection of the canal and auxiliary works, and all provisions, medicines, clothing, supplies, and other things necessary and convenient for the officers, employees, workmen, and laborers in the service and employ of the United States and for their families."

Read by the light of contemporaneous history, it is difficult to see how this article can be considered as relating to the exercise of authority anywhere except in the territory of the Republic of Panama.

That the grant accomplished by the treaty was a grant of land and sovereign right thereover, and not a mere concession or privilege, is shown by the granting clauses and also by the references to the grant in subsequent clauses of the treaty;

for instance, Article XIII employs the expression "outside the Zone and auxiliary lands granted to the United States and within the territory of the Republic."

In support of the contention advanced by the Government of the Republic of Panama, you quote Article IV of the proposed treaty with Colombia. The first stipulation of that article is as follows:

"The rights and privileges granted by the terms of this convention shall not affect the sovereignty of the Republic of Colombia over the territory within whose boundaries such rights and privileges are to be exercised."

No such provision as the foregoing appears in the convention between the United States and the Republic of Panama; on the contrary, Article III of the convention with Panama provides that—

"The Republic of Panama grants to the United States all the rights, powers, and authority within the Zone . . . which the United States would possess and exercise if it were the sovereign, . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority."

This stipulation is plain and its purpose manifest. If the powers of sovereignty are to be exercised in that territory the right to exercise them belongs to the United States.

Permit me to call your attention to certain official acts of the Government of the Republic of Panama which evidence that the legislative, executive, and judicial branches of that Government have heretofore accepted and acted upon the theory that the convention of November 18, 1903, conveyed the territory of the Canal Zone and sovereign jurisdiction thereover to the United States.

The constitution of the Republic of Panama was formulated during the time the treaty between the United States and Panama was pending before the Senate of the United States. The constitution was adopted on February 13 and proclaimed February 15, 1904. The Senate recommended the ratification of the treaty on February 23, and the President carried out the recommendation on February 25, 1904.

The constitution of Panama described the boundaries of that Republic as follows:

"ART. 3. The territory of the Republic is composed of all the territory from which the State of Panama was formed by the amendment to the Granada constitution of 1853 . . . together with its islands and of the continental and insular territory. . . . The territory of the Republic remains subject to the jurisdictional limitations stipulated or which may be stipulated in public treaties concluded with the United States of North America for the construction, maintenance, or sanitation of any means of interoceanic transit."

What is meant by "jurisdictional limitations" if it were intended that the pending treaty should convey nothing but rights of property? Why was this limitation placed upon the extent of the national domain, if the United States was to be a mere concessionaire subject to the jurisdiction of the Republic of Panama?

The legislative branch of the Government of the Republic of Panama has recognized the right of the United States to exercise the sovereign authority to regulate foreign commerce with the territory of the Zone and has enacted two statutes with reference to such exercise of authority by the United States.

Law No. 65, enacted by the National Assembly of Panama on June 6, 1904, "conferring certain authority upon the Executive," is as follows:

"ARTICLE 1. Authority is given to the Executive to reduce, as may be convenient, those duties, the collection of which, at the rates established by the present law, ordinances, or decrees, would be prejudicial to commerce and to the public because of great differences there might be between them and those established by the United States Government for the Canal Zone.

"ART. 2. Authority is also given to the Executive to enter into an agreement with the Government of the United States respecting the rates of duties to be collected in the Canal Zone and the cities of Panama and Colon: *Provided, however,* That the said duties shall be uniform throughout the territory named, which agreement shall remain in force until annulled by the National Assembly."

Your attention is directed to the fact that the foregoing act of the National Assembly of Panama was enacted eighteen days prior to the date of the order of the President of the United States opening the territory of the Canal Zone to commerce and establishing customs-houses therein.

Law No. 88, enacted by the National Assembly of Panama on July 16, 1904, provides as follows:

"ART. 23. The Executive is authorized to reduce the slaughterhouse duty on cattle killed in the districts of Panama, Colon, and Bocas del Toro when the fiscal system to be introduced into the Zone ceded to the United States, in his opinion, requires it."

It can not escape observation that the legislative branch of the Government of the Republic of Panama by legislative enactment declared the Zone to be "ceded to the United States," and dealt with accordingly.

The executive branch of the Government of the Republic of Panama, also, has recognized the right of the United States to exercise the powers of sovereignty in the Canal Zone. By July 17, 1904, His Excellency the President of that Republic officially advised the governor of the Canal Zone as follows:

REPUBLIC OF PANAMA PRESIDENCIA,
Panama, July 17, 1904.

Maj. Gen. GEO. W. DAVIS,
Governor of the Canal Zone, Present.

DEAR SIR: I have the pleasure to inform you that I am fully authorized by law recently enacted by the National Assembly, to reduce or increase our duties and taxes accordingly with the rates which your Government shall establish at the Canal Zone.

Yours, truly,

M. AMADOR GUERRERO.

To carry out the suggestion contained in the foregoing letter and to enable the executive branch of the Government of the Republic of Panama to pursue the course obviously intended and provided for by the National Assembly of Panama, it was necessary for the United States to make known what duties and taxes would be levied and collected in the Canal Zone. Whereupon the President of the United States directed the issuance of the order of June 24, 1904, of which complaint is now made.

Conclusive, as to the right of the United States to exercise sovereign jurisdiction in the Zone, is the fact that upon the arrival of Maj. Gen. George W. Davis, whom the President had appointed governor of the Canal Zone and delegated to administer the government of said territory, all the officials of the Republic of Panama ceased to exercise any authority respecting the administration of government in that territory, the soldiers and police of that Republic stationed in the territory were withdrawn, the officers of all branches of government stationed in the territory surrendered their offices and were superseded by appointees of the United States.

The withdrawal from the Zone of the officials of the Republic of Panama was pursuant to an order issued by the secretary of state and foreign affairs of that Republic, upon the signing of the agreement respecting the boundary line between the Zone and the cities of Colon and Panama. The order was dated June 17, 1904, and reads as follows:

"Governor Colon: "Districts of railway line are comprised within Canal Zone and from to-day authorities and public employees in said Zone cease in their functions as members of the Government of the Panama Republic, according to convention signed yesterday. Advise you for your information.

"Attentive servant,

TOMAS ARIAS."

Upon the assumption of governmental authority over the Zone by the United States it became important that the line of separation between the Zone and the Republic of Panama, especially that separating the Zone from the towns of Panama and Colon, should be ascertained and declared. Major-General Davis, governor of the Zone, on behalf of the United States, and his excellency Tomas Arias, secretary of government and foreign affairs, and Ramon Valdez, attorney-general of the Republic of Panama, on behalf of that Government, entered into and signed a provisional agreement as to such demarkation of boundaries on June 15, 1904.

This agreement was duly published in the *Gaceta Oficial* of the Republic of Panama. The following extracts are quoted from that publication:

"Whereas * * * it is necessary that the extent and boundaries of the territory ceded to the Government of the United States by the Republic of Panama under the terms and provisions of said convention shall be provisionally agreed.

"SECTION 1. The limits of the Canal Zone, including lands under water and islands ceded * * * delivery of which lands, waters, and islands has been made by Panama and possession of which has been taken by the United States are indicated and shown on the attached map * * * and said indicated boundary, or line of division,

between the territory ceded by the Republic of Panama to the United States for canal purposes.

* * * "That the entrance channel of the Panama Canal through said harbor of Colon * * * is hereby declared to be a part of the Canal Zone, under the exclusive jurisdiction of the United States."

It is manifest that at the time this agreement was signed both the secretary of state and the attorney general of the Republic of Panama considered that the rights of the United States in the Canal Zone were something more than those of a private concessionaire or lessee.

The judicial branch of the Government of the Republic of Panama has determined the question as to which government possesses sovereignty over the Canal Zone in favor of the United States. The question was presented by numerous cases of criminal offenses committed in the territory of the Zone since the transfer. The courts of Panama held that they are without jurisdiction and transmitted the papers to the foreign office of their government for transmission of the case and the person of the accused to the Zone authorities. From the correspondence in a large number of instances the following are selected:

Etienne Lamour was arrested, charged with the offense of assault and battery, committed at Emperador on July 5, 1904. The papers were transmitted to the second circuit court, one of the courts of the Republic of Panama, and submitted to the fiscal for report. The fiscal recommended that, as Emperador is situated in the Canal Zone, the court lacked jurisdiction, and therefore the papers should be transmitted to the secretary of justice for submission to the proper American authorities. The papers were so transmitted to the secretary of justice, who returned them to the court with a statement that the question be decided by the court "as the transfer of sovereignty in the districts of the railroad line has been officially communicated."

The letter of the secretary of justice is as follows:

[Republic of Panama, national executive power, department of public instruction and justice]

DIVISION OF JUSTICE, No. 423,
Panama, June 30, 1904.

To the Second Circuit Judge in Criminal Matters, City:

I return to you the proceedings and papers you sent to this office with note No. 275 of the 26th instant, tending to show that Etienne Lomour is guilty of the offense of assault and battery.

This office abstains from deciding what should be done with the said proceedings, as it considers that you are the one that should do so, as the transfer of sovereignty in the districts of the railroad line has been officially communicated.

God preserve you.

JULIO I. FEBREGA.

THIRD CIRCUIT COURT,
Panama, July 21, 1904.

As by reason of the delivery of the Canal Zone the jurisdiction which the judges of this circuit exercised over the districts of Emperador and Gorgona has ceased, the undersigned can not continue to take cognizance of this matter. Therefore let these proceedings be sent to the secretary of government, through the secretary of public instruction and justice, in order that he may transmit them to the North American authority competent to take cognizance of the case in question.

Let it be notified and recorded.

ALFONSO FABREGA, *Judge.*
RAFAEL BENITEZ, *Secretary.*

INVESTIGATION OF PANAMA CANAL MATTERS

Another case proceeded as follows:

Victor Guillot, a French citizen, was accused by his employer of stealing at Culebra on May 5, \$65 gold, \$4 in American bank notes, and about P 10 in silver. Preliminary investigation was conducted by the police inspector of Culebra, and showed that the money was stolen from the pockets of the complainant by cutting through them while he was asleep. The papers were transmitted by the police inspector to the first circuit court for criminal matters of the Republic of Panama, and thence to the second circuit court for criminal matters; they were referred to

the fiscal of the latter court, who reported that the hamlet of Culebra was situated within the provisional demarcation of the Canal Zone, and that the circuit judge lacked jurisdiction, and that the papers should be transmitted to the secretary of public instruction and justice for submission to the proper American authorities.

The papers were transmitted by circuit judge to superior judge for decision. The fiscal of the superior court recommended the transmission of the papers to the department of foreign affairs and that the accused be held subject to said secretary's orders, which recommendation was approved by the superior judge.

The secretary of government and foreign affairs for the Republic of Panama transmitted the papers to the governor of the Canal Zone in a communication reading as follows:

DEPARTMENT OF GOVERNMENT
AND FOREIGN AFFAIRS,
Panama, July 9, 1904.

MR. GOVERNOR: I have the honor to transmit to you herewith the record of the preliminary proceedings instituted against Victor Guillot for robbery committed within the jurisdiction of the Canal Zone, with the request that you issue the proper orders to have these preliminary proceedings duly continued.

I have to inform you, for such action as you may deem proper, that the accused Guillot is confined in the jail of this city.

With expressions of the highest consideration, I have the honor to be,

Your obedient servant,

TOMAS ARIAS.

Gen. GEORGE W. DAVIS,
Governor of the Canal Zone, City.

Raimundo Lizano was brought before the superior court at Panama, charged with the crime of theft, perpetrated in the territory of the Canal Zone. The case was sent to the first circuit court for criminal matters. The decision of that court was as follows:

THIRD CIRCUIT COURT,
Panama, July 22, 1904.

Whereas the crime involved in these proceedings was committed on territory of the Canal Zone, where the undersigned has no jurisdiction, with the concurrence of the fiscal. It is decided that these proceedings be sent to the secretary of state for transmission to the proper person.

Let it be communicated and recorded.

ALFONSO FARRAGA, *Judge.*
RAFAEL BENITEZ, *Secretary.*

The United States at all times since the treaty was concluded has acted upon the theory that it had secured in and to the Canal Zone the exclusive jurisdiction to exercise sovereign rights, power, and authority.

On April 28, 1904, Congress enacted an act entitled "An act to provide for the temporary government of the Canal Zone at Panama, the protection of the canal works, and for other purposes."

Said act provided as follows:

"SEC. 2. * * * All the military, civil, and judicial powers, as well as the power to make all rules and regulations necessary for the government of the Canal Zone, and all the rights, powers, and authority granted by the terms of such treaty to the United States, shall be vested in such person or persons and shall be exercised in such manner as the President shall direct for the government of said Zone. * * *"

Pursuant to the provisions of said act, the President directed that all the government power in and over said Canal Zone should be vested in the Isthmian Canal Commission, to be exercised under the supervision and direction of the Secretary of War.

The power of legislation respecting the government of the Zone was conferred upon the Commission.

Maj. Gen. George W. Davis, U.S. Army, was appointed governor of the Canal Zone by the President and ordered to proceed at once to the Isthmus of Panama, and in the name of the President and for and on behalf of the United States, as the chief executive in the Canal Zone, to see that the laws are faithfully executed and maintain possession of said territory; he was also vested with pardoning power.

The President further designated what laws should be continued in force in the territory of the Zone, by what officials said laws should be administered, and provided for the temporary exercise of the judicial power.

The Isthmian Canal Commission, by the exercise of the legislative power vested in them, enacted laws for the organization and establishment of the executive and judicial branches of the government of the Canal Zone, the establishment and government of municipal subdivisions, and for the collection of revenues, a postal service, the sanitation of the Isthmus, quarantine of the ports, policing of the Zone, a penal code, and a code of criminal procedure, besides other enactments required for the proper administration of the government in the Zone.

In full confidence that it had secured the right to exercise all powers of sovereignty in the Zone, the United States paid to the Republic of Panama \$10,000,000 in gold and to the French Canal Company \$40,000,000. The Congress appropriated \$150,000,000 to complete the canal. The President appointed the Isthmian Canal Commission, and the work of construction was immediately entered upon. Agencies of government have been established in the Zone and the necessities of the social organism provided at the expense of the United States.

I note your reference to the exercise of the sovereign powers by the United States over the harbors constituting the Atlantic and Pacific entrances to the canal.

As understood by me, your contention is that whatever may be the authority of the United States in other parts of the Canal Zone, this Government is without authority at these two points (Cristobal and La Boca) for the reason that these points are within the harbors adjacent to the cities of Colon and Panama, and therefore excluded from the grant made by Article II of the convention.

For convenient reference, I quote a part of said article:

"The Republic of Panama grants to the United States in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of said canal of the width of ten miles, extending to the distance of five miles on each side of the centre line of the route of the canal to be constructed, the said zone beginning in the Caribbean Sea three marine miles from mean low-water mark and extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three miles from mean low-water mark, with the proviso that the cities of Panama and Colon and harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant."

A strip of land 5 miles wide on either side of the entrances to the canal would include all of the city of Colon and substantially all of the city of Panama. The Republic of Panama desires to retain sovereign jurisdiction over the inhabited portions of the territory of these municipalities, hence the exemption in the grant. In this connection attention is called to the fact that if the Republic of Panama intended to retain the right to exercise sovereign jurisdiction over the entire Zone, this exemption would have been unnecessary.

You will recall that when this convention was being considered by the United States Senate the opposition to its confirmation suggested the possibility that the Republic of Panama might advance, thereafter, the contention now presented. Thereupon the matter was brought to the attention of Mr. Banau-Varilla, the duly accredited representative of the Republic of Panama, by whom said convention was negotiated.

In response the representative of the Republic of Panama, by a letter dated January 19, 1904, advised the United States as follows:

"I do not hesitate, sir, to give you in my name and in the name of my Government the following explanation on the meaning of the clauses which have been deemed not sufficiently outlined by the committee of the Senate:

"First, Harbors adjacent to the cities of Panama and Colon. The harbors adjacent to the cities of Panama and Colon (adjacent comes from adjacens—lying at the side of) are, in my understanding, the harbors in contact of said cities, and putting them in communication with the sea. These harbors are completely separated from and independent of the harbors of the canal or the harbors situated at its two entrances, and which ships going through the canal will have to use.

"The harbor at the Colon end of the canal is an interior harbor, made by dredging in the bay of Fox River, adjacent to the city of Christopher Columbus, and protected by a breakwater.

"The harbor adjacent to the city of Colon is constituted by a series of wharves built in the open sea without any artificial shelter. A ship lying in the Colon Harbor and leaving it to go into the canal harbor will have first to go into the open sea, and then pass the breakwater which protects the entrance of the canal harbor.

"At Panama the canal harbor is also an interior harbor, situated at La Boca, several miles from the wharf which forms the Panama Harbor, a wharf built in open sea like those of Colon. The very same thing may be said of the Panama as of the Colon harbors. Both are local harbors, strictly limited to the service of the

respective townships and out of the way of the canal and its approaches to its entrance.

"There is not a shadow of probability that the harbor adjacent either to Panama or Colon will ever be used for anything but the local trade of the town, and therefore the United States will never necessitate to do anything in relation to the canal with any part of them."

The administration of the Government of Panama, being advised by Bunau-Varilla of this letter, wrote him as follows:

"YOUR EXCELLENCY: Most opportune indeed was your excellency's communication of January 19 to the secretary of state, dissipating, as it did, the new obstacles raised to prevent the prompt approval of the treaty by the American Senate.

"All the matters which your excellency mentioned were at the same time discussed with the Hon. Mr. Buchanan.

"F. V. DE LA ESPRIELLA."

The foregoing correspondence being brought to the attention of the secretary of government and foreign affairs for the Government of Panama, he replied as follows:

OFFICE OF THE SECRETARY OF GOVERNMENT AND FOREIGN RELATIONS, DEPARTMENT OF FOREIGN RELATIONS,

PANAMA, August 23, 1904.

"SEÑOR MINISTER: I have before me your excellency's attentive communication, No. 23, of the 16th instant, wherein you refer to the letter which Mr. Bunau-Varilla addressed to Mr. Hay, Secretary of State, of the United States, on the 19th of January of the present year, with regard to the interpretation of certain clauses in the treaty of November 18, 1903, a copy of which your excellency was good enough to send me, and the existence of which I had forgotten. As was natural, I ordered that a search be made of the archives in this office for the missing document, and it was found, the original of which your excellency informs me will be presented to the minister plenipotentiary and envoy extraordinary of Panama in Washington."

The authorities of the Canal Zone report that for a limited period following the promulgation of the President's order establishing ports of entry at the harbors at the entrance of the canal said orders were acquiesced in by the Republic of Panama without protest. Several vessels were cleared from the port of Panama, in the Republic of Panama, for the port of Ancon (La Boca), in the Canal Zone, in which port the vessels were received by the American authorities. In this connection attention is called to the following correspondence between the owners of the steamship *Loa* and the chief of the national customs service of Panama:

PANAMA, July 2, 1904.

The CAPTAIN OF THE PORT,
Chief of the National Customs Service, Panama:

Please certify below whether the steamship *Loa*, which entered this port on the 26th of June last, was authorized to proceed to the La Boca wharf.

Yours, etc.

H. EHRMAN CO.

HEADQUARTERS OF THE NATIONAL CUSTOMS SERVICE,
Panama, July 2, 1904.

The writer, chief of the national customs service of Panama, certifies:

That the Chilean steamship *Loa* was duly received at 9 a.m. on the 26th ultimo, and was authorized to discharge and receive cargo where most convenient to do so. With regard to the observance of formalities in order to proceed to La Boca, this is a matter which pertains exclusively to the governor of the Zone, because that is American property.

As the boat was received by the Panamanian authorities, it was natural that in order to enter and tie alongside of the wharves of the said port of La Boca, it was subject to comply with the formalities required by the authorities of that place (La Boca).

[SEAL]

LEONIDES PRETEL.

The United States learns with regret that the officials of the Republic of Panama are apprehensive that the course adopted by the United States will substantially

reduce the revenues of that Republic. Permit me to express the belief that future developments will show such fear to be without foundation. The construction of the canal will cause a large increase in the population of the Zone and of the Republic. Vast expenditures of money will be made by the Commission in canal construction, which will be expended largely in the commercial centers of the country, to wit, Panama and Colon. This will occasion increased importations, with resulting increase of revenue to the Government exercising sovereign jurisdiction over those cities.

The United States has sought at all times to secure and preserve for the Republic of Panama sufficient means for adequate revenues. In this connection, permit me to call your attention to the fact that the proposed treaty with Colombia contained the following provision (Art. VIII):

"The ports leading to the canal, including Panama and Colon, also shall be free to the commerce of the world, and no duties or taxes shall be imposed, except upon merchandise destined to be introduced for the consumption of the rest of the Republic of Colombia, or the Department of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the canal."

Under such a provision merchandise imported into the ports of Colon and Panama for consumption within those municipalities would have entered free of duty.

The convention between the Republic of Panama and the United States permits the Republic of Panama to impose customs duties on merchandise imported into those cities for consumption therein, as well as elsewhere in the Republic.

Your attention is directed to the fact that under the rule of law established by the United States Supreme Court, goods from the United States were entitled to free entry into the Zone as soon as the sovereignty of the United States permanently attached to the territory. (*Vide Dooley v. United States*, 183 U. S. 151; *Cross v. Harrison*, 16 Howard, 164.)

It was recognized that free entry into the Zone of goods from the United States might work a hardship on the trades people of the near-by cities of Panama and Colon, as the latter were obliged to pay customs duties to the Republic of Panama. To meet this contingency, the order of June 24, 1904, regulating commerce with the Zone, provides as follows:

"The governor of the Canal Zone is authorized to enter into and carry out an agreement with the President of the Republic of Panama for cooperation between the customs service of the Canal Zone and that of the Republic of Panama to protect the customs revenues of both Governments and to prevent frauds and smuggling.

"The governor of the Canal Zone is hereby authorized to enter upon negotiations and make a tentative agreement with the President of the Republic of Panama respecting reciprocal trade relations between the territory and inhabitants of the Canal Zone and appurtenant territory and the Republic of Panama; also a readjustment of the customs duties and tariff regulations, so as to secure uniformity of rates and privileges and avoid the disadvantages resulting from different schedules, duties, and administrative measures in limited territory subject to the same conditions and not separated by natural obstacles. The governor shall report as to such negotiations and proposed agreement to the chairman of the Isthmian Canal Commission for submission and consideration by the Commission and such action by competent authority as may be necessary to render said agreement effective in the Canal Zone."

Admiral J. G. Walker, chairman Isthmian Canal Commission, advises this Department that although several attempts have been made by the authorities of the Canal Zone to initiate negotiations contemplated by the foregoing provisions of said order and by the provisions of laws Nos. 65 and 88 of the National Assembly of Panama, the authorities of the Republic of Panama decline to enter upon such negotiations. Permit me to express the hope that the Government of Panama will recognize the desirability of taking up this matter with the governor of the Canal Zone and ascertaining if a satisfactory solution of the existing discrepancies in customs duties and administration is attainable. The Government of the United States sincerely desires to effect such an arrangement on terms both just and generous to the Republic of Panama.

Accept, sir, the renewed assurances of my highest consideration.

EXHIBIT 2

THE TREATY POWER AND CONGRESSIONAL POWER IN CONFLICT: CESSION OF U.S. PROPERTY IN THE CANAL ZONE TO PANAMA

INTRODUCTION

This report addresses the Constitutional issue of whether United States territory and property in the Canal Zone may be ceded to Panama by a treaty alone, or treaty accompanied by implementing legislation.

Article II, section 2, clause 2 of the Constitution authorizes the President to negotiate and enter into treaties:

He shall have the Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; * * *

Article VI, Section 2 of the Constitution declares treaties to be the supreme law of the land:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under Authority of the United States, shall be the supreme Law of the Land; * * *

However, Article IV, section 3, clause 2 grants Congress the power to dispose of territory and other federal property:

The Congress shall have Power to dispose of and make all Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *

The constitutional issue at hand, then, is not, or should not be, involvement of the House of Representatives in treaty negotiation. "Into the field of negotiation, the Senate cannot intrude; and the Congress itself is powerless to invade it, * * *"¹ Nor is the issue an intrusion by the House of Representatives into the advice and consent powers of the Senate, since that function is explicitly assigned to the Senate by Article II of the Constitution.²

The proper issue for resolution is to determine whether, by virtue of Article IV, Congress exercises exclusive or concurrent power over the disposal of territory and property. If it can be clearly resolved that the grant is concurrent, then the Executive would be able to conclude a treaty disposing of the United States interest in the Canal Zone to Panama without the necessity for implementing legislation. The executive branch seems to believe that such a disposal may be effected by treaty alone, by joint resolution, or by a combination of treaty and implementing legislation.³

The House of Representatives appears to hold the opposite view. That is, that no treaty may convey U.S. property without the House consent. Attempts to leave the House out of this issue are seen as infringement on the basic duties of that body.⁴

I. General considerations regarding the scope of the treaty power

Treaties and statutes are of equal import. Both are the supreme law of the land.⁵ In the event of a conflict between a treaty and a statute, the most recent is controlling.⁶

The scope of the treaty power is very broad. It extends to all matters usually considered as the proper subject of negotiation and relations between nations.⁷ Treaties may and have addressed matters of a political, military, economic, cultural, scientific, or diplomatic nature.

The Constitution does impose limitations on the treaty making power. The major limitation, simply stated, is that a treaty may not violate the Constitution. "It need

¹ *United States v. Curtiss Wright Corp.*, 299 U.S. 304, 319 (1936).

² S. Crandall, *Treaties, Their Making and Enforcement*, Washington: 2nd ed., 1916, section 25 at page 48.

³ Green H. Hackworth Legal Adviser, Dept. of State, Hearings before the Committee on Foreign Affairs, on H.J. Res. 14, "Authorizing the Execution of Certain Obligations Under the Treaties of 1903 and 1936 with Panama, and other commitments." 78th Cong. 1st Sess. page 9. (1943);

Carl F. Salans, Deputy Legal Adviser, Department of State, at Hearings before the Subcommittee on the Panama Canal, of the Committee on Merchant Marine and Fisheries on "Treaties Affecting the Operations of the Panama Canal" 92nd Cong. 2nd Sess. p. 16.;

A similar conclusion was drawn by Ralph E. Erickson, Deputy Assistant Attorney General, Office of Legal Counsel, U.S. Department of Justice, *Id.* at page 97.

See also, statement of Herbert J. Hansell, Legal Adviser, Department of State, at Hearings before the Senate Subcommittee on Separation of Powers, July 29, 1977.

⁴ H.R. Rep. No. 1629, 92nd Cong., 2nd Sess., 21. (Report of the Committee on Merchant Marine and Fisheries.)

⁵ Article VI, cl. 2.

⁶ *United States v. The Peggy*, 1 Cr. (5 U.S.) 103 (1801); *Foster v. Neilson*, 2 Pet. (27 U.S.) 253 (1829); *The Head Money Cases*, 112 U.S. 580 (1884); *Whitney v. Robertson*, 124 U.S. 190 (1888).

⁷ *Holden v. Joy*, 17 Wall. (84 U.S.) 211 (1872); *Geofroy v. Riggs*, 133 U.S. 258 (1890).

hardly be said that a treaty cannot change the Constitution or be held valid if it be in violation of that instrument."⁶ It is interesting to note, however, that the Supreme Court has never ruled any treaty unconstitutional.

In most cases, treaties are binding on the United States, in an international sense, once an exchange of ratifications has occurred.⁷

There are two basic types of treaties, insofar as concerns their effectiveness as domestic legislation. Self-executing treaties are effective upon ratification. Non self-executing treaties require implementing legislation prior to being considered of equal status to statutes and effective as domestic law in the United States.¹⁰

When is implementing legislation required? One test is to determine whether the treaty itself requires implementation in provisions stipulating the need for legislative action.¹¹ Another test asks whether the treaty affects powers exclusively delegated to Congress by the Constitution. A treaty cannot alter the Constitution so as to permit another branch of government to exercise a power exclusively reserved to Congress.¹²

It was at first contended that the treaty power did not extend to any of the subjects of legislation in which the House of Representatives had a constitutional right to participate.¹³

The first conflict between the House of Representatives and the Executive on this issue arose during the administration of George Washington. The Jay Treaty of 1796 contained provisions requiring the United States to indemnify loyalists whose property had been expropriated after the Revolutionary War. The House sought information regarding the Treaty negotiations. Chief Justice Ellsworth, Alexander Hamilton, and various heads of the Executive Departments recommended that the President not furnish the information, since, in their view, the House obligation to vote appropriations arose from the existence of a binding treaty. Thomas Jefferson and Albert Gallatin conceded that the general treaty power was vested in the President and the Senate, but argued that when the general power of one branch conflicts with the specific power granted to another branch, the specific power acts as a limitation on the general power.¹⁴ President Washington refused to furnish the requested papers. The House approved an appropriations bill, but also passed a resolution stating that when treaties contain provisions involving powers vested in Congress, those provisions would not be executed until Congress had passed implementing legislation.¹⁵

This narrow and limited view of the scope of the treaty power has long since been rejected.¹⁶ It is now accepted that those grants of power that are not exclusive in nature, in other words, those that permit concurrent jurisdiction, do not require implementing legislation.¹⁷

The Supreme Court has never issued a comprehensive opinion specifying those powers of Congress regarded as exclusive. However, it has been the practice for the Executive and Senate to seek House consent through implementing legislation when treaties require appropriations or changes in revenue laws.¹⁸

II. Is the power to dispose of Federal territory and property exclusive?

A. THE CONSTITUTION

The exclusive nature of the appropriations and revenue law powers granted to Congress is readily apparent from the language of the Constitutional provision.

⁶ *The Cherokee Tobacco*, 11 Wall (78 U.S.) 616, 620 (1871); *Doe v. Braden*, 16 How. (57 U.S.) 635, 656 (1853); *Geofroy v. Riggs*, supra, note 7, at 267; *Asakura v. City of Seattle*, 265 U.S. 332, 341 (1924); *Reid v. Covert*, 354 U.S. 1, 17 (1957).

⁷ Crandall, supra note 2, at section 155, p. 343.

¹⁰ *Foster v. Neilson*, supra note 6, at 314; *The Head Money Cases*, supra note 6, at 598; *Whitney v. Robertson*, supra note 6, at 194.

¹¹ *Foster v. Neilson*, supra note 6, at 314-315.

¹² Second Restatement of the Foreign Affairs Law of the United States, (1965) part III, at 432-436; C. Anderson, "The Extent and Limitations of the Treaty Making Power Under the Constitution", in 1 *American Journal of International Law* 636, 653-655 (1907).

¹³ Thomas Jefferson, *Manual of Parliamentary Practice*, Article 52, cited in Moore, 5 *Digest of International Law*. 162.

¹⁴ Crandall, supra note 2, at 165-171.

¹⁵ 5 *Annals of Congress* 771-772, 4th Cong. 1st Sess.

¹⁶ Moore, *Id* at 166; L. Henkin, *Foreign Affairs and the Constitution* (1972), at 148-149, 155.

¹⁷ W. Willoughby, *The Constitutional Law of the United States*, (1910) section 306; Q. Wright, *The Control of American Foreign Relations*, 1922, section 248, p. 344.

¹⁸ *Turner v. American Baptist Missionary Union*, 24 F. Cas. 344 (No. 14251) (C.C. Mich. 1852). It appears that the exclusive nature of the grant concerning changes in revenue laws is as much a matter of political expediency as constitutional necessity. Willoughby, supra note 17, at 559, Henkin, supra note 16, at 149; See also H.R. Rep. No. 1569, 68th Cong. 2nd Sess. 8 (1925), for a general discussion of implementing legislation.

Thus, "All Bills for Raising Revenue shall originate in the House of Representatives; * * *,"¹⁹ and, "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; * * *."²⁰ Other provisions of the Constitution state the legislative powers of Congress in a permissive form, without the mandatory language used in the grants concerning appropriations and revenue powers. For instance, "The Congress shall have Power To * * * establish Post Offices and Post Roads;"²¹

The language of Article IV, Section 3, clause 2 is permissive, "The Congress shall have the Power * * *". Despite that language, the Supreme Court has constantly ruled that Congress' power to dispose of federal territory and property is exclusive.²² Those decisions, however, involved situations concerning the locus of authority within the federal system. The Court did not consider the nature of the Congressional power as a limitation on the extent of the treaty power. In fact, Article IV itself is devoted to the distribution of authority between State and Federal governments. For this reason, it is asserted²³ that this Article does not at all pertain to the disposal of federal property by treaty to a foreign nation.

This assertion is entitled to much respect. However, since the matter has never been resolved by the Courts, the scope of Article IV is still unsettled. Some precedent does exist on which to base an argument that Article IV extends to the treaty making power.

Prior to 1872 the federal government concluded treaties with Indian tribes. Many of those treaties gave Indians some interest in federal lands.²⁴ The Indian Appropriations Act of 1872²⁵ stated that, thereafter, Indian tribes would not be recognized as independent nations " * * * with whom the United States may contract by treaty."

The debate surrounding passage of that provision was intense. Members of the House vigorously asserted that the power to dispose of territory was vested exclusively in Congress, and that the treaty power did not encompass the authority to cede land.²⁶ Since that Act received the blessings of a majority of both Houses, and was signed by the President, it would appear that the House, Senate and President all concurred in that belief.

The assertion that territory can be ceded by treaty may also be challenged on the basis of language in *Sioux Tribe of Indians v. United States* 316 U.S. 317 (1942). That case involved a claim by the Sioux that their tribe derived a compensable interest in lands conveyed to them by executive order.²⁷ The court ruled that no compensable interest had been created. It also found that Presidential power to withdraw land from the public domain was based on a delegation of authority—a delegation implied from long and continued Congressional acquiescence in that executive practice.²⁸

The following language from the *Sioux* decision is pertinent to our inquiry as to the nature of the Article IV power when it involves a disposal to a foreign nation.

Concededly, where lands have been reserved for the use and occupation of an Indian Tribe by the terms of a treaty or statute, the tribe must be compensated if the lands are subsequently taken from them. * * * Since the Constitution places the authority to dispose of public lands exclusively in Congress, the executive power to convey any interest in these lands must be traced to Congressional delegation of its authority. The basis of decision in *United States v. Midwest Oil Co.* was that, so far as the power to withdraw public lands from sale is concerned, such a delegation could be spelled out from long continued Congressional acquiescence in the executive practice. The answer to whether a similar delegation occurred with respect to the power to convey a compensable interest in these lands to the Indians must be

¹⁹ Article I, Section 7, cl. 1.

²⁰ Article I, Section 9, cl. 7.

²¹ Article I, Section 8, cl. 7.

²² *Sere v. Pitot* 6 Cr. (10 U.S.) 332 (1810); *American Insurance v. Canter* 1 Pet. (26 U.S.) 511 (1828); *United States v. Gratiot* 14 Pet. (39 U.S.) 526 (1840); *Cross v. Harrison* 16 Har. (57 U.S.) 164 (1853); cf. *Holden v. Joy* 17 Wall (84 U.S.) 211, 247 (1872), dictum.

²³ Statement of Ralph Erickson, supra note 3, at 97.

²⁴ See infra, section II B, for further analysis of the analogy between transfer of land to Indians by treaty, and transfer of the Canal Zone to Panama.

²⁵ 16 Stat. 544, 546, c. 120, 41st Cong. 3rd Sess.

²⁶ 97 Cong. Globe 764, 766-767, January 26, 1871 41st Cong., 3rd Sess., and 99 Cong., Globe at 1811-1812, 1821-1825, March 1, 1871.

²⁷ Although the transfers at issue occurred after the Indian Appropriations Act of 1872, the court indicated that the practice of withdrawing lands from sale by executive order for the purpose of establishing Indian Reservations extended back to 1855. See infra, at section II, B, 3, for an expanded discussion of the quasi foreign-dependent status of the Indian tribes.

²⁸ *Sioux*, at 324-326; see also, *United States v. Midwest Oil Co.*, 236 U.S. 459, 464-470 (1915).

found in the available evidence of what consequences were thought by the executive and Congress to flow from the establishment of executive order reservations.²⁹

The court recognized that the nature of title held by Indians on executive order reservations was distinguishable from the interest possessed by them in statute or treaty reservations.³⁰

If a Congressional delegation of authority was found necessary to create a compensable interest in lands granted to Indians by executive order, it seems possible that a Congressional delegation of authority would be necessary to convey a *total* interest in lands to a *foreign power* whether the conveyance is by treaty or executive order.

It does not appear that there is any clear answer to be obtained from the Constitution as to the exclusive or concurrent nature of the Article IV practice as it relates to the disposal of property to a foreign power. Therefore, it is advisable to look to the past treaty practice of the United States in order to determine if that practice reveals precedent that may be considered controlling.

B. TREATY PRACTICE

Territory and property have, in the past, been ceded by treaty without accompanying implementing legislation. Are these instances a valid precedent for the proposition that the House of Representatives has no role in the disposition of federal property?

1. *Treaties involving boundary claims*

On numerous occasions in its history, the United States has concluded treaties with foreign powers in order to adjust or locate its borders. These boundary treaties are often cited to support the proposition that federal lands have, in the past, been ceded by treaty.³¹ It is submitted that most, if not all of these "cessions" involved circumstances in which the other party to the treaty had, in its own mind, well founded claims to the land in question. Two examples³² will indicate the disputed nature of lands "conveyed" in those treaties.

In the Webster-Ashburton Treaty of 1842, both Britain and America made concessions on claims to some twelve thousand square miles of land on the Maine/New Brunswick boundary. At the time the treaty was being negotiated, it appeared that Britain had a valid claim to much of the disputed land. After the treaty was ratified, it was learned that the United States had ceded land to which it did have a valid claim. Nevertheless, (1) when ceded, the territory was considered to be disputed, and (2) the British made concessions on other points on our northern boundary, in areas that later proved to contain valuable mineral resources.³³

Britain and the United States also had conflicting claims in the Oregon territory. American claims to land to the extent of fifty-four degrees forty minutes were met by British claims for land down to the forty-second parallel. Settlement was reached on a 49 degree boundary. One noted historian has written that, "On the basis of claims and possession, the English made the real sacrifice."³⁴

It is submitted that instances of boundary resolution do not provide conclusive support for the proposition that the treaty making power extends so far as to include the power to dispose of federal lands without implementing legislation. "A treaty for the determination of a disputed line operates not as a treaty of cession, but of recognition."³⁵

2. *Other cessions by treaty and executive agreement without express legislative authorization*

One primary example of a cession of property by executive agreement is the Lend-Lease program. President Roosevelt sent ships and other military material to Great Britain in exchange for rights in various British territories. Attorney-General Robert Jackson supplied the President with an opinion finding authorization for the disposal of property without implementing legislation in the President's exclusive powers as Commander-in-Chief. However, Mr. Jackson also found statutory authori-

²⁹ *Sioux* at p. 326, citation omitted.

³⁰ *Sioux* at 329.

³¹ See Statements of Erickson and Hansell, *supra*, note 3.

³² Other "cessions" referred to are the Treaty of Amity Settlement and Limits, with Spain, 1819 to settle our southern boundary (Florida); and Conventions with Mexico in 1933 and 1963 concerning border problems with that country.

³³ A. DeConde, *A History of American Foreign Policy*, 1963, pgs. 155-162.

³⁴ *Id* at 174.

³⁵ S. Crandall, *supra* note 2, at p. 226.

ty supporting the disposal, and therefore found it unnecessary to rely on the President's inherent constitutional authority.³⁶

Current legislative authorization for transfer of American property to foreign nations by the executive may be found in Title IV (Foreign Excess Property) of the Federal Property and Administrative Services Act of 1949, P.L. 81-152, 63 Stat. 377, c. 288, June 30, 1949, codified at 40 U.S.C. 511-514. Those sections authorize the disposal of foreign excess property by executive agencies. In addition, Part II (International Peace and Security Act of 1961) of the Foreign Assistance Act of 1961, P.L. 87-195, 75 Stat. 424, September 4, 1961 codified at 22 U.S.C. 2311-2320, authorizes the President to transmit (under certain conditions) defense articles and services to other countries.

A recent example of a cession of territory and property by the United States is the agreement concerning the Ryukyu Islands and the Daito Islands 23 UST 446; TIAS 7314. That Agreement was signed in June 1971, received the advice and consent of the Senate in November 1971, and ratified in January 1972. The ratification was exchanged in March 1972, and the Agreement entered into force in May of that year.

By Article I of the 1972 agreement, the United States relinquished in favor of Japan all rights and interests it received under Article III of the 1951 Treaty of Peace with Japan: 3 UST 3169; TIAS 2490. In Article III of the 1951 Treaty, the United States received the right to exercise " * * * all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of these islands, including their territorial waters."

The question that arises is whether the 1972 transfer of interests back to Japan involved cession of territory, in a Constitutional (Art. IV) sense.

An Armed Services Committee Report³⁷ (on a bill concerning economic and social development in the Ryukyu's) recognized that the Ryukyu's were not United States Territory and that American statutory law was generally inapplicable there. However the Committee used very strong language in stressing the nature of the United States interest in the area. It was stated that the United States possessed "de facto" sovereignty and that (after the 1952 Treaty) Japan possessed only a "residual" sovereignty; the only right Japan retained was " * * * the right to expect that the United States will not transfer the Ryukyu's, including Okinawa, to any third party."³⁸ The report concluded that the Committees approval of the legislation was " * * * given with the clear understanding that U.S. administrative control of the Ryukyus and the continued maintenance and operation of the U.S. Base there are inseparable and that, therefore, the United States will continue to retain its jurisdiction over these islands so long as required by the security interests of the United States."³⁹

However, there is also reason to believe that the United States did not have territory to cede. In Article 2 of the 1951 Treaty, Japan renounced " * * * all right, title and claim * * *" to various pieces of territory. There was no similar renunciation as regards the territory discussed in Article 3 (concerning the Ryukyu's and Daito Islands). This implies that the Japanese retained their "right, title and claim" to the Ryukyu's.

Three courts have reached the conclusion that the United States never received sovereignty over this territory. In *United States v. Ushi Shiroma*,⁴⁰ the opinion contains excerpts from a letter written by the Legal Adviser of the Department of State

"1. A legal opinion is requested on the request of the Japanese Vice Minister for Foreign Affairs dated 10 December 1951, that the United States confirm that the 'Southern islands' (the Ryukyus and the Bonins) remain under the sovereignty of Japan and that their inhabitants remain Japanese nationals.

"6. It is concluded that sovereignty over the Ryukyu and Bonin Islands remains in Japan, and that the inhabitants thereof are Japanese nationals."⁴¹

In a statement before the Senate Foreign Relations Committee, Secretary of State Rogers discussed the nature of Japan's interest in the Ryukyu's.

³⁶ 39 Op. A.G. 484, August 27, 1940.

³⁷ H.R. Rep. No. 723, 90th Cong. 1st Sess. (1967).

³⁸ Id. at p. 6.

³⁹ Id. at 16.

⁴⁰ 123 F. Supp. 145, 149 (Hawaii, 1954).

⁴¹ Id., See also *Burns v. United States* 142 F. Supp. 623 (E.D.Va., 1956), affirmed, 240 F. 2d 720 (4th Cir., 1957).

JAPAN'S RETENTION OF RESIDUAL AUTHORITY

On September 5, 1951, in presenting the draft of the peace treaty to the Peace Conference, Ambassador John Foster Dulles noted that some of the allied powers had urged that the treaty require Japan to renounce its sovereignty over the Ryukyus in favor of U.S. sovereignty. Others had proposed that the islands be restored completely to Japan. "In the face of this division of allied opinion," Ambassador Dulles said, "the United States felt that the best formula would be to permit Japan to retain residual sovereignty, while making it possible for these islands to be brought into the United Nations trusteeship system, with the United States as administering authority."

It was decided at that time that although the United States had long-term security interests in the Ryukyus, the "peace of reconciliation," which we and most of our allies sought with Japan, would be vitiated by the islands' enforced, permanent detachment from Japan. The "residual sovereignty" formula was clearly designed to convey the thought to Japan and to the world that although the United States was obliged to retain control of the Ryukyus temporarily for security reasons, what had been Japanese territory was not being permanently detached from Japan and the principle of no U.S. territorial acquisitions as a result of war was being observed.⁴³

As in the boundary dispute cessions, a question exists as to whether the territory transferred belonged to the U.S. The Ryukyu Island cession, therefore, is not conclusive as to the right of the Executive to cede federal territory without implementing legislation.

The 1972 cession did convey a good deal of federal property to the Japanese. This property seems to have been conveyed without Congressional approval. However, this transfer also seems not to be binding precedent for the following reasons.

(1) The Congress may have assumed that the Executive acted pursuant to powers contained in the Foreign Assistance Act of 1961 or the Federal Surplus Property Act of 1949. (It does not appear that the President ever submitted reports required by those Acts. However, the fact that Congress did not demand the reports does not mean that these Acts were not the source of the President's power to convey the property.)

(2) The Japan-United States Friendship Act P.L. 94-118 (1975) contains language 22 U.S.C. 2901(a)(2) that may be seen as a Congressional validation of the Executive action.

(3) Since Congress supported the transfer, it is possible that she may have not insisted on exercising her Article IV rights in this instance. If this is true, such a voluntary lapse does not preclude Congress from insisting upon exercise of that right at a later date.

3. *Treaties with the Indian tribes*

It has been contended⁴⁴ that the practice of conveying land to Indian Tribes by treaty during the nineteenth century supports the proposition that implementing legislation is not necessary in order to convey territory and property in the Canal Zone to Panama. Conveyances to the Indian Tribes appear to be distinguishable for several reasons.

First, the status of the Indian in American law is both unique and complex. Although it has been recognized that the Indians comprised a distinct people, the equivalent of nations, who could be dealt with by treaty,⁴⁵ it is also well established that, since the founding of our government, Indians have been considered as dependent political communities, wards of the nation, or in a state of pupilage to the United States.⁴⁶

It is similarly well established that, through discovery and conquest of the "New World", the European nations, and eventually the United States, obtained title to the land, title that was complete, subject only to the continued use and occupancy of Indian Tribes on certain lands.⁴⁷

The land interests received by the Indians in agreements with the United States government varied. In some cases the United States only recognized a right to continued occupancy and use of certain lands; in other cases, the United States granted, by treaty, a fee simple interest.⁴⁸

⁴³ Reprinted at 92 Cong. Rec. 40371, November 10, 1971.

⁴⁴ See Salans, Erickson and Hansell, *supra*, note 3.

⁴⁵ *Worcester v. Georgia*, 6 Pet. (31 U.S.) 515, 558 (1832).

⁴⁶ *Cherokee Nation v. Southern Kansas. R. Co.* 135 U.S. 641 (1890); *Jones v. Meehan*, 175 U.S. 1, 10 (1890).

⁴⁷ *Johnson and Graham's Lessee v. McIntosh*, 8 Wheaton (21 U.S.) 543 (1823).

⁴⁸ *Lone Wolf v. Hitchcock*, 187 U.S. 553, 564-565 (1903); *United States v. Santa Fe Pacific R. Co.*, 314 U.S. 339, 345, 347 (1941); L. Schmeckebier, *The Office of Indian Affairs, 1927*, pgs. 5-6.

When the Indian tribes were granted land in fee, however, their interest in that land was no more extensive than the interest of any other fee simple owner of land in the United States.

The fact that the Cherokee Nation holds these lands in fee simple under patents from the United States, is of no consequence in the present discussion; for the United States may exercise the right of eminent domain, even within the limits of the several States, for purposes necessary to the execution of the powers granted to the general government by the Constitution.

It would be very strange if the national government, in the execution of its rightful authority could exercise the power of eminent domain in the several States, and could not exercise the same power in a Territory occupied by an Indian nation or tribe, the members of which were wards of the United States, and directly subject to its political control. The lands in the Cherokee territory, like the lands held by private owners everywhere within the geographical limits of the United States, are held subject to the authority of the general government to take them for such objects as are germane to the execution of the powers granted to it; provided only, that they are not taken without just compensation being made to the owner.⁴⁹

At least one authority has commented that most of the treaty grants to the Indians the United States retained a higher interest than a mere right of eminent domain.⁵⁰

If the proposed treaty recognizes that Panama has a complete sovereignty over the Canal Zone, any conveyance of territory and property will be absolute. The United States would not have any of the eminent domain or other interests she possessed in lands granted to the Indians.

C. Past Practice in Disposal of U.S. Property in the Canal Zone to Panama

The remainder of this report contains material that establishes considerable precedent demonstrating that both the Executive Branch and the Senate have considered it necessary to obtain the consent of the House prior to ceding U.S. property in the Canal Zone to Panama.

In 1932, the United States wanted to build a new legation building on land within the Canal Zone. Since it is improper to build a legation on territory under American jurisdiction, the State Department drafted a bill by which Congress would authorize the Secretary of State to modify the boundary line between Panama and the Canal Zone so as to temporarily cede the land back to Panama, so that the proposed legation could be built on "Panamanian territory."⁵¹

In 1942 the Senate debated approval by Joint Resolution of an Executive Agreement transferring land and property in the Canal Zone to Panama.⁵² One of the most acrimonious points of debate concerned whether the transfer should have been effected by treaty, requiring only the consent of the Senate, rather than by an Executive Agreement which required consent of both Houses. The Chairman of the Senate Foreign Relations Committee, Mr. Connally, stated:

"Those who are opposing the measure object because the matter is brought before the Senate in the form of a joint resolution. They say it should be in the form of a treaty."

"Mr. President, I am and have been and in the future shall continue to be ardent in my maintenance of the integrity and the rights of the Senate of the United States in all its proper functions as a branch of the Government; but the matter covered by the joint resolution has to be passed by the Congress sooner or later in some form, for the simple reason that under the Constitution of the United States, Congress alone can vest title to property which belongs to the United States. The Constitution itself confers on Congress specific authority to transfer territory or lands belonging to the United States. So, if we had a formal treaty before us and if it should be ratified, it still would be necessary for the Congress to pass an act vesting in the Republic of Panama the title to the particular tracts of land; because "the Congress" means both bodies. The House of Representatives has a right to a voice as to whether any transfer of real estate or other property shall be made either under treaty or otherwise.

⁴⁹ *Cherokee v. Southern Kansas R. Co.*, supra note 45, at 655-659.

⁵⁰ Schmeckebier, supra note 47; The Non-Intercourse Act (1 Stat. 137, originally passed in 1790 and currently codified at 25 U.S.C. 177) limits the situations in which Indians can transfer tribal lands to those situations when the grant is effected " . . . by a treaty of conventions entered into pursuant to the Constitution.

⁵¹ H.R. 7119, 72nd Cong., 1st Sess., 72 Cong. Rec. 4652-4657 (1932). The legislation was approved, 72 Cong. Rec. 4657.

⁵² S.J. Res. 162, 77th Cong., 2nd Sess.; 88 Cong. Rec. 9266-9287, 9320-9328.

"Another reason why it is not necessary to embody the provisions of the joint resolution in a treaty or treaties is that so far as Panama is concerned, most of the results sought to be attained by means of the joint resolution have already been accomplished. We already have the sites; we already are occupying them; we already are putting installations upon them for the proper defense of the Canal Zone. The instrumentalities involved comprise not only airfields, but detector stations, searchlight stations, and all the other various instrumentalities for the proper protection of the Canal and its approaches."⁵²

Despite calls that the Joint Resolution be rejected because it infringed upon the Senate's right to pass upon treaties (88 Cong. Rec. at 9230), the measure was approved (88 Cong. Rec. at 9328).

The House Committee on Foreign Affairs held hearings on that transfer⁵³ in early 1943. In its Report the Committee stated that—

Congressional approval of the Executive commitments to Panama is sought in the form of legislation because there is involved (a) a disposition of property of the United States and (b) an appropriation of funds, both requiring an exercise of the legislative power, independently of the treaty-making power. Article IV of the Constitution provides that the Congress shall have power to dispose of * * * the territory or other property belonging to the United States.⁵⁴

A 1955 treaty provided for the transfer of real property to Panama. By terms of the treaty the transfer of some property was to be immediate, and the transfer of the remainder was dependent upon Congressional authorization. A representative of the State Department testifying at Hearings on the Treaty admitted that legislation would be needed to implement the transfer of *all* the territory and property mentioned in the treaty.⁵⁵

In addition, those sections of the Treaty (Articles VI and VII) alleged not to require implementing legislation amended the Boundary Convention of 1914 between the U.S. and Panama. The transfer in these Articles, then, may be distinguished from a transfer of the entire Canal Zone or a major portion thereof to Panama. Certainly there is a difference between a boundary adjustment, and the cession of the entire Canal Zone.

III. Conclusion

We have seen that the treaty making power, vested in the President to be exercised with the advice and consent of the Senate, is extremely broad in scope. That power is limited when the Constitution confers an exclusive grant of authority on Congress. Although there are excellent arguments in favor of the proposition that the authority to dispose of property is concurrent and may therefore be exercised under the treaty making power, those arguments are not altogether free from doubt. Supreme Court decisions have recognized the exclusive nature of congress' Article IV powers as they relate to the federal-state relationship. Those rulings have never been qualified by other decisions characterizing those powers as concurrent when used by the executive under the treaty making power. It does not appear that past treaty practice with either foreign nations or Indian tribes provides authoritative precedent establishing, with any degree of certainty, the exclusive or concurrent nature of Article IV, as that provision relates to disposal of land to a foreign sovereign.

It is clear that Congress has often asserted an exclusive right to dispose of federal territory and property. It is also apparent that both the Executive and the Senate have recognized that claim in past dispositions of property in the Canal Zone to Panama. Therefore, while it is impossible to make a categorical assertion that Article IV Section 3, clause 2 is either exclusive or concurrent, it appears that those powers have been recognized as exclusive for purposes of disposal of property in the Canal Zone to Panama.

Finally, regardless of the exclusive nature of the Article IV power, the co-operation of all three branches of government is necessary for the effective implementation of American foreign policy. Although the President is the sole organ of communications with other nations, conclusion of a treaty without prior regard for Congressional attitudes might adversely affect the continuing Executive/Congressional relationship.

⁵² 88 Cong. Rec. at 9267.

⁵³ H.J. Res. 14.

⁵⁴ H. Rpt. No. 78-271, pg. 6.

⁵⁵ Hearings before the Senate Foreign Relations Committee on the Panama Treaty, Exec. F., 87th Cong., 1st Sess., pp. 60-61. Authorizing legislation discussed property conveyed in all three Articles. P.L. 85-223, 71 Stat. 509 (1957).

It is a very serious matter for the treaty-making power to enter into an engagement calling for action by Congress unless there is every reason to believe that Congress will act accordingly."⁶

KENNETH MERIN,
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American Law Division.*

AUGUST 4, 1977.

Mr. SCOTT. Mr. President, I yield the remainder of my time to the distinguished Senator from Alabama (Mr. Allen).

The PRESIDING OFFICER. Without objection, the Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, I thank the Chair, and I thank the distinguished Senator from Virginia (Mr. Scott).

Do I understand then, Mr. President, that I have such time as the distinguished Senator from Virginia did not use plus 15 minutes in my own right?

The PRESIDING OFFICER. That is correct.

Mr. ALLEN. I thank the Chair.

I will not use any additional time, however, than was originally allotted to me, in my judgment.

THE PANAMA CANAL TREATY

Mr. ALLEN. Mr. President, Senators, I am sure, over the past few days have been studying carefully the details of the Panama Canal Treaty and its associated executive agreements. In my own review of the proposed treaty, one aspect is particularly disturbing to me because it is so obviously unnecessary to the basic provisions of the treaty and because it so totally favors the Panamanian position to the great detriment of our own country. I refer, Mr. President, to the treaty provision forbidding the United States to agree with any other country except Panama for the construction of a new Western Hemispheric Interoceanic Canal, unless expressly permitted by Panama in some further future agreement. The treaty reads in relevant part as follows:

During the duration of this Treaty—

And that would be the year 2000—

the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree—

I find it astonishing that the negotiators for the United States saw fit to preclude any possibility of construction of a new interoceanic canal, perhaps at sea level, without our first obtaining the express consent of a pro-Marxist and highly unstable military dictatorship. Why was this concession necessary? What did we gain from this concession?

I notice with some amusement, Mr. President, that the Republic of Panama purports to grant to the United States of America the right to add a third lane of locks to the existing canal. Inasmuch as the United States already has the right to add a third lane of locks to the existing canal, surely our negotiators did not think that a

⁶⁶ Secretary of State Hughes, in an address concerning the League of Nations Covenant, in March, 1919, cited in Wright, *supra*, note 17, at 356-357 (n. 48).

meaningless concession of that variety was sufficient consideration for giving the Panamanians a veto over any other project we may wish to undertake to connect the two oceans. Certainly, the negotiators for the United States could not have felt that the Panamanian agreement to commit Panama "to study jointly the feasibility of a sea level canal" warranted a countervailing commitment from the United States not to do anything whatsoever without Panamanian permission—but perhaps so. The bizarre behavior of our negotiators has produced other results equally as startling.

In any event, Mr. President, one thing is sure and that is that the Panamanians know they got the best of this bargain. Discussing the sea level canal issue, chief Panamanian negotiator, Romulo Escobar Bethancourt, on August 19, 1977, explained to the Panamanian National Assembly the unilateral benefits of the so called sea-level canal options. Dr. Bethancourt's remarks on the subject are illuminating and are worth studying in full. Instead of obtaining an option to build a sea level canal, our negotiators gave to the Panamanians the option to veto construction of a sea level canal by the United States anywhere in the Western Hemisphere. But here are Dr. Bethancourt's own remarks.

I am quoting them at some length for the benefit of the Senate and the public.

I believe we can find out more from the Panamanian negotiators as to what this treaty really means than we find out from listening to our own negotiators. Here is what Dr. Bethancourt, the Panamanian negotiator had to say:

The other problem we—

Speaking of the negotiators on both sides—

The other problem we discussed was that of the option for the construction of a sea-level canal. In all these years the problem of a sea-level canal was hardly discussed at all at the negotiating table. There were about two talks on this. We discussed this, nothing came out of these discussions and then came the Bogota conference with the presidents.

That is, the Presidents of the various countries.

That is where the option problem really reached a crisis. It reached a crisis because a very direct and continuous communication was established among all the presidents meeting there and President Carter through negotiators Bunker and Linowitz as well as with us through Dr Giogenes de la Rosa, who was there at the time, and our Ambassador Gabriel Galindo.

This is Dr. Bethancourt, the Panamanian negotiator, talking. Continuing with his remarks:

But they made a proposal to us—

That is, our negotiators made the proposal to Panama—

But they made a proposal to us on that option and that is why the issue reached a crisis. They proposed that Panama grant them an option to build a sea-level canal without setting any date. Second, they wanted Panama to promise that no other country would construct a sea-level canal.

These are very fine proposals that our people made. Let us see if they won out.

We rejected that proposal in Bogota. We read it to the presidents. That was the proposal brought the previous evening by several of our negotiators and we read it to them. The negotiations between the two countries was practically broken in Bogota. So much so that I remember that at one point General Torrijos told the presidents: "Well, we called this conference several days ago for a celebration of a

new treaty and it turns out that we have come for the wake." The struggle between the two countries began in Bogota. And I say the two countries because the rest of the presidents got as involved as if they had been Panamanians. We must really be very grateful to the presidents that met with the general in Bogota. Regarding this problem they acted just like any of us; they even wanted to walk out mad. The Mexican president wanted to get on his plan and leave; he was very furious. They all became Panamanians regarding the option problem.

When the United States finally realized that there was no way in which an agreement would be reached regarding this option in the terms they were proposing and that the issue had reached an impasse, they asked for a recess. During that recess, we continued our discussions with the presidents meeting in Bogota.

The Panamanian delegation then prepared a draft which all presidents liked. They said it was correct and fair. We then called the United States, they examined it for a while and finally accepted it. I think that it would be a good idea to read the text of this draft to you so that you will see how the option problem came out. I read:

Article 3. Possibility of building a third set of locks or a sea-level canal.

First, the Republic of Panama and the United States of America acknowledge that a sea-level canal can be important for future international navigation. As a result of this, after supporting the treaty of the existing canal and for the duration of this treaty, both countries promise to study jointly the viability of such a canal. In the event that the need for such a canal is viewed favorably, they will negotiate its construction in the terms agreed on by both the countries. This is how the option issue came out. (Applause.)

This is Dictator Bethancourt, still quoting him.

As you can see, it is not even an option to build a sea-level canal. It is an option to promise to study the viability of it.

He is letting the cat out of the bag, Mr. President, in his comments there to his people.

That is the true option. The true commitment is to sit down with the United States to study whether or not it is viable to build a sea-level canal. If the two countries feel it is viable, then they will sit down to negotiate the terms agreed on by the two countries. * * *

You know, Mr. President, this fellow Bethancourt has been very helpful to me in understanding the true implications of the Panama Canal Treaty. From him, I learned the true meaning of the so-called neutrality pact. From him, I learned that the neutrality pact was a sham and of no true benefit whatsoever to the security of the United States. I cannot help but note, Mr. President, in reviewing Dr. Bethancourt's August 19 speech that he explains that the real purpose of the neutrality pact is to propagandize the U.S. Congress and the people of the United States with the myth that the neutrality of the canal will be insured after December 31, 1999. But I would prefer that Dr. Bethancourt answer in his own words the question, "Why this neutrality pact?" He states this:

* * * Because they think—

That is, the United States—

* * * Because they think that maybe in the year 2000 this country will become socialist and will turn into their enemy and they feel it is better to make sure right now that even if our country becomes socialist—

Panama, that is—

it cannot prevent them from using the canal. To be even more frank, they do not need that neutrality pact to tell them whether or not they may intervene. They need it to show to their Congress in order to be able to tell their Congress: "Look, we are turning the canal over to the Panamanians, but we still have the right to watch over them so they behave." That is the truth. It is a question of their internal policy. They are solving an internal problem regarding a Congress that is largely

opposed to these negotiations and which even has members who have not been elected of their own free will—

I do not know whether that is a substantive loss in translation or not, because I do not know of any Members of the House of Representatives who were not elected of their own free will. I know of no Senator or House Member who was forced to run for the position he holds.

turned into members of the U.S. Congress. They are Panamanians who lived here and in Miami.

There is a parenthetical statement that was "as heard," and there was great applause, as shown by the transcript of his remarks.

Mr. President, it strikes me that there is an awful lot of eyewash in these treaties for the benefit of Congress and mighty little in them for the benefit of the United States.

We have obtained a neutrality pact which is meaningless, and we have foregone the right to construct a new canal without the express consent of a gangster dictator. What a spectacle this situation must present to the world—the United States required to seek the consent of a reprehensible and repressive minor autocrat before even undertaking canal discussions with another sovereign nation.

How does that strike the average American? We cannot even negotiate with another country for 23 years about building another canal without the express permission of the Panamanians. It just humiliates the United States.

Before even undertaking canal discussions with another sovereign nation, the United States is surrendering control of a vital international waterway to the Communist advisers of a bandit government.

Mr. President, I have availed myself of this opportunity of discussing two features of the canal treaty. At other times I plan to discuss other sections of the treaty, in order that Members who care to read the Record will see the views that I have expressed, and will have a right to consider whether these provisions are in the interest of the United States. I do plan, as does the distinguished Senator from Virginia (Mr. Scott), to make other speeches here on the floor of the Senate, in the hope that those who read the Record will be able to see just what is involved, and in hopes that others throughout the country may be advised.

Mr. SCOTT. Mr. President, will the Senator yield to me?

Mr. ALLEN. Yes, I am delighted to yield to the Senator from Virginia.

Mr. SCOTT. Mr. President, I commend the distinguished Senator from Alabama for the statement that he has made, for his penetrating analysis of Article 12 with regard to the construction of an additional lane or an additional set of locks in the existing canal, and the prohibition against the United States constructing an additional canal at any other spot in the isthmus outside of Panama.

I agree with the distinguished Senator; there seems to be absolutely no reason why our Government should agree with another nation not to construct something outside of their territory.

Frankly, Mr. President, if someone in the committee does not strike that provision of the treaty under the amending process, I believe it should be done on the floor of the Senate and I will be prepared to do so unless another Senator does.

I would like to go further than the remarks of the distinguished Senator has made on the floor today and commend him as chairman of the Subcommittee on Separation of Powers of the Senate Judiciary Committee for holding hearings, as he has done, in attempting to find out the legalities of this proposed treaty which has been signed by the President, which was obtained by the State Department.

I believe we need reason and we need to determine just how we should proceed.

Mr. President, it is basic in the laws of contracts that there be some quid pro quo, that there be some consideration flowing from one party to another. I do not see any quid pro quo in this treaty.

The distinguished Senator from Alabama, and the subcommittee on which I am privileged to serve with him, is attempting to delve into this question.

I would hope, Mr. President, that somehow we can eliminate the emotionalism and do some straight thinking as to what is best for our own Government in determining whether the Senate should advise and consent to this treaty. I appreciate the Senator yielding.

Mr. ALLEN. I thank the distinguished Senator for his comments. I commend him for his hard work on this issue and the leadership he has exerted in seeking to point out the dangerous provisions, the unfair provisions, in the treaty. I commend him for his work on the Separation of Powers Subcommittee of the Judiciary Committee. I also appreciate his enlightening the Senate and the country on these issues.

The Senator mentioned that there needs to be a quid pro quo in a contract. There also needs to be a meeting of the minds between the contracting parties. Obviously, there is no meeting of the minds on many, but certainly two, very important issues. One is the priority of our ships in the canal. Apparently there is no priority as the Panamanians regard the construction of the treaty. Second is the misunderstanding about the neutrality of the canal; whether we have a right to determine whether their neutrality is in danger; whether we have a right to land troops there or not. The Panamanians say not.

So there is no meeting of the minds here.

The distinguished Senator from Virginia raises another most important point and it will be asked of the Chair at the proper time, though not now, when the treaty is before the Senate.

He feels in the committee, and I feel on the floor certain action should be taken; the committee should strike this provision requiring the United States to get the permission of Panama before even negotiating with another nation for another canal, a sea level canal. I feel reasonably sure that the committee will strike this very dangerous provision, and I feel the Senate will back up the committee.

Having seen one of its provisions stricken, and the Senate if it should approve the treaty with major amendments made to the treaty, would that require the execution of another treaty? There

are constitutional authorities to the effect that once a treaty is amended it cannot then be approved by the other party without entering into a new treaty. If that be the case, if major amendments are made to the treaty, it may well be that that, in itself, will defeat this treaty, because it will require entering into a new treaty.

It will be an interesting constitutional question about which the Chair will be asked. That question may have to be submitted to the Senate for the Senate's view. That would not necessarily be binding if, in fact, that would vitiate the treaty in the absence of another treaty submitted to both countries.

Mr. SCOTT. Will the Senator yield on that point?

Mr. ALLEN. I yield.

Mr. SCOTT. It would appear to me that in the event the Senate does offer amendments and they are adopted by the Senate, and the treaty, as amended, would later be ratified by the Senate, this would influence the executive branch of Government in its efforts to negotiate a new treaty. I feel, quite frankly, Mr. President, that the Senate is somewhat closer to the people of the United States than the executive branch. Certainly, it is closer than the unelected negotiators of this treaty. In fact, no one within our State Department or within our diplomatic corps has had to face the electorate as has each Member of the Senate. I feel someone must speak for the people, and I hope it will be the Senate.

Mr. ALLEN. I thank the distinguished Senator.

There is one other point I would like to make as we suggest guidelines for the consideration of this treaty. I do not foresee here on the floor of the Senate a filibuster against this treaty. I believe there will be a long discussion, a legitimate debate. Though I have not discussed the matter with the leadership, I feel sure that the leadership would not file any cloture petition as long as the debate is legitimate debate. It may last for weeks without being a filibuster. I do not believe a filibuster will ensue, the reason being the difference in what it takes to cut off a filibuster; 60 votes, and 67 votes to approve the treaty, assuming all Senators are present.

Far more than that, the reason there will not be a filibuster is if the treaty is defeated by extended debate, the treaty would still remain on the Executive Calendar for the next session of this Congress and for succeeding Congresses, to be brought up by the leadership at any time.

What I am going to be working toward is a vote up or down on the treaty. Once it is defeated by the Senate, it becomes a complete nullity. If other negotiations are held and other treaties are submitted to the Senate, we would have to consider them *ab initio*. But there will be no filibuster, as such, and no need to invoke cloture.

The PRESIDING OFFICER. The Senator's time has expired.

THE PANAMA CANAL TREATY

Mr. ALLEN. Mr. President, on Monday, September 12, 1977, I brought to the attention of the Senate remarks made by chief Panamanian negotiator, Dr. Romulo Escobar Bethancourt, who gave interpretations of the treaty at a news conference in Panama City on October 24. Dr. Bethancourt's comments showed that, at least in the minds of the Panamanians, the United States would not have the right to intervene militarily to guarantee the neutrality of the canal nor would the United States have the right to priority of passage of its vessels of war.

Today, Mr. President, I have received a translation of a speech given by the Panamanian Planning and Economic Policy Minister, Nicolas Ardito Barletta, given on August 19, 1977, before the National Assembly of Panama in Panama City. Minister Barletta's remarks should be of great value to the Senate in assessing the actual economic impact of the proposed canal treaty. Like Dr. Bethancourt, Minister Barletta interprets the treaty to his country in a manner which stands in stark contrast to the cost analysis presented by our own Government. While the treaty provides only for the payment of \$20 million per year for police services and for fixed annuity, Minister Barletta states that the cash economic benefits actually amount to the astonishing sum of \$2.262 billion in 1977 dollars, for an annual average payment of approximately \$100 million. That is for each of the 23 years of the life of the treaty.

Mr. President, some rather ingenious devices have been discovered by the executive department for providing this \$2¼ billion to Panama without the necessity of seeking congressional approval through the appropriations process. But, Mr. President, unlike our own Department of the Treasury, Minister Barletta gives a very careful explanation of the devices used and, in my judgment, Senators should therefore find of great interest the entire substance of his speech which I intend to enter into the Record if given unanimous consent to do so. For example, Minister Barletta reckons the average income to Panama from the proposed new Panama Canal Commission to be \$80 million per year, not a maximum of \$20 million as expressly stated in the proposed treaty. But his explanation is better than any that I could give. Here is what Minister Barletta had to say:

The agreements reached in this aspect are as follows: An average income of \$80 million per year, I repeat, average, for the next 23 years; that is, a total of \$1.8 billion in the 23 years. The majority of this income is subject to a clause of inflationary correction so that the annuity consistently maintains its purchasing value, based on the year 1977.

It is quite easy to see that this amount would escalate tremendously in 23 years, if we continue the inflationary spiral of some 6 or 7 percent, on the average, per annum—

The income for the first year is estimated to be \$65 million. By the end of the treaty, the amount will reach approximately \$100 million in real values of 1977, that is, corrected against any inflation that may occur during that period. The mean of this gradually increasing sum gives us the average amount of \$80 million. This income is itemized as follows: \$0.30 for each ton of cargo that transits the canal. According to traffic projections through the canal, this means an average income of

\$55 million per year which in the first year will amount to about \$42 million, to reach \$70 million by the end of the century.

Of course, that would be added to the oil that we receive from Alaska, and it is anticipated that there will be a tremendous volume of oil going through the Panama Canal in years to come—

The second item of this round sum is \$20 million per year, of which \$10 million is guaranteed each year, the rest depending upon the level of income of the Panama Canal Company in that year. If in one year the second half of the \$20 million cannot be covered, the deficit caused would be covered in the subsequent years to maintain the \$20 million per year payment.

This is in addition to the average of \$80 million, which would make it up to \$100 million in 1977 dollars—

And a third item of approximately \$5 million per year of income will come from several businesses and operations being transferred to the national government, such as ports, railroads, sale of fuel, repair of ships, and so forth. Therefore, the total sum of \$80 million is composed of these three items that I just discussed. * * *

But, Mr. President, in glowing terms and with obvious pride in accomplishment, Minister Barletta points out other plums he succeeded in shaking loose in the negotiations. And the Panamanian negotiators surely did skin our negotiators. They just outraded us. We are supposed to be the Yankee traders, but they surely outraded our negotiators; and every step of the way, of course, the negotiations were carried on in secrecy as far as the general public here in the United States is concerned; and then we are confronted, here in the Senate, with a fait accompli, with the treaty already signed, with great fanfare, by the President.

But here is what Minister Barletta says they shook from the plum tree of the American taxpayers:

Another aspect gleaned from the canal operation is the transference to Panama—as Edwin Fabrega will explain shortly—of buildings and infrastructure for a current value of \$82 million. Aside from this aspect, which is what Panama would derive from the operation of the canal and from the transfer of physical assets which currently exist in the Canal Zone, there is a parallel and corollary package of economic cooperation. This package reaches an amount of \$345 million, above all, within the next 5 years, and is itemized as follows: loans from the Export-Import Bank up to the amount of \$200 million in the next 5 years; loans for the construction of housing guaranteed by AID up to \$75 million in the next 5 years; loans guaranteed by a U.S. agency called OPIT for \$20 million for Cofina, our development bank, and other loans and equipment, principally military equipment, for the amount of \$50 million in the next 10 years.

Furthermore, Minister Barletta places a 1977 value on facilities which will be donated to Panama in 1999. His figure is \$3 billion, and I have little doubt that it is correct, as to the value of the facilities which will come to Panama in 1999. Or, possibly, it will be a much higher figure. Minister Barletta continues:

Aside from the foregoing, it must be emphasized that all the rest of the existing structures in the Canal Zone, that is, the canal itself and the rest of the civilian and military installations, will be returned to Panama, free of charge, on 31 December 1999.

“Returned to Panama”; this is Barletta’s language, it is not the language of the Senator from Alabama, because I do not feel it is a return to Panama. It is a gift to Panama, because obviously they had nothing to do with constructing these facilities, or with constructing the Panama Canal:

And these structures have an approximate value of \$3 billion currently. Aside from that, we must also point out that Panama will receive from the company that

operates the canal the amount of \$10 million per year, also with inflationary correction, to cover the costs of the public services which Panama will administer in the exercise of its jurisdiction in the zone area, for these services which are generated by reason of the existence and operation of the Panama Canal. Therefore, lending these services will cost nothing to the national treasury.

We are going to pay for the police operations there in the Canal Zone.

Minister Barletta does not place a dollar figure on the immensely valuable real property which would be transferred to Panama immediately upon implementation, but surely those real property values must be well into the billions. He does, however, discuss the significance of the cash contributions in terms of the annual budget of the Government of Panama. His remarks in that respect are particularly illuminating in showing the tremendous benefits being transferred to this small country of only 1.7 million citizens. Perhaps the Governors of some of our smaller States would particularly appreciate Minister Barletta's thoughts on this subject:

In brief, what is the significance of these figures? We can say that in the next few years, the next 3 or 4 years, the amount of the annuity alone, without taking into consideration the economic cooperation, is 19 percent of the national government's budget; that is, it is a considerable increase, one-fifth.

That is just the amount of the annuity alone.

It is 25 percent of the operational expenses of the current budget and is 15 percent of the program of investments of the public sector. As the national government's intention for the time being is to devote the majority of these resources to solving the problems of our nation, the problems of our people through its investment program, we have to take into consideration that this amount—the annuity only, which in the first few years will be approximately \$65 million per year—means at least 15 percent more for the program of investments being carried out by the country. This amount can become a figure of more impact through financing which can be negotiated on the basis of this income.

They are going to use this income as a vehicle to get still more money by putting this in as equity.

We can also say—as another manner of illustrating what these figures mean, because they are so large that one often does not see them in real terms—that this means considerably speeding up the program of investments which we are developing.

There he refers to public works and investments in Panama.

All of us here are aware that during the past year we have had to reduce investment in order to face the serious economic crisis which the country and the world have been experiencing. * * *

So, Mr. President, the Panamanians plan not only to take the loans and cash we are offering; they also apparently intend to use our money as leverage for additional loans. Panama is already bankrupt, but the spendthrift Panamanian Government no doubt has already pledged our country's largesse as collateral in a mad search for even more borrowed funds.

Later on, Mr. President, I am going to talk about the loans by the big banks in this country to Panama and the fact that this treaty income that Panama will receive from the U.S. taxpayers and the users of the canal will be used to pay on these existing debts.

Mr. President, sooner or later the Congress must draw the line and stop robbing American taxpayers to extend funds to bankrupt, Third World countries so that international banks can collect prin-

cial and interest on shaky loans. In my judgment, the international banks should be required to write off their bad debts, at least some portion of the loans they made in error, and the international banks should be put on notice that the American taxpayer will not always guarantee a profit in any loan transaction with unstable governments. Perhaps, the Panama Canal treaty will be a good starting place.

Mr. President, I ask unanimous consent that Minister Bartletta's speech be printed in the Record.

There being no objection, the speech was ordered to be printed in the Record, as follows:

EXCERPT FROM SPEECH BY MINISTER NICOLAS ARDITO BARLETTA

Gentlemen representatives, colleagues, ladies and gentlemen: It is my duty to inform you about the economic aspects of these negotiations, aspects which are fully as important as the others because at this stage we are all convinced of the necessity that a strong national economy must be the basis for obtaining and fully implementing our freedom of action. They are important also because the real valorization of our geographical position as a natural resource was at stake as well as Panama's obtaining of revenue equal to the value of that geographical position. This means, as a result, the real possibility of accelerating Panama's general development and providing an answer to the important needs of our people in this process. In other words, it would be one thing to have dignity and sovereignty with hunger and quite another to have and to consolidate the dignity and the sovereignty with the integral development of our people. And this has been our aim through the economic aspect of these negotiations in attempting to consolidate the value of our geographical position and the resources and revenue which respect to it so as to use it in our development.

The agreements reached in this aspect are as follows: An average income of \$80 million per year, I repeat, average, for the next 23 years; that is, a total of \$1.8 billion in the 23 years. The majority of this income is subject to a clause of inflationary correction so that the annuity consistently maintains its purchasing value, based on the year 1977. The income for the first year is estimated to be \$65 million. By the end of the treaty, the amount will reach approximately \$100 million in real values of 1977, that is, corrected against any inflation that may occur during that period. The mean of this gradually increasing sum gives us the average amount of \$80 million. This income is itemized as follows: \$0.30 for each ton of cargo that transits the canal. According to traffic projections through the canal, this means an average income of \$55 million per year which in the first year will amount to about \$42 million, to reach \$70 million by the end of the century.

The second item of this round sum is \$20 million per year, of which \$10 million is guaranteed each year, the rest depending upon the level of income of the Panama Canal Company in that year. If in one year the second half of the \$20 million cannot be covered, the deficit caused would be covered in the subsequent years to maintain the \$20 million per year payment. And a third item of approximately \$5 million per year of income will come from several businesses and operations being transferred to the national government, such as ports, railroads, sale of fuel, repair of ships, and so forth. Therefore, the total sum of \$80 million is composed of these three items that I just discussed.

Another aspect gleaned from the canal operation is the transference to Panama—as Edwin Fabrega will explain shortly—of buildings and infrastructure for a current value of \$82 million. Aside from this aspect, which is what Panama would derive from the operation of the canal and from the transfer of physical assets which currently exist in the Canal Zone, there is a parallel and corollary package of economic cooperation. This package reaches an amount of \$345 million, above all, within the next years, and is itemized as follows: loans from the Export-Import Bank up to the amount of \$200 million in the next 5 years; loans for the construction of housing guaranteed by AID up to \$75 million in the next 5 years; loans guaranteed by a U.S. agency called OPIT for \$20 million for Cofina, our development bank, and other loans and equipment, principally military equipment, for the amount of \$50 million in the next 10 years.

In short, all these elements of economic benefits which I have mentioned in structures, payments and loans for development will in 23 years amount to the sum of \$2.262 billion. This is compared to what Panama would receive under the current

treaty during that same period, which would be the ridiculous amount of \$52 million. This, then, is the difference between what this treaty means as far as economic benefits and what Panama would receive under the current treaty.

Aside from the foregoing, it must be emphasized that all the rest of the existing structures in the Canal Zone, that is, the canal itself and the rest of the civilian and military installations, will be returned to Panama, free of charge, on 31 December 1999. And these structures have an approximate value of \$3 billion currently. Aside from that, we must also point out that Panama will receive from the company that operates the canal the amount of \$10 million per year, also with inflationary correction, to cover the costs of the public services which Panama will administer in the exercise of its jurisdiction in the zone area, for these services which are generated by reason of the existence and operation of the Panama Canal. Therefore, lending these services will cost nothing to the national treasury.

In brief, what is the significance of these figures? We can say that in the next few years, the next 3 or 4 years, the amount of the annuity alone, without taking into consideration the economic cooperation, is 19 percent of the national government's budget; that is, it is a considerable increase, one-fifth. It is 25 percent of the operational expenses of the current budget and is 15 percent of the program of investments of the public sector. As the national government's intention for the time being is to devote the majority of these resources to solving the problems of our nation, the problems of our people through its investment program, we have to take into consideration that this amount—the annuity only, which in the first few years will be approximately \$65 million per year—means at least 15 percent more for the program of investments being carried out by the country. This amount can become a figure of more impact through financing which can be negotiated on the basis of this income. We can also say—as another manner of illustrating what these figures mean, because they are so large that one often does not see them in real terms—that this means considerably speeding up the program of investments which we are developing. All of us here are aware that during the past year we have had to reduce investment in order to face the serious economic crisis which the country and the world have been experiencing.

MISCONCEPTIONS ABOUT PANAMA

Mr. CRANSTON. Mr. President, negotiations on the Panama Canal treaties went through several discussion stages during the past 13 years. As a result, some misconceptions may have arisen.

I am convinced these will be dispelled when the facts of the treaty become more widely known.

For example, some people were justifiably concerned that we might have to give up our continuing right to protect the canal against threats from within and without. At President Carter's insistence, our negotiations made clear to the Panamanian negotiators that we reserve the unlimited right to intervene—both under the basic treaty until the year 2000, and under the neutrality treaty thereafter.

Similarly, some people feared that with Panama in control, some other power might come in and construct a sea-level canal and cut us out. But the United States has gotten a firm treaty commitment that we will be directly involved in any sea-level canal or any modification to accommodate large modern warships and cargo ships that can not fit through the present waterway.

Still others felt that an abrupt transfer might disrupt efficient operation of the canal. The basic treaty, however, continues overall U.S. management until the end of this century, thereby explicitly assuring continuous U.S. control prior to that date.

The Panama Canal treaties will strengthen our national security interests in Panama and throughout Latin America.

Under terms of the treaties—as we understand them and the basis on which I will vote for ratification—the United States re-

tains indefinitely the right to take whatever action we deem necessary to defend the canal against any threat. Similarly, the treaties guarantee the permanent and unconditional right of U.S. warships to pass through the canal—with priority in the event of an emergency.

The Panamanian Government is on notice that this is our understanding of the agreement. Obviously we will not consider ourselves bound by any other interpretation.

We not only keep all the authority we now have to assure an open, safe, and efficient canal, we pick up some new and valuable assets besides.

Under the treaties Panama—now only an unwilling host—will have a greater stake in protecting the canal and keeping it open and neutral. So will other countries in Latin America that for seven decades have resented the claim that the United States “owns” a part of an independent nation in Central America.

United States national interests depend upon the proper use and assured security of the canal, not upon its ownership. And U.S. national interests will be far more secure when Panama and other Latin American nations are our genuine friends and allies and are committed to similar, mutually beneficial goals.

Our highest military leaders—the Joint Chiefs of Staff—unanimously agree.

THE PANAMA CANAL TREATY

Mr. HARRY F. BYRD, JR. Mr. President, for months now, the question as to whether the United States should accept a treaty which would surrender U.S. control of the Panama Canal has been prominent in the news.

This coverage reached a peak last week when President Carter formally signed two treaties which, if ratified, would completely relinquish U.S. control over the Panama Canal and the Canal Zone.

As a result of this extended media coverage a great deal of information and misinformation has been put forth and repeated many, many times.

Several distortions of fact have been used over and over again to foster support for a canal treaty and unfortunately, with repetition, these half truths and distortions are gaining a wider acceptance.

However, a recently published article by Hanson W. Baldwin, former military editor for the New York Times, dispells much of the ignorance and distortion which has surrounded the Panama Canal controversy and provides factual, documentable evidence in opposition to the proposed canal treaties.

This article, published in the AEI Defense Review is entitled “The Panama Canal: Sovereignty and Security” and should be read by every Member of the U.S. Senate.

It addresses the military and economic importance of the Panama Canal to the United States and documents the clear fact that the United States has full sovereignty over the canal and the Canal Zone.

Further, this article explodes the myth of American exploitation of Panama and provides an impressive summary of the benefits Panama has derived from the canal and the U.S. presence.

Finally, and most importantly, Mr. Baldwin explodes the myth that the United States can effectively maintain control over the operation of the canal and insure its defense without retaining sovereignty.

Once that sovereignty is relinquished the ability of the United States to assert control—should that become necessary—will be almost nonexistent short of an invasion of Panama to reassert control.

I command this thought-provoking article to my colleagues and I ask unanimous consent that its full text be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

THE PANAMA CANAL: SOVEREIGNTY AND SECURITY

(By Hanson W. Baldwin)

The future security and well-being of the United States are threatened by the administration's proposed abandonment of sovereignty over the Panama Canal and the Canal Zone.

Any such action would have global consequences, nowhere more adverse than in the Caribbean Sea-Gulf of Mexico area. The vital interests of a nation can be defined in territorial and regional terms or as political, psychological, economic, or military interests. By any and all of these yardsticks, the security of the Caribbean, the ability of the United States to control the Caribbean in war and to be a dominant influence there in peace, is vital to our country.

THE STRATEGIC IMPORTANCE OF THE CANAL

These southern seas have been considered essential to U.S. security since the time of Thomas Jefferson and the enunciation of the Monroe Doctrine. The great importance of the Caribbean has been restated in modern terms by Alfred Thayer Mahan and all succeeding generations of strategists. In fact, in a strategic sense the Caribbean-Gulf of Mexico area must be considered the *mare nostrum* of the United States. Unless we are capable of controlling it, we are, indeed, undone.

Yet that capability has already been gravely weakened; the turning point was the Communists' seizure of power in Cuba, the Caribbean's most important island, only ninety miles from our shores. Soviet Migs flying in Cuban skies, Soviet submarines calling at Cuban ports, and the hammer and sickle flaunting its red blazon of revolution across the area are both cause and symbol of the deterioration in the past fifteen years of U.S. security on our southern flank. Our own mistakes and weaknesses have cost us dearly; the infiltrators are within the outer walls, and what should be our island-speckled ramparts are becoming today the soft underbelly of North America.

It is in this broad perspective—the future of the Caribbean-Gulf of Mexico area—that any basic change in the status of the Panama Canal must be judged, for any such change will profoundly affect our interests in the area and hence, ultimately, our political, psychological, economic, and military security. And, in an even larger, global sense, any retreat or major concession in Panama in the face of the threats of General Omar Torrijos, the Panamanian dictator, can only be interpreted around the world as scuttle-and-run, further proof of the weakening of the will and resolution of the United States. Faith in promises made, belief in the power of a nation and its will to use it in defense of its own interests, is the coin of international respect; since Castro, Vietnam, Angola, the credibility of the United States has been severely impaired and our international solvency in doubt.

Panama and the canal are therefore both cause and symbol; the canal is highly important in its own right, but far more so as a symbol of U.S. resolution and as one of the vital links in our vital interests in the Caribbean. Looked at in this light, the canal itself, contrary to the claims of its detractors, is in no way obsolete.

It is ironic, indeed, that in an era when the United States Navy needs the canal to a greater degree than at any time since the end of World War II, Washington is

considering its abandonment. The navy today is in the same strategic bind it was in prior to World War II: it is a one-ocean navy (in size and power) with two-ocean responsibilities. We are outnumbered in submarines and surface ships by the Soviet Union, and, more than at any period since 1945, the navy must have a quick transfer capability between Atlantic and Pacific in order to meet sudden crises. To send the fleet or individual ships around the Horn, as in the days of Fighting Bob Evans and Teddy Roosevelt, might be, in the modern age of speed, to lose a war.

General V. H. Krulak, United States Marine Corps (ret.), writing in the summer 1975 issue of *Strategic Review*, summarized the canal's naval importance: "In truth the Panama Canal is an essential link between the naval forces of the United States deployed in the Atlantic and in the Pacific. It is only because of the waterway that we are able to risk having what amounts to a barebones, one-ocean Navy."

It is ironic, too, that a major change in naval ship size, construction, and design is starting just at the time when proponents of a transfer of canal sovereignty justify their position by arguing that the locks cannot accommodate the navy's largest ships. The argument—true, though only for the moment—is irrelevant. Only the thirteen giant aircraft carriers of the U.S. Navy have too large a beam to pass through the 110-foot width of the present locks. Yet the days of these behemoths of the seas are numbered; well before 2000 (one of the dates proposed for the transfer of sovereignty over the canal to Panama) a new generation of ships will begin to replace them—smaller, but more effective, with VSTOL aircraft, drones, missiles, or other new state-of-the-art developments like hovercraft and hydrofoils.

Even more important is the fact that every other ship in the U.S. Navy (except the thirteen carriers) can transit the canal, a fact of major importance in limited war, the type of crisis we are most likely to face. Our missile-firing and attack submarines (now deservedly called capital ships of the navy), all our antisubmarine and escort forces, our amphibious vessels, and our support and supply craft can transit the canal—a fact which has already proved of major importance in two recent instances.

During the Cuban missile crisis marines and supplies from the West Coast were ferried through the canal to the Caribbean. If they had had to pass around Cape Horn, they would never have arrived in time to influence the outcome. As it was, the threat of invasion helped materially to force Khrushchev to change his mind. During the Vietnam War about 98 percent of all supplies for our forces were shipped by sea; of this total, approximately 33 percent were loaded in East and Gulf Coast ports and transited the canal. The volume of military-sponsored cargo in the four years from 1964 to 1968 increased, for dry cargo, by some 640 percent and for petroleum products by about 430 percent. And the number of U.S. government vessels (chiefly naval) transiting the canal increased from 284 in 1965 to more than 1,500 in 1968.

The limitations of the current locks (though, indeed, the canal can handle much more traffic than the 12,000 to 14,000 vessels a year that now use it) have, in any case, little relevance. A third set of locks, larger than the existing ones, was long ago authorized and started, but work was suspended because of World War II; the excavations (within the present ten-mile-wide Canal Zone) still exist, and whenever the need is demonstrated the new locks could be completed.

There is another military factor which bears on the present and future utility of the canal and deserves mention in passing. Nuclear weapons, it is said, have made the canal indefensible and vulnerable to sudden destruction. Actually other means of blocking or closing the canal existed long before the development of nuclear weapons. The point is, however, that this change is completely irrelevant. No sane enemy would waste a nuclear warhead on the Panama Canal with such decisive targets naked to his missiles as New York City and Washington, the industrial complexes of Pittsburgh and Cleveland, the huge urban, industrial, and naval-port complexes of Norfolk and San Diego. In a nuclear war, the Panama Canal would simply play no role whatsoever, either as target or as launching pad.

Finally, the U.S. Panama Canal Zone offers facilities unavailable elsewhere under the U.S. flag for training troops in jungle warfare. More important, the zone is oriented towards the problems of Central and South America and the zone's army schools and training facilities have fostered and helped to develop a close and productive military liaison between the armed forces of many nations in the Southern Hemisphere and the United States. Most important, the zone is the southern and western anchor of our entire position in the Caribbean. Together with the southern Florida—Florida Keys area, Guantanamo Bay, which dominates the Windward Passage (one of the principal passages into the Caribbean from the Atlantic) and the Roosevelt Roads base in Puerto Rico (supplemented by Virgin Island ports), it offers naval, air, and land facilities which can strengthen the security of our

southern flank. (Incidentally, it also has importance to the strategy of the Central Pacific, outward to the Galapagos.)

It is within this framework that the Panama position is of the greatest significance to the strategic control of the Caribbean and to the security of the United States. Without it, the other island positions of the United States in the area—already threatened by Castroism and communism—would probably be engulfed by a hostile sea. Thus, the Panama Canal, strategically significant in its own right, is far more important to the United States as a part of the vital whole of Caribbean—Gulf of Mexico security.

ECONOMIC CONSIDERATIONS

The economic factor is also of major importance in the canal-Caribbean equation. In the past four years, the canal, for the first time in its history, has lost money, despite its first toll increases in seventy years. Part of this loss appears to be due to a change in bookkeeping practice: for the first time amortization costs for the original excavations of the Panama Canal were charged off, apparently in anticipation of a treaty transferring sovereignty. But there were more important economic causes. The world recession and the reopening of the Suez Canal in 1975, currency devaluations, and rapid inflation which increased the canal's operating expenses from about \$182 million to \$260 million in four years, as well as the increase in "land-bridge" traffic (that is, the shipment of containers from Atlantic to Pacific ports by rail) all contributed materially to a recent period in which ship transits, contrary to the long-term trend, did not increase on an annual basis but stabilized or declined.

Nevertheless, in recent years, there have been some 12,000 to 14,000 ship transits annually; vessels of all the nations of the world have been lifted from sea to sea economically and efficiently. Ships flying the Liberian and Panamanian flags—so-called flags of convenience—many of them actually owned by U.S. citizens, ships of Latin American nations, and vessels flying the flags of Great Britain and the United States are among the greatest users of the canal. The fees they pay (still only half as high as the Suez Canal fees) are a small price for the savings and convenience of the short transit. To the American economy, and particularly to U.S. overseas shippers and importers, the canal has major importance; it has been estimated that, of all cargoes transiting the canal in ships of all flags, about 60 to 70 percent are bound to or from U.S. ports. More than 1,000 transits annually are by U.S. flag ships, and an increasing number of them are "Panamax" vessels specially designed to fit snugly the locks of the canal. Many of these are engaged in the growing container-ship traffic from the East Coast and Europe to the Orient.

Some thirteen major trade routes funnel through the Caribbean Sea-Gulf of Mexico-Panama Canal region. The skies and waters of the Caribbean and the Gulf are vital arteries for U.S. industry and trade, through which pass coffee and fibers, manganese and iron ore, beryl and columbium from Brazil; oil and iron ore from Venezuela; bananas and other tropical fruits from Central America; copper from Peru and Chile; bauxite from Jamaica, Surinam, the Dominican Republic, and Haiti; antimony and tin and tungsten from Bolivia; zinc from Mexico and Peru; sugar from the sugar islands of the Caribbean. These products and others are essential to U.S. industry, and Latin American markets help to maintain U.S. prosperity.

The so-called Sun Belt of the United States, that growing and prosperous region extending across the country from southern California to Florida and Georgia, is greatly dependent upon its gateways to the world. The most important of these are the Gulf Coast ports and the entrance to the mighty Mississippi River. All the approaches to this area lie through the Caribbean-Gulf of Mexico region. The seas that wash these shores also border Mexico, where newly discovered major reserves of petroleum add immeasurably to the importance of this vast southern region for our future security.

There is, too, in the Gulf of Mexico, extending seaward farther and farther from our shores, a resource that is increasingly more precious than gold—the offshore and undersea deposits of gas and oil, resources which require security for their development. And one of the plans for transporting the oil of Alaska's North Slope to the hungry markets of the "lower forty-eight" contemplates shipment by tanker through the Panama Canal to Gulf and East Coast ports.

POLITICAL AND PSYCHOLOGICAL FACTORS

Even more compelling than the military and economic importance of the canal are the political and psychological considerations. Since the failure at the Bay of Pigs, U.S. foreign policy has suffered a series of severe defeats; we have been in

retreat in many places around the world; human errors, gloomy Spenglerian indecisiveness and confusion, poor leadership, and a lack of mobilized national will have led to the loss of Vietnam and our retreat from Southeast Asia, the debacle of Angola, the substitution of Communist for U.S. influence in Ethiopia—and, in the Caribbean, the transformation of a friendly Cuba into a springboard for Soviet imperialism in the Western Hemisphere. As the *Pueblo*, *Mayaguez*, and other incidents have shown, even second- and third-rate powers now dare to tweak Uncle Sam's nose.

This process of losing not only face and prestige but also control has gone far in the Caribbean; it will accelerate greatly if we abandon the canal. The much-maligned domino theory was valid for Southeast Asia; along with Vietnam, Cambodia and Laos fell to Communist governments; Thailand expelled our forces; the Philippines immediately announced a shift away from the United States and demanded a revision of our base agreements; and all over the world, U.S. resolution and will were questioned. The domino theory is equally valid for the Caribbean: if Panama goes, all our positions there may eventually follow.

This is particularly true of Guantanamo Bay at the western tip of Cuba, a base important for training and, because of its geographical location, commanding the Windward Passage. The treaty that governs our use of the base is remarkably similar in some ways to the Panamanian treaty. We enjoy at Guantanamo Bay "complete jurisdiction and control," or de facto exercise of sovereign rights, over some 29,000 acres of land and water. (There is a major difference; we concede in the Cuban case that "ultimate sovereignty"—not defined in the treaty—resides in Cuba, but our "complete jurisdiction and control" continue indefinitely until the United States voluntarily "abandons" the base or agrees mutually with Cuba to revise the treaty.) In other words, we lease the Cuban base and under the terms of the lease, which can be terminated only by mutual agreement, we hold sovereignty over it. But we do not—as we do in Panama—own the land or water.

If we give up our sovereign rights in Panama and abandon the canal, it seems certain that Castro—who long ago cut off the Guantanamo Bay reservation from the rest of Cuba—will reassert his past demands that the United States get out.

Nor is "Gitmo," as the navy calls it, the only threatened point d'appui. Castro has never made any secret of his ambition to be, in his own right, a dominant figure in the Caribbean and, with help from the Communist bloc, to make the neighboring island and mainland countries safe for Marxism. Indeed, his Communist and Third World alignment has led him with Moscow's encouragement and support far afield from the Caribbean, to the African continent, where Cuban troops armed by the Soviet Union have been operating in various countries for years. By far the largest and most ambitious manifestation of Castro's determination to make the world safe for communism was, of course, Angola, where a left-wing faction in a three-way civil war took over the country only because some 12,000 to 20,000 Cuban troops, transported chiefly by Moscow and armed and supplied by the Soviet Union, easily overran the primitive guerrillas that opposed them. Castro must be judged by his actions as well as by his words, and his actions—endorsed and supported by the Soviet Union—are clear. Indeed, Castro and Brezhnev jointly reiterated during Castro's visit to Moscow in the spring of 1977 their determination to continue to support revolutions around the world—a public statement that seemed to cause few ripples in Washington, intent on "normalizing" relations with Cuba.

At Russian urging, Castro abandoned some years ago his overt attempts to subvert other Latin American countries; his strategy is now more insidious because largely, though not entirely, covert. His Russian-trained agents operate secretly in numerous countries, through propaganda, subversion, and infiltration of key government positions. He has encouraged and supported all left-wing governments in the Caribbean, with training missions, agents, provocateurs, guerrillas. His spore, which is to say the spore of Soviet communism, is everywhere in the area; his agents have appeared in Jamaica, Guayana, Puerto Rico, and Panama. Nor would "better relations" between Cuba and the United States halt these subversive manipulations; any Communist program includes, alongside the formal and overt implements of policy, their unofficial and covert counterparts.

Even more important, a U.S. retreat from Panama would probably put the last nail in the coffin of the Monroe Doctrine. Until Castro took power and Cuba became a Soviet protectorate, this 150-year-old policy—that the Western Hemisphere was for the Americas—was a no-trespassing sign to Moscow's imperialism. Under the Monroe Doctrine the Caribbean had been—particularly throughout the twentieth century—within the U.S. "sphere of influence," a term that today is too often misunderstood and denigrated. This southern sea has been as important to us as Eastern Europe has been to the Kremlin. It has lost none of that importance, but

communism in Cuba, fortified by the largest Soviet-trained and equipped army in Latin America, a Soviet submarine base at Cienfuegos, Soviet anti-aircraft missiles in large numbers, and modern Soviet aircraft flying from Cuban bases, some of them piloted by Russians, has gravely threatened our predominance.

A retreat from Panama would be certain, therefore, to further impair our political and psychological position in the Caribbean and throughout the world; its specific effects cannot be forecast. It is clear, however, that a cession of sovereignty by the United States, in the face of the open demands and threats of violence made by Panama's Torrijos government with the overt backing of Castro and Moscow would weaken our power position, our prestige, and our pride. Guantanamo Bay would be next to go, and the ripples would spread far. The world would again ask as it did after the *Pueblo*, Vietnam, Angola: Is the United States a paper tiger? Are its will and resolution to be depended on? Where would Washington draw the line if not at its own back door?

ARGUMENTS FOR ENDING U.S. SOVEREIGNTY

All of these considerations appear to support so clearly the retention of the Panama Canal under U.S. sovereignty that one may well ask why the question of transferring the canal to Panama is even an issue. What possible arguments can be made for it?

There are, I think, three principal reasons for Washington's persistence in adhering to what the great majority of Americans (according to the polls) believe to be an aberration, a mistaken policy, namely, the relinquishment of sovereignty. These reasons are related and mutually reinforcing.

First, there is—particularly among our intellectuals, our literate and literary opinion molders, our academics, and our liberal political thinkers—what Robert M. Utley has well described as “a national guilt complex that would expiate sin by bending history to modern social purposes.”¹ This stems, I believe, from the great emphasis in the past two decades on civil rights (particularly for the Negro, the Indian, and minorities), the excesses of Watergate, the trauma of Vietnam, and blind frustration at the changing world about us. The American pride of the past has given way to the breast-beating shame of the present. This guilt complex has been particularly pronounced in that small but highly important group of managers and public servants and opinion formers who tend to make policy.

The second reason is simply obfuscation—what has been described as “our lack of purpose, our strategic self-effacement, and our confusion.”² These are particularly evident in the State Department's canal policy. There has been little evidence of firm, coherent, positive policy; rather we have been diffident, divided, and defensive. Our great efforts have been largely patch-and-mend. Compromise and concession are essential parts of diplomacy, but when they are used merely to paper over cracks, they inevitably lead to defeat and retreat, especially when the adversary is aggressive, strong, and expansionist.

A third reason is the change, since World War II, in the world around us—the end of empire (except the Soviet empire), the exorcism of colonialism, the gradual exhaustion of some U.S. raw materials such as oil, and the consequent increasing political and in some cases economic importance of a plethora of newly independent Third World countries. In particular, the ultimately successful seizure of control of the Suez Canal by Egypt has had an important influence, not only upon the government of Panama but also upon some of our own intellectuals.

And now the chickens have come home to roost. As a result of all our past mistakes and fruitless concessions, we are facing a put-up-or-shut-up situation.

The waffling of past administrations and, since the Suez takeover in 1956, a long series of concessions reached a point of no return in 1974 when Secretary of State Henry Kissinger, in a personal visit to Panama, initiated a document which set guidelines for the treaty negotiations that are now reaching their culmination. This Joint Statement of Principles proposed that at some future undetermined date the operation and defense of the canal would become a joint U.S.-Panamanian responsibility, but that the canal and the U.S. territory of the Canal Zone would ultimately be transferred to Panama.

This unprecedented action, which, in effect, would give to Panama territory over which the U.S. flag has flown for more than seventy years and the canal installations that have cost the U.S. taxpayer a total of, perhaps \$7 to \$8 billion, was a unilateral action of the executive branch, unauthorized by Congress, indeed, un-

¹ Robert M. Utley, *The Contribution of the Frontier to the American Military Tradition*, Harmon Memorial Lecture, U.S. Air Force Academy, September 30, 1976.

² Roger Fontaine, Introduction to Mario Lazo, *Panama Canal Giveaway*, Special Study no. 1 (Washington, D.C.: Council for Inter-American Security, 1977).

known to most congressmen until after the fact. In brief, this is what the current debate and the battle still to come in the Senate are all about: will the Senate rubber-stamp Henry Kissinger's *fait accompli*, or will it reassert, as it has done on other issues in the past decade, its ancient prerogatives?

THE HISTORY OF U.S. SOVEREIGNTY

Many of the arguments for the switch in sovereignty and much of the conscious or subconscious motivation for it stem, in part, from ignorance or distortion of the manner in which the Panama Canal territory was acquired by the United States and of the wording of the original treaty of 1903. S. I. Hayakawa, now a senator from California, spoke last fall in his eccentric campaign about our "stealing" the canal. Even President Carter has contributed to the perpetuation of myths spawned by revisionist historians and liberals. In his telephone call-in last March, he told a caller that "the treaty signed when Theodore Roosevelt was President gave Panama sovereignty over the Panama Canal Zone itself."

But, contrary to these assertions from public officials who should know better, we did not steal the canal, nor does Panama have residual, titular, or any other kind of sovereignty over it. The United States bought the canal territory—a strip across the Isthmus of Panama some fifty miles long and ten miles wide—at a cost to the American taxpayer that far exceeded the cost of the Louisiana purchase, the Mexican cession, the Florida purchase, the purchase of Alaska, or any other territorial acquisition.

An isthmian canal had been talked about for centuries and became an overriding issue when the California gold rush drew thousands westward. But it was not until the turn of the century that Panama became the preferred locale; in fact, up until the digging began, many American experts preferred a route through Nicaragua. A French company lost \$260 million in an abortive attempt, ending in 1889, to construct an isthmian canal. In 1901, when the canal issue was still hot politically as a result of the Spanish-American war and the battleship *Oregon's* mad dash through the Straits of Magellan to bolster the Atlantic Fleet, the United States ratified the first of a series of enabling treaties which led to the construction of the Panama Canal. The Hay-Pauncefote Treaty of 1901 between Britain and the United States established guidelines for the operation of an isthmian canal, when completed; it provided (as did the arrangements governing the Suez Canal, then controlled by the French and the British) for unhindered passage by the ships of all nations. In that treaty—which is still operative—Britain agreed that the United States should have "the exclusive right of providing for the regulation and management of the canal" and that "no change of territorial sovereignty or of the international relations of the country or countries traversed by the . . . canal, shall affect the general principle of neutralisation or the obligation of the High Contracting Parties (Britain and the United States) under the present Treaty."³

The Hay-Pauncefote Treaty, which would seem to preclude any transfer of sovereignty to Panama without British agreement, was followed in 1902 by the Spooner Act, in which Congress provided President Theodore Roosevelt with \$40 million with which to purchase the rights to an isthmian canal obtained by the French from Colombia. The act provided specifically for "perpetual" control by the United States of any canal that might be built. A Colombian representative agreed to the transfer in perpetuity of a strip of isthmian land to the United States, but the government of Colombia repudiated the treaty.

In 1903, the Colombian province of Panama—which had once been independent and had occasionally seethed with revolt since its autonomy had been revoked by Bogotá—saw its golden opportunity slipping through its fingers and falling to its rival, Nicaragua. With some French and American encouragement and help, a bloodless revolution occurred; Colombian ships and troops were held at arm's length by a U.S. show of force, and the Republic of Panama, now one of the most economically favored of Latin American nations, was born out of a pestilential swampland.

The establishment of Panama led almost immediately to the conclusion of the Hay-Bunau-Varilla Treaty between the United States and Panama in 1903. This treaty has governed the administration, operation, and control of the canal and the Canal Zone ever since. The fundamental terms of this treaty, which Secretary Kissinger and before him President Johnson abandoned, are now at issue.

The articles which have aroused so much discussion and debate are Articles 2 and 3. Article 2 states that "the Republic of Panama grants to the United States in

³ Treaty between the United States and Great Britain to Facilitate the Construction of a Ship Canal, signed in Washington, D.C., November 18, 1901; manuscript, U.S. Department of State, Archives, Treaty Series, no. 401; quoted in U.S. Congress, House, Subcommittee on the Panama Canal of the Committee on Merchant Marine and Fisheries, *Panama Canal Finances*, 94th Congress, 2nd session, 1977.

perpetuity [a reiteration of the language of the Spooner Act; italics added] the use, occupation and control of" the Canal Zone, of which the dimensions are then described. Article 3 states, "the Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article 2 * * * which the United States would possess and exercise if it were the sovereign * * * to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority." For this outright transfer of territory the United States paid the new republic an initial \$10 million.

In the same treaty, the U.S. government assumed the annual obligations of the Panama Railroad Company, a private company that had built a rail link across the isthmus many years before. Washington bought the entire stock of the company as an aid to construction of the canal and undertook to pay to Panama the \$250,000 annuity or "compensation" the private company had previously paid to Colombia annually. From this clause—the annuity or grant for the railroad right of way—has arisen the myth that we are paying Panama rent for the Canal Zone, although the term lease is nowhere mentioned in the treaties and the transfer of sovereignty is specific.

Ratifications of this treaty were exchanged, and in May 1904 the foreign minister of the Republic of Panama formally notified Washington that the Republic of Panama considered that its jurisdiction over the zone had ceased.

The United States then purchased, in accordance with the treaty, title in fee simple to all privately owned lands within the Canal Zone, at a cost of something more than \$4 million. Thus, the *initial* acquisition of the Canal Zone—entirely aside from the accumulation over the years of the annual annuity paid to Panama, the later transfer of millions of dollars worth of U.S. property to Panama, and the cost of construction and modernization of the canal itself—cost the United States some \$54 million.

The 1903 and 1904 agreements were implemented by provisional boundary agreements delineating the Canal Zone, in which Panama specifically ceded (the word is used four times) the land defined to the United States. The National Assembly of Panama ratified the agreements and used the word ceded in so doing. This provisional agreement was finalized and formalized in 1914 (when the canal was completed) and established the boundary lines "permanently."

Following the initial treaties a three-year struggle to conquer yellow fever and reduce malaria, then endemic in the area, permitted the construction of what was and still is an engineering marvel. Many of the laborers who helped to build the canal were not, contrary to present belief, Panamanians, but blacks from West Indian islands. The canal was completed in 1914 at an initial cost (including the \$54 million acquisition payments to Panama, the French company, and private landowners) of \$366,650,000. Together, this initial outlay and all the improvements, modernization, and maintenance of some seven decades now total almost \$2 billion, exclusive of cumulative defense costs.

In the year the canal was completed, disgruntled Colombia, which had always wanted more American dollars, settled its differences with the United States in the Thomson-Urrutia Treaty, which was finally ratified in 1922. As a result of this treaty the United States gave Colombia valuable canal and railroad transit rights across the isthmus and paid Colombia \$25 million in compensation for the loss of the province that had become the Republic of Panama. Colombia recognized Panama's independence, formalized the boundaries between them, and acknowledged that title to both the canal and the railroad was vested "entirely and absolutely" in the United States.⁴

Partly as a belated result of the settlement with Colombia and the formal recognition by Bogota of Panama's independence, the original treaty of 1903 was renegotiated in 1936 to eliminate what had become an obsolescent clause. The U.S. guarantee of Panama's independence was cancelled, at Panama's request, and Panama, encouraged by Franklin D. Roosevelt's Good Neighbor policy, won many other concessions. Most important was the elimination of the right granted the United States in the original treaty to what amounted to "eminent domain" throughout the Republic of Panama, that is the right to use any defense sites it required outside the zone. Also abrogated was the right of the United States to keep order in the Panamanian cities of Colon and Panama, located near the Atlantic and Pacific entrances to the canal respectively. In addition Panama was granted customhouse sites in U.S. Cristobal and Balboa and a corridor or legal easement over the zone.

Despite current contentions by the State Department that the 1936 treaty revisions recognized Panama's sovereignty over the Canal Zone, it is clear that in both

⁴ House, Subcommittee on the Panama Canal of the Committee on Merchant Marine and Fisheries, Colombia, Settlement of Differences, Article 1, n. 123.

wording and intent the treaty actually reemphasized the sovereignty, in perpetuity, of the United States.

At the time, Undersecretary of State Sumner Welles, anticipating what was to come, attached a memorandum to the treaty noting that both the Panamanian foreign minister and the Panamanian ambassador had stated that the treaty met fully every request Panama might ever make. The Welles memorandum quoted the two Panamanian officials as stating that their country had received "everything that Panama could possibly want from the United States and henceforth would request no more concessions."⁵

During World War II, air bases and defense sites deemed necessary to defend the canal were acquired and utilized during hostilities in the Republic of Panama, but only at a price, paid to Panama, of about \$1 billion. A 1955 treaty revision increased the annual compensation or annuity, made some property adjustments, which turned over about \$40 million worth of U.S. property to Panama, and clarified the status and improved the employment opportunities of Panamanians working in the zone.

The Implicit Shift in U.S. Policy

But the formal treaty revisions have perhaps been less important than some of the executive actions taken by various administrations.

One of the most symbolic of these actions, which was widely publicized in Latin America, occurred in 1946 when Alger Hiss, then head of the Office of Political Affairs at the State Department, sent to the new United Nations a list of so-called U.S.-occupied territories, which included the Panama Canal Zone. This action signalled a split in the State Department, with Spruille Braden, then assistant secretary of state for Latin America, in furious opposition to Hiss. Even more important, the action of Dean Acheson, then acting secretary of state, in backing Hiss forecast the beginning of an implicit shift in State Department policy about the sovereignty of the Canal Zone.⁶

Panama's increasingly clamorous claims to sovereignty over the zone received striking symbolic support when President Eisenhower ordered the Panamanian flag to be flown at one location in the zone. His action followed some minor student riots in Panama City in 1959 and an invasion of the zone by Panamanian students who planted their flag at several locations.

Eisenhower's action was interpreted by the Panamanian government and, at least symbolically and implicitly, by many in the State Department as recognizing Panama's residual, or ultimate, sovereignty over the zone. Later, President Kennedy authorized the flying of the Panamanian flag at some seventeen different locations in the zone.

Still unsatisfied, Panamanian mobs rioted in 1964 and attacked the zone. They were tacitly encouraged by the Panamanian leadership, but directly led and egged on by "persons trained in communist countries for political action."⁷ These mobs consisted of "known and identifiable communists, members of the communist party of Panama and people who belonged to the vanguard of National Action, which is * * * the Castro Communist Party in Panama."⁸

Partly as a result of the bloodshed in these riots (twenty-three Panamanians and four U.S. soldiers were killed) and the insistence of the State Department that the canal was really the sovereign territory of Panama, President Lyndon Johnson negotiated a series of treaties with Panama (never ratified) basically similar to the Kissinger-Tack agreement, which have provided the parameters for the present treaty negotiations. Congressman Gerald Ford commented: "With Cuba under the control of the Soviets through its puppet Castro, and with increased communist subversion in Latin America, a communist threat to the Panama Canal is clearly a grave danger. The American people will be shocked by the terms of this treaty."⁹

As President, however, Ford supported the reversion of sovereignty to Panama. Now President Carter is supporting the same view, though both have paid lip service to the necessity of joint U.S.-Panamanian control and defense.

⁵ Statement of Alfred T. Schweppe, "Panama Canal Treaties," in U.S. Congress, House, *Congressional Record*, 95th Congress, 1st session, March 3, 1977, p. H1713.

⁶ The State Department's shift in policy has been perceptible in the last thirty years, particularly since the Suez Canal crisis, but opinion on the sovereignty issue is not unanimous—within either the State Department or the executive branch of government—even today. The Defense Department's attitude has ranged from aggressive opposition to foot dragging.

⁷ Ambassador Ellsworth Bunker in a public statement, 1964, cited in Lazo, *Panama Canal Giveaway*, p. 12.

⁸ Joseph A. Califano, Jr., then assistant secretary of defense in the administration of President Johnson, in a public statement, 1964, cited in Lazo, *Panama Canal Giveaway*, p. 12.

⁹ Lazo, *Panama Canal Giveaway*, p. 12.

The Debate over Sovereignty

It has been necessary to summarize the history of the canal and the mutations in the original treaty and in our relationship with Panama in order to understand—and to refute—two of the basic arguments made by proponents of turning over the Panama Canal to Panama.

These arguments are that Panama retains, and always has retained, sovereignty and that, in any case, the great big United States has exploited poor little Panama in the past and should make amends (part of the warp and woof of the guilt trauma, which particularly seems to infect intellectuals).

The sovereignty argument derives from two sources: the "if" clause in Article 3 of the 1903 treaty, which appears to qualify U.S. sovereignty over the zone, and the use of the phrase titular sovereignty by Secretary of State John Hay and Secretary of War William Howard Taft soon after the treaty was signed. Panama itself has not directly raised the issue of titular sovereignty; instead, some of its administrations have claimed at various times and under various circumstances that Article 3 preserved the republic's sovereignty over the zone.

The issue of residual or titular sovereignty has been discussed on many occasions in the United States since 1903. Secretary of State Hay never conceded the validity of the theory, and termed the concept at best a "barren scepter."¹⁰

Taft, then secretary of war, discussed the theory in a long statement presented to the Senate Committee on Inter-oceanic Canals on April 18, 1906. He noted that Article 3 "gives rise to the obvious implication that a mere titular sovereignty is reserved to the Panamanian government," and continued: "Now, I agree that to the Anglo-Saxon mind a titular sovereignty is like what Governor Allen, of Ohio, once characterized as a 'barren ideality,' but to the Spanish or Latin mind, poetic and sentimental, enjoying the intellectual refinements, and dwelling much on names and forms, it is by no means unimportant."¹¹

Taft later explained that titular sovereignty really meant, in pragmatic terms, that if, at some future time, the United States decided to abandon the canal, it would turn it over only to Panama, which had ceded it to the United States originally, and to no other nation.

Later, as President, Taft visited Panama, and told the Panamanians that they had given the United States sovereignty and jurisdiction over part of their country. Still later, in 1930, when he was chief justice of the United States in the case of *Luckenbach Steamship Co. v. United States* he noted that the theory of titular sovereignty was "the subject of diverging opinions." But in the same opinion, he cited as one of the precedents the case of *Wilson v. Shaw*, a unanimous Supreme Court opinion of 1907 which interpreted the 1903 treaty as having "ceded" title over the zone to the United States. Taft quoted the 1907 opinion, which stated: "It is hypercritical to contend that the title of the United States is imperfect, and that the territory described does not belong to this nation, because of the omission of some of the technical terms used in ordinary conveyances of real estate." * * *¹²

Throughout the decades various secretaries of state and attorneys general of the United States have declared in unequivocal terms that the United States holds full sovereignty and title over the Canal Zone. In 1923, Secretary of State Hughes vehemently insisted the United States had full and sovereign rights to govern and regulate and control the Canal Zone. He added—ironically in view of recent developments: "It was an absolute futility for the Panamanian Government to expect any American administration, no matter what it was, any President or Secretary of State, ever to surrender any part of these rights which the United States had acquired under the Treaty of 1903."¹³ And as recently as the early 1970s, the Supreme Court let stand a U.S. Fifth Circuit Court of Appeals ruling, referring to both the 1903 and 1936 treaties, which declared that the "Canal Zone is an unincor-

¹⁰ House Subcommittee on the Panama Canal of the Committee on Merchant Marine and Fisheries, *Panama Canal Finances*, p. 398.

¹¹ *Ibid.*, p. 402. This source includes some of the most thorough discussions of the sovereignty issue in the public record. Particularly important are the pages cited, which include a memorandum written in 1959 from Governor W. E. Potter of the Canal Zone to the Honorable Herbert C. Bonner, chairman of the Committee on Merchant Marine and Fisheries of the House of Representatives on the subject "Sovereignty over the Canal Zone."

¹² *Luckenbach Steamship Co. v. United States*, 280 U.S. 173; 50 Sup. Ct. 148. *Wilson v. Shaw*, 204 U.S.; 27 Sup. Ct., 233, 235.

¹³ House, Subcommittee on the Panama Canal of the Committee on Merchant Marine and Fisheries, *Panama Canal Finances*, p. 400.

porated territory of the United States over which Congress exercises 'complete and plenary authority.'"¹⁴

History and the law appear to indicate in no uncertain terms that there is no merit whatsoever to the concept that the treaty of 1903 vested so-called titular sovereignty or residual sovereignty in Panama. The wording, to repeat, is clear and unequivocal: "The Republic of Panama grants to the United States *in perpetuity* the use, occupation and control" of the Canal Zone. "The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned . . . which the United States would possess and exercise if it were the sovereign . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority." (Italics added.)

The State Department's current contention that the treaty does not mean what it says (a complete reversal of its interpretation of the treaty during our first forty to fifty years in Panama) is in flat contradiction with its attempts to negotiate a new treaty. What is being negotiated is a transfer of sovereignty. One cannot transfer sovereignty unless one exercises it. The United States has, and will retain until Congress decides otherwise, complete sovereignty and control over the Canal Zone in perpetuity.

The Myth of U.S. Exploitation

The other argument, that the United States has exploited Panama, is obvious nonsense. Panama had been no more than a pestilential swamp in 1903; it is a potentially prosperous little nation today almost entirely because of Uncle Sam's munificence and the golden flood of dollars that poured into the region because of the Canal.

In addition to the approximately \$2 billion spent by the United States in acquiring, building, maintaining, and improving the canal and its supporting infrastructure in the Canal Zone, the United States has spent, over the years, some \$6 to \$7 billion on the military defense and security of the canal, much of which has found its way into Panamanian pockets. To offset these expenditures, about \$1.125 billion has been paid back into the U.S. Treasury in tolls and other revenues, leaving the U.S. taxpayer in the hole over the seventy years of our hegemony in the zone to the tune of almost \$8 billion.

These figures are in themselves an index of U.S. policy. The United States has regarded the Panama Canal as a major strategic asset but also as an international utility of great benefit to the world. Tolls have been kept low purposely, and the canal has been open impartially to the ships of all nations, in accordance with the Hay-Pauncefote Treaty with Britain.

There is no question that it is the canal and its efficient operation and the tremendous economic stimulus provided by direct and indirect U.S. grants that have made little Panama, with its 1.7 million people, a viable, if restless, entity. The canal, to Panama, is the goose that laid the golden egg. The country could not exist without it.

Consider some figures: In 1975 Panama received—including an annuity which now totals \$2.32 million per year—some \$236.9 million from the United States, of which about \$103 million was paid in wages and retirement and disability benefits to Panamanians employed in the zone. About 10,000 people, 72 percent of the total work force of the Panama Canal Company and the Canal Zone government, are Panamanian nationals; other thousands work for the U.S. military. The canal is larger than any other single source of employment in Panama. Between 1946 and 1973, according to House Appropriations Committee hearings, Panama was the recipient of \$342 million in total U.S. aid, more per capita than any other country in the world. Net income to the Panamanian government originating in the zone totalled about 12.5 percent of the gross domestic product of Panama in 1975.

In addition to these direct economic infusions Panama has received all sorts of benefits from literally hundreds of projects. A bridge and highway across the canal were built at U.S. expense to link the two parts of Panama; the country's deep-water ports are U.S. built and operated; its principal international airfield was U.S. built and its transisthmian road and railroad were U.S. constructed or operated. Its water supply comes largely from reservoirs and purification systems constructed by the United States. Its sanitation system was largely a product of U.S. organization and equipment; until some years ago, when by mutual agreement the responsibility was transferred to Panama, the United States collected the garbage in the terminal

¹⁴ Statement by Alfred T. Schweppe, *The Panal Canal Treaties*, p. H1713. See also Donald Dozer, Panama Canal Series, no. 1, p. 4, a National Education Project, Emergency Committee to Save the U.S. Canal Zone, P.O. Box 30054, Santa Barbara, California. The case cited is *U.S. v. Husband R. Roach*, 406 U.S. 935 (1972).

cities of Panama and Colón and directed the mosquito elimination program which safeguarded the health of residents in Panama and the Canal Zone alike.

U.S.-owned merchant ships, flying Panama's flag of convenience, add to the revenues in Panama's coffers, and tourism attracted primarily by the canal provides a stream of dollars, particularly for the merchants in Panama City, a free port. U.S. private capital has invested fairly heavily in hotels and other projects or in direct loans to the Panamanian government, and a number of the largest U.S. banks have established branches in Panama City.

All of this golden stream has made Panama—despite its unstable governments, mismanagement, and a greedy elite—one of the most favored nations in Latin America. If "poor little Panama" has been exploited, none of the economic, health, or social statistics show it. It has one of the highest GNPs per capita among all the nineteen Latin American nations; it had, from 1960 to 1974, a per capita growth rate surpassed only, and barely, by that of Brazil; until 1975 it had one of the lowest inflation rates in Latin America; thanks to American medicine, infant mortality has been the lowest in all Latin America and the mortality rate, second lowest. Panama's literacy rate is considerably higher than most in the region, and its life expectancy has been fourth among all the Latin American nations.

Far from being exploited, it is quite clear that Panama has derived benefits from the American presence in the Canal Zone that have made it fortunate among nations. The canal is Panama's single greatest revenue source. The exploitation myth is just that—a propaganda ploy fostered by Panama's politicians, by Castro's Cuba, and by the Soviet bloc to help force the United States out of the zone. It has no basis in fact.

THE VIEW FROM LATIN AMERICA

These two completely groundless arguments for giving away the canal are often supported by two others—usually advanced by Panama—that have made some impression, at least in the public media, in the United States. First, the Latin American nations are unanimously in favor of the transfer of the canal, it is said: and second, if the United States does not bow to Panamanian demands, it will face gunfire and disruption in the zone (as in 1964), sabotage of the canal or zone installations, or even guerrilla warfare. Both arguments should be closely examined.

To anyone who knows the countries of South and Central America, the notion of solid unity on nearly any issue is far from convincing. On the other hand, *pro forma* denunciations of the Big Brother to the north are virtually obligatory for Latin American politicians, and public expressions of solidarity with Panama should not come as a surprise. To damn the gringo and Yankee imperialism is the normal rhetoric of some Latin American politicians, but at the same time they respect firmness and strength. Such statements in no sense imply a unified, or even a majority, approval by the Latin American nations of a transfer of sovereignty. The same men who express such opinions publicly often renounce them privately.

The late Mario Lazo, himself a Latin American, wrote before his death that "the almost universal reaction among the educated people of Latin America to . . . a giveaway treaty would be . . . incredulity . . . sadness . . . eventually ridicule and even contempt for the once greatly respected nation that had shown itself no longer to have the will to maintain its prestige and discharge its responsibilities."¹⁸ General V. H. Krulak, writing in the summer 1975 issue of *Strategic Review*, declares that most Latin Americans "realize that the critical strip [the Canal Zone] must never be allowed to fall into irresponsible hands." In the same article General Krulak, who is an executive with the Copley newspapers, cites the remarks of both Chilean and Venezuelan delegates to a recent Inter-American Press Association meeting, warning the United States not to give in to Panamanian demands.

Congressman Daniel A. Flood of Pennsylvania, who has made the canal one of his primary interests during his twenty years in Congress, points to the views and opinions expressed during an Inter-American Conference on Freedom and Security in 1975, attended by representatives from thirteen hemispheric nations. "The overwhelming views," he states ". . . were in opposition to surrender of the Canal Zone to Panama, and a general desire for the United States to continue its undiluted sovereign control."¹⁹

The claim that all Latin America backs Panama's position is propaganda, pure and simple, propaganda which has used the Goebbels technique that if a lie is repeated often enough it will be believed. In a 1976 General Assembly meeting of the Organization of American States the only resolution referring to Panama ex-

¹⁸ Lazo, *Panama Canal Giveaway*, p. 10.

¹⁹ Statement by Congressman Flood in U.S. Congress, House, *Congressional Record*, 94th Congress, 2nd session, September 9, 1976, p. H9658.

pressed the simple hope that the two countries might settle their differences peacefully by the end of 1976. Earlier, a much advertised invitation from General Torrijos, the Panamanian dictator, to all Latin American presidents to attend a conference in Panama had to be cancelled when a number of presidents declined the invitation after learning that Fidel Castro would attend. Despite his drum beating and his invocation of solidarity, Torrijos has never been able to enlist all the nations of Central America behind his demands, much less all the nations of the Southern Hemisphere.

The reasons for this are clear: those nations—and they probably represent a majority—that hold aloof from the Torrijos campaign have a definite self-interest in preserving the status quo of the Canal Zone, which to them is compelling. Latin American trade routes use the canal to such an extent that it has assumed major significance for the hemisphere. Nicaragua and El Salvador are particularly dependent upon the waterway; more than two-thirds of their trade passes through its locks. More than half of Ecuador's trade uses the waterway; for Peru, the figure is more than 40 percent, for Chile, Colombia, and Guatemala approximately one-third. Most of these users do not want to buy a pig-in-a-poke; under the American flag the low rates and the stability and efficiency of canal operation have been impressive. Under Panamanian jurisdiction the users could have no such assurance; considerably higher rates (some unofficial Panamanian sources have suggested a 400 percent increase) would almost certainly be imposed and sizable outlays for maintenance and modernization indefinitely postponed.

Even more important, the example of the Suez Canal since its nationalization by Egypt gives no assurance that a Panama Canal under Panamanian operation would indeed be open to all shipping. Political preferences would almost certainly infringe upon the canal's maritime neutrality—all the more so because of the close ties of Torrijos and his one-party regime with the Communist bloc. Castro's Cuba and behind it the looming figure of Soviet imperialism are still a frightening specter to Latin America. Many of the nations that Torrijos has wooed are well aware of his ties, overt and covert, to Cuba and of the growing Communist influence in various forms in Panama. To many countries of Latin America, better the devil you know than the devil you don't.

The Torrijos Regime

And there is, finally, the image that General Omar Torrijos projects, the record on which he stands, and the political history of the little country he represents. None is reassuring for the future of the canal if it is transferred to Panamanian hands. Torrijos has been in power for eight years—a strong contrast to the average tenure of 2.25 years of the thirty-two presidents who have ruled Panama since its creation. But duration does not necessarily mean stability.

Torrijos is a military man, the former and present head of the Panamanian National Guard, a paramilitary police force, trained, organized, and equipped by the United States. The guard is the only organized military or police force in Panama; as such it has always strongly influenced and sometimes dominated politics. But until Torrijos seized power from an elected president in 1968 in a coup backed by the guard, the so-called fifty wealthy families dominated both the Panamanian economy and to a great extent (often in an alliance with one or another guard officer) Panamanian politics. These families oscillated in and out of politics, accumulating wealth which many of them kept in Spanish or U.S. banks. They usually sent their children abroad to school and they varied greatly in their services to their country; a few were generally progressive and public spirited, the majority selfishly reactionary. But no matter who was in power, the tactics of Panamanian politics for the past thirty years have always been to use Uncle Sam as a whipping boy. The leaders who controlled these politics never hesitated to incite street mobs to demonstrate against the American ogre and to try to extort from Washington more concessions to put more money in their pockets.

The golden flood, either in the form of increased payments, direct or indirect, from the canal or from Washington, or in the form of loans or grants by American banks for private development or to the Panamanian government, increased. But little of it filtered down to the poverty-stricken peasants of the interior, many of whom, as in other countries, migrated to urban areas, to live in the torpid, dirty slums of Panama City and Colón just across the street from the American zone. As the United States from the 1930s to the present turned over more and more of the responsibilities of nationhood to Panama and made concession after concession, the rich got richer and the poor got poorer.

The tragedy of Panama, similar to the tragedy of so many Latin American countries, is that until relatively recently there was a very small middle class; a few had great wealth; many were poor. (Parenthetically, however, Panama's extremes—

though more obvious to the tourist strolling from the oasis of the Canal Zone to the slums of Panama City—are not nearly as lopsided as those of Brazil or most other Latin American countries.)

General Omar Torrijos, like many other Latin American dictators before him, played on these economic discrepancies to consolidate power. He started a miniature version of a modified welfare state and wooed the masses. He spent heavily on health, education, training, public services, and transport and gave the unions the highest wages in Central America, while at the same time approving legislation that virtually prohibited any worker dismissals. These tactics made him, for a time, a popular figure with "the street," which has always played a volatile role in Panama. But above all, he has until recently been able to insure the loyalty of the 8,000-man National Guard, which alone was enough to perpetuate his power.¹⁷

The Torrijos economic reforms and the wastefulness of his rule cost the Panamanian treasury heavily, and the dictator went deeply into debt, chiefly to American banks. Partially to distract his followers from his broken promises at home, Torrijos concentrated his fire against the United States. He endorsed the same basic goal enunciated by the Communist party of Panama when it was founded in 1930—the seizure of the canal, by treaty negotiations if possible, by force if necessary. Since then, with the very great help of a vocal and highly placed minority in the United States, he has beaten the drums of Panamanian sovereignty, with, until last year, what seemed to be considerable success.

In the fall of 1976, for the first time in Torrijos's reign, students and youth groups rioted against the government. Their discontent, quickly controlled by the loyal National Guard, had nothing to do with the Canal Zone treaty. It was a manifestation, as the *New York Times* put it, of "deep economic discontent and growing political dissatisfaction" with Torrijos and his dictatorship.¹⁸

The situation in Panama today is smoldering. The country is greatly overextended economically, with about thirty-five cents of every dollar of revenue going to pay the interest on foreign debts worth \$1.1 billion. The rising growth rate of about 8 percent per year which helped Torrijos greatly when he seized power has declined to less than 1 percent in 1976 (in part because of the worldwide recession). Unemployment in Panama City is high; to meet inflation and to placate the fearful business community, a two-year wage freeze was initiated and taxation was increased, while salary cuts for bureaucrats were promised. But the result has antagonized the left and has not satisfied the right. At the same time Panama has been through some of the same speculative land and real estate booms so familiar to Florida. In the late 1960s and early 1970s scores of foreign banks established branches in Panama, enticed by "the most liberal money-exchange laws in Latin America," and helped to promote a real estate boom. This has now virtually collapsed, and unfinished office buildings and partially occupied luxury apartments dot the skyline of Panama City. The rural migration to city slums has added to Panama's problems.

Torrijos today is reaping the fruits of his own self-perpetuating rule. He is an absolute dictator, who has established a one-party system, rules without legislative check, and brooks no opposition. The press is completely censored and the economy shackled. He has exiled dissenting businessmen, and active oppositionists get short shrift; there are repeated reports of extensive government corruption and of National Guard involvement in smuggling or contraband. High Panamanian officials are alleged to be involved in a heroin ring, and the republic has been officially described by the director of the U.S. Bureau of Narcotics and Dangerous Drugs as "one of the most significant countries for the transshipment of narcotic drugs into the U.S."¹⁹ There are also reports of political prisoners and even of murders, atrocities, and torture, though President Carter—still intent on a canal treaty—has not chosen to include Panama among the nations he has publicly denounced as violators of human rights.

Far more important from the point of view of U.S. security is the character of the Torrijos regime and its relationships to Communist powers. A kind of neo-Marxist establishment rules the country, even though there is no proof that Torrijos himself is a Communist (of either Soviet, Cuban, or Chinese coloration). Known and open Communist occupy high positions in the Torrijos regime.

The ties between Torrijos, Castro's Cuba, and the Soviet Union have been cordial and close, though some of their most important manifestations have been hidden. The original visits of members of Torrijos's government and his top advisers to Cuba

¹⁷ Some estimates of the National Guard's strength are as low as 5,000. Either way the guard includes all police and militarized police forces in the Republic of Panama.

¹⁸ Jonathan Kandell, *New York Times*, February 17, 1977, p. 2.

¹⁹ U.S. Congress, House, *Congressional Record*, 94th Congress, 2nd session, September 23, 1976, p. E5275.

were not reported and were apparently made as covertly as possible. Reports of these visits first surfaced about 1971. Later, the veil was thrown off and in one well-publicized visit Torrijos hailed the Cuban dictator as "an example and a light" to be followed elsewhere.²⁰ In recent years the traffic between Panama and Cuba has been extensive; the Cuban embassy maintains a very large staff of sixty people in Panama, and, far more ominous, numerous writers have recorded unconfirmed reports, seemingly with considerable substance, that sizable cadres of guerrilla-trained Cubans and of Panamanians trained in rioting and sabotage are now in Panama and are training or subverting some units of the National Guard. These reports deserve credence, if only because it has happened before; the bloody 1964 riots were led by identified and trained Communists. And, in the early years when Castro and Che Guevara were openly promoting armed revolution in Latin American countries, a small Cuban guerrilla force was surreptitiously landed in Panama.²¹

The character of the regime to which we are being asked to turn over the Panama Canal is clear. It does not matter whether Torrijos is a Communist or not; Castro was not a self-proclaimed Communist until he seized power, and now Cuba is shackled to Communist doctrines. Torrijos may well have started as a populist who broke the monopoly of the oligarchy that had long ruled Panama, but today he is a beleaguered tyrant, surrounded at the top by men who profess or are extremely friendly an ideology and to nations which have sworn our undoing.

The Torrijos regime is all the more unstable because of the growing discontent of the masses, upon whom Torrijos has attempted to build his power base. His original populist image is wearing thin, particularly because of the concessions to the right he has had to make in a time of recession and inflation. Some National Guard officers are said to be restive, worried by the increased power of Torrijos's Communist-oriented advisors. Meanwhile, opposition from students, businessmen, and the middle class, wary of communism, has increased materially in the past few years. Guillermo Ford, former president of the Panama Chamber of Commerce and one of a number of businessmen exiled by Torrijos for trying to foster a general strike against the dictator, expressed the sentiments of many Panamanians when he said simply, " * * * we do not want the United States to make the proposed treaty with the oppressive, unconstitutional regime of Omar Torrijos or any of his like."²²

As long as the National Guard remains loyal, Torrijos may remain in power, but if the political and economic dissatisfaction spreads and cracks widen in the National Guard, Torrijos, who has been trying to straddle the political fence, will have either to veer even more sharply to the left or to be swept aside. He is trying, of course, to avoid this—as all threatened rulers do—by focusing public attention upon an external issue and an external enemy, the canal and the United States. If Washington gives him the canal, Torrijos will be a hero for a day and his tenure will be lengthened, but the triumph will be brief. Panama's volatility and instability are there to stay; the political hero of today is the villain of tomorrow. The vacuum left when the United States retreats will be quickly filled by Cuban and Soviet power and influence.

So much for the argument that transferring sovereignty over the canal to Panama is desired by Latin America and will contribute to the stable and peaceful operation of the canal. It just is not so. Self-interest, the specter of Cuban or Soviet influence in the isthmus, the moody, power hungry, unreliable character of Torrijos, and the unstable situation in Panama itself are forceful warning signs, even to some Panamanians.

THE DANGER OF ARMED CONFRONTATION

What, then, of the argument that we must face confrontation and the danger of bloodshed in Panama if we do not give up sovereignty there? This is a far more realistic threat than the possibility that all of Latin America would unite against us. There will almost certainly be more rioting in Panama; it is endemic there. And physical attacks upon the Canal Zone, Americans, American property, or even the canal itself may, indeed, occur, particularly if the U.S. Congress refuses to cede sovereignty to Panama. The hopes of "the street" in Panama have been built high by demagoguery and by very skillful Communist propaganda. Fanatical ideologues, trained groups, and excited mobs might well seek to wreak vengeance for their disappointment.

²⁰ Ibid.

²¹ At that time—before Torrijos had seized power—its presence had negative effects; existing Latin American governments were frightened by Castro's aggressive attempts to overthrow constituted governments.

²² Public statement in Miami, 1976, quoted in *Sea Power Magazine*, August 1976; Virginia Prewett, "The Panama Canal," printed in the *Congressional Record* of July 22, 1976.

If such trouble does occur, the blame must be shared with the Panamanian government by the State Department and by the several administrations past and present that have made concession after concession and have encouraged in Panama expectations that are not supported by the U.S. public. In any case the threat of physical or even armed confrontation is no justification for surrender when a nation's vital interest is involved. One may concede, bow gracefully, and withdraw about minor issues, but unless a nation stands fast when major interests are involved, it will invite war ultimately or an endless spiral of retreat and defeat.

A confrontation in Panama could take one or more forms; terrorism, harassment, sabotage, rioting and attacks upon the zone, with or without the active participation of the National Guard, or even a kind of guerrilla warfare. Any violent action in the area, other than the acts of individual fanatics, would have to have either the overt or covert support or the tacit acquiescence of the Panamanian government. It would certainly be accompanied by Panamanian demands in the United Nations and elsewhere for condemnation of the United States, demands which would be carefully concerted with and supported by Cuba and the Soviet Union and quite probably a sizable number of Third World powers, particularly African nations.

Terrorism, on a small scale, may already have started. United States businesses in Panama have been attacked. A number of U.S.-owned automobiles parked in the zone, including one owned by a Canal Zone employee who has led organized opposition to the transfer of sovereignty, have already been destroyed by surreptitiously placed bombs. Terrorism has also been used to stifle internal opposition in Panama; the homes and offices of some businessmen who dared to oppose Torrijos openly have been the targets of bombings.

The U.S. embassy in Panama City was stoned, most recently in 1976. Harassment, too, has been employed by the Panamanian government. In at least one instance, contrary to existing provisions which guarantee free access by Canal Zone residents to Panama's commercial airfield (built by the United States), the same opponent of a transfer of sovereignty whose car was destroyed was detained by Panama National Guard officers on his way to the airfield. Threats have been freely employed by Torrijos and his subordinates, and Panamanian police have tried to exercise their authority in the zone.

On at least twenty occasions Torrijos has invoked the threat of open attack, led by the National Guard, on the Canal Zone unless a treaty transferring sovereignty is signed. The personnel officer of the Panamanian National Guard who doubles as minister of agricultural development, was one of the latest members of the Torrijos administration to promise bloodshed unless Torrijos gets control of the canal. He told a student audience a few months ago that members of the guard would be the first to fall.

Much of this rodomontade can be dismissed as breast-beating machismo, but not all of it. When addressed to volatile people and particularly to fanatics, it is deliberately inflammatory, and it is intended as psychological blackmail. Unfortunately few U.S. newspapers have reported the excessive rhetoric of Torrijos and his associates or the instances of internal repression and terrorist activities; thus, the impression, seemingly fostered by the State Department, that there is a stable government in Panama has been reinforced. The silence encourages more harassment and repression and an extension of terrorism.

A more serious form of terrorism would be sabotage against facilities in the zone, including pumping stations, power plants, dams, the Gatun spillway, and the lock gates. Modern explosives and the ease of procuring them (with help from Cuba and the Soviet Union), the large numbers of Panamanian citizens who work on the canal or in the zone, and the very openness of the zone to such attack would facilitate the task. There are, in most places, no fences or obstacles to access; the zone is just across the street from Panamanian territory and no documents are required for entry.

Sabotage could be a serious threat. And yet there are ameliorating considerations. A successful blockage of the canal, particularly if Gatun Lake were drained or both sets of locks put out of commission, would kill the goose that laid the golden egg. Panama's relative prosperity is entirely dependent upon the canal. If the canal were closed, thousands of Panamanian employees would be thrown out of work, and they could well represent a dissident force within Panama. Economic conditions would deteriorate in Panama to a point of no return; Torrijos and his regime would almost certainly be finished regardless of what else happened. And sabotage on a sufficient scale to paralyze the canal is not easy to accomplish; it was prevented during World War II, Korea, and Vietnam.

But the incitement of street mobs led by what Ambassador Ellsworth Bunker described in 1964 as "persons trained in communist countries"²² is a tactic which is entirely possible, easy to arrange, and hard to prevent. A mob rampaging from the National University or the slums of Panama City could threaten and perhaps overrun parts of the Canal Zone, particularly if U.S. troops were held in barracks or were ordered to hold their fire. It could conceivably burn, loot, and destroy U.S. property in the zone and perhaps injure or kill U.S. citizens. The seriousness of any such action would depend almost entirely upon the support given "the street" by the Panamanian National Guard and/or by infiltrated Cuban or Soviet forces, operating covertly. The National Guard is seemingly rather formidable in size—some 8,000 men, though less than 2,000 of them combat-trained and equipped—and armed chiefly with fairly modern U.S. infantry weapons (including some armored cars, which the State Department, in its inscrutable wisdom, allowed to be sold to Panama recently). But it has no staying power; the guard—a paramilitary police force—is well trained in riot control but has virtually no heavy weapons and its supplies and communications and stocks of food and fuel could sustain it in any actual paramilitary or combat situation only for a few days. Nevertheless, if the guard participated in any numbers in an attack on the zone or stood aloof, as it did in 1964, there is no doubt that blood, and perhaps considerable amounts of it, would be shed on both sides. Such action, if obviously supported by the Panamanian government, would represent a self-defeating threat to that government even more than a threat to U.S. sovereignty over the canal.

Still another possibility is the gradual institution of a kind of guerrilla warfare—nit-picking, perhaps, but persistent and drawn-out. This seems unlikely if only because the Panamanians are in no way similar to the Vietcong in temperament, discipline, or resolution, and in any case, the fragile structure of the government and the establishment in Panama would be incapable of standing the protracted strain of such an effort.

PEACE AT ANY PRICE?

Nevertheless the distinct possibility of a physical confrontation—perhaps an armed one—must be faced. This does not mean that we must cut and run. The avoidance of bloodshed is devoutly to be desired, but for some things we must be prepared to fight. If we establish as our goal peace at any price—if, faced with the threat of force, we continuously concede and compromise—we shall lose the world. Since the Bay of Pigs the United States has been in retreat. The communization of Cuba, the defeat in Vietnam and the loss of southeast Asia, the administration's promise to withdraw U.S. troops from South Korea, the triumph of African, Cuban, and Soviet Marxism in Angola, the fumbling American policies in Africa, and the siren slogan of "no more Vietnams" have all lent substance to the gloomy Spenglerian-Solzhenitsyn vision of decline and fall.

Somewhere the line must be drawn—this far and no farther. Sometime the resolution and will of the American people must be made manifest. Panama is the place and now the time. Throughout the world, Soviet communism has tried to secure control of, or influence over, the global maritime choke points. For a considerable period the Soviet Union was dominant in Egypt and the Suez Canal, and a pro-Soviet Communist underground, smashed just in time, came close to making that dominance permanent. Now, rebuffed in Egypt, Soviet communism is highly influential on the Horn of Africa, which gives access to the Red Sea and the southern approaches of the Suez Canal, and it is jockeying for position to threaten the Strait of Bab-el-Mandeb, through which most of the world's oil traffic from the Persian Gulf flows.

In Indonesia, on the flank of the Malacca Strait, it came within a hair's breadth, in Sukarno's day, of assuming power. In West Africa, Nigeria and Angola, notably, provide facilities for Soviet naval vessels close to the important South Atlantic shipping routes. In Southern Africa, a vital geographic area which dominates the important shipping routes around the Cape of Good Hope, Moscow has been making slow gains.

It is, therefore, no accident that the Panama Canal has been the object of so much Soviet and Cuban attention. A Communist Panama, in control of the canal and dominated or greatly influenced and supported by Havana and Moscow, would indeed represent another major defeat for the United States and a strategic victory for communism, this time in an area vital to the United States.

If we will not stand fast in our own backyard, if we compromise and equivocate and retreat about an issue as vital as the Panama Canal and an area as strategic as the Caribbean, where will we stand? Alexander Solzhenitsyn, in his book *Warning*

²² Lazo, *Panama Canal Giveaway*, p. 12.

to the West, sums up the dilemma, the crisis, of which Panama is a part: We are at "a turning point in history," he says, facing implacable Communist enemies, who are united in one aim—the destruction of capitalism and of the social order of the West.

The Myth of Control without Sovereignty

The answer from those who advocate retreat evades the issue. American supporters of a transfer of sovereignty to Panama try to make the shift seem a minor adjustment which will ensure happy relations with a friendly and stable Panama and stress that "control" of the canal would remain in our hands. In the 1976 campaign, Jimmy Carter ducked the sovereignty issue, but said unequivocally, "I would never give up complete control or practical control of the Panama Canal Zone. * * *"²⁴ Yet control without sovereignty is doublespeak. Torrijos has stated that withdrawal of U.S. troops and the complete elimination of the American presence—including management and operational personnel—from the area is his goal.

Control without sovereignty has inevitably led, in all instances where it has been attempted, to loss of control. To cite but two examples out of many: A government changed in Libya and the great air base there, built entirely with U.S. dollars, was closed to us. Greece and Turkey quarrelled over Cyprus, and U.S. bases in those countries, some of them highly important to U.S. security, were closed or limited in their operations simply because we were not sovereign—that is, in paramount control.

United States sovereignty simply means that within the parameters of U.S. law, the United States holds supreme power over the region in question, unchallengeable by any other power. Our sovereignty over the Canal Zone has been untainted and absolute, but how we operate the Panama Canal has always been subject to the provisions of the Hay-Pauncefote Treaty with Britain—which requires equality of treatment for the shipping of all nations. Colombian treaty rights would also be involved in any treaty revision; as Congressman Daniel J. Flood has said, the projected transfer of sovereignty would open a "Pandora's box of difficulties."²⁵

Without sovereignty it is clear that we shall not be able to carry out the terms of the Anglo-American treaty, nor shall we be able, regardless of the wording of any attempted compromise solution, to "control" the canal. If we transfer sovereignty over the canal to Panama—an act that seems to be, under the Hay-Pauncefote Treaty, legally questionable unless Britain agrees—we should leave the isthmus, lock, stock, and barrel; our "control" would become completely ineffective, probably after protracted wrangling, unending disputation, and perhaps repeated clashes.

Again, to quote Congressman Flood:

The operation of the Canal by the United States on an extra-territorial basis in a land of endless intrigue and turmoil could only result in endless conflicts and recriminations. Besides, it would result in the removal of an island of stability on the isthmus that has often served as a haven of refuge for Panamanian leaders seeking to escape assassination. One of the most recent Panamanians to seek refuge there was Señora Torrijos, the wife of Panama's chief of government, during an attempt to depose her husband while he was out of the country.²⁶

If we are to retain the canal, there cannot be any compromise on the issue of sovereignty; if we are going to scuttle and run, let us do it completely, with no doubletalk. We must not retain responsibility without authority.

FACING THE PROBLEM

Thus, we have followed a long straight road to a point of no return since the days when Christian Herter, alarmed by student rioting, persuaded President Eisenhower to allow the Panamanian flag to fly, along with the stars and stripes, in the Canal Zone. Ever since that day, American Presidents, supported by State Department policies of concession, have greatly encouraged Torrijos and his predecessors to press for the transfer of sovereignty. We face, therefore, a dilemma of our own making, from which there is no escape. If Panama's hopes of sovereignty are dashed—as they must be—frustration, coupled with emotional volatility, may well lead to a brief explosion of violence.

What should we do?

We must face the problem head-on. Rejection of any treaty transferring sovereignty is not enough. Washington must officially announce that the United States is—and will remain, in perpetuity—sovereign in the Canal Zone.

²⁴ *New York Times*, October 8, 1976, p. A18.

²⁵ Speech by Congressman Flood before the National Aviation Club, Washington, D.C., April 22, 1974.

²⁶ *Ibid.*

Within that parameter, there is, however, room for maneuver on less important problems. A third set of locks and a deeper waterway—the construction of which was started but suspended in World War II—may well be required by world trade in the next century; as early a resumption of this project as economic conditions permit should be a high priority and would have a beneficial effect on Panama's now stagnant economy. The annuity paid to Panama—now \$2.32 million annually—might be increased somewhat to provide for inflation. Some profits from the canal operation, when the canal operates in the black again, might be passed on, in recognition of improved productivity, to Panama Canal employees regardless of citizenship. Many of the personnel problems that are irritants to good relations must be solved. Most important should be a well-organized public relations campaign by Washington to correct, in this country, in Panama, and elsewhere, the distorted image of the ugly American which has grown up around the Canal Zone.

Morale in the Canal Zone

Partly because of our own mistakes, partly because of the growth among some American canal employees of a "colonial ghetto" mentality, partly because of the sheer contrast between the neat middle-class order of the Canal Zone and the slum misery that lies cheek-to-jowl with it just across the street, but largely because of skillful and heavily financed Panamanian and Communist propaganda, the Canal Zone's American population have come to be unfairly identified in too many minds—particularly in the minds of the liberals—as colonialist exploiters.

The image is flawed; most of the Americans who work in the zone are simple, average people living in a simple, low-middle-class style, willing to be friendly, wanting to be liked. It is true, however, that over the years the close contacts and friendly relations of the first generation of "ditch-diggers" with the indigenous population have been weakened. Some of the sons and daughters of the first generation live in claustrophobic insularity; too few of them speak Spanish or take an interest in the culture of Panama. Similarly, there is far too little effort within Panama or elsewhere in Latin America to advertise the better aspects of U.S. culture.

Nor have the Panamanian workers in the Canal Zone been unfairly treated, as is so often claimed. They are subject, along with U.S. citizens, to U.S. minimum wage laws. Until 1955, when at the request of the Panamanian government the privilege was in large part revoked, they were able to shop at U.S. commissaries and stores in the zone, at prices considerably lower than those that prevailed in Panama. A good many of them lived in the zone in U.S.-furnished quarters. Their rates of pay are considerably higher than those in Panama—in some cases two to four times as high. Their children attend U.S.-supported schools in the zone, some of which teach in Spanish a curriculum emphasizing Spanish and Latin American culture. Many objective observers believe the Panamanian employees of the canal live in the best of both possible worlds.

Yet there are flies in paradise. Most U.S. citizens employed in the Canal Zone have received a 15 percent "tropical differential" not paid to Panamanians. (This is now to be largely but gradually phased out.) Higher-paying, so-called security positions are reserved for U.S. citizens. Two school systems, one for Panamanians and one for U.S. citizens, and two systems of housing allocation, have prevailed; they are now being merged. The Panamanian employees of the canal, despite the benefits they receive, expect and are demanding through their unions exactly the same benefits the U.S. employees receive.

Little things loom large in today's Canal Zone and they affect U.S. employees even more than many of the disgruntled Panamanians. The U.S. employees have resisted what they believe to be a gradual but persistent erosion of the benefits they have enjoyed; they feel strongly that with inadequate and insufficient housing in the zone, U.S. citizens should have preference; many of them object strongly to what they believe will prove to be the destruction by merger of the U.S.-supported school system. They have other gripes. Wage freezes, cuts, and reductions all along the line, some of them forced by the recession and the necessity of reducing costs, the elimination of some medical and hospital services, reclassification of jobs, and the prospect of future cuts and reductions have angered them. They see their jobs threatened by Panamanian replacements, and above all they face the uncertainty of the future—perhaps the complete elimination of all jobs held by U.S. citizens in the zone.

The reaction on both sides is natural and understandable. The concessions made to Panamanian employees have merely made them want more. The several thousands of U.S. citizens employed by the canal have seen those concessions as a threat to their own standard of living, and this, along with the uncertainty of the future, has depressed their morale to what Governor of the Canal Zone Harold Parfitt

described recently as the lowest point in history. So low, indeed, that the canal has been closed twice—in 1973 and 1976—by “sick-outs” or strikes of its American employees, actions which hurt their own cause but dramatized their grievances. In 1973 the canal’s 80 pilots (only a handful of them Panamanian) walked off the job; in 1976, about 700 essential employees, all American, closed down the canal. Both events—indicative of the tremendous deterioration in the “legacy of pride” the canal workers once held—symbolize the insecurity and instability in the zone itself.

These problems are a direct product of the long drawn-out, off-again-on-again treaty negotiations; the entire area has been living in a limbo of uncertainty and frustration for a decade. Until the United States finally and unequivocally rejects the transfer of sovereignty there will be little stability in the zone or in Panama. When that is done, some of the ancillary problems can be settled.

Reactions at Home

In the United States, there has been little organized effort devoted to presenting the case for U.S. sovereignty. Polls indicate that some 80 percent of the people want the United States to retain the canal, but the results are far from specific. Ignorance about the canal, its past and its present and above all its strategic importance, is profound, and indifference is apparent. Into this partial vacuum Torrijos and his Communist supporters have moved.

In January 1977, Panama’s United Nations mission signed a contract with a New York firm—Public Affairs Analysts—to conduct a nationwide public relations drive to influence the U.S. public to back a new treaty transferring sovereignty. Former politicians including former Democratic National Chairman Lawrence F. O’Brien and campaign aides of Senator Barry Goldwater and Senator Hubert Humphrey are connected with Public Affairs Analysts. The firm plans to send protreaty information to a list of thousands of influential people. It will also monitor, it is said, the activities of the score or more of organizations that have publicly opposed a new treaty, though it will not—a fine line, indeed—lobby or engage in propaganda.

Perhaps even more influential than this campaign will be the activities of an organization called the Council of the Americas, comprising more than 200 major U.S. corporations with investments in Latin America, and the quiet private influence of some U.S. banks with outstanding loans in Panama. These organizations, which have considerable clout, operate undoubtedly from a sense of self-interest; the Council of the Americas states that a new treaty would have a “very positive impact” in Latin America, and some of the banks are said to believe the only way Panama can pay interest on its loans is by achieving control of the canal and raising the transit rates. These organizations will undoubtedly be supported by a sales campaign promoted by both the State Department and the White House if a treaty can be arranged that saves face for President Carter and ostensibly permits U.S. control without sovereignty. Thus, the lines are drawn for a possible battle in the Senate which may shape, and will certainly influence, the future of the United States.

It is conceivable that the senatorial battle might be preempted by events in Panama; Torrijos’s throne is propped up by bayonets and his position and the economy and social structure of Panama are unstable. But whatever the specific course of events in Panama, the argument that the transfer of sovereignty would promote stability, insure a friendly Panamanian government, and secure vital U.S. strategic interests seems groundless in the light of existing conditions.

CONCLUSION

In considering the vital issue of the future of the Panama Canal, two fundamental questions should be asked.

(1) Can the Republic of Panama operate, maintain, improve, and defend the canal without external aid and with equitable treatment for all shipping?

The answer, to anyone who has studied canal problems, is clear. Panama could undoubtedly physically operate the canal, with the help of sizable numbers of the present American employees. This initial period of operation might cover several years, during which U.S. employees would be gradually replaced and outside aid phased out. But Panama clearly does *not* have the economic or technical capability to *maintain*—much less to *improve* and *modernize*—the canal without massive external financial and engineering aid. Unless it has complete authority (which means sovereignty) over such expenditures, the United States should not provide such aid. “Internationalization” of the canal, a term which has a beguiling ring, would be, in reality, a cover for some form of collectivized control or consortium, with Communist and/or Third World influence probably predominant. The canal, U.S.-owned and operated, is an asset to our strategic interests. But the canal, controlled and operated by a nation or nations actively or potentially hostile to our

way of life, is a menace to our security. And, given the ideological instability of past Panamanian governments and the example of the Suez Canal, it seems highly unlikely that, with Panama nominally sovereign over the canal, the "big ditch" would be truly and perpetually neutral or its long-term operation efficient.

(2) Would transfer of sovereignty to Panama impair the U.S. strategic position in the Caribbean?

Again, the answer is clear. U.S. control and U.S. influence in this vital backdoor area—already impaired by the extension of Communist power and influence outward from Cuba and by our past defeats and retreats around the world—would be fatally weakened. We cannot insure control without sovereignty; the mere phrase is doublespeak. We cannot provide military security for the canal without sovereignty; to attempt it would be to accept responsibility without authority.

THE PANAMA CANAL TREATY

Mr. ALLEN. Mr. President, last Friday there was an interesting editorial in the Wall Street Journal by George F. Kennan, who is, I am sure, well known to Senators. Mr. Kennan is currently professor emeritus at the Institute for Advanced Studies in Princeton, N.J., and throughout his very distinguished diplomatic and academic career he has been a leading and very able apologist for Third World dictators and Soviet imperialism. Mr. Kennan's editorial was no doubt seen by many, but I feel its significance should be emphasized to all.

His subject was the proposed Panama Canal Treaty, and surprisingly he apparently shares my own opinion that the plan for joint United States/Panama operation of the canal—as set forth in the treaty—is totally unworkable. However, Mr. President, rather than concluding that the treaty should be rejected, Mr. Kennan recommends an immediate, total withdrawal from the Isthmus of Panama.

Prof. George Kennan has always stood, so to speak, at the head of the class, and I wonder if he is not setting the stage for the next act in the Panamanian road show. Would we ratify this proposed treaty only to face renewed demands by dictator Torrijos that the area be abandoned entirely and immediately? In my judgment, following ratification, such a result would be inevitable.

But, Mr. President, as I said, George Kennan does agree with the view held by many of us here in the Senate that the proposals for joint operation of the Panama Canal Company are going to cause more problems in our relations with Panama and Latin America than they would solve. As Mr. Kennan put it:

One can only quail at the prospect of attempting to operate and protect the canal in some sort of "partnership" with the Panamanians. An arrangement of this nature would weaken the American position without giving permanent and complete satisfaction to the Panamanians. It would be replete with possibilities for disagreement and minor conflict.

Yes, Mr. President, this proposed solution would indeed be "replete with possibilities for disagreement" and with the possibility or probability of minor, even major, military conflict.

Surely, the Department of State must recognize the futility of undertaking to operate the Panama Canal on a joint basis with participation by two nations having wholly divergent political systems, national goals, technological ability, and national temperament. Rather than the "possibility of disagreement" suggested by Mr. Kennan, the United States and Panama would face the certainty of disagreement—virtually on a day-to-day basis—throughout any joint operation of the Panama Canal. These disagreements would range from what is a "reasonable" rent to be charged to occupants of housing which now belongs to the United States and is occupied by U.S. citizens to the proper level of transit shipping tolls to be charged in order to guarantee a profit to the new joint company so that Panama could be paid its \$10 million kicker for a profitable year. We have not seen a spirit of conciliation or give-and-take from the Panamanians in the negotiations for this one-sided canal treaty, we have already seen that they disagree with

our interpretation of it, and we ought not to be so naive as to expect a conciliatory attitude from the Panamanians in the joint operation of the canal.

Musing over these same problems, Mr. Kennan speculates as follows:

Could not the dilemma be better resolved, one wonders, by turning the Canal over entirely to the Panamanians.

He continues with this statement in a burst of candor:

The proposal may sound extreme.

Yes, Mr. President, George Kennan's proposal does sound extreme because it is extreme. Would not a better option be exercised in a simple rejection by the Senate of this ludicrously inept document, the Panama Canal Treaty, which unfortunately the executive department is seeking to foist on the citizens of the United States and on the Congress?

But, Mr. President, George Kennan must be given due credit for recognizing what has seemingly eluded the leading active-duty military thinkers in our Defense Establishment. George Kennan accurately points out that the Panama Canal Treaty will not be a panacea guaranteeing our freedom from insurgent attack on Panama Canal installations or on U.S. Forces in the Isthmus of Panama. If the Canal Zone is already indefensible as many would have us believe, how much more indefensible will it be when the U.S. military presence is reduced to 4 bases, as against some 14 now and limited, more or less regardless of the circumstances, to present strength.

With deference to Mr. Kennan's peculiar perception of this fact, it does not take a visionary or a great military planner to be able to see that U.S. Forces—when confined to four small bases and associated military areas—are going to be particularly vulnerable to harassing attacks designed to hasten our withdrawal from Panama. Mr. Kennan seems to acknowledge that such attacks would be likely should the proposed treaty be ratified and should the United States thereby signal its complete lack of resolve to defend and protect the Canal.

In his testimony before the Subcommittee on Separation of Powers of the Committee on the Judiciary, Lt. Gen. Dennis McAuliffe, Commander in Chief of the Southern Command, including Panama, stated the mission of his troops as follows:

The principal mission, sir, is that of defending the Panama Canal and the Canal Zone.

Thereafter, I pursued a line of questions which I am satisfied got answers demonstrating the present defensibility, not indefensibility, of the canal and laying to rest the myth that the canal cannot be defended by our forces in their present posture. Mr. President, Senators should find General McAuliffe's testimony decisive on this subject and, therefore, I quote from the pertinent record from the hearing:

Senator ALLEN. I assume, then, that if you concluded that you were unable to perform the mission of defending the Panama Canal you would so report to the Pentagon, would you not?

General McAULIFFE. Absolutely. To the Joint Chiefs of Staff.

Senator ALLEN. Have you made any such report since you have been assigned there?

General McAULIFFE. No, sir.

Senator ALLEN. I would assume, then, that you feel that you are adequately equipped and manned to perform that mission.

General McAULIFFE. Again, if I may, Mr. Chairman, my answer is dependent upon the threat scenario. However, under the kind of threat scenarios that I see today or in the immediate future I can tell you that I have an adequate force to carry out this defense mission.

Senator ALLEN. Should you not be prepared for just routine defense, but for any emergency? We have seen our various bases attacked in the past by enemy nations. Should we not be able to react successfully to any conditions?

General McAULIFFE. I can assure you, Mr. Chairman, that we are well trained and prepared to react to any contingency.

This is the general in charge of the defense of the Panama Canal in answer to the question of whether or not the canal is defensible.

Just to clarify my statement about needing reinforcements, let me say that my forces are able to react and, I think, do an adequate job of defending. However, sooner or later in an emergency period that relatively small force may be over-committed. Hopefully, within those couple of days or whatever period of time we may be talking about we might be able to bring in additional forces to help meet the requirement.

So ends the portion of the testimony to which I have alluded.

So, Mr. President, the canal is now defensible, but, as George Kennan points out, should this treaty be ratified. U.S. forces will more or less find themselves boxed up in small enclaves subject to terrorist attack by dissident elements in Panama and subject to the inflammatory polemic which has characterized pronouncements of the Panamanian Government and government-controlled press ever since the seizure of power by Dictator Torrijos. Would such conditions present an emergency situation for which military reinforcements would be required? Would the United States be permitted to reinforce under the provisions of paragraph 5, article IV of the proposed treaty? Or would we prefer simply, as suggested by Mr. Kennan, to bug out?

Let us not kid ourselves, Mr. President. We do not solve a defense problem with this proposed treaty; we create instead a nightmare with a predictable result.

Mr. President, I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. Mr. President, would the distinguished Senator not suggest the absence of a quorum at this time?

Mr. ALLEN. Yes, I withhold my suggestion. I yield the floor.

[From the Congressional Record—Senate, Sept. 21, 1977]

THE PANAMA CANAL TREATY

Mr. ALLEN. Mr. President, last week I had occasion to speak from time to time on matters involving the proposed Panama Canal treaty and the proposed neutrality treaty for the Canal Zone. In my study of the terms of both treaties, I have relied heavily on Panamanian interpretations of the various documents involved inasmuch as the Panamanian negotiators have been somewhat more candid with the Panamanian National Assembly than our own negotiators have been with the U.S. Congress.

Too, Mr. President, the information we gathered as to the interpretation that the Panamanians put on these treaties is of vital concern to the Senate in reaching a determination as to whether it shall advise and give its consent to the ratification of these treaties. Because of the fact there has been no meeting of the minds between the two countries, the treaties would, in effect, be completely worthless if we had one interpretation and the Panamanians had another.

I might add also, Mr. President, that the dictator-controlled Panamanian Press, in many respects, has set forth more real information on this subject than has our own press. Over the weekend, I ran across an informative editorial in a U.S. newspaper, this week's *Army Times*, and this editorial does deserve high commendation for its very accurate assessment of one facet of the executive department's propaganda offensive for ratification of these treaties.

The *Army Times* editorial is entitled "Using the Chiefs"—having reference to the Joint Chiefs of Staff—and it points out the double standard, the inconsistency, and the impropriety of chastising military personnel on the one hand for speaking out against the policies of the executive branch yet coercing them on the other hand to speak out in favor of such policies. The editors of *Army Times* apparently share my own deep conviction that the professional military cannot be permitted to intervene publicly in politics and that grave danger is posed by deliberate misuse of the military for political advantage.

Army Times states its disapproval in this manner:

One of the reservations we have about the administration merchandising of the treaty is the early use of the Joint Chiefs of Staff to promote ratification.

In addition, JCS chairman Gen. George S. Brown, supposedly on his own accord, met with ranking military retirees in the Washington area in an attempt to win their support for the treaty.

We accept the contention that the chiefs acted out of honest conviction in their protreaty effort. But their presence among political figures who are endorsing the treaty is cause for concern. Critics of the pact already are charging that the military leaders acted out of loyalty to the Commander in Chief. Brown has denied the charge but probably has not laid it to rest.

We would rather have seen the military views given in that forum instead of the White House extravaganza preceding it.

I might state that while the Joint Chiefs have endorsed the treaty, four former Chiefs of Naval Operations have come out in strong opposition to the treaty, showing the direct contrast between those who are still on the payroll and in active military service who may have one view, but their equally distinguished

colleagues, many of them, and certainly four former Chiefs of Naval Operations, have come out against the treaty.

You know, Mr. President, we have just recently been treated to the public spectacle of a senior military commander in Korea being summarily relieved of command for remarks thought inconsistent with the executive department's apparent determination to abandon South Korea, yet almost in the same breath we have had paraded before us assorted active-duty generals and admirals, all chorusing in unison the praise of the President and endorsing to a man this strategically disastrous treaty proposal. The irony, at least, has not been lost on the editors of Army Times who see danger in this obvious politicizing of the role of the military decisionmakers.

I again quote the Army Times:

It is fair, in our view, to criticize the President for the service leader's participation in the pre-debate "education" effort.

I welcome an education effort, educating the American people about these treaties, because the more they find out about the treaties, in my opinion, the harder and the more determined will the opposition of the American people be to the treaties.

When general officers have spoken out on other national policy matters, he and his representatives have been quick to remind them of the bounds of their military responsibilities.

"He," in this case, is the President.

In this case, however, the military leaders are showing approval of administration policy, not opposition. The difference may be difficult to explain and may result in some erosion in the military's traditional political neutrality.

Mr. President, I do believe that the fair and dispassionate views of our leading military officers should be considered by the Congress, but I trust the Members will recognize the unseemliness of ballyhooing active-duty military support for the new treaties, when such support is so obviously generated by a desire for job security and personal advancement rather than out of loyalty to the national interest of the United States, at least as I perceive it.

Mr. President, from time to time I have spoken out against these treaties, and I have pointed out reasons for my opposition. I am going to continue, week in and week out, until this matter comes before the Senate, with the approval of the distinguished majority leader and his graciousness in getting me this time, to speak out against these treaties and to give a backlog of information showing that approval by the Senate of these treaties will be contrary to our national interest.

I believe that the education process which the executive department is going to carry on in connection with trying to sell this treaty to the Senate and to the American people will be counter-productive insofar as getting approval of the treaties is concerned; and that public opinion will be stronger and stronger, as time goes on, against the treaties.

Mr. President, I ask unanimous consent that the editorial to which I referred be printed in the Record.

There being no objection, the editorial was ordered to be printed in the record as follows:

USING THE CHIEFS

The administration's selling job on the new Panama Canal treaty has to be one of the major political spectacles of recent memory.

While Congress was on vacation in August, the President worked to rally support for the pact among legislators, key people in the former administration, union leaders, governors, business people and others. The signing brought more heads of foreign governments to Washington than have been here since the last state funeral.

The political activity gives the impression that the treaty is about to take effect. In fact, it still faces Senate ratification and what amounts to House endorsement through approval of related money bills. Heated debate on the issue is predicted.

The administration's effort may be good political strategy, but it tends to raise questions. If the treaty—actually two treaties are involved—is good, it may be asked, why the hard sell and why, until now the lack of specifics?

We don't pretend at this point to know whether the treaty is the best arrangement the U.S. can make with Panama. Senate hearings and debate should provide light as well as heat on the issues involved. But it should be evident that overwhelming protreaty arguments are going to have to be made to persuade lawmakers and perhaps a majority of the American public that the U.S. should relinquish its Canal rights.

For many Americans the treaty surfaces at the wrong time. The U.S. has "lost" a war in Asia, and is preparing to withdraw ground combat forces from South Korea. Negotiating away American rights on the canal comes as the final straw.

One of the reservations we have about the administration merchandising of the treaty is the early use of the Joint Chiefs of Staff to promote ratification.

In addition, JCS chairman Gen. George S. Brown, supposedly on his own accord, met with ranking military retirees in the Washington area in an attempt to win their support for the treaty.

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We would rather have seen the military views given in that forum instead of the White House extravaganza preceding it.

It is fair, in our view, to criticize the President for the service leaders' participation in the pre-debate "education" effort. When general officers have spoken out on other national policy matters, he and his representatives have been quick to remind them of the bounds of their military responsibilities.

In this case, however, the military leaders are showing approval of administration policy, not opposition. The difference may be difficult to explain and may result in some erosion in the military's traditional political neutrality.

THE PANAMA CANAL TREATY

Mr. THURMOND. Mr. President, I have before me a news article written by John Chamberlain for publication in The Florida Times-Union and published in the August 19, 1977, edition. Mr. Chamberlain's analysis of the terms of the Panama Canal treaties is informative and one with which I totally agree.

The Panama Canal is vital to our national security and economic well-being. President Carter is attempting to persuade the American people to put both in jeopardy in order that Panama be appeased. In view of the importance of this issue to the U.S. Senate and the American people, I ask unanimous consent that this excellent analysis by Mr. Chamberlain be printed in the Record.

There being no objection, the article was ordered to be printed in the Record as follows:

(From the Jacksonville (Fla.) Times-Union, Aug. 19, 1977)

GUANTANAMO SURRENDER NEXT

(By John Chamberlain)

The Carter Administration pulled a fast one when it divulged the major points of its proposed new Panama Canal Treaty during a Congressional recess.

This meant it would be days before the opposition, including Democrats as well as Republicans, could form its lines for putting pressure on 17 more or less undecided Senators who are still needed to block the treaty, which must have 67 votes to pass.

There must also be House of Representatives concurrence, a requisite for treaties that dispose of U.S. property.

The treaty, as set forth by our negotiators, contains its superficially reassuring features. We do not propose to relinquish all control of the canal until the year 2000. By then the present Panamanian dictator, Omar Torrijos, will be overthrown or dead. We can be sure the face of the world will be changed almost unrecognizably in 23 years.

Brezhnev will be gone, Jimmy Carter (if the fates are kind to him) will be sitting on a porch in Plains, Ga., shelling peanuts. Ronald Reagan may still be riding a horse but he will no longer be a political force unless Geritol develops some unsuspected properties.

By 2000 there may not be much Alaskan oil left to put in big tankers that can't get through the canal anyway.

So why, since many of us won't even be around in 2000 A.D., isn't it the mark of expedient wisdom to leave the long-term future of the canal up to our children, along with the six trillion of debt obligations that we have already bequeathed to them?

The reason why this is a stupid question is that Marxists of every stripe regard the fight over the treaty as a test of will in a struggle that is not going to be postponed to 2000.

The Panamanian Marxists have already made blackmail claims on us to compensate for artificially low canal fees. Our willingness to give up sovereignty over the sublime engineering feat that our technology (and our tropical medical hygiene) made possible where the French canal builders had failed will not be lost on Fidel Castro, who will surely be raising the question of our Caribbean base in Guantanamo.

The Jamaican Prime Minister, Michael Manley, who has welcomed thousands of Cubans to his country to run such things as a "people's militia," will be putting in more phone calls to Havana. The Washington-based Council for Inter-American Security, which has excellent correspondents, speaks of Jamaicans staring with awe at closed circuit television replays of Panamanian youth being trained in warfare, singing and shouting Marxist slogans. This is the sort of thing that dictator Torrijos looks upon with complaisance, even if it is "unofficial" insofar as his government is concerned. It makes it look as though we were quitting the canal out of fear.

Some of the still officially undivulged terms of the Treaty which I saw circulating last week at an Inter-American Symposium at the University of Miami in Florida would seem to indicate that many of the attributes of Canal Zone sovereignty are scheduled to be relinquished to Panama long before 2000. U.S. citizens working for the Department of Defense or whatever authority will be operating the canal will be required to have Panamanian visas on ID cards. U.S. Customs employees will lose their jobs immediately.

There could be a five-year rotation plan for canal employees recruited in the U.S. for "noncritical" jobs (pilots and marine engineers would, fortunately, be another matter). PX and Army commissary privileges would be discontinued after five years, with no compensatory cost-of-living subsidy from the U.S. government.

In short, the treaty would make it unpleasant for U.S. citizens to take jobs in the Canal Zone. With U.S. police jobs being turned over to Panamanians, who knows how many Castros would be telling Americans where to park their cars or when to put out their lights?

We are told that the Canal Treaty must be accepted if Latin America as a whole is to be appeased. This is arrant nonsense. There is only worry in the West Coast Latin countries (Chile and Peru with their copper, Ecuador with its bananas) lest a Panamanian-owned canal, presumably "nationalized," should hike the canal tolls. When the Brazilian and the Argentine complain of Yankee "imperialism" these days, they have Carter's selective statements on "human rights" in mind, not these U.S. engineers who keep watch on the canal's Gaillard Cut and Gatun Dam.

The Senate, if it is seeking to know the truth about Latin American opinion, should find some means of conducting honest polls all the way from Guatemala to Cape Horn. An honest poll might disclose a yearning for a "users' control" of the Canal after 2000.

Everyone knows what happened to the Suez Canal when the "users" lost sovereignty there.

[From the Congressional Record—Senate, Sept. 22, 1977]

THE PANAMA CANAL TREATY

Mr. ALLEN. Mr. President, no doubt the Senate is aware by now of my very deep conviction that the proposed Panama Canal treaties are directly contrary to the national interest of the United States and the free world.

This is the seventh speech I have given in the Senate since the Panama Canal Treaties were signed by the President and the Panamanian dictator. I intend to make other speeches from time to time while this matter is before the Senate and before the country, I might say, Mr. President.

But, Mr. President, the more I study this matter, the more I am convinced that these proposed treaties are not even in the interest of the people of Panama. Stating the matter bluntly, these treaties seem chiefly to benefit the large multinational banks and the elitist dictatorial regime now in power in Panama, a regime which has repressed and subjugated the people of Panama since its inception in 1968.

Let us face it—dictator Torrijos and the clique surrounding him see these treaties not as a program for uplifting and improving the lot of the people of Panama, but rather as a means for perpetuating their own privileged position as a ruling class.

Dictator Torrijos in 1968 was an undistinguished left-leaning major in the Panamanian National Guard. Now, after a career based more on gangsterism than on military ability, he professes to hold the rank of brigadier general and is without argument titular head of one of the world's worst dictatorships.

Mr. President, Freedom House, which is recognized internationally as an impartial monitor of the status of human freedom—and, I might add, counts Dr. Henry Kissinger as a member of its advisory council—rates Panama as one of the ever-growing number of nations in the world whose people are counted among the “not free.” As a matter of interest, according to Freedom House, 67 nations are “not free,” 48 are “partly free,” and 42 are “free.” So, Panama is in bad company, but certainly not alone.

But, Mr. President, in addition to these three major categories, Freedom House further breaks down and characterizes the governments of the world by rating political rights under those governments on a scale of 1 to 7, with 7 being least free. Panama is rated 7.

That is right at the bottom in the degree of freedom which the citizens of Panama enjoy or fail to enjoy under the dictator regime in Panama.

Civil rights—or, if you prefer, human rights—are rated on a similar scale, and Panama receives a 6.

A 7 is the worst they can possibly receive under this rating system.

The sad case of the late Leopoldo Aragon is typical of the consistent pattern of gross violation of human rights by the military dictatorship in Panama. Aragon was a working journalist, an idealist, and politically a Social Democrat. Strongly anti-Communist, he had been forced to leave Czechoslovakia because of his opinions and was barred from virtually all socialist-Communist dominated

countries. In Panama, rather than being expelled for his political activities, he was jailed summarily without trial for 15 months in Panama's infamous penal colony, Coiba—pronounced CO—E—BA. Amnesty International, the International Commission of Jurists, and the Human Rights Commission of the United Nations finally prevailed on Dictator Torrijos to release this journalist-idealist, who had had the audacity to suggest that Panamanians should be permitted to enjoy basic human rights on the same footing as people of this country or of other free nations.

Of course, Mr. President, Senators know the sad end to correspondent Aragon's life, but I question whether many Members of the Senate are aware that our own Department of State refused Aragon's application for a visa to enter the United States, presumably because the Department of State, like dictator Torrijos, did not wish any dissent or opinion conflicting with its own view of what is best for Latin America and the Republic of Panama. I sometimes wonder where our own country would rate on the scales at Freedom House if the Department of State could impose its programs here as they are imposed abroad.

To be sure, Mr. President, the Panamanian dictatorship, in the present glare of international publicity, will pay lip-service to the forms of democracy. We will be treated to the spectacle of a plebiscite by the Panamanian people allegedly in ratification of these proposed treaties, we will see demonstrations of support and even expressions of patriotic affection for this guileful gangster dictator, and some of us will be reminded of similar plebiscites and expressions of support from another era and on another continent.

Yes, we will see the forms of democracy observed, but I trust that our own media, our own free press, will report substance and not sham. I trust, Mr. President, that our press, being free, will recognize the hollowness, indeed the perversity, of a plebiscite conducted in a country with a censored and controlled news media and with a legislature hand-picked and installed by a military dictator.

Perhaps Senators wonder why the Panamanian dictator is even bothering to go through the motions of conducting a plebiscite. Some hint can be found in remarks made on August 19 in the dictator-controlled Panamanian National Assembly. So-called Representative Luis Castillo posed the following revealing question:

Mr. President, distinguished negotiators, dear comrade: I would like to ask the negotiators about the plebiscite. Since this is the means by which the Panamanian people will ratify the treaty and is related to the ratification by the U.S. Congress, I would like to ask whether a date has been set for the plebiscite and whether it has considered that it is important for the plebiscite to be held before the U.S. Congress ratifies the treaty. The idea is that once the results of the plebiscite are known—and we feel sure the Panamanian people will approve the treaty by a majority—this would have an impact on the U.S. Congress.

So, Mr. President, the real purpose of this plebiscite is going to be to add fuel to the propaganda fires here in the United States. The Panamanian plebiscite will have nothing whatsoever to do with the desires or interests of the Panamanian people. It will be conducted only for its impact on the U.S. Congress. Panama is a small country but the dictator and his henchmen understand our politics much better, apparently, than we understand the facts of political life in Panama. As chief negotiator, Romulo Escobar Bethancourt put the matter:

As for the U.S. Congress, there is a big problem, to be frank with you. They (the U.S. negotiators) have a big problem, worse than you can imagine . . . Why? Because the U.S. Congressman, as a good politician, acts as an instrument of those electing him. He is always aware of how the voter of the district or state that elects him feels.

I might say parenthetically, Mr. President, if the Members of the Senate act according to the wishes of their constituents, in my judgment, there is no doubt whatsoever that the two treaties will be rejected by the U.S. Senate. Of course, I think that would be a most fortunate result of the treaty vote in the U.S. Senate.

You see, Mr. President, this matter of elections is something of a novelty down there in Panama. Of course, Torrijos did not get there by an election. He took over in a coup.

Negotiator Bethancourt had to go to some trouble to explain the whole process to the "representatives" in the National Assembly. I can almost imagine their amusement at the thought of having to take account of the views of the people.

But they do have to ratify it, and that is the form that they are going through. It is absolutely meaningless. It will be 999 to 1, I dare say, in favor of the ratification of the treaty unless it would serve their best interests to show a closer vote, indicating that the treaties are not stacked in favor of Panama, which, of course, they are.

But, Mr. President, one representative in this appointed National Assembly of over 400 members did voice a little opposition to the dictator's treaties. Let us see what happened to him. This is Representative Luis Emilio Veces:

I wish to clear up a point of order. . . .

This fellow seems to have the same problems with the Chair that a number of us have experienced from time to time—not the present occupant of the Chair, I hasten to add.

This Representative continues:

I wish to clear up a point of order, because the Secretary has declared that the vote was unanimous for the resolution approving the accomplishments of the Panamanian negotiators regarding the treaty.

One can almost imagine the situation. Over 400 dictator-appointed assembly members shouting approval of the actions of the dictator's negotiators, yet one brave voice insisting to be recorded as an abstention. Apparently, a direct vote against might have been viewed as treason. Representative Veces bravely continues:

I wish to explain my abstention from voting. With the indulgence of those at the presidential table, the vice president, the cabinet ministers and fellow representatives, I wish to explain that I am incapable of begrudging the merits with which the resolution credits those abroad who have expressed their solidarity with our country. However, there is a basic issue which has caused me to abstain from voting for that resolution. It is the fact that I cannot share the pleasure of those at this meeting or the pleasure expressed by the government team today for a treaty which I have not yet seen.

Apparently, they had the same problems in Panama, in this dictator-run national assembly, that we had here in the U.S. Congress—the same problems in discovering actually what had been negotiated on behalf of our respective Governments. But Representative Veces had an additional concern which caused him to abstain:

According to the national press and the government team, we have ample guarantees permitting a debate on the new treaty draft. Nevertheless, the same government team has made a series of threats of a political nature against persons who oppose the treaty.

We have not had any such situation as that in this country, and I do not anticipate that we will have any, although, of course, the President and the Department of State are conducting what they call an educational campaign. I believe the more people are educated, though, on this question, the more against the treaty they are going to be. If there is any retaliation, it will not be on the part of the executive department, I am sure. If there is any at all against those who vote for the treaty, it will be by the voters back home, in my judgment. Says Representative Veces:

I wish to state clearly that in such a situation it would appear that we are left only to take it or leave it.

We shall not have that situation here. We shall have an opportunity to amend the treaty. If we amend it successfully in a basic and fundamental way, that will have the effect of killing the treaty, because it would then have to be renegotiated. I am hopeful that we will be able to amend it.

For instance, one section, aside from the major question of whether we ought to give the canal away, one article says that, during the 23-year period of the treaty, the United States will not negotiate with any other nation regarding another Isthmian Canal. There has been suggested a route through Nicaragua. The House, at one time, back around 1903, favored and passed a resolution to that effect, for the Nicaraguan route. But under the treaty, we will not be able even to negotiate with another nation for another sea-level canal without the permission of Panama. Of course, they are not going to give their permission, because the Panama Canal would be a great asset.

Certainly, that ought to be knocked out of the treaty, and many other provisions, as well, should be knocked out, assuming that the treaty is going to be ratified in some form, which I oppose. The similarities between this Panamanian Assembly and our own Congress are sometimes startling. Veces continues:

I am also worried about a number of ideas being expressed, such as that those who oppose the government or the treaty are traitors to the fatherland.

That was stated down in Panama, not here, because no one goes that far.

These are ideas which given the pretense that there is a democratic atmosphere, constitute a threat for anyone in this country who has the power to reason.

Certainly, that same situation would apply here. Those of us who have the power to reason and who can point out the defects in this treaty and the inadvisability of going ahead with it certainly are held up to some degree of—vilification possibly is too strong a word, but some degree of ridicule in the media.

Representative Veces seems to be seeking to discover the limits of permissible dissent, and negotiator Bethancourt advises him in this fashion.

Here is the propaganda line they are handing out in Panama—

Any person who during the debate objects to the approval of the treaties because Torrijos is a dictator will receive our reply explaining why we do not consider Torrijos a dictator, and in addition we will reprimand that person.

So they do not have much freedom of speech down there in Panama.

That will be the debate, at whatever level people choose to engage in it, but whoever decides to enter the debate should know that he will get a reply.

The reply that they are suggesting is not too favorable to any dissenters' life and health.

Veces got his answer, and I am sure he got with it the clear message it carried.

The following facts certainly portend great danger to our use of the Panama Canal.

Mr. President, on July 19, a Soviet delegation in Panama negotiated an agreement with Panama which included the following points—construction of a major heavy equipment repair facility in Panama for use by the Soviet Union; permission for the Soviet Union to take advantage of the tariff "free zone" at Colón for Soviet merchandise; establishment of Soviet installations at France Field, formerly a U.S. Air Force base; and informally, a commitment to allow construction of a Soviet hydroelectric plant and oil storage facilities. Moving in very rapidly, Mr. President. Against that background, I question seriously the judgement of those who would urge the Congress to support treaties which will prop up and perpetuate a military regime whose leader oppresses his own countrymen and seems bent on forging an alliance with the world's bloodiest and most tyrannical imperial power. These treaties are clearly not in the best interest of the United States or the free world. Since they will tend to darken and prolong the night of tyranny and oppression in Panama, neither are they in the best interest of the Panamanian people.

Mr. SPARKMAN. Will the Senator yield?

Mr. ALLEN. I am delighted to yield to my colleague.

Mr. SPARKMAN. Speaking of those early discussions and particularly the proposal for a sea-level route through Nicaragua, I want to call to the Senator's attention that his predecessor and mine many years ago, Senator John T. Morgan, was one of the great advocates of the sea-level route through Nicaragua.

I have often thought it would have been a great blessing had that gone through.

Mr. ALLEN. Yes.

The ACTING PRESIDENT pro tempore. The time of the Senator from Alabama has expired.

Mr. ALLEN. Mr. President, I ask unanimous consent for 2 additional minutes.

The ACTING PRESIDENT pro tempore. Is there objection? Without objection, it is so ordered.

Mr. ALLEN. The Senator already has been called, as the distinguished Senator knows, the father of the Panama Canal.

Mr. SPARKMAN. Correct.

Mr. ALLEN. He had advocated the Nicaragua route.

The House of Representatives passed the resolution calling for the Nicaraguan route in working out a treaty with them and in the Senate.

They only changed the resolution substituting Panama for Nicaragua.

Senator Morgan, though he for decades advocated the Nicaragua route, was so interested in the Isthmian Canal, he urged his friends in the House not to make any effort to go back to Nicaragua, not to have a conference, and they accepted the Senate amendment.

Certainly, it is a great tribute to Senator John T. Morgan that he was willing to sacrifice his own notions of where it ought to go in order to achieve the objective of getting the Isthmian Canal.

Mr. SPARKMAN. While we are reminiscing, I would like to recall that one of the great men in Panama during those days was an Alabamian, Col. William C. Gorgas, who cleared it of yellow fever.

Mr. ALLEN. That is correct. Also, Gen. William L. Sibert of Alabama.

Mr. SPARKMAN. A corps engineer.

Mr. ALLEN. He did not get the credit, but he was actually the engineer in charge of the construction.

Mr. SPARKMAN. The Senator is correct.

Mr. President, may I be recognized in my own right since the time is up?

The ACTING PRESIDENT pro tempore. Does the Senator make a unanimous-consent request to be recognized?

Mr. SPARKMAN. I ask unanimous consent that my colleague's time be extended.

Mr. ALLEN. Three minutes.

Mr. SPARKMAN. For 3 minutes.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The time of the Senator is extended for 3 minutes.

Mr. ALLEN. I yield to the Senator.

Mr. SPARKMAN. Mr. President, of course, my colleague realizes that these treaties are coming before us.

Mr. ALLEN. Yes.

Mr. SPARKMAN. I had printed in the Record sometime back a rather detailed announcement on the hearings. The Senator recognizes that I am chairman of that committee.

Mr. ALLEN. The very distinguished chairman, I might say.

Mr. SPARKMAN. I shall do my best to preside, shall I say on a nonpartisan basis.

Mr. ALLEN. I know that the Senator will.

Mr. SPARKMAN. I believe we do have a wonderful parade of witnesses that are coming before us.

Mr. ALLEN. I might say while the Senator is looking for his paper that I have requested time before the committee and the distinguished Senator has certainly graciously stated I would have that time to speak or testify in opposition to the treaties.

Mr. SPARKMAN. Mr. President, I would like to refer to the notice that I put in the Record.

First, we are going to open these hearings on the 26th. I will be presiding and not supporting either side.

Mr. ALLEN. I understand.

Mr. SPARKMAN. I am going to be presiding officer. We do have a very fine schedule of witnesses. It will probably run about 2 weeks, I should think, and maybe longer than that.

We do not look forward to presenting the treaties—there are two treaties—to the Senate until we are back here the first of the year. I believe that is what Senator Robert C. Byrd has scheduled.

Mr. ALLEN. That is correct.

Mr. SPARKMAN. But we are going to start off with our negotiators, Ambassador Bunker and Ambassador Linowitz.

I have tremendous respect for both of them. I believe they did yeoman work down there. We expect to hear from them first.

Then we are going to hear from the Defense people because they are vitally concerned in this matter.

Then we will hear from some of our former Secretaries of State, Secretary Kissinger and Secretary Rusk are particularly mentioned.

I think we have a very fine selection.

Furthermore, we are not going to try to rush these hearings. We are going to give an opportunity to as many as we possibly can—that will include Members of both Houses of Congress, it will include the military, it will include interested citizens and others.

We plan to give as broad a hearing as we possibly can.

Mr. ALLEN. I know that.

Mr. SPARKMAN. I want to assure the Senator of that.

Mr. ALLEN. I know he will be eminently fair and give all sides an opportunity to be heard. I do not know any Member that I would rather see chair these hearings than my distinguished senior colleague from Alabama (Mr. Sparkman).

I know it will be a fair hearing. He has outlined those who will testify on behalf of the treaty. I am sure he will be just as fair in giving an opportunity to those of us who oppose the treaty to be heard.

I have full confidence in the Senator's handling of the hearing.

THE PANAMA CANAL

Mr. CRANSTON. Mr. President, I urge all within and without the Senate to read the remarkable statement on Panama just made public by our esteemed colleague from South Carolina (Mr. Hollings).

Senator Hollings was one of the numerous Senators who in the last Congress cosponsored the resolution that warned the State Department against negotiating a treaty with Panama.

He was one of the numerous Senators who cosponsored the resolution in the last Congress who has refrained from cosponsoring the resolution in this Congress.

And now, after reading, thinking, listening, asking, studying, and traveling to Panama to make a penetrating examination of all the factors at close hand, Senator Hollings has come out for ratification of the Panama Treaty.

He set forth a careful, detailed, and thoughtful dissertation of all the steps and stages he went through as he came to his decision, and the reasons and thought processes that led him to his conclusions, in his September newsletter to his constituents.

I ask unanimous consent that Senator Hollings' statement be printed in the Record, and I urge that it be read with care equaling the care with which it was written.

There being no objection, the statement was ordered to be printed in the Record, as follows:

THE PANAMA CANAL

Do you want to give the Panama Canal away? NO! I don't either. Nor does President Carter. If President Carter's treaty is not giving it away, what is it doing? Keeping it to use! Given the present circumstances, the two new treaties are the only reliable and fair way for the United States to keep the Canal to use.

We all start by agreeing that the Panama Canal is important to the United States, both from a commercial standpoint and from a strategic standpoint. We all start by agreeing that the Canal should be continuously open and continuously in use. The debate centers on how best to keep it open and operating, so that our commerce can flow and our Naval fleets can remain mobile.

After looking at this question from every angle, listening to both sides over the years, and visiting Panama for another first-hand look, I join all our recent Presidents the Joint Chiefs of Staff, and a bipartisan group of political leaders in supporting Senate ratification of the treaties. They are the best safeguards for an open Canal, and they guarantee America's continued access and continued freedom of transit permanently.

If this treaty prevented our ability to use or defend the Canal, it would be different. But it does no such thing. On the contrary, the United States continues to operate and defend the Canal until the year 2000. After 2000, we retain the right to intervene to guarantee the Canal's accessibility to U.S. shipping.

Let's be practical. The Canal is like an airplane—it is no good unless it can be used. We can go out and squat in the airplane, but unless we can fly it, the plane is of no use. So title to the Canal is not the issue. The problem is the unimpeded right to use it. Does the treaty give the United States the permanent, unimpeded right to use the Canal? Are we guaranteed freedom of transit even after 2000? A few days ago in Panama when President Demetrio Lakas was asked these questions, he answered "Yes" to both. Returning home and checking, Article IV of the treaty provides it, and Dictator Torrijos states in Washington, "we are agreeing to a treaty of neutrality which places us under the protective umbrella of the Pentagon."

Why, then, all the hubbub? Two main reasons. First, we have not yet fully learned the lesson of Vietnam. A decade there should have convinced us that people do not like foreigners in their country. The Vietnamese did not like it. The Panamanians do not like it. But failing to recognize this, the treaty opponents see no problem. They think the whole thing is a scheme of the State Department, and all we need to do is prove title or sovereignty and the treaty will be defeated. Secondly, we feel frustrated. The cry is, "We lost in Vietnam; we lost in Angola; we are pulling out of Korea; we talk about abandoning Taiwan. We have given away too much and 'detented' too much, and just once we should stand up and say—'NO!'" This was exactly my reaction ten years ago when former Secretary of the Navy Robert Anderson came before our Commerce Committee to testify on a proposed new treaty for the Canal. "We bought the Zone, we built the Canal, we paid for it all. Why should we want a new treaty?" Secretary Anderson said quietly, "We made a bad treaty. The people of Panama have never accepted it, and now they are ready to lay down their lives for their country." "Baloney" was the reaction. America's sovereignty must be protected at all costs. In 1967 in Vietnam, it was becoming difficult to explain to next-of-kin how their sons were being sacrificed for U.S. sovereignty. But in Panama—it could be explained easily. This feeling permeated a glowing newsletter about U.S. "sovereignty" five years ago. But the legal opinions to support sovereignty were not forthcoming.

President Lyndon Johnson had conferred with former Presidents Eisenhower and Truman and the three Presidents agreed we needed a new treaty. When President Nixon and President Ford also endorsed the idea, everyone began to wonder. Nixon had ignored the State Department and Ford would like to have ignored State if his conscience would allow him. Ronald Reagan was giving him a fit and it would have been a lot easier for Ford if he could just stand up and say "No" on the Panama Canal. My conscience hurt—and in another newsletter last year, it was pointed out that we did not have sovereignty, and the need was emphasized to rid ourselves of the vestiges of the "Ugly American" in the Canal Zone by relinquishing separate courts, the commissaries, special stores, etc. But, the newsletter concluded, the United States should make sure " * * * that we will be in charge of the Canal both

five years and 50 years from now." Previously, I had joined in the Panama Canal resolution putting Henry Kissinger on notice. We never knew what he was up to and it was thought healthy to let him know that some of us in the Senate were watching. In January of this year, with Henry gone, there was no need to co-sponsor the resolution.

Today I am better informed—reading "The Path Between the Seas" by David McCullough—a 698 page historical account of how we created the Republic of Panama after Colombia, the sovereign, refused to ratify our treaty. Talking and listening at length to Ambassador Bunker and Ambassador Linowitz, who was President Johnson's Ambassador to the Organization of American States—hearing the joint Chiefs of Staff, including General Brown, the Chairman, and General Jones, head of the Air Force—talking more recently with Army Secretary Alexander after his return from a trip to the Canal Zone—traveling to Colombia, Argentina, Peru and the Canal Zone, meeting with their Presidents—talking in Brazil to the Foreign Minister and the President of the Brazilian Senate and with many other officials—talking with the Economic Minister and Secretary of Commerce in the Republic of Panama—meeting with a group of Zonians, people living in the Canal Zone—lunching with American business leaders who had lived from two to twelve years in Panama City—outside the Zone—traveling with the U.S. Governor of Panama over the entire Canal—being briefed all along by Lt. General Dennis P. McAuliffe, the U.S. Commander of the Canal Zone—spending an evening with the U.S. Ambassador to Panama Jorden, meeting with a former prisoner of the Bay of Pigs in Cuba. With the exception of some of the Zonians, they agree to a man that the Senate should ratify the treaty. Even the Zonians emphasize that the treaty ought to be "modernized."

There must be good reason for all of these leaders plus six American Presidents to favor a new treaty. The good reason, of course, is an appreciation of the true character of America. Some think our strength lies in our military might alone. But America's power lies in its solid stand on the principle of self-determination. Having lost 56,000 for this principle in Vietnam, it is appalling that some would suggest we now lose Americans to deny the principle in Panama.

Much is proclaimed about building the Canal—but so little said about building the Republic of Panama. If ever a country should be stamped, "Made in the USA," Panama is the country. We created it 70 years ago—and today it is a stronghold of American free enterprise. Seventy major U.S. banks operate in Panama City—those which refuse to operate in Communist countries. Recently, when Panama needed increased revenues, she took the Chamber of Commerce approach—a value-added tax rather than an increase in income tax. Dictator Torrijos' economic team are all U.S. trained and educated. President Lakas—six years in the United States, a graduate of Texas Tech. Planning Minister Nicolas Barletta, a classmate of Governor Hunt of North Carolina—both graduates of N. C. State. The Guardia Nacional, or army—U.S. trained. Like many other heads of state in Latin America, Torrijos has visited with Castro. But Panama does not recognize the Soviet Union and Panama refuses to recognize Red China—she recognizes Taiwan instead. In a population of 1,700,000—there are reportedly 600 Communists—but none in the government. The government is patterned after the United States with three branches—legislative, executive and judicial. And they have an American system of education. Now the important point of all this is that we have taught them one American trait—patriotism. The Republic of Panama has developed a nationalism of its own. The people are proud, they are patriotic. They have learned the cardinal principle of government—the right of the people to determine their own destiny. The ten-mile strip of foreign occupation in the heart of their country is viewed the same way as if the French had retained a five-mile zone on either side of the Mississippi. Every Panamanian schoolchild is taught the wrong that the United States did in obtaining the treaty in 1903. Everyone in the city and countryside of Panama feels it and as they showed in 1964, they are willing to die for it. But most importantly, in this section of the world where the United States lacks strong friends, the Panamanians are friends of the United States. Everything they feel or know comes from the United States. Pointing out to President Lakas the feeling that existed in the United States, that the people were tired of being pushed around, that somewhere, sometime we had to stand up and say "No"—the President responded quietly, "But why do it to a friend."

Let me touch briefly on the certain aspects of the Panama Canal controversy:

1. SOVEREIGNTY

1. Legally, we don't have sovereignty;
2. Morally, we don't have sovereignty;

3. Realistically, we don't need, we don't want sovereignty.

Legally—Article III of the 1903 treaty grants to the United States certain rights as “... if it were the sovereign of the territory.” This retained sovereignty in Panama. President Roosevelt’s Secretary of War William Howard Taft, later to become President, said in a 1905 report: “The truth is that while we have all the attributes of sovereignty, the very form in which the attributes are conferred in the treaty seems to preserve the titular sovereignty over the Canal Zone in the Republic of Panama.” The Supreme Court decisions cited by treaty opponents are like the 1896 *Plessy v. Ferguson* segregation decision—totally untenable in this day and age. The real test is how the Government of the United States or Congress treats the Canal Zone—and it has not been as sovereign. If the Panamanian couple gives birth to a child in South Carolina or Louisiana or Alaska, under the Constitution that child is a U.S. citizen. If the same couple gives birth to a child in Guam or the Virgin Islands, then the child becomes a citizen, because Congress has treated these two areas as under our sovereignty. But if the same Panamanian couple gives birth to a child in the U.S. Canal Zone, that child does not become a citizen. So while the treaty said we could act as if sovereign, we were not and we did not.

Morally—No question, the United States rooked Panama back in 1903. We actively supported the revolution against Colombia by its Isthmus section after Colombia refused to ratify the treaty we wanted. We sent ships and troops and this guaranteed the outcome. Then we signed the treaty hurriedly before the official delegation objecting from Panama could even arrive in Washington. Signing for Panama was—not a Panamanian—but a French citizen who had not been in Panama for 17 years, and who returned to France immediately after the ratification. Further, it was made known that our military might would be withdrawn from the fledgling revolution in Panama unless ratification was promptly forthcoming. Such withdrawal would have left Panama at the mercy of a far stronger Colombia. This congeals hundreds of items, but it is interesting to note that the majority of the U.S. payment was retained by a New York bank and invested in real estate in the City of New York. At the time, Teddy Roosevelt’s Secretary of State commented, “You and I know too well how many points there are in this treaty to which a Panamanian patriot could object.” Said Woodrow Wilson, who would soon be President, “Our acquisition of the Panama Canal Zone has been a scandal since the day of the fake “revolution” of November 3, 1903. * * * In every country to the south of us we are distrusted, feared, hated.” Today this diplomacy is characterized by conservative columnist James Kilpatrick as a “national shame.”

Don't want sovereignty—After spending our history destroying colonialism from the beginning in 1776 thru to the Philippines, Cuba, World War II, Korea and Vietnam, let's not insist on colonialism in Panama. If there is one thing that President Carter and the United States have going for us in the world today, it is our stand on human rights—the right of people to determine their own destiny. We finally are getting the Soviets and others on the defensive about their denial of human rights, and things are beginning to move our way. Are we now going to say, “Yes, human rights for everyone—except the people of Panama.

2. DEFENSE

Flying up and down the length of the Canal in a helicopter. Lt. General McAuliffe was pointing out the strategic points to be defended—the lakes, the power facilities, the bridge and most important, the dam at Gatun Lake filling from the Chagres River. This lake is 25 miles across, the largest man-made lake in the world. The locks are filled by gravity flow taking 52 million gallons of water for each ship that goes through. If the dam was blown at any point emptying the lake, it would take two years to refill. “It would take 80,000 to 100,000 men to defend key points,” said General McAuliffe. “This does not mean wall-to-wall coverage of the entire length, only the key places. And this would not include the hundreds of inspectors necessary to examine each ship going through—an almost impossible task.” Guantanamo Bay in Cuba is a tip of land—easily defended. But the Panama Canal is open to ships from Cuba, Russia—all nations—and a lunch box of explosives could put it out of commission.

3. COMPETENCE

Can the Panamanians learn to operate the Canal efficiently? Presently there are 12,000 Panamanians helping to operate the Canal efficiently. Can they take over the jobs of pilots, engineers, etc? Yes. This could be done in short order. The Pan-American Airlines manager in Panama City, having operated in seventeen countries, said the best management and operating team of the seventeen was right now in Panama. Another friend, the Latin American manager of Intercomsa handling

85% of the communications from Latin America, came two years ago with an operating team of twenty-two U.S. experts. Already, he has sent back all but three to the United States—the Panamanians are doing the job. Let's remember the Egyptians readily learned to operate the Suez Canal.

4. TOLLS AND PAYMENTS

Can the Canal operate without further appropriations from the Congress? This year the Canal will operate at a \$7 million profit. But for the past several years, the Canal has been subsidized by the American taxpayer. The first ship with Alaskan oil went through the Canal on August 30. This increase in traffic will permit the Canal Company to pay the added 30 cents per ton plus the \$10 million required annually under the treaty. Tolls will have to be increased from \$1.29 a ton to approximately \$1.70. But if a pipeline connection for Alaskan oil is made from the West to the East Coast, then further increases in tolls could be counterproductive. This plus the loan guarantees may require us to subsidize again.

Treaty opponents cry, "It's bad enough to give it back, but why do we have to pay them to take it?"

Spain: \$685 million for base rights for five years.

Greece: \$700 million for base rights for four years.

Turkey Demanding \$1 billion for base rights for four years.

Philippines Demanding \$1 billion for base rights for five years.

We have had a free ride in Panama for 74 years. Now Panama, like other allies, wants compensation for the military installations in her country—Fort Kobbe, Fort Amador, Howard Air Force Base, Fort Clayton, Albrook Air Station, Fort Davis, Fort Gulick, Fort Sherman, the Jungle Warfare Range, etc. We are not paying to take the Canal back—we're paying for these installations. And most of the payments will be coming from toll revenues.

5. NEW CANAL

A new sea-level canal will probably be built by Panama and the United States before the year 2000. An estimate in 1970 reported the cost at \$2.7 billion. With inflation today that cost would be \$5.7 billion. With hindsight now we realize that rather than working for thirteen years to renegotiate the old treaty, we should have insisted on a new sea-level canal. This would have been wide enough for all our warships as well as the largest oil tankers. Then the sovereignty, sabotage and other problems would have been moot. What is unexplainable is the provision that forbids us to negotiate a new canal anywhere but Panama.

6. IMPORTANCE OF THE CANAL

The Panama Canal is important to the commerce and defense of the United States. It is especially important to South American countries such as Colombia, Peru, Chile, Ecuador and Nicaragua. Colombia, for example, drills its oil on the Pacific side and refines it on the Atlantic side. The Canal is Colombia's lifeline. Over ¼ of Nicaragua's trade passes through the Canal. The list goes on. I recently heard the statement that all Latin American nations wanted Panama to control the Canal. False. They feel that Panama should have sovereignty over its own territory, but time and again different leaders in South America told me that the United States is the only power in the Western Hemisphere strong enough to protect the Canal. They are worried about toll increases. They are worried about freedom of transit for their countries. They feel that the neutrality treaty is ideal in that Panama regains sovereignty and they all have freedom of transit—with a U.S. guarantee. Finally, they are worried about communism. More so than are treaty opponents, because attempts have been made on these leaders' lives. They all oppose any communist takeover of the Canal.

7. COMMUNISTS IN THE CANAL

Treaty opponents feel that once the treaty is ratified then in a couple of years the Canal will be turned over to the communists. No one knows or can guarantee what will happen in the years to come. All studied opinion holds firm that communism will have no issue upon which to take root if the treaty is ratified. However, they all feel that if the Senate turns the treaty down, then the communists will have a controlling issue not only in Panama but all over South America. Right now the communists in Panama are in the streets agitating against this treaty which they know will deprive them of their big issue. The best way to keep it from the communists in the future is to validate the neutrality treaty. And the best way to keep it from the communists today is to ratify the new treaty.

8. TORRIJOS

No question about it—he is a dictator. But not “tin horn” like opponents contend. Every head of state emphasized this fact—Torrijos is a man supported by his people. Previously, rulers of Panama were from the city, educated in Europe. But as President Lopez-Michelsen of Colombia said, “Torrijos is not a patrician. He is first and foremost a man of his people.” Torrijos is from the countryside. He was educated in Panama and trained at Fort Sherman and the U.S. Army School of the Americas. He came to power after the uprising in 1964. At the time he was a major in the National Guard—and had the bitter task of subduing his own people. After the riots, he took over pledging to rid the Canal Zone of foreigners. When asked if the Senate’s failure to ratify the treaty would weaken or strengthen Torrijos, all national leaders in South America plus the American business leadership in Panama City said it would strengthen him. Several immediately replied: “It would make him a hero.”

What happens if the Senate ratifies the treaty—There is no guarantee that this would solve all of our problems in Panama or in Latin America. Brazil particularly has a chip on her shoulder. They favor the treaty but the Brazilians want the United States to know that this would not solve all the problems in Latin America.

During the twenty year transition period, the Panamanians will have a chance to prove themselves. No doubt ratification will be followed with free elections next year as promised. There is every reason to believe that with the United States and Panama working together under the new treaty, Panama could become a showcase of American free enterprise. Ratification could prove a dramatic turning point in U.S.-Latin American relations. For ten years now, we have ignored South America. Each President has promised a new policy—only to be followed with neglect. During this period, the countries down under have developed a nationalism. No longer are they client states of the United States. And the disregard for this development has resulted in a “Bad Neighbor” policy. With the new Panama treaty, the United States could once again start acting as a “Good Neighbor.”

What happens if the Senate fails to ratify—The one group in Panama solidly opposed to the treaty are the communists. They realize that their principal arguing point will vanish with ratification. But they become an important movement if the treaty is rejected. Talking recently to a senior U.S. official in Panama, one who had served in combat at the DMZ in Vietnam—a man with guts and a lot of sense—“Just remember,” he said, “There’s lots of jungle out here and the use and control of this Canal depends upon a friendly people. If the treaty is not confirmed, you will have another Vietnam on your hands.” Maybe not a Vietnam, but at least an Ireland. The top CIA man in one South American country said, “Turn that treaty down and within hours, cars will be overturned and this embassy will be fire-bombed.” When asked how long this would last, he answered, “Just as long as the President of this country permits it—and, politically, he would probably have to let it go on for some time.” I wondered who would be with us. Surely not the British and French after the way we treated them in the Suez Canal. The Free World and the Communist World would both be arrayed against us. We would have learned nothing from experience. Separatism cannot sustain. It held us back in the South; it is the trouble today in Africa; and that ten-mile wide strip of separatism in Panama is an embarrassment.

Listening and studying as carefully and thoroughly as one can, I am convinced that our future in the Canal, our credibility on human rights, our being true to ourselves, and the respect for the United States will all be advanced by ratification. By every count, the new Panama Canal treaties are in the best interests of every American. In short, ratification is in our national interest.

THE PANAMA CANAL TREATIES

Mr. DOLE. Mr. President, I have asked for this time today to discuss what will be, perhaps next year, perhaps later, a very important issue in the Congress of the United States, and that is the discussion and debate and consideration of the Panama Canal Treaties.

I would like to take this time to define the defects, as the Senator from Kansas sees the defects, in the treaties presented to Congress, and suggest some amendments and some reservations to the treaties so that, perhaps next week, when the Senate Committee on Foreign Relations starts its deliberations these amendments—and certainly there will be others submitted by other Members of the Senate—can be properly considered.

There will be formal consideration starting on Monday, and then the proposals will be considered, although it is my understanding there will be no vote on ratification until early in 1978.

The Panama Canal Treaty issue is certainly one that will demand much of our attention in the weeks ahead. The American people look for and hope for an exchange of views and responsible consideration of our Nation's future security at every stage of debate on the matter.

Now that the pomp and ceremony associated with the treaties is over, and the foreign dignitaries have left, we in the Senate shall consider the proposed treaties in a thoughtful and responsible manner.

An issue such as this which bears so heavily on our national security and economic well-being cannot be passed on casually. I know that each of my colleagues will carefully examine all of the treaty provisions, and reflect carefully on them. The Senate Foreign Relations Committee hearings will contribute in a valuable way to this process. Administration spokesmen, Defense establishment leaders, Members of Congress, and a variety of public witnesses will all have an opportunity to testify on the merits of the treaty proposals. I know that the committee will make a genuine effort to listen to all interested parties and make every effort to obtain all points of view on this highly controversial issue. The committee will, in turn, be expected to pass on its own recommendations to the full Senate for final consideration and judgment.

SEEK OUT INFORMATION

All of us have a responsibility to become as well-educated as possible on all aspects of the Panama Canal issue. Now that the treaty drafts are available for inspection, we should actively seek additional information and advice from a variety of sources. A well-informed public can provide guidance during our deliberations, as well as support for our decision once it is made. Because I believe the American people deserve the opportunity to hear the full range of arguments for themselves, I have already suggested to the majority leader that Senate debate on the Panama Canal treaties be televised. Television coverage would place the treaty issues

before a far greater number of our citizens, and enable them to better understand and participate in the decisionmaking process.

At all times during the weeks ahead, we, in the Senate, must be attentive to any new developments which may bear upon the treaty issue. I am thinking at this moment of reports last week that surveillance activity may have taken place during the treaty negotiations. The Senate Intelligence Committee, after conducting hearings on the matter, concluded that our treaty negotiators had not been compromised in any way by the disclosures. But I raise this matter to make a point: No matter what our predisposition toward the treaties may be, all of us should remain receptive to updated information on the treaty matter as it becomes available.

During the past several weeks, I have made an active effort to familiarize myself with all points of view on the matter. I have discussed the treaties with President Carter, former President Ford, and Governor Reagan, and I received a detailed briefing on both treaties by the State Department. I have deliberated upon the provisions of both treaties and consulted with respected members of the academic and professional community. Having now had the opportunity to carefully consider the background, the context, and the details of the treaty proposals, I have arrived at certain conclusions. In order to express my observations and concerns about the treaties, I will today introduce several proposals for their modification.

TREATIES UNACCEPTABLE

I cannot support the two Panama Canal Treaties in their present form. Both the basic treaty, and the treaty concerning permanent neutrality contain omissions and defects which make them unacceptable, in my opinion. In order to focus attention upon these weaknesses, particularly for the benefit of forthcoming Senate hearings, I am proposing two reservations and six amendments to the treaty language at this time.

The U.S. Constitution gives this body the power of "advice and consent" over international treaties concluded by the President with foreign heads of government. As such, we have the constitutional obligation to scrutinize these treaties for their impact on our national interest, and to identify the defects or omissions. On 16 occasions in our Nation's history, the U.S. Senate has directly rejected treaty proposals submitted by the President. In 38 other instances, the Senate has attached reservations or amendments which ultimately led to the demise of proposed treaties.

The modifications I propose would, in my opinion, better protect the Nation's vital interests and substantially improve upon these documents. Hopefully, the Senate Foreign Relations Committee will solicit testimony on each of these points, and the full Senate will later have an opportunity to consider them.

NO RESTRICTIONS ON LOCATION OF NEW CANAL

My first amendment will insure that the United States is not committed in advance to refrain from constructing a new sea-level canal, at some point in the future, in a country other than Panama. Article XII of the basic Panama Canal Treaty would, in fact, bind the United States to construct such a canal in Panama if

it should be determined that a modernized canal is desirable in Central America. Yet, there is no commitment on the part of Panama to agree to permit construction of the canal; we are only prevented from constructing one elsewhere.

I do not suggest that we rush right down and build a new canal in Central America. That project may or may not be vital to U.S. defense and economic interests at some point in the distant future. The President has been talking a good deal lately about a new sea-level canal, but I suspect that the vast majority of American people will want to know first why we are giving up one canal in order to build another, which I understand may cost as much as \$7 billion. This very logical question acquires all the more significance when we talk about building a new canal in the same country that is now demanding possession of the old one.

Whether or not Panama is the best location for construction of a sea-level canal is really not the immediate issue. The central question is whether the United States should bind itself, by this treaty, to foreclose all options with respect to a new canal. We have no idea at this point how cooperative the Panamanian Government will be in observing the provisions of the present treaty. We have no idea what the nature of a future Panamanian Government may be.

Because this is a question that could bear directly on American defense and economic interests, it is vital that it be given careful attention. My amendment will strike that section of article XII which would foreclose our options, and substitute in its place a clause specifically rejecting any restrictions on U.S. negotiations with other countries for the right to construct a new canal somewhere in the Western Hemisphere. In my opinion, it is absolutely necessary that this freedom of choice is maintained.

REDUCE PAYMENTS

Probably no other aspect of these treaties causes as much concern among so many Americans as the payment provisions outlined in article XIII of the basic treaty. This "pay-away" plan is an enigma—are we providing rent, ransom, or "conscience" money?

The United States currently pays the Panamanian Government an annuity of \$2.3 million. Article XIII would raise those payments to between \$70 and \$80 million per year—a windfall by any standard, particularly when we consider the value of real estate and equipment that will be transferred without charge to the Panamanian Government under the treaty terms. In addition, our Government agrees to negotiate an economic loan package amounting to as much as \$345 million.

According to calculations by Panama's own economic policy minister, the total amount of anticipated U.S. financial aid may reach as high as \$2.26 billion over the next 23 years, amounting yearly to more than 20 percent of Panama's annual national budget.

CUT PAYMENT IN HALF

The amendment I am proposing would reduce the payments provided in article XIII by more than one-half. First, it would reduce Panama's share of the canal's annual operating revenues

from 30 cents per net ton to 15 cents per net ton for each vessel transiting the canal. Second, it will eliminate altogether the biennial adjustment of this rate according to changes in the U.S. wholesale price index, which, frankly, I have never totally understood why that was a provision in any event, but it is mandated in the treaty.

Finally, my amendment will strike that provision supplying Panama with "up to" \$10 million per year depending upon revenues. Although this provision is billed as contingent upon the profitability of the canal in any given year, it in fact guarantees payment of the full annuity "from operating surpluses in future years" whenever annual revenues are insufficient.

With implementation of this amendment, the Panamanians are still provided a fixed annual annuity of \$10 million, plus an equitable share of canal revenues, plus eventual receipt of U.S. loans and zonal property. No one can seriously dispute the generosity of this arrangement. Yet, it is far more rational and equitable in terms of compensation for our continuing primary role in using and operating the canal until the year 2000.

NO PAYMENT IF CANAL IS CLOSED

In addition, my amendment provides that the fixed annual annuity shall cease during any period in which the canal is inoperable. It would be unfair and irresponsible to continue that payment during a time in which the canal is closed, whether due to natural catastrophe, functional breakdown, or intentional sabotage. We almost certainly would be expected to bear the major economic burden of reopening the canal in any such instance, and it simply does not make sense for us to continue paying Panama for a passage route that is temporarily nonexistent. The present treaty makes no provision for such a contingency, and the United States must be protected on this point.

EXTENSION OF TRANSITION PERIOD FOR JURISDICTIONAL ARRANGEMENTS

In accordance with the intent of article XI of the basic Panama Canal Treaty, to provide for an "orderly transition" of jurisdiction over the Canal Zone, my amendment would extend the period for transfer of certain jurisdictional arrangements.

This treaty is being marketed by the administration as a "23-year" transition document, with the superficial implication the United States will maintain principal control over the Canal Zone and canal until the year 2000. In fact, a careful reading of the treaty provisions suggests that this concept is largely fictional. In effect, this is not a 23-year transition treaty: It is a 30-month transfer of title.

Article XI provides that the Republic of Panama shall regain full jurisdiction over the Canal Zone as soon as the treaty enters into force, and a complete transfer of U.S. judicial, administrative, and regulatory authority will be accomplished within 30 months. After that, U.S. citizens will be subject to Panamanian law, and subject to Panamanian civil and criminal justice as well.

I believe that a transfer of this magnitude in such a short period of time will not constitute "orderly transition." In effect, the provision will tend to drive Americans out of Panama. We may see a mass exodus of U.S. engineers and other canal personnel within the next 2½ years.

In order to provide for a more gradual phaseout of U.S. authority over Americans employed in the area, my amendment would permit the Panama Canal consultative committee to study the issue after the treaty takes effect and, with the benefit of actual experience, make a recommendation as to when the period of transition should formally end. However, in no case will this be prior to January 1, 1990. This date coincides with transfer of the administration of the Panama Canal Commission from United States to Panamanian leadership. It is only logical that primary U.S. authority over both the canal and the Canal Zone should expire at approximately the same time. By the same token, we will allow for a more orderly and gradual phase-out of American employees in the area, and of judicial and administrative control over them.

The amendment would not alter the theoretical return of "sovereignty" over the Canal Zone to Panama on the date the treaty comes into force. However, it would provide for the more practical arrangement of gradually phasing out U.S. jurisdiction over its own citizens in the former Canal Zone area.

HUMAN RIGHTS

For an administration which has made the subject of human rights a basic element of its foreign policy, particularly toward Latin America, the White House has been remarkably silent on the issue with respect to the Panama Canal negotiations. Yet, I believe this is an issue that should not be ignored. In the interest of moral principle, as well as consistent policy, it is important that we address the subject of human rights observance within Panama for both Panamanian and United States citizens.

There are several very important reasons why we have the obligation as a nation to pursue this point. First, U.S. employees will remain for a time in what was formerly the Panama Canal Zone. Under the terms of the treaty proposed by this administration, American citizens will become subject to both civil and criminal jurisdiction of the Panamanian Government at the end of a 30-month transition period. We have a responsibility to see that their basic rights are at all times strictly observed and fully protected. Second, we are effectively expanding the territory under the direct control of Gen. Omar Torrijos and his regime. In ratifying this treaty, we are strengthening the political and economic power of the Torrijos government. As such, I think we have both a responsibility and a right to insist upon a better observance of the basic human rights of Panamanian citizens, as a condition of this treaty. The Carter administration has not hesitated to exercise this condition with regard to aid proposals for Brazil, Argentina, Uruguay, and other Latin American nations to the point of straining diplomatic relations.

The ACTING PRESIDENT pro tempore. The Senator's 15 minutes have expired.

Mr. DOLE. May I have 2 additional minutes?

Mr. ROBERT C. BYRD. Mr. President, who is the next Senator to be recognized under the special order?

The ACTING PRESIDENT pro tempore. The Senator from Rhode Island (Mr. Chafee).

Mr. CHAFEE. Mr. President, the Senator from Kansas is certainly entitled to have 2 minutes of my time.

The ACTING PRESIDENT pro tempore. The Senator may proceed for 2 minutes.

Mr. DOLE. I thank the Senator from Rhode Island.

Interestingly enough, the State Department itself has refused to give the Panamanian regime a clean bill of health with regard to the observance of human rights. In a report prepared by the Department and submitted to the Senate Subcommittee on Foreign Assistance in March of this year, the State Department shed light on the repressive conditions in the country. The report notes that "Political opposition is not tolerated. The media are monitored by the Government." We are told Panamanians "generally" are assured of judicial redress where criminal charges are concerned, but "the guarantee of a fair trial might not be observed in a case with important political considerations."

A human rights survey conducted by "Freedom House" in New York is consistent with these observations. On a scale of 1 to 7, with 7 representing the lowest level of observance, the Government of Panama ranks 7 in extent of political rights, and 6 in extent of civil rights. In its comparative survey of freedom issued in January of this year, Freedom House characterizes the nation of Panama as "not free" and indicates the outlook for a change in these repressive conditions is unlikely.

Why, then, have we ignored the human rights issue altogether while confronting the persistent demands of General Torrijos? The Latin American correspondent for the Chicago Daily News recently reported that the response she received to this question by a high ranking State Department official was—

Of course, we are not going to challenge human rights in Panama because we want the treaty.

I am concerned about these authoritative reports of political repression within Panama, as I know many of my colleagues are. I am concerned as well about additional allegations of torture, murder, and severe punishment communicated by concerned groups of Panamanians. My amendment would insist upon Panamanian protection for the human rights of all those living and working in the former Canal Zone.

My reservation would condition treaty ratification on the understanding that the Panamanian Government will make "significant progress" toward observing the human rights of all its citizens during the basic treaty period. Both modifications will also encourage onsite investigations of alleged repression by respected international organizations.

TRANSFER OF CANAL ZONE PROPERTY

My second reservation would reaffirm the constitutional responsibility of the House of Representatives to participate in transfer of

ownership of the Canal Zone territory. Article IV, section 3, paragraph 2 of the U.S. Constitution reads:

The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or any particular State.

U.S. title to the Canal Zone property has been affirmed on several occasions by the highest courts in our land. In 1907, the Supreme Court, by unanimous decision, confirmed our clear title to the Canal Zone property:

It is hypercritical to contend that the title of the United States is imperfect, and that the territory described does not belong to this Nation because of the omission of some of the technical terms used in ordinary conveyances of real estate. (*Wilson v. Shaw* 204 U.S. 24).

That unanimous Supreme Court decision affirming U.S. sovereignty over the Panama Canal Zone still stands as a law of our land, and was reaffirmed by the U.S. Court of Appeals decision in 1971 *United States v. Husband R. Roach*, 453 F. 2d 1054, 1057), where the court said:

The Canal Zone is an unincorporated territory of the United States.

Both of these cases clearly reaffirm the fact that the Canal Zone is "territory" of the United States. Consequently, not only two-thirds of the U.S. Senate but a majority of the U.S. House of Representatives must approve the proposed treaties as well.

As a footnote to the issue of whether or not the United States can clearly claim title to the Canal Zone territory, it should be pointed out that our Government actually made payment to individual property owners at the time the original treaty was promulgated. Besides the initial payment of \$10 million to the Panamanian Government, the United States paid approximately \$4 million for acquisition of property from ownerships that existed in the Canal Zone area. We paid over \$300,000 to the French for land rights they already possessed in that region.

So I think there is little question that we currently have clear title to this territory. As such, both Houses of Congress must participate in its transfer, and my second reservation will make this a precondition to enforcement of this treaty.

UNILATERAL U.S. MILITARY INTERVENTION

I propose to amend article IV of the treaty concerning the permanent neutrality and operation of the Panama Canal, by adding a provision specifically guaranteeing our authority to intervene militarily on behalf of the canal whenever we determine its neutrality to be threatened. In my opinion, this amendment is absolutely necessary to the protection of our national security interests. We cannot count on Panamanian concurrence in every instance where we may perceive the operation of the canal to be in jeopardy. For all we know, the Panamanian Government itself may be consciously or unconsciously a part of that threat at some point.

The administration has sought to reassure the American people that this treaty, by implication, assures that the United States can unilaterally intervene in the defense of the canal whenever neces-

sary. I see nothing in article IV or in any other section of the treaty which specifically guarantees that prerogative.

In fact, in a Panamanian radio broadcast on August 24, Panamanian negotiator Escobar Bethancourt maintained just the opposite:

The pact does not establish that the United States has the right to intervene in Panama. This word was discussed and eliminated, and what is stated is that Panama and the United States will maintain the neutrality of the canal. What is the meaning of "will maintain?" In practice, the meaning of "will maintain" is that, if neutrality is ever violated, Panama on one hand and the United States on the other, or the two countries jointly, will determine how they will guard the canal against such a violation. * * * the neutrality pact does not provide what the United States will say when neutrality is violated.

If this is, in fact, what the article say—and I would say that Panamanian interpretation is at least 50 percent of the definition—then this is an unacceptable accord and should be either modified or rejected by the U.S. Senate. Regardless of how the State Department may choose to interpret this or that clause in the treaty, the point is that U.S. authority to intervene should be made crystal clear to the Panamanians within the treaty itself. My amendment would provide the necessary modification.

GUARANTEE U.S. WARSHIPS PRIORITY PASSAGE

This amendment relates to article VI of the treaty concerning the permanent neutrality and operation of the Panama Canal. The article guarantees that United States and Panamanian vessels of war will be entitled to transit the Panama Canal "expeditiously" at all times. At face value, this is a reassuring provision, given the importance of the canal to our national security interests. We can assume that the term was included because our negotiators recognized the vital security implications of the canal and felt it important to imply a special right of passage.

Now, some proponents of the Panama Canal treaty have tried to convince us that the canal is no longer vital to our national security interests. I do not agree with that point of view, and we have certainly seen some persuasive comments from those most knowledgeable about our naval operations that support the canal's continuing importance. It just seems to me that, by including the term "expeditious passage," the treaty drafters admit to an immediate defense interest by our Government. But, it is imperative to get a precise interpretation for that term.

To be more specific, I have to wonder why the treaty negotiators did not use term "priority" or "privileged" passage for United States and Panamanian warships, if that is in fact what the concept is supposed to be. My skepticism on this point was heightened recently when I became aware of a Panamanian radio broadcast on August 24, in which the Panamanian Minister of Information and chief negotiator, Escobar Bethancourt, gave the Panamanian Government's interpretation of the term. Senor Escobar explained that:

Expeditious passage does not mean privileged passage. As a matter of fact, the concept of privileged passage was rejected * * * if after examining the provision the gringos with their warships say, "I want to go through first," then that is their problem with the other ships waiting there. We cannot go that far."

It is readily apparent, then, that the Panamanians do not understand expeditious passage to mean that U.S. warships would receive priority, even during a period of crisis. In effect, the Panamanians intend to interpret the concept in this way: If there is a line of ships waiting to pass through the canal, the U.S. warships must get in line with the others and wait their turn. I do not believe that America's security can, or should, depend on traffic circumstances on any given day. Our naval defense could be thwarted by a bottleneck.

My amendment would specifically amend article VI to stipulate that, during a period of crisis, American vessels of war and their auxiliary vessels will be entitled to privileged passage through the canal. I believe this is an equitable arrangement, and certainly the only one that our country can accept in consideration of national defense, Latin American defense, and defense of the free world.

POINTS OF CONCERN

The foregoing represents some of my principal concerns about these treaties. Specialists on the subject have identified these aspects as among the greatest weaknesses in the treaty proposals, although there are a number of other deficiencies that can and should be addressed. The forthcoming Senate committee hearings are intended to shed some light on all of these problems. There is no question in my mind but what a number of modifications will eventually be proposed by various members of the Senate, and I may offer additional amendments or reservations myself after further analysis of the treaties has been conducted. Furthermore, the specific concerns expressed by our constituents should be fully represented at every stage of deliberation on the treaties.

NO APOLOGIES

In closing, I want to say that the people of the United States owe Panama no apologies for our involvement with the canal. The generosity of our Government in building the canal, in operating and maintaining it for 65 years, and in thereby enhancing the standard of living for Panamanians, requires no remorse on our part. Free of any implications of guilt, we should proceed to analyze these treaties in an objective and responsible manner.

But the Panamanian Government officials must know that we will never relinquish our presence in the Canal Zone because of veiled threats or direct pressures. They must know that we reserve all rights to intervene when the security of the canal is threatened, and that we expect priority passage for our ships during periods of crisis. And they must be told that we expect to see substantial progress in the area of human rights in which they rate so poorly. Above all, we do not intend to pay exorbitant amounts of money for the purpose of turning over control of the canal and Canal Zone. My amendments and reservation will effectively communicate these messages, at the same time that we consider the basic merits of the treaties themselves. We should settle for nothing less.

Mr. President, I ask unanimous consent that the texts of my amendments and reservations be printed in the Record at the conclusion of my remarks.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

(See exhibit 1.)

Mr. DOLE. As I say, Mr. President, we have no apologies to make. The United States does not owe Panama or anyone else any apologies for our involvement with the canal. We have been generous; we have operated and maintained the canal for 65 years; and we have enhanced the standard of living of the Panamanians.

Certainly there are areas of agreement and disagreement, and it may be modifications should be made. I just suggest that the amendments and reservations offered by the Senator from Kansas be carefully considered. As indicated, there will be others, but I hope I have responsibly addressed some of the major defects in the treaty submitted to Congress.

I yield back the remainder of my time.

EXHIBIT 1

AMENDMENT No. 1. (EXEC.) 95-1

Paragraph 2(b) of article XII is amended to read as follows: (b) During the duration of this Treaty, the United States of America may negotiate with any third State for the right to construct an interoceanic canal through such third State on any other route in the Western Hemisphere.

AMENDMENT No. 2 (EXEC.) 95-1

In article XIII, paragraph 4, strike out subparagraphs (a), (b), and (c), and insert in lieu thereof the following:

(a) An annual amount to be paid out of Canal operating revenues computed at a rate of fifteen hundredths of a United States dollar (\$0.15) per Panama Canal net ton, or its equivalency, for each vessel transiting the Canal, after the entry into force of this Treaty, for which tolls are charged.

(b) An annuity of ten million United States dollars (\$10,000,000) to be paid out of Canal operating revenues and as an expense of the Panama Canal Commission, except that such sum shall be reduced by the proportion which the number of days during the calendar year the Canal is not navigable bears to the calendar year.

AMENDMENT No. 3 (EXEC.) 95-1

In the second sentence of the first paragraph of article XI, strike out "for thirty calendar months" and insert in lieu thereof "until such date as is agreed upon by the members of the Panama Canal Consultative Committee, but not before January 1, 1990".

In paragraph 2 of article XI, amend subparagraph (a) to read as follows:

(a) The authorities of the United States of America shall have the primary right to exercise criminal and civil jurisdiction over employees of the Panama Canal Commission who are citizens of the United States and their dependents, and members of the United States Forces and civilian component and their dependents, in the following cases:

In paragraph 2(a)(i) of article XI, strike out "offense committed" and insert in lieu thereof "act or omission".

In paragraph 2(a)(ii) of article XI, strike out "offense committed" and insert in lieu thereof "act or omission".

In the text following clause (ii) of paragraph 2(a) of article XI, strike out "offenses committed" and insert in lieu thereof "acts or omissions".

In the annex entitled "Procedures for the Cessation or Transfer of Activities Carried out by the Panama Canal Company and the Canal Zone Government and Illustrative List of the Functions that may be Performed by the Panama Canal Commission", strike out paragraph 4(b) and insert in lieu thereof the following:

"(b) Upon termination of the transition period provided for under article XI of this Treaty, governmental services such as:

"(i) Police;

- "(ii) Courts; and
 "(iii) Prison system."

AMENDMENT No. 4 (EXEC.) 95-1

At the end thereof, add the following:

ARTICLE XV

HUMAN RIGHTS

1. The United States of America and the Republic of Panama agree on the importance of maintaining and properly observing internationally recognized human rights, including civil and political rights, in the former Canal Zone and commit themselves to maintaining, observing, and protecting such rights during the duration of this Treaty.

2. The Panama Canal Consultative Committee shall report annually to the national legislatures of the two Parties on the maintaining, observing, and protecting of such rights.

3. The two Parties agree to permit unimpeded investigations of alleged violations of internationally recognized human rights, including civil and political rights, by appropriate international organizations including, but not limited to, the International Committee of the Red Cross, Amnesty International, the International Commission of Jurists, and groups or persons acting under the authority of the United Nations or the Organization of American States.

In article V, strike out the second sentence.

AMENDMENT No. 5 (EXEC.) 95-1

At the end of article IV, add the following: "Nothing in this Treaty may be construed to prevent the United States of America, in accordance with its constitutional processes, from intervening militarily to maintain such regime of neutrality when determined to be seriously threatened by the President of the United States of America or, through the adoption of a concurrent resolution, by the Congress of the United States of America."

AMENDMENT No. 6 (EXEC.) 95-1

Before the period at the end of the first paragraph of article VI, insert a comma and the following: "except that the Republic of Panama shall, upon request, afford privileged passage through the Canal to such vessels of the United States of America during any period in which the United States of America is at war".

RESERVATION No. 1 (EXEC.) 95-1

Before the period at the end of the resolution of ratification, insert a comma and the following: "and subject to the following reservations:

"(1) that the Republic of Panama demonstrate, during the duration of this Treaty, significant progress toward observing the internationally recognized human rights of its citizens, including the right of free speech and the right to a fair trial; and

"(2) that the Republic of Panama permit unimpeded investigations of alleged violations of internationally recognized human rights by appropriate international organizations including, but not limited to, the International Committee of the Red Cross, Amnesty International, the International Commission of Jurists, and groups or persons acting under the authority of the United Nations or the Organization of American States".

RESERVATION No. 2 (EXEC.) 95-1

Before the period at the end of the resolution of ratification, insert a comma and the following: "and subject to the reservation that before the date of entry into force of this Treaty, the Congress has adopted appropriate legislation to transfer the Canal Zone to the Republic of Panama, in exercise of the power of Congress under article IV, section 3, clause 2 of the Constitution, relating to the disposal of territory or other property belonging to the United States".

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Rhode Island (Mr. Chafee) is recognized for not to exceed 13 minutes.

THE PANAMA CANAL TREATIES

Mr. HARRY F. BYRD, JR. Mr. President, the able syndicate columnist, Henry J. Taylor, a former U.S. Ambassador to Switzerland, raised some serious charges concerning Cuban intervention into Panama and the possibility of guerrilla infiltration from Costa Rica and Colombia.

I have no way of knowing if these charges are accurate, but I believe that they should be thoroughly investigated during the Senate hearings which will soon be held on the matter of the proposed Panama Canal treaties.

I ask unanimous consent that excerpts from Mr. Taylor's column be printed in the Record.

There being no objection, the excerpts were ordered to be printed in the Record, as follows:

COMMUNISTS WELCOME PANAMA CANAL TREATY

(By Henry J. Taylor)

President Carter has foolishly laid his prestige on the line for ratification of the new Panama Canal treaty. This blunder may not be as great as, say, Hitler attacking Russia, but it will do for openers.

The real question is not the surrender of U.S. control of the Canal versus Communist control. The real question is U.S. control versus Communist control.

It should be debated on that basis—for this is the stark reality.

The global strategic importance of the Panama Canal in U.S. hands is self-evident. Our Joint Chiefs of Staff, beholden to President Carter, have been corralled behind the proposed treaty. But six former Chiefs of Naval Operations [the No. 1 men in our Navy] publicly oppose this give-away.

As for Latin America, a full 80 percent of Peru's and Chile's imports and exports pass through it. The dependency is equivalent along the entire Pacific side of the South American continent . . .

The Latin American Communists welcome President Carter's new treaty with the forebearance of a hungry shark. Fidel Castro's guerrilla fleet is moving armed fighters into Panama from La Colma, Cuba. Air deliveries are from a heavily guarded air base at San Julian, 90 miles southeast of Havana. The propaganda support is sparked from Castro's powerful Russian-built radio station on Cuba's Kay peninsula.

Costa Rica borders on Panama. Castro has installed there Havana-based Costa Rican Communist Julio Sunol. And Castro's resident agent in Panama itself is Communist Thelma King.

She won her spurs in 1964 when four U.S. soldiers were killed in the riot in our Canal Zone. Thelma King herself led the rioters into the U.S. Canal Zone and boasts of killing these U.S. soldiers.

Nicaragua except for the U.S. 10-mile-wide Zone, is the only zone of stability in the entire area. President Anastasio Somoza Debalye told me that Castro has made 22 armed attempts to invade Nicaragua.

Moreover, the Republic of Panama is directly threatened on its two frontiers by Communist guerrillas.

How can President Carter ignore the fact that Panama borders on chaotic Costa Rica and Colombia? Is it news to President Carter that imported Red guerrillas are active in nearby El Salvador? Can he forget the Red-instigated insurrections in neighboring Guatemala and Honduras?

The Republic of Panama itself is a political jungle. Demagogues' tirades light a contrived fuse under Panamanian emotions and serve to distract the Panamanians from so much that should be done.

Panama is blessed with an amazing amount of rich, arable land—as rich as Iowa's best farmland. But less than half is under cultivation. Panama's true need is for better agriculture, animal husbandry and light industry.

It's easy for nearly any politician to roar against the United States, "Yankee Imperialism," "The Yankee Dollar," etc.—and bite the only hand that feeds Panama.

[From the Congressional Record—Senate, Sept. 24, 1977]

REFERRAL OF A RESOLUTION CONCERNING TELEVISION AND RADIO COVERAGE OF THE PANAMA CANAL TREATIES DEBATE

MR. ROBERT C. BYRD. Mr. President, I offer a resolution on behalf of the distinguished minority leader and myself, and I ask simply that it be stated and referred in the normal course of things, and printed.

The ACTING PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

S. RES. 268

Resolved, That the Committee on Rules and Administration be and is hereby authorized and directed to provide for radio and television coverage (including the making of videotapes) of proceedings in the Senate Chamber during consideration of the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, both signed at Washington, D.C., on September 7, 1977. Such coverage shall be provided for continuously at all times while the Senate is considering the Treaties, except for any time when a meeting with closed doors is ordered.

SEC. 2. The radio and television coverage of proceedings in the Senate Chamber, and the videotapes of such coverage, provided for in the first section shall be made available to public and commercial radio and television broadcasting stations and networks under such terms and conditions as the Committee on Rules and Administration may prescribe.

SEC. 3. The radio and television coverage of proceedings in the Senate Chamber under this resolution shall be carried out in such manner as the Committee on Rules and Administration shall prescribe.

MR. ROBERT C. BYRD. Mr. President, we recently witnessed an historic occasion upon the signing of the Panama Canal Treaties by President Carter, on behalf of the United States, and President Torrijos, on behalf of the Republic of Panama.

After 74 continuous years, these treaties would cause a significant change in that status. This is certainly a major change in the relationship of the United States and Panama and in the event the treaties are ratified, and it would be one that would have generated widespread interest among the citizens.

Over the course of the next several weeks, the President and the administration will make major efforts to advise the public on the results and the ramifications of the treaties, if ratified.

I compliment the President for the effort he will expend in this regard, and I say this without implying what position I may take or how I may vote.

Certainly, however, one of the most crucial needs we in the Congress will have in making our determination—we in the Senate will have in making our determination—is to know how our individual constituencies and the American public as a whole feel about the treaties. Only if the public is fully informed in this regard will they be able to impart the benefit of their wisdom to us.

In order to continue the process of imparting information on both sides of the issue, the public should be informed of the deliberations that will take place in the Senate.

Woodrow Wilson said that one of the most important functions of the Senate was the informing function, and that is one of the

reasons why I believe the hearings of the Committee on Foreign Relations should be televised, and it is my understanding that they will be televised.

It is also important that, following the hearings, which will begin shortly, and the record which will be made therefrom, we in the Senate can have access to that record of hearings and begin to base our own conclusions on the facts that are adduced in the course of those hearings.

I personally want to go to Panama, after the Senate adjourns, and see with my own eyes and hear with my own ears what is to be seen and heard in the interest of making my own decision in that regard.

I have today, as I have said, introduced this resolution, and the distinguished minority leader and I have joined in sponsoring it and calling for television and radio coverage of the deliberations and voting which will take place in the Chamber of the Senate of the United States.

I hope this resolution can be considered and approved by the committee to which it has been referred in due time, and if it is approved, preparation then can go forward for such televising and other publication by the media to the American people.

Mr. BAKER. Mr. President, I congratulate the majority leader for proposing this resolution and for his statement in support of it. I am pleased to cosponsor it with him.

There are few issues that have come before the Senate in the almost 11 years that I have served here that are of greater consequence and of more importance, not only to the people of the United States, but, in fact, to much of the world.

It is important that we proceed carefully in our deliberations and judgment, in our exercise of the coordinate jurisdictional authority granted to the Senate by the Constitution in matters of foreign policy, particularly the ratification of treaties.

I, too, have not made up my mind on how I will vote on the treaties or what action I may take in respect to them. I am a member of the Committee on Foreign Relations, and I intend to participate fully in those hearings, and energetically I intend to try to develop a record and to contribute to it according to whatever talents I may possess, to test the testimony of witnesses as that may be appropriate or desirable. But mostly, I intend to function in my capacity and under my responsibility as a Senator exercising the unique and special responsibilities the Senate has in foreign policy. But in doing so I want, indeed I need and I greatly desire, the advice and consent of the country because I am mindful, as I have said on other occasions, that America has been remarkably right in her major decisions, not because she has had great leaders always, although she has had more than her share, but because the people of the United States in their collective judgment and wisdom have been remarkably right in their judgments and determinations.

It is the very essence of the congressional system that the public is informed, that it has access to and is aware of our deliberations and proceedings.

In this age of electronic media, of instantaneous communication, I believe it is our responsibility to broaden, to extend, and to elaborate the access of the public to our deliberations.

So, Mr. President, I think the time has come in having something of a significant departure from the past, and that is to present these deliberations in this body through the electronic media, as well as the writing press, as we proceed to make a judgment of such fundamental importance that we dare not do less than our best.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader for his comments and for his joining with me in the introduction of this resolution.

Mr. THURMOND. Mr. President, will the distinguished Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. THURMOND. As I understand it, the resolution that has been introduced would provide for television in the Senate Chamber; is that correct?

Mr. ROBERT C. BYRD. Yes. Television and radio coverage.

Mr. THURMOND. The distinguished Senator referred to the Foreign Relations Committee. Does this resolution cover the Foreign Relations Committee hearings, also?

Mr. ROBERT C. BYRD. The resolution only covers the Senate debate in the Chamber.

Mr. THURMOND. That is what I was thinking.

I guess that would be left to each committee chairman as to TV in the committees, would it not?

Mr. ROBERT C. BYRD. Yes.

Mr. THURMOND. The Armed Services Committee, I believe, is planning some hearings, also, and I would think that probably if the Foreign Relations Committee is going to have TV the Armed Services Committee may want TV also.

I have no objection to the resolution. I think it is a fine idea.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from South Carolina.

Mr. President, I ask unanimous consent that any Senators who may wish to join the distinguished minority leader and me in cosponsoring the resolution to which we have just alluded may have the privilege of doing so before the resolution is printed, so I would ask that they have until 3 p.m. on Monday to add their names.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. ABOUREZK. Mr. President, I wish to be added as a cosponsor.

Mr. THURMOND. Mr. President, I wish to have my name added as a cosponsor.

Mr. HUDDLESTON. I wish to have my name added as a cosponsor to the resolution.

Mr. ROBERT C. BYRD. I thank the distinguished Senators.

Mr. President, I ask unanimous consent that Mr. Abourezk, Mr. Thurmond, and Mr. Huddleston be added as cosponsors.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

SENATE STATESMANSHIP AND THE PANAMA CANAL TREATIES

Mr. CRANSTON. Mr. President, John Averill, veteran Capitol Hill reporter for the Los Angeles Times, wrote an excellent article over the weekend about Senate prospects for the Panama Canal Treaties, which also appeared in the Sunday Washington Post.

I want to say that despite the excellence of the article, I emphatically disagree with an unidentified Senate aide whom he quotes as saying:

I fear we won't see many statesmen around here when the vote comes.

If correctly quoted, that unidentified Senate aide did a disservice to the Senate and a disservice to the advise-and-consent process of the Senate in connection with the Panama Canal Treaties. I have no desire to ascertain who that person may be. He may remain anonymous as far as I am concerned.

I have, as my colleagues know, been working hard over the past several months to help steer the treaties through the Senate.

I have probably talked, at one time or another, with well over two-thirds of the Senate about the treaties. So I think I talk from intimate, firsthand knowledge when I say that Mr. Averill's anonymous Senate aide is way, way off base.

I do not believe I have ever seen in my years in the Senate such serious, careful deliberation on one issue by so many Senators.

All are very much aware of the heavy crush of mail they are getting opposing the treaty, even though much of the mail is obviously the result of an organized campaign rather than a spontaneous outpouring from their constituents.

Nonetheless, Senator after Senator I have talked with is clearly determined to find out all he can about pros and cons of the treaties and to make his final decision on the merits of the case.

That is one of the reasons for the delay in the treaties coming to the floor.

Most Senators have been following carefully the course of the debate so far—in the press and on the floor of the Senate.

They will be following perhaps even more carefully the Foreign Affairs Committee hearings that begin today.

They want time to read and to reflect on this vital national issue. They very correctly don't want to be rushed into a decision. And they will not be.

Most of my colleagues know by now how strongly I feel about the treaties. The treaties are—in my view—essential to our Nation's national security interests in Latin America.

But that is my view. Other Senators may disagree; some already do. But I have never had cause to question their motives or their sincerity. The burden is on those of us who favor the treaties to prove our case.

This much I am already convinced of: That when the final vote for ratification comes, every Senator will be voting his conscience—and his sincere view of the national interest—and not his mail.

It may be a hard vote for some. While I see the merits of the case overwhelmingly in favor of the treaties, others may see it as rather a close call, one way or another. I respect that view.

But win or lose, I am convinced the decision will be a decision of statesmen, of Senators who make up their own minds about right and wrong and who are not swayed—in a matter as vital as this—by outside pressures and fears about the next election.

Indeed, they know that so-called conventional wisdom is often wrong, and that the voters are far more likely to reward courage, integrity, and the strength of a man's conviction.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield?

Mr. CRANSTON. Yes, I yield.

Mr. ROBERT C. BYRD. Mr. President, I subscribe completely to what the distinguished majority whip has just said. I also want to say that I have very high regard for John Averill and the same high regard for the Los Angeles Times.

Now and then statements of aides are allowed to color the stories in all publications. I want to say that the Senate has never been devoid of statesmanship, and it has never been devoid of courageous men. Whatever our viewpoints are, when the time comes for the Senate to show down on the issue, I have faith in the courage and the integrity of every Senator who will cast his decision.

There will be those who will vote against, and there will be those who will vote for. I myself am keeping a completely open mind. I am determined that the Senate have an opportunity at some point to reach its decision, and I think that we owe it to the President and we owe it to the country, in the meantime, to have enough time to get over the emotional hump, lay out the facts, let Senators and the American people take a good look at those facts, and let Senators make their decisions on the basis of the facts that have been adduced.

Now, there may be some Senators who have already decided one way or the other. I do not question their judgment, their integrity, their courage, or their dedication as being just as good and high as mine. But this business of basing a story on a Senate aide's observations, I think, is a rather bad way to go about reaching a judgment as to what the Senate will do. We have to have our aides; we could not do without them. They perform a very important service to Senators and the Senate.

But as far as I know, Senators are accessible to the press. The leadership on both sides of the aisle is very accessible to the press, and any time the press wishes to speak with the leadership or any Senator to get their viewpoints, we are accessible, and the press knows that.

I would just hope that in a matter of such vital importance, either way one views it, if one is for the treaties or if one is against them, nevertheless it is a subject of such moment, such far-reaching significance, and such importance that Senators ought to be able to make up their own minds and have time to do so. I think they are capable of expressing their sentiments, they are capable of being statesmen, and they are capable of showing courage where courage is required. I have no doubt that the Senate will reach one of its finest moments when the time comes.

I am glad that the distinguished majority whip took the floor and the occasion to say what he said. I subscribe to it thoroughly. Let us be done with this business of Senate aides prognosticating and predicting what the outcome will be and how little courage there will be, and how devoid of backbone 100 Members of the Senate may be. I have absolute faith, confidence, and trust that this Senate will make the right decision when it is made, and I do not doubt any Senator's courage and dedication when it comes to the point of putting his country's interest first.

All of us are politicians; there is no question about that. We all get heavy mail, many times on many subjects. In connection with some subjects more than with others, I think, a degree of statesmanship is called for. But when it comes to something like the Panama Canal Treaty, watch the Senate. I dare say there will be many Senators who will cast votes that will cost them, politically, insofar as their constituents' support back home is concerned.

We reach issues from time to time when, any way one votes, one is going to disappoint some constituents. I cannot satisfy all my constituents without voting two ways on the treaties—one for and one against. But each of us has only one vote and we all realize that. When the time comes to cast that vote, I believe that every Senator is going to cast his vote in what he sees as the best interests of the Nation. Partisanship should have no part in this matter, in my judgment, whether we are Democrats or Republicans, whether we are for or against.

I hope that that, may I say to my friend from California, will help to supplement his fine statement.

Mr. CRANSTON. That is a superb statement. I welcome it. I agree with every bit of it. I want to stress, as the majority leader did, my recognition of the right of the press and my respect for the ability of the press to cover our doings and what is said and done by the Senate.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. STEVENS. I shall be happy to yield a portion of our time to the Senator.

Mr. CRANSTON. I specifically admire John Averill for ferreting out the Senate aide who gave him that quote to spice his article, along with all else he wrote. I do not admire the wisdom of that Senate aide at that particular moment.

Mr. ALLEN. Will the Senator yield?

Mr. STEVENS. Yes, I yield some time.

Mr. ALLEN. I commend the majority leaders for their statements. I, too, feel that there will be statesmanship shown by Members of the Senate on this issue. I might stress, too, that the side that the Senator votes on does not necessarily indicate whether he is a statesman or not. I think statesmen will appear on both sides of the issue.

Mr. CRANSTON. Of course.

Mr. ALLEN. I think there are pressures from many, many quarters that will be evident as this debate goes on. But I do not feel that only those who vote "aye" on the treaties will be regarded as statesmen. I think those who feel that it is in the best interests of the country to vote "nay" can, equally well, be regarded as statesmen.

Then, too, I commend both leaders on stating that this matter will be allowed to be debated at length here in the Senate so that Senators can be fully informed and so that the Nation can be informed as to these issues.

Speaking for myself, I assure the leaders that there will be no filibuster, as such, on this treaty. As soon as legitimate arguments have been made, and legitimate amendments to the treaties and the reservations have had an opportunity to be considered here, in the Senate, I shall certainly be ready to vote.

I do feel that the treaty needs to be amended at a number of points, and there need to be reservations where amendments are not regarded as being a proper vehicle. But it should be debated at length and I am confident that there will be no obstructionist tactics used in connection with the treaty.

While the debate will be extended, it will not rise to be a filibuster. I think that is the sentiment on both sides.

Mr. CRANSTON. Will the Senator yield me 30 seconds?

Mr. STEVENS. Yes.

Mr. CRANSTON. I want to say that I welcome the statement of the Senator from Alabama, and I assure him that, of course, I recognize that there are and will be statesmen on both sides of this issue.

Mr. ALLEN. I might state that I plan to offer an amendment to the treaty that will leave the present treaty in full force and effect except as to the increase in the amount of annuity paid to Panama. If that amendment is adopted, that being the sole provision of the treaty, then I should be willing to support the treaty. But I think that is what we need to do here in the Senate. An amendment will be offered along that line, to raise the annuity, but let that be the only change in the treaties.

Mr. CRANSTON. I look forward to statesmanlike debates on the merits of this case on another occasion.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished acting minority leader for his courtesy in yielding to us on this side.

Mr. STEVENS. I thank the majority leader. I am happy to cooperate. If the minority leader were here, I am sure he would echo the sentiments of the majority leader.

For myself, I state again that this is no time for haste. I commend the majority leader for indicating that time will be taken to explore thoroughly all of the ramifications of these treaties and that the Senators will be given an opportunity to return to their homes to discuss the issues involved and to be part of the process of national education which must take place if these treaties are to be voted upon by an informed Senate.

I even believe that it ought to be a duty of each Member of the Senate to go to Panama, to see what we are talking about, and to be fully informed of the total consequences of the approval of these treaties. That, in and of itself, will take time. If that time is taken, I think the final judgment of the Senate will be the proper one.

If we have any further time, Mr. President, I yield it back.

THE PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, today the Committee on Foreign Relations began an extension series of hearings to consider the Panama Canal treaties. Today the committee heard testimony from Secretary of State Cyrus Vance and our two negotiators for the treaties, Ambassador Ellsworth Bunker and Mr. Sol M. Linowitz.

I ask unanimous consent that the statements of each be printed in the Record, I believe that these statements will be of interest to my colleagues and other readers of the Record, in view of the intense interest in the treaties.

There being no objection, the statements were ordered to be printed in the Record, as follows:

STATEMENT BY SECRETARY OF STATE CYRUS R. VANCE ON THE PANAMA CANAL TREATIES

Mr. Chairman, Members of the Committee:

Today I seek your support for new treaties governing the Panama Canal.

First, these treaties protect and advance the national interests of both the United States and Panama.

Second, they provide for an open, neutral, secure and efficiently operated Canal for this hemisphere, and for other nations throughout the world.

And third, they will promote constructive and positive relationships between the United States and other nations in this hemisphere.

These treaties, in my judgment, will gain us respect among other nations of the world—both large and small—because of the responsible way they resolve complex and emotional issues which have been with us for most of this century.

The treaties are the culmination of 13 years' work by four American Presidents of both major political parties, and their Secretaries of State.

They are the outcome of patient and skillful negotiation since 1964 by a number of dedicated political leaders, diplomats, and military men. They have been achieved because of valuable counsel and support offered by members of this Committee and by representatives of American business and labor who have seen these new treaties as being in their own interest and in the larger national interest.

They are, above all, a triumph for the principle of the peaceful and constructive settlement of disputes between nations. That is a principle we seek to apply in all aspects of American foreign policy.

It is quite proper that this Committee, the Senate, and the American people should consider carefully the content and implications of these treaties. For they should not at some later time be made the subject of partisan or divisive debate. In my opinion, they should be beyond partisanship.

They should now be examined in detail by this Committee, and by the nation. Basic questions are being asked—and should be asked—about them.

These questions express the same concerns and goals that have been on our minds during the negotiations.

Do these treaties safeguard our national security interest in the Canal?

Do they establish a long-term basis for open and effective operation of the Canal?

Do they enhance our relationships with nations of this Hemisphere?

Do they place any new burden on the American taxpayer?

Do American workers in the Canal Zone get a fair shake?

And, without the treaties, what might happen?

I am satisfied in my own mind that these questions have been properly answered, thanks to the skilled and hard bargaining by our negotiators. I will discuss these questions briefly this morning.

LONG-TERM OPERATION OF THE CANAL

The United States will control canal operations through a new U.S. government agency—the Panama Canal Commission—to be supervised by a board composed of five Americans and four Panamanians. The Commission will operate the Canal until the end of this century. The present Panama Canal Company will be discontinued.

The United States will maintain responsibility for managing the canal, setting tolls, and enforcing rules of passage until the year 2000. Until the year 2000 the U.S. will also maintain primary responsibility for the defense of the Canal. After

that, the United States will have responsibility to maintain the permanent neutrality of the Canal to assure that it will remain open to our ships, and those of all other nations on a nondiscriminatory basis.

The treaties further allow for the modernization of the Canal through construction of a third lane of locks and foresee the possibility of construction in Panama of a new, sea-level canal. This would provide access for many modern super-tankers and warships too large to pass through the present Canal.

HEMISPHERIC RELATIONS

I believe the ratification and implementation of these treaties will be the single most positive action to be undertaken in recent years in our relations with Latin America.

Only last month, in Bogota, the democratic governments of Venezuela, Costa Rica, Colombia, Mexico and Jamaica issued a joint communique urging the United States and Panama to conclude the new treaties rapidly. For years, Latin American peoples and governments have viewed our negotiations with Panama over the Canal as a litmus test of our intentions toward their countries.

The treaties, as negotiated, represent a fair and balanced reconciliation of the interests of the U.S. and Panama. They create a partnership under which our two countries can join in the peaceful and efficient operation of the Canal. They symbolize our intentions toward the Hemisphere. And they prove, once and for all, the falsity of the tired charges that we are imperialistic exploiters bent only on extracting Latin American raw materials and using the continent for our own economic interests.

NATIONAL SECURITY ASPECTS

Representatives of the Joint Chiefs of Staff worked closely with the treaty negotiators on the security provisions, and played a major role in drafting the neutrality treaty. The United States will retain all military bases and facilities—all the lands and waters—that we require for the Canal's defense until the year 2000. We may keep the same force levels we now maintain in the zone—about 9300—and can increase them if necessary.

After the year 2000, as I indicated earlier, the United States will have a permanent right to maintain the Canal's neutrality, including the right to defend the Canal if necessary. Our warships are given the right to use the Canal expeditiously.

Article IV of the Neutrality Treaty says:

"The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two contracting parties."

This means there is no limit under the Treaty on the freedom of the U.S. to assure permanently the Canal's neutrality.

THE ECONOMICS

Under the treaties, Panama will receive payments which more fairly reflect the fact that it is making available its major national resource—its territory. But the treaties require no new appropriations, nor do they add to the burdens of the American taxpayer.

The treaties provide that Panama will receive 30 cents per Canal ton for traffic transiting the Canal; a fixed annuity of \$10 million per year; and an additional \$10 million per year provided canal revenues permit. Panama would initially receive about \$60 million per year under this formula, which will apply until the year 2000. All of these payments are to be made from Canal revenues. Panama will thus have a strong interest in insuring unimpeded and efficient use of the canal.

We have agreed, outside the treaty, to certain arrangements which will assist the general economic development of Panama and enhance its stability. We have formally told the Panama Government that we are prepared to develop a program of loans, loan guarantees and credits to Panama—including up to \$200 million in Export-Import Bank credits over a five-year period; up to \$75 million in AID housing investment guarantees over the same period; and a loan guarantee of up to \$20 million from the Overseas Private Investment Corporation. All the loans concerned require repayment. There are no grants. In addition, over a 10-year period, Panama will receive up to \$50 million in foreign military sales repayment guarantees, so that its armed forces can be better prepared to help defend the Canal. Most of this assistance will be used to purchase American equipment. These programs would be subject to all relevant U.S. legal requirements and program criteria.

AMERICAN WORKERS IN THE ZONE

Some 3,500 American employees of the Canal enterprise and their dependents live in the Canal Zone. Some have spent all their working lives there; most of these American workers will continue to be employees of the U.S. Government until their retirement. The treaties protect their basic conditions of employment. If they remain they will be free to continue living in government housing and to use the American schools and hospitals in the areas. Until the year 2000, the treaties guarantee American employees and their dependents basic civil rights, similar to those that apply in the U.S., in Panamanian courts, and other benefits and protections similar to those enjoyed by other U.S. Government employees overseas. The AFL-CIO, which represents both Panamanian and U.S. workers in the Canal Zone, supports these treaties.

WHAT IF THE TREATIES ARE REJECTED?

It would be all too easy for me to emphasize today that if 13 years of effort were lost, and these treaties rejected, our relations with Panama would be shattered; our standing in Latin America damaged immeasurably; and the security of the Canal itself placed in jeopardy.

Indeed, all of these things could and might happen if these treaties were not ratified. But that is not the major reason for supporting them.

They deserve support because they are in our interest, as well as the interest of Panama.

For the people and government of Panama, there is the knowledge that they, eventually, will assume full jurisdiction over their own territory. There are also the economic benefits to be gained from canal revenues, and from the guarantees, loans and credits—not grants—we have pledged to consider on their behalf. Panama, as a result, will be a more stable and prosperous country.

For us, there is our knowledge that the Canal will be open, neutral, secure and efficiently operated, for our benefit and that of other nations in the world. We are not appropriating American taxpayers' money to accomplish this. And we will have gained respect throughout Latin America and the world for addressing this issue peacefully and constructively.

It is our interest, not foreign pressures, that lead us to these treaties.

OTHER QUESTIONS

Let me address, very briefly, some doubts about the treaties that have been raised but can be dispelled as the facts become better known.

We are asked whether the new treaties may encourage Panama to nationalize the Canal. But our new treaty rights would be no less binding than our rights under the existing treaty. Moreover, a Panama which is cooperating with us in canal management and will eventually exercise full management responsibility has no reason to seize or obstruct the Canal. Any Panamanian government will have an interest in preserving the treaties because the treaties are in the interest of Panama—as well as ourselves. These treaties reduce the chance of such an event.

It has been suggested that the new treaties could diminish our ability to maintain the neutrality and security of the canal. But, in fact, the Joint Chiefs of Staff are satisfied that the treaties enable us to keep the canal open indefinitely.

It has been suggested that we are "paying the Panamanians to take the canal away from us." But payments to Panama will come from canal revenues, not from American taxpayers.

Finally, let me address briefly another question which has been raised: Human rights in Panama.

The Panamanian government has in the past been charged with abusing the civil and political rights of some of its citizens. And we have discussed this issue with that government. The closer relations between our two countries that will grow out of the new treaties will provide a more positive context in which to express such concerns, should it be necessary in the future.

Already, there are encouraging signs. On September 13 Panama invited the Inter-American Human Rights Commission to send a team to investigate human rights conditions in Panama. In addition, it has invited the United Nations to send observers to its plebiscite on the new treaties next month.

At the same time, the Panamanian government has made continuing and real commitments to the economic and social rights of its citizens. Its economic development plans give priority to upgrading the housing, nutrition, health care and education of the ordinary Panamanian citizen.

How we respond to an issue such as these Panama Canal treaties will help set the tone for our relations with the rest of the world for some time to come.

Both we, and others, are under considerable pressure in our domestic economies. There is a tendency toward economic protectionism. And there is question about the most appropriate ways to use our power in a world grown so complex.

Panama is a small country. It would be all too easy for us to lash out, in impatience and frustration, to tell Panama and Latin America—and other countries around the world—that we intended to speak loudly and carry a big stick and to turn away from the treaties four Presidents have sought over so long a time.

But that, in my judgment, would not be conduct appropriate to a responsible world power or consonant with the character and ideals of the American people.

Any nation's foreign policy is based, in the end, not just upon its interests—and, in Panama, our interests are clear and apparent. It also is based upon the nature and will of its people.

I believe the American people want to live in peace with their neighbors * * * want to restraint * * * want all peoples, everywhere, to have their own chance to better themselves and to live in self-respect.

That is all a part of our American tradition.

And that is why I am convinced that after the national debate they deserve, these treaties will be approved without reservations by the Senate, with the strong support of the American people.

STATEMENT BY HON. SOL M. LINOWITZ

Mr. Chairman and Members of the Committee: Although I have not been involved in Panama Canal diplomacy for as many years as Secretary Vance and Ambassador Ellsworth Bunker, I have for a long time been deeply concerned about the Panama Canal issue and its implications for our whole relationship with Latin America.

For three years prior to my designation as Co-Negotiator of the new Canal treaties, I served as Chairman of the Commission on United States-Latin American Relations.

In the Report which our Commission issued on December 20, 1976 we said: "The most urgent issue the new Administration will face in the Western Hemisphere in 1977 is unquestionably the smoldering dispute with Panama." We went on to say: "1977 will be a crucial year for resolving the volatile Panama issue; if negotiations do not produce an equitable solution during this coming year, deepened hostility seems inevitable." We urged the new President "to exercise prompt, vigorous and decisive leadership in negotiating an acceptable compromise with the Panamanian Government while serving our own interest in the Canal. Such an action will also indicate our desire to address the issues which concern the United States and Latin America in a more cooperative and mutually respectful atmosphere."

Our recommendation was: "The new Administration should promptly negotiate a new canal treaty with Panama; it should involve members of both parties and both Houses of Congress in the negotiations; and it should make clear to the American public why a new and equitable treaty with Panama is not only desirable, but urgently required."

Mr. Chairman, the treaties which we have negotiated and which are now before you in large measure follow that prescription. We have negotiated treaties which are, we believe fair and equitable and which fully preserve our interest in the canal while taking into account Panamanian aspirations. In the course of the negotiations, we have involved members of both parties and both Houses of Congress. And the terms we have agreed upon clearly reveal a more cooperative and mutually respectful atmosphere in hemispheric relations.

There are, I believe, three basic facts which must be understood about the Panama Canal issue.

First, it is an issue which involves far more than relations between the United States and Panama. For it is an issue which affects all United States-Latin American relations. In the eyes of our Latin American neighbors, the Panama Canal runs not just through the center of Panama, but through the center of the Western Hemisphere. All the countries of the hemisphere have made common cause in looking upon our position in the canal as the last vestige of a colonial past which evokes bitter memories and deep animosities. So in going forward with these new treaties with Panama, the United States will be improving its position with virtually all the countries of this hemisphere whose attitude towards us as a nation will be importantly influenced by how we conduct ourselves on the Panama Canal issue.

Second, our primary interest in the Canal is, and always has been, to assure that it remains secure and open, on a neutral, non-discriminatory basis. Viewed in this light it is unmistakably clear that the greatest threat to the operation and security of the Canal would be to try to insist upon retention of the present outmoded treaty

and its anachronistic provisions—provisions which have in the past and can so easily again in the future, trigger hostility and violence. The simple fact is that if we do not agree upon treaties which are mutually agreeable and acceptable, the time may come when we may find ourselves in the position of having to defend the Canal by force against a hostile population and in the face of widespread condemnation by the countries of Latin America and even the rest of the world.

Third, it is, therefore, clear that the best way to preserve an open, accessible and secure canal and to maintain its permanent neutrality would be to substitute for the 1903 Panama Canal Treaty a new arrangement which will be mutually fair, which will properly provide for Panama's just aspirations, and which will take into full account our own national needs. Putting it another way a new treaty arrangement is the most practical means for protecting the very interests we are seeking to preserve in the Canal.

We believe that the new treaties meet this test by preserving for the nation the important interest it has in assuring that the Canal remains secure, accessible and open on a nondiscriminatory basis—and in a manner which will both advance our national security interests and further our hemispheric objectives.

With your indulgence I would like to recall a few words of history about how we got where we are in the Panama Canal.

During the middle of the 1800's we were, as a young nation, interested in the possibility of constructing a canal across the isthmus in order to connect the Atlantic and Pacific Oceans. This need was dramatically underlined when, during the Spanish American War, it took the battleship *Oregon* 67 days to get from the Pacific coast to its Atlantic battle station.

At the end of the 1800's the French Canal Company had undertaken to construct a canal through the Province of Colombia known as Panama. By the end of the century it acknowledged failure—failure because of disease, because of technological and scientific problems which seemed insurmountable, because of lack of financing, and finally because of lack of spirit and morale.

At that time an engineer, Philippe Bunau-Varilla, who had worked for the French Canal Company, spurred an effort for the United States to take over the French company's assets and enter into a treaty with Colombia for the completion of the canal. Such a treaty was rejected by the Colombian Senate.

At that point it was suggested that the Province of Panama might undertake to declare its independence from Colombia and then enter into a satisfactory treaty with the United States. On November 4, 1903 a revolution occurred in Panama and a few days later the United States recognized Panama's independence. Thereupon a treaty was entered into known as the Hay/Bunau-Varilla treaty.

The treaty granted the United States rights "in perpetuity" to construct a canal within a zone 10 miles wide over which the United States would exercise the "rights, powers and authority" it would have if "it were the sovereign." Secretary of State Hay candidly wrote to a leading Senator that the treaty was "very satisfactory, vastly advantageous to the United States and, we must confess with what face we can muster, not so advantageous from Panama." The treaty was ratified in 1904 and construction of the canal was begun immediately. It was completed in 1914 after a brilliant engineering and scientific performance by American engineers, doctors, scientists and builders who were determined to conquer the unconquerable and make the canal a reality.

Today the Panama Canal stands as an engineering marvel, as one of this country's greatest accomplishments. In a very real sense it was our moon shot of the early 1900's. Any America must view with pride this highly complex, integrated hydraulic system of locks, dams and artificial bodies of water designed to move ships over the uplands of the isthmus for 50 miles from ocean to ocean.

And we can also point with pride to the way we have operated the Canal. For 62 years it has been run as a public service for the nations of the world rather than as a business. Tolls have been set as low as compatible with meeting costs and providing a modest return, and world commerce has been a major beneficiary of the Canal operation. The toll rate when the Canal opened in 1914 was \$1.20 per Panama Canal ton; today it is \$1.29.

It is against this backdrop that these new treaties must be evaluated.

Several arguments have been widely advanced against a new treaty arrangement with Panama. Secretary Vance has already discussed the sovereignty issue, and I would like to touch upon several other major concerns which have been asserted in connection with the new treaties.

First, will the new treaties in any manner prejudice our national security? Your Committee will have the benefit of the testimony of our foremost defense authorities on this score; but it is important to stress that in all of our negotiations we have

worked closely with the Department of Defense and the Joint Chiefs of Staff to assure that our national security interest would not in any respect be prejudiced under the new treaty arrangements. And we have been assured by them that the treaties we have agreed upon will not only preserve but indeed enhance our national security interests.

Second, will the new treaties seriously affect United States commercial interests? The new treaties, we believe, are the best protection of our commercial interest in the Canal. The simple fact is that the commercial value of the Canal has diminished considerably as world commerce patterns and technologies of shipping have changed. Today supertankers and other larger vessels cannot use the Canal. In percentage terms the Canal is much more important to the various countries of Latin America than it is to us. Today approximately 7 percent of total United States international maritime trade passes through the Canal each year. About 4 percent of the trade between the East and West coasts travels the Canal. It is, therefore, clear that though the Canal is still important, it has, to a substantial extent become economically obsolescent.

Third, is the present Government of Panama the one with whom we should be negotiating these new treaties? For over 13 years we have been engaged in negotiations for a new Panama Canal treaty. The present Chief of Government, General Omar Torrijos, who has been in power for almost 9 years, has been committed to trying to work out a new treaty with the United States and in doing so he is supported by the people of his country and is following in the footsteps of every Panamanian Head of State since 1903—irrespective of ideological differences. Moreover, pursuant to the Panamanian Constitution, the treaties will now have to be submitted to a plebiscite in Panama next month so that the Panamanian people will be able to express their judgment with respect to these treaties.

Secretary Vance and Ambassador Bunker have already described to you the major terms of the new Panama Canal treaty, and I would like to focus my remarks on the neutrality treaty. This treaty commits the United States and Panama to maintain a regime of permanent neutrality for the canal. Under the rules of neutrality set forth in this treaty, the Canal is to be open to merchant and naval vessels of all nations at all times without discrimination as to conditions or charges of transit. A special provision authorized United States and Panamanian warships to transit the Canal expeditiously in both peace and war without being subject to any restriction as regards means of propulsion, armament or cargo.

Under this provision no question can be raised about the right of U.S. naval vessels to transit the Canal with all their weapons nor can any restriction be placed on the type of cargo they may carry. Further, we are assured of a preferential right to expeditious transit of our naval vessels whenever we consider this necessary.

Under the treaty the United States is in a position to assure that the Canal's permanent neutrality is maintained and there is no limitation on our ability to take such action as we may deem necessary in the event the Canal's neutrality is threatened or violated from any source. The precise type of response we might determine to make would of course depend upon all the political, military, legal, economic and other factors involved in a particular situation. But the key point is that it is for the United States to make the determination as to how we should respond and how we should defend our rights under the Canal's regime of permanent neutrality. Thus the treaty provides for the United States maximum freedom to determine how to carry out its responsibility for Canal neutrality. We are under no obligation to consult with or seek approval from any other nation or international body before acting to maintain the neutrality of the canal nor does the treaty in any other way limit our ability to act.

This permanent neutrality treaty will also apply to any other international gateway that may be built in Panama in the future. In short, the neutrality treaty provides a firm foundation for assuring that our long-term interest in the maintenance of an open, accessible, secure, efficient Canal is preserved—now and in the future.

In order to emphasize the importance of the regime of neutrality to world shipping there is a protocol to the neutrality treaty which will be open to accession by all the countries of the world. The signatories to this protocol will, in effect, endorse the neutrality treaty by specifically associating themselves with its objectives and by agreeing to respect the regime of permanent neutrality of the Canal both in time of war and in time of peace. The Instruments of Accession will be deposited with the Secretary-General of the Organization of American States.

The lasting and deeply significant implications of this treaty have been fully recognized by the Panamanians. In signing the treaties at the Pan American Union here in Washington on September 7, 1977, General Torrijos clearly told the people of

Panama, the people of the hemisphere, and the people of the world: "We have agreed upon a neutrality treaty that places us under the protective umbrella of the Pentagon. This pact could, if not administered judiciously by future generations, become an instrument of permanent intervention."

Both countries recognize that this treaty is designed not only to assure that our own interests will be fully preserved but to assure the other countries of the world that the United States will be in a position to do whatever may be required in the future to preserve the openness, security and accessibility of the Canal.

It is vitally important that the American people study these new treaties carefully and open-mindedly and recognize what is at stake. The issues involved are far too complex and significant to be compressed into a slogan or reduced to the size of a poster. In these agreements we believe we have a rare opportunity to demonstrate to the world how a large nation and a small nation can settle their differences amicably and with mutual respect and enter into a lasting partnership of which future generations will be proud. They will bear witness to our intentions to build a balanced, constructive, and lasting relationship among the countries of the hemisphere.

Theodore Roosevelt put it very well:

"We have no choice as to whether or not we shall play a great part in the world. That has been determined for us by fate. The only question is whether we will apply that part well or badly."

STATEMENT BY AMBASSADOR ELLSWORTH BUNKER

With the opening today of the hearings, the resolution of one of our nation's most difficult and pressing foreign policy problems enters a new stage. You have before you two new treaties designed to assure our interest in a secure and efficient Panama Canal.

Those of us who have participated in the negotiations have completed our task. It is now up to the Senate to examine the agreements and to make a judgment on them.

My first involvement with Panama Canal diplomacy came in 1964, when I was serving as Ambassador to the Organization of American States. From the vantage point it was possible to see at firsthand how urgent was the need for the United States to modernize its relationship with Panama and how important such a step forward was for our position in the Hemisphere.

My direct association with the Canal negotiations began in 1973. At that time the two sides began working out a set of principles to serve as a guide in preparing new treaties. These principles—which have guided the subsequent negotiations—were embodied in the Joint United States-Panamanian Statement signed at Panama City in February 1974. In January of this year these principles were reaffirmed by Secretary Vance on behalf of the Carter Administration. This action followed a thorough policy review in which the incoming Administration established its positions on the principal issues at stake in the negotiations.

The fundamental concept in the 1974 principles is that of United States-Panamanian partnership. Throughout the discussions of the past three years, our objective has been to shape a close and enduring partnership between the United States and Panama in maintaining an open and efficiently operated canal. That is the concept which underlies the treaties you have before you today.

The partnership envisioned in the new treaties has three aspects:

The United States and Panama will be partners in the operation of the Canal through the end of this century. During this period the United States will continue to shoulder the responsibility of managing the canal enterprise, building on a tradition of safety and reliability developed in over sixty years of experience. At the same time, we will be preparing Panamanians to carry on this tradition after the year 2000.

The United States and Panama will also be partners in protecting the Canal. For the duration of the Panama Canal Treaty, the United States will have the primary responsibility for defense of the waterway and will retain bases and troops in Panama for that purpose. Panama will also contribute forces to canal defense. While the forces of the two countries will work in coordination, they will retain their separate lines of command. We will be able to act unilaterally to maintain canal security if need be.

Finally the United States and Panama will share a long-term responsibility for maintaining the Canal's neutrality. The United States role in assuring neutrality will continue for as long as the Canal remains in operation—even after management of the waterway passes to Panama.

Let me now explain more specifically how the United States-Panamanian partnership in operation of the Canal will function.

The Panama Canal Treaty provides for the creation of the Panama Canal Commission, which will manage and operate the Canal through December 31, 1999. The Commission, which will replace the existing Panama Canal Company, will be a United States Government agency constituted in accordance with legislation to be sought from the Congress.

The Commission will be supervised by a nine-man Board consisting of five Americans and four Panamanians. The Commission's executive officers will be an Administrator and a Deputy Administrator. Until 1990 the Administrator will be an American and the Deputy Administrator a Panamanian. After that time, the Administrator will be Panamanian and the Deputy, American.

The United States will appoint all officials of the Commission, including the Administrator, Deputy Administrator, and the nine Board members—Panamanian as well as American. The Panamanian appointees will, however, be proposed by Panama.

United States control of Canal operations throughout the treaty period is fully assured. The United States will have a majority on the Commission Board; it will appoint Commission officers; it can remove the Commission executive officers at will. Most importantly, the Commission will operate in accordance with United States law.

At the same time, the participation of Panamanians at the highest levels in the Canal enterprise—both as Board members and executive officers—will permit Panama to attain the managerial expertise to operate the Canal after the year 2000. When Panama assumes responsibility for canal operation, Panamanians will have had the benefit of twenty years of involvement in the direction of the Canal enterprise.

The Treaty grants to the United States the rights needed to carry out its responsibility for operating the Canal. These include the authority to establish and collect tolls, make and enforce rules pertaining to navigation and marine traffic control, and regulate planning relations with employees. The Treaty also grants the United States the use of all lands, waters and facilities required for Canal operation. The areas and facilities reserved for this use and specifically identified. They include the Canal itself and related installations.

The Panama Treaty encourages continuity and quality in the Canal work force. The provisions governing employees are designed to encourage experienced personnel to remain with the Canal under the new Commission. Salary levels, and the terms and conditions of employment, will remain generally as favorable as they are now.

An important difference for employees will be the change from United States to Panamanian jurisdiction in what is now the Canal Zone. For the United States employees—most of whom reside in the Canal Zone and who will therefore be most deeply affected by the shift—the treaties provide special guarantees which commit Panama to apply specified procedural standards in criminal cases involving United States citizen employees. In addition, an agreed minute provides that Panama, as a matter of general policy, will in such cases, transfer jurisdiction to the United States at the latter's request.

As with management, there is provision for development of a qualified Panamanian work force to man the Canal enterprise. In hiring new employees the Panama Canal Commission will give preference to qualified Panamanians. The Commission will also provide training programs to develop Panamanian workers with all the requisite skills needed by the Canal enterprise. During the more than two decades of the Treaty period, it should therefore be possible to build up a fully qualified Panamanian work force. We, of course, start from a strong base. Seventy-four percent of current Canal employees are Panamanian.

A sound financial structure is also important to the success of the Canal enterprise. We have kept this objective very much in mind in working out the economic arrangements under the new Treaty.

At the start of these negotiations—in the 1974 Kissinger-Tack Joint Statement of Principles—both countries agreed that Panama should receive "a just and equitable share of the benefits derived from the operation of the Canal in its territory". In line with this principle the United States consistently maintained during the negotiations that payments to Panama for its contributions to the Canal enterprise should be drawn entirely from Canal revenues—that is, that the payments should reflect the Canal's economic value as measured by its revenue-generating capacity. Panama initially sought much larger payments, which far exceeded what could be financed by Canal earnings.

The United States concept has been followed in establishing the payments to be made to Panama under the Panama Canal treaty. These payments—as Secretary Vance explained—will come entirely from Canal revenues. The amounts established are based on what we consider sound and realistic projections of the Canal's earning capacity.

The economic and military assistance—of up to \$345 million, which—as Secretary Vance has stated—we have undertaken to provide Panama, has been kept entirely separate from the Canal treaty and from Canal operations. This aid is not linked in any way to our rights and obligations under the new Canal treaties and will not be a burden on the Canal operation. At the same time, it will, we believe, enhance the successful implementation of the new treaties by contributing to Panama's economic development and thereby helping to foster a climate of stability conducive to efficient and secure Canal operation.

We are confident that the economic arrangements worked out will contribute to the success of the United States-Panamanian partnership. The payments Panama will receive from Canal revenues will give it a stake in the success of the Canal enterprise. At the same time, they are set at a level within the Canal's projected earning capacity. And the economic assistance to be provided outside the Treaty—while in no way tied to Canal operations—will contribute to the success of the new arrangements.

I am confident that the Treaties provide the basis for efficient operation of the Canal under United States stewardship until the end of the century and with Panamanian management thereafter. They build on effective operating procedures already established. They provide for an orderly shift to Panamanian operation. They ensure that over the long term the Canal will have an effective management, qualified work force and a sound financial base—three of the essential elements for any successful industrial enterprise.

I am also confident that the United States and Panama can work together effectively in carrying out all aspects of the new relationship which these Treaties envision.

In our preoccupation with differences over the Canal, both Americans and Panamanian tend to overlook the many positive elements in our long association. The United States and Panama have been working together for three-quarters of a century. It is fair to say that there is no other nation with which Panama maintains a closer relationship than the United States. This relationship has centered on the Canal, but it has not been limited to that. Important ties of trade and investment link our two countries. For thirty years the United States and Panama have also been allies under a mutual defense treaty—the Rio Pact. And on a personal level, thousands of Panamanians have attended the schools and universities in the United States.

The United States and Panama are well prepared to enter on an area of closer cooperation in the Canal enterprise. They begin from a solid foundation of mutual understanding and concrete accomplishment. Without that, these Treaties would never have been concluded. That is why I am convinced that the partnership envisioned in these Treaties will be productive and successful.

CONSERVATIVES SUPPORT THE PANAMA TREATIES, TOO

Mr. CRANSTON. Mr. President, the national debate over the Panama Canal Treaties sometimes gives the impression that this is a liberals versus conservatives dispute, with so-called liberals favoring the treaties and so-called conservatives opposing them.

That is an erroneous perception, as a column by Emmett B. Ford, Jr. who calls himself a card-carrying conservative, makes eloquently clear.

Mr. Ford, who supports the treaties, writes a weekly column for the Charlottesville, Va., Daily Progress. One of his columns was reprinted in today's Washington Post.

In it, he accurately points out that there is "a considerable body of conservatives in good standing," that also supports the treaties.

The reason, as he puts it, is simple:

In the final analysis * * * it really does not matter whether we bought the canal, paid for it, built it or stole it. That is all in the past.

In deciding whether or not to ratify the Panama treaty, the Senate * * * must very simply decide which future course is in the best interests of the United States. The course offered by the new treaty can serve only to enhance the international prestige and moral authority of the United States. By neutralizing a potential hot spot and cutting down on the numbers of those hostile to us abroad, it effectively strengthens our overall defense posture.

How can an avowed conservative object to that?

Mr. President, I ask unanimous consent that Mr. Ford's article, as it appeared in the September 26, 1977, issue of the Washington Post, be printed in the Record—except for one sentence, which I have deleted, because I do not want to give wider audience to some critical remarks about some Members of the Senate and their supporters.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the Washington Post, Sept. 26, 1977]

CONSERVATION SUPPORT

(By Emmett B. Ford, Jr.)

Everyone seems to assume of late that all Americans on the conservative end of the political spectrum are united in their opposition to the recently signed treaty giving Panama unrestricted sovereignty over the Canal Zone.

There remains a considerable body of conservatives in good standing, including Gerald Ford, Bill Buckley and Henry Kissinger, who firmly support the Panama treaty. And, as a card-carrying conservative, I support it myself.

I support it because it corrects a gross injustice that we perpetrated against Panama, Colombia and indeed all of Latin America three-quarters of a century ago. (Is the perception of injustice and inequality reserved only for liberals?)

I support it because it slowly and subtly phases out an anachronistic colonial arrangement that has increasingly soured our relations not only with Panama, but with all of our neighbors to the south.

I find that I can, in good conscience, support it because I am persuaded absolutely that our vital security interests in the canal are safeguarded. A Panama with which we have concluded a mutually satisfactory agreement is far less likely to create difficulties for us over the use of the canal than would a Panama with a permanent 10-mile-wide strip of foreign occupation right through its middle.

Moreover, under the terms of a separate treaty to be signed later by every country in the Western Hemisphere, the United States will guarantee the neutrality of the canal and its accessibility to world shipping (that is we will have the right to intervene militarily).

Opposition to the treaty seems to be based more on nostalgia for the late 19th-century era of "manifest destiny" than anything else. One can almost hear Ronald Reagan saying (to paraphrase Winston Churchill): "I did not become Mr. Conservative in order to preside over the liquidation of the American Empire."

What Reagan actually did say about the canal during the election campaign last year has gradually become the rallying cry of the opposition: "We bought it, we paid for it, we built it. And we are going to keep it." "We are going to keep it," he said, "because it is ours," and to cede anything that is ours constitutes ignominious retreat.

But there is a good deal of loose rhetoric in this position. Certainly there is more motion than fact in his arguments.

To begin with, the Canal Zone is not "ours" and never has been. Even in 1903, when we could have dictated any terms we wished to impose upon the newly created Panamanian state, we did not choose to acquire full and sovereign rights to the territory.

According to the treaty of that date, Panama granted to the United States, in perpetuity, "all the rights, power, and authority * * * which it would possess and exercise if [repeat, if] it were the sovereign" of the zone. Thus, as we confirmed in a subsequent agreement with the Republic of Panama, that country has always re-

tained legal sovereignty over the Canal Zone, despite the fact that we exercise full control in perpetuity over it.

Similarly, we may have paid out enormous sums as rent, construction costs and bribes, but we have never "bought" the Canal Zone from anyone. A few years after we had successfully separated the Republic of Colombia from its province of Panama, we paid Colombia the sum of \$25 million as "a gesture of goodwill." And, of course we spent over \$350 million to build the canal itself.

None of these expenditures, however, can be (or is) legally regarded as the purchase price of the property. The Canal Zone was never purchased outright for a specific sum of money as was the case with Louisiana, Alaska or the Gadsden strip. Panama, in effect, still has the deed, while the United States plays the role of an unwanted tenant with a very long-term lease.

That lease is the 1903 treaty, upon which all rights exercised by the United States in the Canal Zone are based. It is historically of enormous significance to the Panamanians that no Panamanian had anything to do with drawing up the document that rented out part of their country forever.

The 1903 treaty was negotiated in Washington between Philippe Bunau-Varilla, a French businessman serving as Panama's envoy to the United States, and John Hay, the American Secretary of State.

It was approved by the U.S. Senate before the arrival of the official Panamanian delegation and ratified later by the Panamanian provisional government under threat of the withdrawal of American military protection. A thoroughly sneaky and discreditable performance.

But if we could not be proud of the manner in which we acquired the right-of-way for the canal, we covered ourselves with glory in the building of it.

By the time it was completed, Dr. William Gorgas had conquered yellow fever, and Maj. Gen. George W. Goethals had overcome the incredible engineering problem of cutting through the mountains of a continental divide. It was—as many have already noted—the moon shot of its day.

In the final analysis, however, it really does not matter whether we bought the canal, paid for it, built it or stole it. That is all in the past. In deciding whether or not to ratify the Panama treaty, the Senate, which will begin hearings this week on approval of the treaty, must very simply decide which future course is in the best interests of the United States.

The course offered by the new treaty can serve only to enhance the international prestige and moral authority of the United States. By neutralizing a potential hot spot and cutting down on the numbers of those hostile to us abroad, it effectively strengthens our overall defense posture. How can an avowed conservative object to that?

[From the Congressional Record—Senate, Sept. 27, 1977]

THE PANAMA CANAL TREATY

Mr. ALLEN. Mr. President, on Friday, September 16, 1977, I discussed in some detail the major cash benefits which would flow to the Government of Panama should the Senate ratify the proposed Panama Canal Treaty. I relied heavily on an analysis of treaty benefits by the Panamanian Planning and Economic Policy Minister, Nicolas Ardito Barletta, given on August 19, 1977, to the National Assembly of Panama in Panama City. Minister Barletta stated to the National Assembly that cash benefits accruing to Panama under the treaty would total some \$2.262 billion in 1977 dollars, for an average annual payment of approximately \$100 million, during the term of the proposed treaties.

The major treaty I have reference to would turn full control of the canal over to Panama in the year 2000.

At the time I made my remarks on Minister Barletta's analysis of the expected cash flow from the proposed treaty, I advised the Senate that I would subsequently discuss the relationship of this projected cash flow to the enormous loans which have been made by the large multinational banks to Panama and which are in danger of default. The fact is, Mr. President, that the treaty income that the military dictatorship in Panama hopes to exact from U.S. taxpayers and from the users of the canal would be spent not to upgrade the position of the Panamanian worker, but rather to refinance or pay off these existing tremendous debts owed to the big international banks.

Some time ago, at my request, the Economics Division at the Library of Congress researched the claims of the foreign and domestic branches of U.S. banks against Panamanian borrowers. The Library of Congress reported an astonishing total of \$2.77 billion in claims on Panama by U.S. banks and their foreign branches alone, and I should point out, Mr. President, that this \$2.77 billion in claims does not—does not—take into account similar claims by major European and Japanese multinational lenders.

To be sure, much Panamanian borrowing is in the private sector—no doubt also substantial personal loans have been extended to members of the elitist Panamanian regime—but of U.S. total claims of \$2.77 billion, a minimum of \$1.4085 billion is public sector borrowing, and I am reliably advised that this figure has grown over recent months to a conservatively estimated \$1.7 billion in public sector borrowing. How did Panama raise this kind of cash? What collateral was pledged for this enormous debt? A clue is found in a particularly perceptive passage from the recent staff report of the Committee on Foreign Relations entitled "International Debt, the Banks, and U.S. Foreign Policy." I quote:

The question arises of how prudent the banks have been in their lending, how thorough their assessment of the credit worthiness of individual borrowers. In light of the general lack of accurate data on the external debt situation of many countries, it is hard to see how their evaluations of sovereign risk can be very precise. Has the profitability of this activity blinded them to the underlying risks? Or has the banks' willingness to lend to foreign countries for balance of payments purposes been premised on the unstated assumption that in the event of a real debt repayment crisis the governments of the wealthy industrial countries will have to come to

the rescue because they cannot afford to see either the debtor countries or their own large banking institutions go under?

In my judgment, the answers to the questions posed should be obvious to us all.

So, Mr. President, although it is virtually impossible to obtain completely accurate data on the debt position of the Government of Panama, a fact recognized by the Foreign Relations staff report, my own study of this matter convinces me that Panama is in the midst of a serious financial crisis, if not on the brink of bankruptcy. This pending insolvency of Panama should be especially obvious to the big U.S. banks which are clearly overlent to Panama, and indeed the multinational banks must all see the clear danger that the Government of Panama could soon default on very substantial loans now coming due—unless, of course, the U.S. taxpayer puts up the cash or unless the Panama Canal, with its substantial revenues, is handed over. We are, in this case, being asked to do both.

As I said, Mr. President, the multinational bankers like to shroud their affairs in a cloud of mystery, making it accordingly quite difficult to keep tabs on international banking transactions, but again, the Panamanians have helpfully supplied us with a memorandum from Minister Barletta to the President of Panama, Demetrio B. Lakas—Mr. Torrijos is the dictator, but they do have a nominal President, Mr. Lakas—in which financial perspectives for Panama for 1977 are outlined in grim, but presumably accurate, detail. Minister Barletta advises President Lakas that commitments of an obligatory nature in the Panamanian budget include:

Between B/42.3 million—

A Balboa is the equivalent of the dollar in Panama. It has the same value as the American dollar. It is tied to the American dollar.

Between B/42.3 million to B/42.7 million for servicing the foreign debt which will increase from between B/87.5 million to B/129.8 million or B/130.2 million in 1977, depending on whether or not the economy recuperates during the last semester. Interest will increase from between B/24.8 million or B/25.2 million, depending on the above observation, while the amortizations will be increased by B/17.5 million. Due to the tendency required to service the foreign debt, its ratio in respect to current revenue increases from 29.6 percent to between 38.2 percent and 39.0 percent which significantly deteriorates our capacity for further indebtedness.

That is Minister Barletta advising President Lakas of Panama.

If we in this country pay some \$42 billion in interest on our national debt, it is only approximately 10 percent of our current Federal income. The interest on the Panamanian debt is going to jump up to about 38 or 39 percent of their total revenue. So we see the horrible financial straits they are in. The only thing that can save them and, secondarily, the big international banks is to have this Panama Canal Treaty approved.

I do not believe it is in the interest of the American taxpayer to hand over the canal to Panama in order that they can pay back the international banks.

Mr. President, these figures are truly incredible. This small country of 1.7 million people is already obligating up to 39 percent of its current revenues to foreign debt service. These multinational banks have got their hooks into Panama pretty solidly, and one can well imagine the dilemma facing the Government of Panama

and can certainly understand the Panamanian dictator's frantic desire to shake down the Panama Canal Company for quiet money to satisfy these international bankers.

But, Mr. President, Minister Barletta's memorandum to President Lakas contains other information which ought to be carefully considered by the Senate. Minister Barletta states:

The global (annual) deficit (of Panama) will be between B/ 131.9 million and B/ 138.7 million, depending on how well the economy recuperates during the second semester of 1977. To finance this deficit we will require B/ 15.6 million from the Venezuelan Investment Fund, B/ 5.0 million in Internal Bonds, and from B/ 111.3 million to B/ 118.7 million from the private banks.

So we can see the desperate straits that Panama is in.

Mr. President, I do not know whether this latest B/ 118.7 million from the private banks has yet been obtained, but I understand that a consortium of banks did extend an additional \$150 million in loans to Panama about the time it became obvious that the executive department of the United States was serious about pressing for the conclusion of a proposed treaty and a cash bailout of the Government of Panama. So one of the chief parties in interest in this whole proceeding is the group of international banks. They stand to gain by this more than anybody else, possibly.

Minister Barletta continues in this fashion:

We feel it will be extremely difficult to syndicate loans with the commercial banks in the amounts previously mentioned, taking into account that during the present fiscal period we must contract for a total of B/323.6 million with those sources, who in turn have become more demanding each time that an accord has to be finalized. Besides, the relation between servicing the debt and current revenues of between 38.9 percent and 39 percent suggest a deteriorated capacity to service this debt and thus will increase the risk as realized by the lending institutions.

We should remember, Mr. President, that these remarks are in a memorandum which predates by some months the conclusion of the proposed treaty, and I note particularly that Minister Barletta refers to commercial banks becoming "more demanding each time that an accord has to be finalized." I do not think there should be any doubt in anyone's mind what accord Barletta has in mind. He is talking about this treaty, Mr. President. He is talking about this document signed a few weeks ago amid such fanfare down there at the OAS and at the White House.

So, Mr. President, what we have is a relative small country down there of some 1.7 million inhabitants—about half the size of my native State of Alabama—a spendthrift dictatorial government, and multinational banks demanding payment. What we have gotten proposed to us as a solution to their problems is apparently the Panama Canal Treaty. The banks get their money, the Panamanians get the canal, the Canal Zone, and the American people get to hold the bag. That is what the whole situation boils down to.

Again, Mr. President, Minister Barletta expresses the problem quite succinctly:

In short, 1977 lines up as extremely delicate due as much to current expenses increasing more than current revenues, as well as to the amount and structure of the new financing that must be contracted which reaches the limits available to the Nation as such.

Yes, 1977 does line up as an extremely delicate year for Panama and for the United States and for the big banks. But, Mr. President, the U.S. Senate cannot permit the interests of these multina-

tional banks to outweigh the critical and special national interest of our own people.

Perhaps methods of assisting this destitute Panamanian Government should be explored, notwithstanding the repressive and repugnant character of the present dictator, but in no event should the United States give economic aid to Panama in a form which damages the security of our country and, indeed, the entire free world. If we must bail out these banks, can we not find some other method of rendering assistance? The stability of these banks, to be sure, is important to us all, but surely we ought not permit the dismantling of our own country in order to satisfy their insatiable appetite for profit.

Mr. President, I ask unanimous consent that the memorandum of Minister Barletta, together with a related memorandum of the U.S. Embassy in Panama and two reports from the Congressional Research Service of the Library of Congress dated July 21, 1977, and July 28, 1977, be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., July 21, 1977.

To: Subcommittee on Separation of Powers, Attention: Quentin Crommelin.
From: Economics Division.
Subject: U.S. Commercial Bank Loans to the Government of Panama.

As we have discussed on the telephone, we are enclosing photocopies of different materials pertinent to the above-mentioned subject. There is a statement by Henry C. Wallich, Member, Board of Governors of the Federal Reserve System, dated March 23, 1977, to the House Subcommittee on Financial Institutions of the Committee on Banking, Finance and Urban Affairs, which includes a table on claims of U.S. banks on various foreign countries, including Panama.

We have also included a June 3, 1977 Federal Reserve press release which has tables on U.S. bank claims on selected foreign countries in 1976. Panama is included in the section on offshore banking centers on page 5 of the tables.

Another source in the Federal Reserve indicated that foreign branches of U.S. banks had claims of \$1.886 billion on Panama at the end of 1976, while the March 1977 Treasury Bulletin indicated that domestic offices of U.S. banks had \$886 million in short and long-term claims against Panama as of that date. Of this amount, only 13% were long-term claims. Adding the two figures results in \$2.772 billion in claims on Panama by U.S. banks and their foreign branches. This appears to be the number used by Governor Wallich in the attachment to his statement.

We are also including a photocopy of the World Debt Tables, Volume II, p. 117, which shows the external public debt position of Panama. Unfortunately, the table includes data only up through 1974. Conversation with a World Bank official revealed that 1975 and 1976 figures are in the process of compilation and some results are expected by the end of next week.

If you would like further assistance on this matter, please do not hesitate to contact us on 426-5750.

DAVID HOYT,
Analyst in Banking and Capital Markets.

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., July 28, 1977.

To: Senate Judiciary Committee, Subcommittee on Separation of Powers.
From: Economic Division.
Subject: Further information on loans to Panama.

As we have discussed on the telephone, we have been able to gain some further information on the availability of data on U.S. bank loans to the Government of Panama.

In conversation with a Federal Reserve official, it was learned that they do not have information available which gives a distinction by type of borrower for foreign loans from U.S. banks. They do have a figure for borrowing by banks and official institutions in Panama from the head office of a U.S. bank. This figure, however, is not available over the telephone and is obtainable only "through normal channels". Information on loans made from individual U.S. banks is, in some instances, known by the Federal Reserve, but is regarded as confidential information and was not released to us.

The World Bank provided us with some preliminary data on the external debt of the entire Panamanian public sector. At the end of 1975, loans outstanding and actually disbursed by foreigners to Panama totaled \$767.9 million with \$58.7 million accounted for by Panamanian branches or offices of private, foreign-owned banks. The corresponding figures for 1976 were \$1.0909 billion and \$129.4 million. The 1976 figure for Panamanian public sector borrowing, disbursed or undisbursed was \$1.4085 billion.

DAVID HOYT,

Analyst in Banking and Capital Markets.

MEMORANDUM

To: Eng. Demetrio B. Lakas, President of the Republic, Presidency of the Republic.
From: Nicolas Ardito Barletta, Planification Minister.
Matter: Financial perspectives for 1977.

The purpose of this Memorandum is to call attention to the financial basis upon which will be defined the budget policy of 1977 thus permitting to show the pertinent limitations that are being detected in this year's budget.

(a) The current revenues should increase between B/ 43.6 million and B/ 44.2 million with respect to this year's revised income figures thus reaching totals of B/ 33.97 million or B/ 333.3 million; dependent on whether or not there is a recuperation in the economic activity during the last six months of this year.

(b) The increase in current revenues assumes an economic upturn of 3 percent and an inflation rate of 5 percent throughout 1976.

(c) It also assumes a B/ 21.0 million package increase of taxes which should not interfere significantly in the desired economic recuperation process.

(d) The technical group involved in this evaluation has concluded that the following are the tributary measures that would fill the above requirements:

A consumer tax designed in such a manner as to minimize its effect on prices and on lower income groups. This type of taxation tends to divert private expenditure towards investments, thus stimulating economic development.

Reform import duties in order to replace specific value taxes by value added duties. This measure will adjust the increase of tax income to the increased cost of imported goods, and will thus help to stimulate internal production.

Limit the tax deduction permitted on interest paid for mortgage loans used to buy homes for one's personal use.

Consolidate the progressive tax structure for corporations into one tax rate in order to avoid the use of numerous companies to lower the effective tax rate.

(e) At the same time, operational expenses are estimated to increase from between B/ 50.3 million and B/ 50.7 million and will reach totals of B/ 340.6 million or B/ 341 million, depending on how the economy is reactivated during the second semester of this year.

(f) The fact that the increase in revenues will be inferior to the increase in expenses suggest that there will virtually be no new recourses to augment the coverage of public services.

(g) The significance of the rigidity to which the new budget elaboration will be subjected will be understood when one observes that only B/ 3.1 million will correspond to net reincorporations of previously frozen expenditures, while the remaining B/ 47.2 million correspond to commitments of an obligatory nature.

(h) These commitments of an obligatory nature can be broken down in the following manner:

(1) From between B/ 42.3 million to B/ 42.7 million for servicing the foreign debt which will increase from between B/ 87.5 million to B/ 129.8 million or B/ 130.2 million in 1977, depending on whether or not the economy recuperates during the last semester. Interest will increase from between B/ 24.8 million or B/ 25.2 million, depending on the above observation, while the amortizations will be increased by B/ 17.5 million. Due to the tendency required to service the foreign debt, its ratio in

respect to current revenue increases from 29.6 percent to between 38.2 percent and 39 percent which significantly deteriorates our capacity for further indebtedness.

(2) B/ 2.3 million of the amortization of salaries are for:

Education—B/ 1.4 million.

Health—0.4 million.

Housing—0.1 million.

Other institutions—0.4 million.

(3) B/ 1.3 million of current transferences which reflex the increase in subsidy to the National University, the payment of Balboa notes subscribed to BID and the increased consumption of water.

(4) E/ 0.4 million in salary increases to: Health—0.3 million. Government and Justice, Labor—, Presidency—0.1 million.

(5) B/ 0.3 million for the XIII the month of public functionaries.

(6) B/ 0.2 million for inclusion in the MIDA budget for personnel frozen in its investment portion of said budget and for the hiring of new auditors for the Finance Ministry.

(7) B/ 0.4 million in order to bolster the supply budget of the Health Ministry and other compulsory expenditures.

(i) Since, for the above reasons, all other expenses must be maintained at the budgeted fiscal 1976 level, it is convenient to eliminate from the budgeting process all programmed budgeting meetings in order that the respective institutions and our analyst can dedicate the most amount of their time possible to formulate, evaluate and turn in punctually their budget by program.

(j) As to the Central Government contribution towards the public investment program, we calculate that it will be B/ 78 million which represents an increase of B/ 18 million over B/ 60 million that is estimated will have been contributed this year.

(k) As a result, the global deficit will be between B/ 131.9 million and B/ 138.7 million, depending on how well the economy recuperates during the second semester.

(l) To finance this deficit we will require B/ 15.6 million from the Venezuelan Investment Fund B/ 5 million in Internal Bonds, and from B/ 111.3 million to B/ 118.7 million from the private banks.

(m) Thus, the amounts that must be financed as well as the amounts that must be obtained, create very concrete problems which in turn reiterate the need to increase expenses and investments only in those areas of an obligatory nature and to dedicate the most of time possible to the conscientious elaboration of a budget by programs in order to execute the largest possible amount of services required by our society with the scarce resources that are available.

(n) On the one side, the required new financing of between B/131.9 million and B/ 138.7 million implies that there will be pressure on the liquidity and solvency of the National Bank which must provide the Central Government the monetary resources while the 3 previously mentioned financial operations can be formalized, all of which should take at least four months. During this period, the National Bank will have to recur to its lines of credit as well as to its internal reserves which have been practically saturated during the present year by having to finance the global deficit of B/99.3 million which in turn is between B/32.6 million and B/39.4 million less than what has been estimated for 1977.

(o) On the other hand, we feel it will be extremely difficult to syndicate loans with the commercial banks in the amounts previously mentioned, taking into account that during the present fiscal period we must contract for a total of B/323.6 million with those sources, who in turn have become more demanding each time than an accord has to be finalized. Besides, the relation between servicing the debt and current revenues of between 38.9 percent and 39 percent suggest a deteriorated capacity to service this debt and thus will increase the risk as realized by the leading institutions.

(p) In short, 1977 lines up as extremely delicate due as much to current expenses increasing more than current revenues, as well as to the amount and structure of the new financing that must be contracted which reaches the limits available to the Nation as such.

(q) As a result of the above, I respectfully request your backing in eliminating the budgeting meetings and in demanding from the institutions that they pay the most attention to formulating and elaborating a budget by program. Also, I ratify the need for you to back the approval and execution of the taxing measures that we have presented for your consideration, once that we have finalized the pertinent studies.

With my highest consideration and appreciation.

EXHIBIT 4

(Sent by United States Embassy in Panama to the State Department on Oct. 26, 1970)

Tags: ECON, EFIN.

Subject: Panama's recession is structural—a result of low productivity.

1. This message is part of a continuing series of mission economic studies of the State of the Panamanian economy and projections for its future.

2. Summary: Panama's recession, which deepened during the first half of 1976, is neither cyclical nor primarily a product of economic conditions outside Panama. In our view the economy is floundering mainly because its high cost output is not competitive in the world market and few opportunities exist for available private investment. To establish a basis for renewed sustainable growth will require actions that lead to lower costs and improved productivity. These could include easing the labor code, reducing subsidies, boosting domestic savings, and directing resource flows more toward the international service sector where Panama has natural advantages, however, most such actions would cut back social benefits granted to the working classes under the "revolution", and might not be politically acceptable under the present government, inflows of foreign capital have not been getting at the core problem of high costs (low productivity). Lack of access to relevant Canal Zone sites is delaying GOP development of infrastructure which is prerequisite to the growth of various commercial services industries by the Panamanian private sector. End summary.

3. Economic conditions in Panama worsened steadily during the 1976 first half. There were decreases from a year ago in key indicators—manufacturing, construction, external trade, unemployment, (increase), and sales to the Canal Zone (see refett), overall growth is likely to be near zero for 1976.

4. Failure of the economy to respond to a variety of stimulants indicates that the recession is more than a cyclical maladjustment. Credit has remained relatively plentiful, with preferential rates available from the government for both agricultural and industrial projects. There are tax subsidies for new exports, and tax benefits for reinvested profits. No basic changes have been made in the "rules of the game" under which business operates, such as the labor code or tax laws, since before the onset of recession, in fact, the GOP in recent months has actively sought by various direct means to improve the business climate. A large boost in 1975 public sector spending had little effect on either private investment or aggregate demand.

5. Also, Panamanian economic problems do not seem to be caused primarily by worldwide economic trends or world trade. In contrast to Panama's continuing decline, other developing countries (LDC's) have been experiencing a quickening economic tempo so far this year in response to rapid recovery by the industrialized countries, plus some correction of structural maladjustments, LDC exports have been generally increasing as a part of the marked improvement in 1976 first half world trade (plus 10 percent) while the value of Panamanian exports remained at its 1975 level (excluding an abnormal decline in petroleum products exports), changes in Panama's economy also differed from the worldwide pattern both during the 1974-75 world recession and the years immediately preceding it. Despite sharp 1974-75 recession among the industrialized countries (zero growth), LDC's, gross domestic product (GDP) increased 5.5 percent in 1974 and 1.7 percent in 1975. Growth had begun tapering off in 1971 whereas during 1971-73 the rest of the world including Latin America experienced unprecedented boom.

6. Private investment in Panama reached a peak in 1971. Growth in manufacturing began to fall off in 1971 with a decline in the number of attractive import substitution possibilities, little increase has subsequently taken place in the volume of manufactured exports, output of both construction materials and intermediate goods stopped expending in 1973. Expansion of construction activity began slowing in 1972 and has actually been declining since 1974. Imposition of rent controls in 1973 brought private investment in low cost housing to a standstill. On the other hand, growth of the important services sector remained near 8 percent annually through 1974 (plus 3 percent in 1975) due in part to the major expansion of the foreign banking sector since 1971, growth in agricultural output has remained sluggish since 1970 at about 3 percent annually, much slower than during the 1960's.

7. Panama's basic economic weakness in our view and the reason behind current stagnation is its non-competitiveness in the world market—a structural problem involving primarily high cost production (coupled with a lack of resources) in both agriculture and industry. The export potential for Panamanian agriculture is extremely limited at present, the main exports, bananas, is in the hands of foreign plantation operators, and has probably reached its peak in an increasingly competitive world market. In general land is of poor quality and farm labor costs are high—the \$3 per day minimum wage is estimated to be at least double the rate anywhere else in Central America. The government encourages high cost production, including rice, the principal crop, by subsidizing producers through support prices typically set above the world market. Thus, Panama cannot profitably export major crops such as rice and corn and is further precluded from developing any profitable export potential for various lesser crops by the small domestic market base in Panama. Accessible forests have been cut over and there is little potential for meat exports while access to the U.S. market is restricted. Panama's sugar industry is likewise non-competitive due to high costs of both cane production and refining operations.

8. As with agriculture, Panama's manufacturing industry currently has little export or overall growth potential because of high production costs coupled with a dearth of natural resources (copper deposits have not yet been determined to be economically exploitable). Minimum wages and the general wage and benefit structure in Panama are estimated to be the highest in Central America and among the highest in all Latin America. Higher wages and benefits in the Canal Zone exert upward pressure on wages in the republic as employers compete for the generally better qualified workers attracted by Zone wages. The dominance of the service sector in Panama's central urban areas with its higher skill levels also creates upward pressure on the entire wage and benefit structure. Employee benefits under Panama's labor code add to direct employment costs. The code exerts indirect pressures on costs through subsidies such as firing restrictions imposed on employers and, by strengthening the trade union movement, bolsters the trend toward costlier contract settlements. High labor costs encourage the substitution of capital for labor, thus boosting structural unemployment throughout the economy. Also, relative capital costs—mostly foreign sourced—are likely to rise as Panama's already high debt service burden worsens and the economic outlook for other LDC's improves relative to Panama.

9. Establishing the basis for renewed growth and improved economic well being that can be sustained will require actions that lead to a lower cost structure. One widely discussed possibility is an easing of the labor code, although its real impact on costs remains uncertain (it did not bring on recession although it may have stood in the way of needed private sector adjustments). Changes probably would not induce an immediate surge of private investment, however, the business community has made clear its conviction that changes are essential, giving them an additional psychological importance that bears importantly on the general investment climate. Changes might be a convincing sign of GOP concern over the private sector's economic plight.

10. Appropriate belt tightening also could include lowering subsidies as well as the wage/benefit structure to reduce relative production costs, and increasing personal taxes to curb consumption (particularly imports) and expand domestic savings. These effects are usually achieved indirectly by currency devaluation. Since Panama's currency is the U.S. dollar, such actions must be taken directly; in addition, resources may need to be more heavily concentrated in the internationally-based services sector where Panama has more natural advantages, with proportionately less in agriculture and the nonproductive social sectors.

11. Comments:

(A) Panama's high wages, subsidies, and consumer imports—together with a moderate tax burden and little public saving—permit a standard of living which no longer appears to be supportable by Panama's inefficient domestic production.

(B) Increased external financial flows per se, regardless of concessionality, permit Panama to defer grappling with the core problem of low productivity until a later date when the problem will probably have worsened, unless such financing bears specifically on some aspect of costs. Indeed, much of the capital inflow of the past three years has aggravated Panama's economic malaise by exacerbating its debt service burden without enhancing overall productivity. Moreover, total inflows greatly exceeded the current account deficit of Panama's balance of payments, resulting in large negative "errors and omissions" (around \$100 million annually) most of which probably represented outflows of domestically-owned capital.

(C) The types of actions mentioned above for addressing Panama's high cost structure run headlong into the "revolution"—the social and economic benefits granted to the urban and rural working classes over the past eight years which would need to be reversed in part—in short, the "revolution" has collided with growth and one or the other must yield; whether or not actions of sufficient scope to be economically meaningful along the above lines are politically possible for the present government is questionable.

(D) Panama's best economic prospects lie in the development of its potential as a sub for servicing international commerce, various aspects of cargo handling are an essential part of the picture. Thus, the GOP has a valid case in urging early access to relevant canal zone sites needed to develop the infrastructure on which growth of various transport, storage and other commercial services depend.

TESTIMONY ON PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations continued its hearings today on the Panama Canal treaties. The witnesses today were Dr. Harold Brown, Secretary of Defense, Gen. George S. Brown, Chairman of the Joint Chiefs of Staff, Adm. Robert L. J. Long speaking for Adm. James L. Holloway III, the Chief of Naval Operations, and Lt. Gen. D. P. McAuliffe, Commander in Chief, U.S. Southern Command.

I ask unanimous consent that the prepared statements of these witnesses be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

STATEMENT OF THE HONORABLE HAROLD BROWN

Mr. Chairman and Members of the Committee: Just over sixty-three years ago the first United States vessel crossed through the Panama Canal from one to the other of the two great oceans which border our country.

Let us strip the matter to its essentials. Your deliberations in this committee room today are vital. As much as any other factor, they will determine whether we can be confident that our ships of war and vessels of commerce will continue to use that important but fragile waterway during and beyond the last quarter of the twentieth century as they did in the first.

We have always been a practical people—proud of our history, but not sentimental; remembering where we have been, but oriented toward the future. You all are practical men or you would not hold the offices you do. In my judgment, the issues before you are practical ones, and it is in practical terms that I shall address them.

On September 7, 1977 the President signed two treaties affecting the operation and control of the Panama Canal. I am pleased to appear before you this morning with General George Brown, Chairman of the Joint Chiefs of Staff, to state that the Department of Defense wholeheartedly and fully supports these treaties, and to explain why I believe they deserve our—and your—full support.

Quite properly, the focus of your deliberations must be on whether these treaties promote the national interest—and specifically the national security interest—of the United States. To help in answering that question, there are three points that I consider critical:

Use of the Canal is more important than ownership.

Efficient operation of the Canal in the years ahead is more important than nostalgia for a simpler past.

Ability to defend and control access to the Canal is essential. But the issue is how that ability can best be assured—by a cooperative effort with a friendly Panama, or by a garrison amid hostile surroundings.

I have examined these issues personally and in detail. So have the Joint Chiefs of Staff. The Department of Defense has been fully involved in all stages of the drafting and negotiation of these treaties. Mr. Chairman, I believe, personally, and in the light of my responsibilities as Secretary of Defense, that these treaties fully serve, and greatly promote, our national security interests. The Joint Chiefs of Staff, as General Brown will tell you, share that assessment. These treaties deal with today's realities. They provide the security which we need for the future.

I see three elements which together make up our national security concerns relating to the Canal. These are:

- First, unimpeded use;
- Second, effective operation; and
- Finally, physical security of the Canal.

These are our paramount objectives.

The first requirement includes free and unimpeded use of the Canal both by our Navy and by our merchant ships. Free use of the Canal is essential to assure optimum ability to shift our forces and materiel rapidly between the Atlantic and Pacific Oceans. That capability enhances our defense posture in both the European and Pacific regions.

The neutrality treaty—more formally, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal—provides that the Canal shall be open permanently to all vessels of all nations. Moreover, it contains an important additional provision. The United States is given a preferred position with respect to use of the Canal, a position which no other country except Panama will enjoy: United States vessels of war, and the United States auxiliary fleet (important examples of which are oilers and supply ships) are guaranteed rapid transit through the Canal. This is so irrespective of the cargo they carry. These provisions assure us that the United States will remain able to use the Canal in timely fashion whenever military necessity dictates, just as we can today.

Our second national security requirement is that the Canal operate effectively. The Panama Canal treaty provides that during its term the United States will operate the Canal, with increasing participation of Panamanian managers and workers operating under the treaty terms according to U.S. laws and regulations. Thus, the United States can continue the present efficient operation of the Canal for many years to come, and the Panamanians will be in a position to operate it successfully when the treaty expires.

Our third national security requirement is that we must be able to defend the Canal from hostile acts. Our armed forces now control, and they will continue to control with overwhelming forces, the sea approaches to the Canal, on both the Pacific and Caribbean ends. This is not affected by the treaty.

The treaty goes even further, however. It states unequivocally that during the life of the treaty, the United States armed forces shall enjoy the right and the primary responsibility to defend the Canal itself. It further provides that during that period the United States may station, train, and support units of our armed forces in Panama, and that the United States will decide unilaterally whether and how to modify the force levels we maintain there. All key military bases and training areas which we now operate in the Canal Zone will remain under U.S. control.

When the Panama Canal treaty expires, as the year 2000 dawns, the neutrality treaty provides that U.S. and Panama are to maintain jointly the permanent neutrality of the Canal, and that no troops other than Panamanian may be stationed in Panama. The United States is also made a guarantor of the neutrality of the Canal. In that capacity, we have the right to take appropriate measures to enforce this guarantee. In my judgment, these provisions ensure that the United States' ability and unilateral right to defend the Canal against any external threat remain unimpaired.

There is another aspect of the third national security requirement—ability to defend the Canal from hostile acts—which cannot be ignored. Such hostile acts might not be external. If Panama and other Latin American countries, or major elements of the Panamanian population, became hostile to the United States, then protecting the Canal against internal threats, terrorism and guerrilla actions would become much more difficult. Such occurrences are far less likely under the new treaty than they would be if the long unsettled status quo were to continue. The treaty is a guage of our good faith, toward Panama and all of Latin America. It also provides Panama with a tangible stake in the continued effective operation of the Canal. Further, the treaty contemplates a combined defense agreement between the United States and Panama as a result of which Panama's armed forces will be able to protect the Canal against threats from within Panama more effectively than they can at present. Nothing in life, and still less in international life, is certain. But all these elements should add to the real security of the Canal, and make its availability for United States use much more sure than any alternative course of action.

As I see it, and I do not think anyone with national security responsibilities disagrees, the Panama Canal will, for the foreseeable future, be an important defense artery for the United States. The treaties which you are examining provide real security, not paper claims. They offer the firmest and most practical guaran-

tees obtainable that the Canal will remain operational, secure, and available to the United States.

The Canal was built for shipping, not slogans. We seek to guarantee transit of vessels, not theoretical claims of title. These goals we have sought, as I said at the beginning, are practical. The issues before you are practical ones. Our negotiations have obtained instruments which—more certainly than thousands of forces and their armaments on the spot—will assure those practical objectives for generations to come. I am convinced that approval of these treaties will best provide for our national security.

I would be happy now to answer any questions you may have.

STATEMENT BY GENERAL GEORGE S. BROWN, USAF

Mr. Chairman and Members of the Committee: I am here to discuss the security aspects of the proposed Panama Canal treaty.

The Joint Chiefs of Staff recognize the Panama Canal as a major defense asset, the use of which enhances United States capability for timely reinforcement of United States Forces. The strategic military value of the canal is reflected in our ability to accelerate the shift of military forces and logistic support by sea between the Atlantic and Pacific Oceans. The strategic value of the canal is not expected to change substantially throughout the life of the new Panama Canal Treaty and beyond, so long as the canal provides the sole means of transiting ships across the American continent.

United States military interests in the Panama Canal are in its use, not its ownership. Therefore, any new treaty must assure that access to and security of the Panama Canal are protected in times of war and peace. This assurance is provided by a permanent regime of neutrality to be maintained by the U.S. and Panama which specifies that the canal will remain open to all world shipping at reasonable tolls, without discrimination, in accordance with specific rules of neutrality, and that it will always be operated efficiently under rules that are just, equitable and reasonable and necessary for safe navigation and efficient, sanitary operation.

Defense of the Panama Canal has two components: internal security and external defense. Both are presently the responsibility of the United States Government.

Internal security entails surveillance and control. It is primarily concerned with countering sabotage and terrorist activities. Currently the Canal Zone's police and security forces are responsible for internal security. When required, reinforcement is provided by the United States military units assigned to U.S. Southern Command. Under the new Panama Canal Treaty there will no longer be a Canal Zone and police functions will become the responsibility of the Government of Panama. However, the Canal Commission will continue to provide security for Canal installations. The military units of U.S. Southern Command will be available to augment the Panamanian forces and Commission guards.

External defense is concerned with defense against armed attack by hostile forces using guerrilla or conventional tactics. Our current plans will be described by General McAuliffe. Under the new Panama Canal Treaty, the United States will have primary responsibility for the defense of the canal during the balance of this century. Under the new Panama Canal Treaty, the Panamanian Guardia Nacional and appropriate U.S. Forces Commander will develop plans in concert to provide for mutual defense. The Joint Chiefs of Staff will continue to plan for rapid reinforcement of U.S. Southern Command in the event of emergency need.

Our capability to defend the Panama Canal will be enhanced through cooperation with the Government of Panama. The new treaty provides a basis for such cooperation between the United States and Panama. The alliance relationship should develop and strengthen during the life of the Panama Canal Treaty and be further enhanced by the Neutrality Treaty. The regime of neutrality provided in the Neutrality Treaty calls for a canal open to all ships of all nations in times of peace or war. It specifically provides that U.S. and Panamanian naval ships shall transit expeditiously without impediments or preconditions. Since both the United States and Panama agree to this regime, out right to take the measures that we may deem to be necessary to maintain the canal's neutrality is assured.

For these reasons, the Joint Chiefs of Staff support the treaty as being protective of the military interests of the United States and as providing an effective basis for defense of the canal.

STATEMENT OF ADM. ROBERT L. J. LONG, U.S. NAVY, (SPEAKING FOR ADMIRAL JAMES L. HOLLOWAY III, U.S. NAVY CHIEF OF NAVAL OPERATIONS)

I have gone on record with the other members of the Joint Chiefs of Staff, in supporting the Panama Canal Treaties.

The Joint Chiefs of Staff are unanimous in their position supporting the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, although each of us may have reached this conclusion on the basis of our individual line of reasoning. I would like to provide the Committee, in this statement, with my own rationale.

The Panama Canal is and will remain of major importance to the United States. Its use is a key factor in the Navy's ability to accomplish its responsibilities in connection with essential war plans and other contingencies involving our national security. While I cannot state that loss of the Canal would result in the failure of these plans or in the inability of the Navy to carry out these responsibilities, it would certainly make these tasks enormously more difficult. We would be much better off with the use of the Canal than without it.

The importance of the Canal to the Navy for defense purposes lies in its assured use, not in its ownership. There are two threats to the continued use of the Canal by our naval forces and essential shipping: the external threat and the internal threat.

The external threat is represented by a general war situation. In a conventional conflict, our capabilities to defend the approaches of the Canal are adequate to provide me with reasonable confidence that defense of the Canal against an external threat is practicable. In the case of a nuclear conflict defense of the Canal would be virtually impossible as would be defense of almost any other major installation of importance to the United States. However, in a strategic nuclear war, the importance of the Canal in relative priorities diminishes to an inconsequential position.

The second threat to our continued use of the Canal is the internal threat from subversive, clandestine, or local guerrilla activities. The defense against such a threat in the formidable jungle terrain of the Canal area would be extremely difficult, particularly in view of the vulnerability of the lock system to disruption as the result of relatively minor damage to critical mechanical components. Defense against a persistent and continuing internal threat would be particularly difficult. Therefore defending against this internal threat is significantly enhanced if the cooperation of the local interests, the Panamanians and Central Americans, can be maximized. On the other hand, our ability to defend and protect the Canal so as to ensure its continued operation, would become extremely difficult in the face of an adversary relationship with our Latin neighbors, or an active hostility on the part of the local population. Our adherence to these treaties, which make the Panamanians our direct partners in the defense of the Canal, will substantially contribute to a friendly and cooperative attitude among all Latin Americans toward the United States on the Panama Canal issue.

The specific provisions in the Panama Canal Treaty providing for the defense of the Canal by the United States until the year 2000, and in the Treaty of Neutrality which will guarantee our use of the Canal after the turn of the century, are considered by the unified commander, Commander-in-Chief Southern Command, to be adequate. That view is shared by the Joint Chiefs of Staff, based upon the analysis of the Services and the unified commander. It is my judgment that the favorable effect which I believe the Treaties will have on the attitudes of the Panamanians and Central Americans toward our continued use of the Canal, for national and hemispheric security purposes, will substantially assist the United States to defend the Canal against the internal threat. On this basis, it is my view that the continued use of the Panama Canal for military purposes in our national defense plans is best assured through the provisions of the new Treaties.

STATEMENT BY LIEUTENANT GENERAL D. P. McAULIFFE

Mr. Chairman and Members of the Committee, thank you for inviting me to appear before you, as the Commander in Chief of the United States Southern Command. My priority mission is the defense of the Panama Canal.

I will discuss with you my present capability to perform that mission with the forces and facilities presently available and also an assessment of my capability to perform that mission under the treaties signed on 7 September.

The forces presently available to me to carry out the mission of canal defense are well trained and capable of implementing a wide range of defense tasks to protect the canal and also to protect U.S. lives and property. They are not capable, without reinforcement from the United States, of protecting the canal from a major external

threat. Substantial reinforcement forces would be needed in the event of such a contingency. We could not, however, assure the uninterrupted operation of the canal in such a hostile environment, but it is my firm conviction that under the most likely threats, we can limit such interruptions to ones of short duration.

I have been consulted regularly during the course of the treaty negotiations and have furnished information, comments and recommendations to the Joint Chiefs of Staff for the development of U.S. defense positions concerning the negotiations.

In my judgment the Panama Canal treaty provides adequately for the United States to exercise primary responsibility for the defense of the Panama Canal and for the support of the forces needed to carry out that mission. That judgment is based upon the following factors: The United States has an adequate military force structure in the canal area now; that force structure is expected to remain adequate and may, of course, be modernized during the treaty period; our capability to reinforce from the United States will continue to exist; U.S. forces, located astride the most critical canal facilities, have sufficient bases and training facilities, the latter of which will be shared; the treaty and its agreements provide freedom of movement for military forces in carrying out the canal defense mission.

The Panama Canal treaty establishes a concept of defense which includes U.S. and Panamanian forces operating cooperatively to defend the canal. Indeed, the most effective defense of the canal can be obtained in conjunction with a friendly Panama. We expect that the Panamanian armed forces, that is, the Guardia Nacional, will contribute military units to canal defense and that they will train with our forces in appropriate canal defense tasks.

The concept for combined defense which I have recommended to the Joint Chiefs of Staff envisions the continued presence of American forces in the vicinity of the canal for the term of US control of canal operations, not only to assist in defense of the canal but also to provide protection of US lives and property.

Under this concept certain types of military facilities are essential to support the US Forces committed to canal defense. These include the major airfield, cantonment areas for stationing of forces in close proximity to the canal, training areas, communications facilities, piers and docks, logistic support facilities and family housing. These essential facilities are provided for in the Panama Canal treaty and its implementing agreements.

It is apparent that the Panama Canal treaty will require the relocation of a few US military units from their present locations in the Canal Zone to other locations within selected US military defense sites in Panama. These consolidations will not adversely affect our capability to defend the canal and, in fact, in many ways will contribute to a more efficient operation.

The US primary defense responsibility and the presence of US military force in Panama, together with the provisions of the neutrality guarantee, adequately protect the security interests of the United States. When these factors are combined with a cooperative defense effort by the Government of Panama and its armed forces, they even more adequately provide for the security interests of the United States.

That concludes my statement. I shall be pleased to answer any questions you may have.

PANAMA CANAL TREATY

Mr. ALLEN. Mr. President, when I first initiated this series of speeches on the proposed Panama Canal Treaty and on the proposed so-called neutrality treaty—and this is the ninth speech in the series—I had some concern that my speeches might tend to become redundant, inasmuch as apparently these proposed treaties will not be presented to the Senate for some months; but, Mr. President, the more I study these proposed treaties, the more defects I discover and the more I realize that I will be at no loss for topics to discuss over the coming weeks and months. I have no desire to bore the Members of the Senate with redundancy, so I will on each occasion discuss a separate aspect of the proposed treaties in a manner which I sincerely desire to be illuminating and informative rather than repetitive.

Today, Mr. President, I intend to discuss the environmental impact of the new treaty.

We hear a lot in Congress about the environmental impact, and we have environmental impact statements for almost everything. This new treaty has an environmental impact. Let us study it a little bit.

I will use as the basis for my remarks the draft environmental impact statement for the new Panama Canal Treaty prepared by the Department of State and published on August 30, 1977. That is a new publication. This proposed environmental impact statement is now open for comment, and I would encourage anyone wishing to comment thereon to correspond with the Office of Environmental Affairs in room 7820 at the offices of the Department of State here in Washington.

There is much to be learned from this draft environmental impact statement which cannot be learned from a cursory reading of the proposed treaty itself. And incidentally, Mr. President, this draft statement applies only to the proposed Panama Canal Treaty and does not apply to the proposed neutrality treaty. Presumably a draft statement on the proposed neutrality treaty will also soon be forthcoming.

As I said, Mr. President, much can be learned about the proposed canal treaty from this draft environment statement, and although obviously the Department of State is lobbying heavily and heartily for ratification of this treaty, nevertheless, the author of this draft statement should be commended for his candor in stating at least some of the more obvious environmental problems which are likely to ensue if the proposed canal treaty is ratified.

Under the heading "Unavoidable Adverse Impacts," the statement reads as follows:

The principal unavoidable adverse impact resulting from actions under the proposed Treaty will be the loss of jobs of certain American and non-American employees of the Canal Company and the Canal Zone Government. There are also two other possible adverse impacts: increase in Canal tolls with a consequent increase in transcontinental rail traffic in the U.S. (section III B. 7.); and extensive deforestation in the Canal Zone, if protective measures are inadequate.

The environmental statement then proceeds to discuss in some 100 pages or more the details of this sobering conclusion. The

statement further considers major alternatives to the proposed treaty including, "taking no action on the proposed treaty."

I do not favor that. I want to take action, up and down action, against giving advice and consent to the ratification of the treaty.

Then, it states, "postponing further action on the treaty, implementing the treaty's provisions (including those on environmental protection), and the possibility of a new treaty with stronger environmental safeguards."

Mr. President, I doubt if there is ever going to be another treaty. I believe this one will be defeated so badly that they are not going to come back with another treaty. I believe, too, that substantial amendments must be made to this treaty. Some definitely must be made in the area which forbids us to even negotiate with another nation for a sea level canal for this 23-year period without the consent of Panama. That must be changed.

Then there has to be an amendment giving us the right to determine whether the neutrality of the canal is in danger and giving us the right to send in troops.

The failure to give us priority on our warships going through the canal is amended.

Once these amendments are made, Mr. President, it is treaty law that the treaty would become a nullity and would have to be renegotiated and submitted again as a treaty *ab initio*.

I want to see an up and down vote defeating this treaty. Before we have that up and down vote, I want to see substantial amendments offered. One amendment I am going to offer, Mr. President, and I would be willing to vote for the treaty if this amendment is made, would be to raise the annuity that Panama receives from the Panama Canal Company out of the tolls, to raise it substantially—and it is around \$2.3 million now—and leave all other provisions of the present treaty in full force and effect.

That is, that we would continue to have sovereignty over the Canal Zone; that we would continue to have the power to operate and maintain the canal, and that we would continue to have the right to defend the canal.

Another thing we are certainly going to have to amend is the American presence we have there. I believe under the treaty and executive agreements, we are supposed to cut down our bases there from 14 to 4. That will have to be changed.

The whole treaty will have to be redrafted by the Senate, in my judgment, which would be another way of saying it is dead because it would then have to be renegotiated.

The reservations are not going to do any good, mere reservations. That is merely a unilateral statement of how we interpret the treaty. It would not be binding on Panama, as I see it. It is not sufficient to say, "We make this reservation, that we feel the treaty means" this. That is not worth anything. We have to amend the treaty in the particulars I am talking about. Then to be absolutely safe, not only amend it but then defeat it after it has been amended as best we can.

As I say, I would be willing to substantially raise the amount of the tolls which Panama receives, the amount of annuity payments Panama receives, because I know they need the money, possibly raising the figure tenfold. That would not shock me. We could raise

it up to \$25 million annually, provided all of the provisions of the present treaty remain in full force and effect.

Mr. President, how much time have I remaining?

The ACTING PRESIDENT pro tempore. The Senator from Alabama has 5 minutes remaining.

Mr. ALLEN. I thank the Chair.

So, Mr. President, as far as the Office of Environmental Affairs at the Department of State is concerned this matter is still open to discussion—but, I might add, a limited amount of discussion inasmuch as the 30 days for comment will expire on September 30. In other words—the day after tomorrow. I would like to make my comments on the environmental impact of this treaty now, and I do feel after reviewing the draft environmental statement that the proposed new treaty will have adverse environmental impact sufficient to warrant rejection of the treaty in its present form unless substantially amended to include stronger environmental safeguards.

Let me get back to the subject from which I digressed a moment ago. As I stated, if this is a substantial amendment to the treaty that would vitiate and nullify the treaty because it would not be sufficient then for Panama to accept the treaty in its amended form we would have to renegotiate and submit a new treaty to the Senate. We would have to go through the same process that this present treaty has gone through or is going through.

But the value of the amendments would be that it would be a guideline, Mr. President, to what the Senate would probably accept in the subsequent negotiations between the two countries having to do with a Panama Canal Treaty. So if we amend this treaty in these substantial forms that I have suggested, even though that would nullify and hold for naught the entire treaty, it would serve as a guideline for the negotiators to have a treaty that would be acceptable to the Senate.

In my judgment, Senators should listen carefully to the recommendations of environmental groups and consumer groups and business groups in assessing the unavoidable adverse impacts of the proposed treaty in its present form on the environment, the rate of inflation, unemployment, and commerce generally.

Chief among the immediate adverse environmental impacts of the proposed canal treaty will be the short-term use and deforestation of the land in the Canal Zone turned over to the Panamanians. In considering this problem, the environmental impact statement reads as follows:

Short-term use of the forest resources in Panama involves slash and burn practices by squatters to clear fields for corn and other crops. Given population pressures and rural poverty, these subsistence crops are very important to the nutrition and welfare of the numerous squatters engaged in these practices. This is the reason for the widespread deforestation around the Canal Zone and the threat to the Zone's forests. However, within a year or two the soil is exhausted, the squatters move on to new forest areas, and erosion sets in with resultant damage to the entire ecosystem of the Canal watershed. Wildlife disappears, reforestation is difficult or impossible, and silting of the Canal may increase. Over the longer term and in combination with droughts, the level of the lakes may even diminish to the point of limiting the operation of the Canal and the Panama City water supply. Archeological sites and artifacts exposed during cultivation may also be lost.

There is, therefore, Mr. President, apparently some considerable concern that once the zone is thrown open to the Panamanians, Panamanian farmers will rapidly deplete the natural forest resources of the zone. This concern is expressed under the heading "Irreversible and Irretrievable Commitments of Resources" in the following fashion:

If the environmental protection measures in the draft treaty and the supplementary watershed management project should prove ineffective, the forests and associated ecosystem in the Canal Zone could disappear.

We are trusting an awful lot to chance, Mr. President, if even the Department of State recognizes the danger that the forests and associated ecosystem in the Canal Zone could disappear and presumably be ruined for the foreseeable future—that is if, of course, this proposed treaty is in fact ratified.

Other considerations which come to light are the various laws, regulations, and policies now in force in the Canal Zone which would be supplanted by Panamanian law, regulations, and policies affecting environmental matters, if any. Among the U.S. laws which would apparently cease to operate after implementation of the treaty are the following:

1. National Environmental Policy Act of 1969 (NEPA).
2. Section 311, Federal Water Pollution Control Act of 1972 (FWPCA) regulating the discharge of oil and other hazardous substances into the navigable waters of the U.S.
3. Section 312, FWPCA regulating marine sanitation devices.
4. Marine Protection, Research and Sanctuaries Act (Ocean Dumping Act).
5. Section 4, Noise Control Act.
6. Executive Order 11514.
7. Occupational Safety and Health Act (OSHA) where it regulates the environment.
8. Environmental Control Policy for Canal Agencies (published in Federal Register Vol. 37, No. 204, October 20, 1972.)
9. Guidelines for the Preparation and Coordination of Environmental Impact Statements for Canal Agencies, dated December 15, 1972.
10. Title 35, Code of Federal Regulations (CFR):
 - a. Chapter 1, Part 61 Health Sanitation and Quarantine (includes controls on use of pesticides, herbicides, and rodenticides).
 - b. Chapter 1, Part 103.21 Precautions against sparks, smoke, etc. from vessels.
 - c. Chapter 1, Part 103.22 Vessels at Fuel Berths.
 - d. Chapter 1, Part 113, Subparts B, C and D: Handling Explosives, Hazardous Liquid Cargoes and other Hazardous Materials (noxious chemicals, radioactive materials).
 - e. Chapter 1, Part 125 Sanitary Requirements: Vessel Wastes, Garbage Ballast.
11. Canal Zone Administration and Regulations (CZAR):
 - a. Chapter 5, Part 167.111: Transporting Explosives, Flammable Liquids and Liquefied Petroleum Gases.
 - b. Chapter 5, Part 167.85: Mufflers; prevention of noise.
12. Regulations Governing the Storage and Handling of Petroleum Products in Bulk at Canal Zone Terminals. (This document has a different primary purpose but a major environmental secondary effect.)

The above list is not exhaustive and regardless of efforts to guarantee adequate environmental safeguards under the proposed treaty, I doubt that the measure of protection now afforded by U.S. law could ever be achieved in any arrangement with the Panamanians which included supplanting U.S. legal jurisdiction with Panamanian jurisdiction.

Tab F of the draft environmental impact statement is a study entitled, "Environmental Assessment of Proposals to Increase Tolls." You know, Mr. President, a major consideration in the

proposed treaty is the increase in tolls proposed in order to cover promised payments to the near-bankrupt Government of Panama. But what effect will this increase in tolls have on commerce with the United States and on prices charged to consumers in the United States? Well, Mr. President, the effect is not going to be salutary.

The author of this study on the proposal to increase tolls, William Whitman of Kensington, Md.—and, I might add parenthetically that his study has been approved by the Canal Zone Environmental Quality Committee—Mr. Whitman's study is based on projected traffic through the Panama Canal in 1985 and assumes no increase above the rates in effect prior to July 8, 1974 except a 50 percent across-the-board increase in those rates. In fact, Mr. President, two increases have occurred since that time and a major jump in toll rates is still envisioned by the proposed treaty. Yet even discounting the two toll increases which we have already seen, Mr. Whitman finds the following unavoidable environmental effects: "A minimal increase in air pollutants over the United States; and an unquantifiable loss of employment and employment benefits in U.S. Atlantic ports." These environmental impacts are unavoidable effects of the toll increases which have already occurred and do not even take into account to any significant degree the major new increases which we are being asked to ratify in this proposed treaty.

You see, Mr. President, when these tolls go up, the inevitable effect is going to be to burden ocean-borne commerce and, as a result, to inflate the costs of basic raw materials shipped through the canal. Those materials will either be shipped at a higher cost through the Isthmus of Panama or will be transported by other means, chiefly rail, with the result both of higher prices and increased atmospheric pollution.

Lest there be any doubt that a toll increase could have a very serious adverse effect on U.S. commerce, I ask unanimous consent to include in the Record a table of major trade routes and tonnage carried on those routes through the Panama Canal in 1975.

Mr. President, I ask unanimous consent that a table entitled "Major Trade Routes in Panama Canal Traffic" be printed in the Record.

There being no objection, the table was ordered to be printed in the Record, as follows:

MAJOR TRADE ROUTES IN PANAMA CANAL TRAFFIC: 1975

Trade route	PC net tons	Long tons cargo
East Coast United States-Asia	41,970	55,402
Europe-Asia	13,779	10,028
Europe-West Coast United States/Canada	10,186	10,561
East Coast United States-West Coast South America	9,792	8,417
Europe-West Coast South America	7,642	5,481
U.S. Intercoast (including Alaska and Hawaii)	4,627	4,386
Europe-Oceania	4,484	3,590
East Coast United States/Canada-Oceania	4,112	4,130
East Coast Canada-Asia	3,891	3,461
South American Intercoastal	3,532	4,675
West Coast South America-West Indies	2,474	1,985
West Coast United States-East Coast South America	2,277	2,934
Subtotal	108,766	115,050
All other routes	26,288	25,051
Total	135,054	140,101

Mr. ALLEN. Mr. President, this table shows pretty conclusively that the United States is quite dependent on ocean-borne commerce through the Canal Zone and that the principal beneficiary of traffic through the zone is, contrary to some reports, the United States.

But let us look at the type of commerce moving through the canal. I ask unanimous consent that a table entitled "Panama Canal Traffic by Commodities" be printed in the Record.

There being no objection, the table was ordered to be printed in the Record, as follows:

Panama Canal traffic by commodities, 1975

Commodity:	Percent of total cargo
Coal and coke	18.8
Petroleum and products	17.1
Grains	12.7
Ores and metals	9.5
Manufacturers of iron and steel	8.0
Nitrates, phosphates, and potash	6.7
Miscellaneous agricultural products	5.1
Lumber and lumber products	4.1
Canned and refrigerated foods	3.0
Chemicals and petrochemicals	1.9
Machinery and equipment	1.8
Miscellaneous minerals	1.7
All other	9.6

Source: Annual Report, Panama Canal Company, fiscal year 1975.

Mr. ALLEN. Mr. President, this table shows that a substantial amount of cargo moving through the canal is energy-related or bulk shipment of raw materials required in the manufacture of consumer goods here in this country. The major increases in Panama Canal tolls are bound to have a multiplier effect in raising the cost of raw materials and thereafter raising the cost of consumer goods.

Mr. President, I ask unanimous consent that a third table entitled "Effect of 50 Percent Tolls Increase on Commodity Manufacturers" be printed in the Record.

There being no objection, the table was ordered to be printed in the Record, as follows:

EFFECT OF 50 PERCENT TOLLS INCREASE ON COMMODITY MOVEMENTS THROUGH PANAMA CANAL IN 1985

[Thousands of long tons]

Commodity	No increase	50 percent increase	Difference	Percent change
Bananas	2,342	1,710	632	27
Iron ore	3,300	2,508	792	24
Crude petroleum	19,900	17,512	2,388	12
Petroleum products	13,600	11,968	1,632	12
Coal	14,000	12,460	1,540	11
Phosphates	4,700	4,277	423	9
Coarse grain and wheat	26,237	24,343	1,894	7
Soybeans	12,345	11,604	741	6
Iron and steel manufacture	11,543	10,966	577	5
Sugar	6,127	5,943	184	3
Miscellaneous ores	4,655	4,562	93	2
General cargo	30,659	30,046	613	2
Cargo not affected	35,534	35,534		
Total	184,942	173,433	11,509	

Mr. ALLEN. Mr. President, this table shows significant percentage reductions in the transportation of iron ore, crude petroleum, petroleum products, and coal through the Canal Zone if a 50-percent increase over pre-June 1974 tolls would be permitted. I want to emphasize, Mr. President, that a 50-percent increase over pre-June 1974 tolls has just about already occurred with the two increases put into effect to date. We can expect, therefore, reductions in energy products transiting the Isthmus of Panama if the further increases contemplated by the new Canal Zone Treaty are permitted. This at the very time when we are spending days here in the Senate working on legislation designed to solve energy problems. Let us not put any more burdens on the energy industry, Mr. President. Let us not drive up the cost of coal and petroleum products by a wholly unjustified increase in Panama Canal tolls.

There is another aspect of this environmental impact statement which I would call to the attention of the Senate and in particular to the members of the Committee on Agriculture, Nutrition, and Forestry. This one item appears under the heading "United States-Japan Via Cape of Good Hope." It discusses the bulk movement of coarse grains and wheat and soybeans between New Orleans and Japan. The report reads:

The distance between New Orleans and Yokohama is 9,126 miles via the Panama Canal and 15,762 miles via the Cape of Good Hope, a difference of 6,636 miles. The movement of 2,635,000 tons of soybeans and coarse grains and wheat via the Cape of Good Hope would entail about 16 voyages by a bulk carrier of 183,570 deadweight tons lifting approximately 170,000 tons of cargo. Each voyage would require about 42.4 days and fuel consumption at 15 knots would be 101.5 tons a day.

Senators ought to consider the possible impact on our farm exports if commercial shipping is diverted from the Panama Canal either because of the economics of increased tolls or because of other reasons beyond our control. Will farm exports be decreased because of a decrease in our ability to compete in world markets? Yes, in my judgment, much study should be given to the real world consequences of these proposed toll increases which have been given to us as part and parcel of this disastrous treaty. Mr. Presi-

dent, I ask unanimous consent that five additional tables from Mr. Whitman's study dealing with diversion of commodities from the canal route be printed at this point in the Record for easy reference by Senators and staff members.

There being no objection, the tables were ordered to be printed in the Record, as follows:

Rearrangement of sources and markets resulting from 50 percent tolls increase

[By commodities]

Commodity:	Long tons (thousands)
1. Bananas.....	632
2. Iron ore.....	627
3. Petroleum.....	2,388
4. Petroleum products.....	1,632
5. Iron and steel manufactures.....	195
Total	5,474

The reaction to a tolls increase by rearranging sources and markets in effect eliminates the necessity for moving the cargo involved from one ocean to the other thereby reducing energy consumption that otherwise would be used for that purpose. Obviously, in this aspect, the effect of the proposed increase in tolls is beneficial to the environment.

DIVISION OF COMMODITIES FROM PANAMA CANAL TO SUEZ OR CAPE OF GOOD HOPE RESULTING FROM 50 PERCENT INCREASE IN PANAMA CANAL TOLLS (1985)

Commodity	Tonnage	Trade route	Via
General cargo.....	¹ 1,201	Europe-Japan-Australia.....	Suez.
Miscellaneous ores.....	93	Europe-Australia.....	Cape of Good Hope.
Iron and steel manufactures.....	186	Europe-Japan.....	Suez.
Phosphates.....	423	Africa-Japan.....	Suez.
Coal.....	1,540	United States-Japan.....	Cape of Good Hope.
Coarse grains and wheat.....	1,894	United States-Japan.....	Do.
Soybeans.....	741	United States-Japan.....	Do.
Sugar.....	116	Philippines-New York.....	Do.
Total	6,194		

¹ Europe-Far East & Oceania. Because of the shorter distances involved, the movements of general cargo, miscellaneous ores, iron and steel manufactures, and phosphates, aggregating 1,315 tons, between Europe and Japan, Africa and Japan, and Europe and Australia, via Suez or the Cape of Good Hope, will result in less fuel consumption than would movement of the cargo through the Panama Canal.

CARGO DIVERSIONS INVOLVING VOYAGES OF DECREASED LENGTH VIA SUEZ CANAL OR CAPE OF GOOD HOPE

Commodity	Tonnage	Trade route	Decreased distance on diversion route
General cargo.....	¹ 1,201	Europe-Japan (Suez).....	1,251
Miscellaneous ores.....	93	Europe-Australia (Cape).....	1,558
Iron and steel manufacturers.....	186	Europe-Japan (Suez).....	1,251
Phosphates.....	423	Africa-Japan.....	4,726
Total	1,903		

¹ Includes 588 tons assuming full impact of cumulative increase on reefers and general cargo ships without consideration of shift of cargo to container ships and bulk carriers.

DIVERSION OF CARGO TO FAR EAST MINIBRIDGE BY 50 PERCENT INCREASE IN PANAMA CANAL TOLLS (1985)

[Thousands of tons]

Commodity: Route	Tons diverted	Total through PC
Sugar: Hawaii—United States	68	5,943
Iron and steel manufacturers: Japan—United States	196	10,966
Total	264	16,909

Ships carrying cargo between Japan and East Coast United States ports may proceed directly from Japan to East Coast U.S. via the canal, or move from Japan to the West Coast U.S. and thence to East Coast U.S. via the canal. Cargo moving by the minibridge route moves from Japan to the West Coast U.S. by water and from there to the East Coast by rail. Movements from the East Coast U.S. to Japan follow the reverse pattern. Whether the all-water movement is direct between the East Coast and Japan or via intermediate West Coast ports, the shorter distance involved in the intermodal movement using rail transportation across the United States, results in a substantial saving in energy consumption in the use of that route in comparison to the all-water routes. The distance between Yokohama and New York on the all-water routes indicated is shown in the following table:

Distance Yokohama to New York on all-water routes via Panama Canal

Route:	Statute miles
Direct Yokohama-New York.....	11,115
Yokohama-San Francisco	5,261
Yokohama-Los Angeles.....	5,565
San Francisco-New York.....	6,053
Los Angeles-New York.....	5,671
Total Yokohama-New York (via SF).....	11,269
Total Yokohama-New York (via LA)	11,236

Source: H.O. Doc 151, with nautical miles converted to statute miles at ratio of 1:1.15.

I yield the floor.

[From the Congressional Record—Senate, Sept. 29, 1977]

THE PANAMA CANAL TREATIES

Mr. ALLEN. Mr. President, I appreciate the distinguished majority leader and the distinguished minority leader arranging for me to speak from time to time, at the start of the Senate hearings, on the subject of the Panama Canal treaties.

This is the 10th speech I have given in the Senate on the Panama Canal treaties since the announcement was made that an agreement had been reached between our negotiators and the Panamanian negotiators, and from time to time in the future while this issue remains before the Senate I do plan, with the acquiescence and assistance of the distinguished leaders, to make speeches here in the Senate pointing out the defects, as I see them, in the Panama Canal treaties.

Mr. President, I am obviously greatly troubled with the substantive provisions of the proposed Panama Canal Treaty and the proposed so-called Neutrality Treaty—since there are two treaties—but beyond my strong objection to the substance of both treaties, I am also greatly concerned that the treaty drafters saw fit to include so much of the meat of these proposed arrangements not in the body of the treaties themselves—by the way, which is not a very voluminous document—but rather in the associated executive agreements, protocols, and minutes. We have agreements and annexes to agreements and annexes to annexes; we have minutes; we have exchanges of notes between the negotiators; we have protocols, and all of these form a part of the treaties. But the catch is, Mr. President, that these executive agreements can be modified from time to time by executive agreement requiring no assent by the Senate.

So once the treaties are approved, the provisions of the treaties can be greatly altered by executive agreement over which the Senate has no control whatsoever. I am particularly concerned, Mr. President, that the major substantive defense provisions are not actually set forth in the canal treaty in its article IV, which is entitled "Protection and Defense," but appear instead in the proposed executive agreement in implementation of article IV—which is several times as large as the entire treaties themselves. I have that in my hand. Article IV itself does not cover a complete printed page, yet the agreement in implementation of article IV is some 53 pages long excluding annexes and an additional 22 pages of agreed minutes, the minutes themselves having their own annexes.

So if we are going to find out what the Panama Canal treaties really provide, we are going to have to do a whole lot of research, because it is not contained just in the body of the treaties themselves.

Admittedly, some of the provisions contained in these very lengthy documents implementing this very short article IV are provisions which ought not to burden the treaty itself. But, Mr. President, much is in these additional pages which in my judgment should have been set forth in the treaty text rather than in these executive agreements. The Canal Treaty reads:

The rights of the United States of America to station, train, and move military forces within the Republic of Panama are described in the Agreement in Implementation of this Article, signed this date.

Mr. President, recognize that the rights that are being talked about here are rights to move, station, and train military forces within what is now the Canal Zone. By this one sentence, if ratified, the Senate would turn over entirely to the executive department all future arrangements regarding our defense rights in the Canal Zone, even during the duration of the treaty.

So, Mr. President, in its present form, what does this agreement in implementation of article IV now provide? Already, the executive department proposes in this executive agreement to surrender 10 out of 14 bases—we have 14 bases down there and we are going to surrender 10 of them right at the outset and to have our forces hemmed in at four relatively small enclaves—and I would encourage Senators, if they have not done so already, to have a look at some of these maps that are contained in the annexes to these executive agreements to get some idea of just how hemmed in our forces are going to be if this treaty is agreed to and implemented.

But, Mr. President, beyond this immediate surrender of 10 military bases, what lies down the road? If we turn to article I of the executive agreement in implementation of article IV of the canal treaty, under the heading "Definitions" is the following explanation:

Defense Sites: Those areas, and the installations within them, which the Republic of Panama by this Agreement permits the United States Forces to use for the specific purposes of the Panama Canal Treaty, and as the two Governments may otherwise agree, a list of which is set forth in paragraph (1) of Annex A of this Agreement.

In other words, they can wipe it all out by subsequent agreement. So these defense sites are already on pretty tenuous ground. If this thing is ratified, a couple of years from now or sooner, the Department of State could agree—and they seem to be pretty agreeable with this dictator down there in Panama—the Department of State could agree that it was time to shut down another base. Would they have to come to the Senate for ratification of that decision? No. Would they go to Congress for permission to turn over some more U.S. property to a foreign government? Well, Mr. President, they have shown no inclination to do that with this proposal to give away virtually the entire Canal Zone, notwithstanding the Constitution, so I doubt congressional authorization would be sought for simply shutting down one more base. After all, we would have already closed down 10.

I cannot understand, Mr. President, why it is thought if we have 14 bases now to defend the canal and the Canal Zone, why 4 would be sufficient. Is the thought that we no longer have to defend it from the Panamanians and, therefore, we can cut down from 14 to 4 bases? Why is it that the defense of the canal will be so easy after the treaty is implemented? Why does it become so easy unless the bases are there for the defense of the canal against the Panamanians?

I would assume they are not the ones we are defending the canal against, that is, the Panamanians. But under the agreement, the bases would be cut from 14 down to 4.

Now, Senators may not think that this process is contemplated, but I would call attention to executive agreement article IV, entitled "Use of Defense Sites," which is not a part of the treaty but is a part of this proposed executive agreement in implementation of article IV of the canal treaty. Paragraph (1) of this executive agreement article IV reads this way:

The United States Forces may use the defense sites listed in paragraph (2) of Annex A of this Agreement. * * *

So we have permissive use of these four defense sites, but let us not be fooled into thinking that that use is contemplated throughout the term of this proposed treaty. Paragraph (2) of this article IV of this executive agreement contains the following language:

Annex A of this Agreement shall be examined every two years or upon the request of either Government, and shall be revised to reflect any agreed elimination or change in areas. The United States Forces may notify the Republic of Panama at any time that the use of a defense site or a military area of coordination or of a specified portion thereof, or other right granted by the Republic of Panama is no longer required. Under such circumstances, said use or right shall cease on the date determined by the two Governments.

This is astonishing, Mr. President. We have already agreed in the body of the executive agreement that we are going to renegotiate it every 2 years or at the request of either government. This treaty is for a proposed term of 23 years. We are going to need negotiators to negotiate this deal if we want to hang onto these defense sites for a term of 23 years with our Government already proposing to negotiate the matter on a biannual basis or upon request.

Would Congress have any say in this matter? No, Mr. President, we will have relinquished effectively any say whatsoever in our military operations in defense of the canal. The Department of State could simply with the stroke of a pen more or less at will wipe out what little they propose to retain.

You know, Mr. President, I am amused by this language in this paragraph (2) in which we are given permission to notify Panama at any time that the right they have granted us to use one of our defense sites is no longer needed. Apparently, someone down at the Department of State thought it was necessary to give us the option to renounce this so-called right of use given to us by the Panamanians in the event pressure was on to move out before the anniversary date of a biannual renegotiation. Of course, on the other hand, it is conceivable with the political turbulence in the Republic of Panama that some new government in Panama might at a future date wish the United States to stay, but the Department of State has been careful to retain the unilateral right to leave anyway.

The more I review this material that is in the treaty and a whole lot more that is not contained in the treaty, but would nevertheless bind our Government the more I am of the opinion that the Department of State is seeking both to obtain ratification of this proposed treaty and at the same time get absolute control of all future dealings with the Republic of Panama inasmuch as the real substance of our relations with Panama can be modified simply by amending these executive agreements with no need for consultation with Congress and no need for approval by the Senate.

But, Mr. President, another motive of the Department of State may have been to bury in these executive agreements some of the more embarrassing terms of this proposed arrangement with Panama. I think that also could well be the case. For example, do the American people know that we would renounce forever the right to place any type of nuclear armament in what is now the Canal Zone? I doubt that they do know that, Mr. President, because that particular provision—this critical major provision—is buried away in paragraph (6) of article IV of the agreement in implementation of article IV of the Panama Canal Treaty.

So it takes some pretty careful reading to find out just what is afoot. Fortunately, we do have time to give complete study to these proposed agreements, and I am confident that the Senate will discharge its responsibilities in ferreting out fully the substance of this proposed deal regardless of how fine the print.

Mr. President, I yield the floor.

TESTIMONY ON PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations continued its hearings today on the Panama Canal treaties. The witnesses today were the Honorable Griffin B. Bell, Attorney General, Department of Justice; the Honorable Herbert J. Hansell, Legal Adviser, Department of State; the Honorable Clifford L. Alexander, Secretary of the Army; Maj. Gen. H. R. Parfitt, U.S. Governor of the Canal Zone; and the Honorable William J. Jordan, U.S. Ambassador to Panama.

I ask unanimous consent that the prepared statements of these witnesses be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

STATEMENT BY THE HONORABLE GRIFFIN B. BELL

Mr. Chairman: I am pleased to appear before your Committee to testify on and discuss with you a problem arising in connection with the Panama Canal Treaty. The question is whether the treaty-making power of the United States vested by the Constitution in the President, by and with the advice and consent of two-thirds of the Senate, can dispose of the proprietary interests of the United States in the Panama Canal Zone by treaty alone, or whether such action requires in addition legislation authorizing, approving, or actually effectuating such transfer.

The principal provisions governing the rights of the United States in the Panama Canal Zone are to be found in Articles II and III of the Hay-Bunau-Varilla Treaty of 1903. Pursuant to those Articles, the Republic of Panama granted to the United States—

“* * * in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the Canal to be constructed.” Art. II. And—

“* * * all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.” Art. III. Additional provisions relating to the interests of the United States in the Canal Zone are to be found in Articles VI, VIII and XXII of the 1903 Treaty, which concern the rights of private landholders in the area granted to the United States

by the Republic of Panama, and the property of the Panama Railroad Company and the New Panama Canal Company.

It is recognized that under these provisions the Republic of Panama retained titular sovereignty over the Canal Zone. The United States is not the sovereign, but it has jurisdiction over the Canal Zone, that is to say that the United States has all the rights, power, and authority which it would possess and exercise if it were the sovereign of the Canal Zone. In addition, the United States has title to substantial lands, buildings, and facilities in the Zone.

According to Article II, section 2, clause 2 of the Constitution, the President has the power to make treaties by and with the advice and consent of the Senate provided two-thirds of the Senators present concur, and Article VI, clause 2 provides that such treaties shall be the supreme law of the land. It has been established since *Foster v. Nielson*, 2 Pet. 253, 314 (1829), that whenever a treaty operates of itself and does not merely constitute an undertaking to enact legislation it is the equivalent of an act of the legislature.

Geofroy v. Riggs, 133 U.S. 258, 266-267 (1890), and *Asakura v. Seattle*, 265 U.S. 332, 341 (1924), have taught that the treaty-making power of the United States extends "to all proper subjects of negotiation between our government and other nations . . ." although it does not extend "so far as to authorize what the Constitution forbids." To the same effect are *United States v. Curtiss-Wright Corp.*, 299 U.S. 204, 320 (1936), *Reid v. Covert*, 354 U.S. 1, 5-10, 16-19 (1957). Foremost, among those constitutional provisions are those designed to protect rights of citizens from encroachment by the Government (*Reid v. Covert*, *supra*).

The question raised in the present context is whether a treaty would do something "prohibited by the Constitution" if it seeks to be self-executing in an area in which Congress has legislative jurisdiction. Here the problem posed is whether a treaty can dispose of the territory and property of the United States in the face of Article IV, section 3, clause 2 of the Constitution, which gives the Congress power to do so. Even brief reflection shows that the application of the supreme law of the land clause in Article VI to treaties would be extremely limited, if it were restricted to those areas in which Congress did not have power to legislate. The courts have concluded that this is not so and that the mere existence of a congressional power to legislate in the field does not preclude a treaty from being self-executing. *Foster v. Nielson*, *supra*, recognized this by equating a treaty to an act of legislature. The courts have given self-executing effect to a number of treaties which dealt with matters over which Congress has legislative jurisdiction under Article I, section 8, such as claims against the United States, customs inspection, and trademarks.

On the other hand, it is generally assumed that the specific powers granted to the House of Representatives and the Congress in fiscal matters (Article I, section 7, clause 1 and Article I, section 9, clause 7, money bills and appropriation power) preclude making treaties self-executing to the extent that they involve the raising of revenue or the expenditure of funds. Were it otherwise President and Senate could bypass the power of Congress and in particular of the House of Representatives over the pursestrings. It is our conclusion that this consideration does not apply to Article IV, section 3, clause 2 of the Constitution. In other words the power of Congress to dispose of the territory and property of the United States does not have the same unique and prominent status as the fiscal powers of Congress.

To begin with, Article IV, section 3, clause 2 uses the same phraseology "Congress shall have power" as does Article I, section 8, and we have shown above that the legislative powers vested in Congress under that section do not preclude the making of self-executing treaties. The conclusion that this clause is not designed to foreclose the conclusion of self-executing treaties disposing of the territory and property of the United States gains strong support from the records of the proceedings of the Constitutional Convention. The pertinent debates indicate that the members of the Convention were fully aware of the possibility that a treaty might dispose of the territory or property of the United States. Much of the opposition to the treaty power of the United States and the requirement of a two-thirds majority in the Senate were based on fears that the Senate might give away territorial right of the United States.

I wish to mention a few of the pertinent remarks. Thus, Col. Mason observed "that the Senate by means of a treaty might alienate territory, etc. without legislative sanction." Farrand, *Records of the Federal Convention* Vol. 2, p. 297. Later, Messrs. Williamson and Speight moved "that no Treaty of Peace affecting Territorial rights should be made without the concurrence of two-thirds of the [members of the Senate present]." *Id.* at p. 543, Mr. Gerry felt that—

" . . . in treaties of peace, a greater rather than less proportion of votes was necessary than in other treaties. In treaties of peace, the dearest interests will be at

stake, as the fisheries, territories, etc. and there is more danger to the extremities of the Continent of being sacrificed than in any other occasion." Warren, *The Making of the Constitution* 656.

Sherman and Morris proposed but did not formally move the following proviso: "But no treaty (of peace) shall be made without the concurrence of the House of Representatives, by which the territorial boundaries of the U.S. may be contracted, or by which the common rights of navigation or fishery recognized to the United States by the late treaty of peace, or accruing to them by virtue of the laws of nations may be abridged." Warren, *op. cit.*, p. 657, Farrand, *op. cit.* Vol. 4, p. 58.

The awareness of the Founding Fathers that the Constitution authorizes self-executing treaties disposing of the territory and property of the United States also appears from the following amendment to the Constitution proposed by the Ratifying Convention of Virginia:

"7th. That no commercial treaty shall be ratified without the concurrence of two-thirds of the whole number of the members of the Senate; and no treaty ceding, contracting, restraining, or suspending, the territorial rights or claims of the United States, or any of them, on their, or any of their rights or claims to fishing in the American seas, or navigating the American rivers, shall be made, but in cases of the most urgent and extreme necessity; nor shall any such treaty be ratified without the concurrence of three-fourths of the whole number of the members of both houses respectively." Elliot, *Debates on the Federal Constitution* Vol. 3, p. 660.

A letter from Hugh Williamson, a delegate to the Convention from North Carolina dated June 2, 1788, reminded James Madison of the background of the treaty clause and the requirement of a two-thirds majority in the Senate:

"* * * It is said that some antied in Maryland on the last Winter fastened on the Ear of Genl. Wilkinson who was accidentally there and persuaded him that in case of a new Govt. the Navigation of the Mississippi would infallibly be given up. Your Recollection must certainly enable you to say that there is a Proviso in the new Sistem which was inserted for the express purpose of preventing a majority of the Senate or of the States which is considered as the same thing from giving up the Mississippi. It is provided that two thirds of the Members present in the Senate shall be required to concur in the making Treaties and if the southern states attend to their Duty, this will imply $\frac{2}{3}$ of the States in the Union together with the President, a security rather better than the present 9 States especially as Vermont & the Province of Main may be added to the Eastern Interest and you may recollect that when a Member, Mr. Willson objected to this Proviso, saying that in all Govts. the Majority should govern it was replied that the Navigation of the Mississippi after what had already happened in Congress was not to be risked in the Hands of a meer Majority and the Objection was withdrawn." Farrand, *op. cit.*, vol. 3, pp. 306-307.

The text of the Constitution and its history thus support the proposition that a treaty disposing of the territory and property belonging to the United States can be self-executing.

I am aware of a number of decisions of the Supreme Court holding that Article IV, section 3, clause 2 of the Constitution is of an exclusive nature, and that some have argued from those decisions that treaties disposing of property of the United States must be implemented by legislation enacted under that clause of the Constitution. It should be noted, however, that the decisions declaring Article IV, section 3, clause 2 to be exclusive related to the authority of the Executive and Judicial Branches to dispose of the territory or property of the United States. None of them dealt with the question here involved, the power of the treaty-making authority to make such disposition. To the contrary, as shown in my opinion, there is a substantial body of Supreme Court decisions dealing with Indian treaties which holds that a treaty may dispose of territory belonging to the United States without implementing congressional legislation under Article IV, section 3, clause 2.

Of those cases, *Holden v. Joy*, 17 Wall. 211 (1872), appears the only one in which the question was raised whether Article IV, section 3, clause 2 of the Constitution precludes such a treaty from being self-executing. The Court conceded that the question was immaterial in the case at bar because Congress had actually implemented and ratified that particular treaty. Nevertheless, it rendered the following strong dictum:

"* * * [S]till it is insisted that the President and Senate, in concluding such a treaty, could not lawfully covenant that a patent should issue to convey lands which belonged to the United States without the consent of Congress, which cannot be admitted. On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it, and that Congress has no constitutional power to settle or interfere

with rights under treaties, except in cases purely political. Much reason exists in view of those authorities and others which might be referred to, for holding that the objection of the appellant is not well founded, but it is not necessary to decide the question in this case, as the treaty in question has been fully carried into effect, and its provisions have been repeatedly recognized by Congress as valid." At 247.

In addition to the Indian treaty cases, in *United States v. Percheman*, 7 Pet. 51, 88-89 (1833), the Court held self-executing certain clauses of the Florida Treaty with Spain which related to the regulation of property rights in newly acquired territory. Those provisions of the treaty thus came within that part of Article IV, section 3, clause 2 which gives Congress power to make all needful rules and regulations respecting the Territory of the United States. If a treaty which deals with that part of Article IV, section 3, clause 2 can be self-executing, the same reasoning applies to a treaty coming within another part of that clause. The final point which I wish to make is that throughout our history Presidents acting with the advice and consent of the Senate have made numerous self-executing treaties transferring territory or property belonging to or claimed by the United States. One example, cited in the Opinion, is the 1819 Florida Treaty with Spain. Under that treaty the United States ceded all its territory beyond the Sabine River in Texas to Spain in return for the cession of the Spanish territories of East and West Florida. While there had been some dispute over some of the relevant boundaries, the congressional debates, as well as President Monroe's annual message to Congress, make it clear that many considered the action to be an outright cession of American territory in exchange for Spanish territory. 36 *Annals of Congress* 1719-38, 1743-81; 2 J. Richards, *Messages and Papers of the Presidents* 55 (1896). There was no statute authorizing this cession of American territory. There have been numerous other treaties which have transferred U.S. territory or compromised U.S. claims. See, e.g., United States-Great Britain Treaty of 1842 (Webster-Ashburton), 8 Stat. 572, T.S. No. 119; United States-Great Britain Treaty in regard to limits westward of the Rocky Mountains of 1846 (Oregon Treaty), 9 Stat. 869, T.S. No. 120.

In conclusion, the text and history of the Constitution, as well as the decisions of the Supreme Court and historical treaty practice all support the opinion I recently rendered that property of the United States may be transferred by treaty absent statutory authorization.

Thank you, Mr. Chairman. If you or the members of this Committee have any questions, I shall be pleased to answer them.

STATEMENT OF HERBERT J. HANSELL

Mr. Chairman, Members of the Committee: I appreciate the opportunity to appear before you today to discuss the new Panama Canal Treaties.

Judge Bell's statement has explained the Administration's view with reference to the Constitutional issues that have been raised concerning transfer of property by treaty. The State Department is in full accord with the view expressed by Judge Bell. If the Committee wishes any additional information or expression of views from the Department of State on this subject, we will be happy to provide it.

I believe that it would be helpful to you if I focus on four additional aspects of the Treaties:

1. The timing and manner of transfers of U.S. property to Panama;
2. The legal structure that will replace the Canal Zone;
3. The organization of the new Canal Commission; and
4. The necessary implementing legislation.

1. PROPERTY TRANSFER

First, as to property transfers, Article XIII of the Panama Canal Treaty provides for the transfer of property by the United States to the Republic of Panama in stages. Upon entry into force of the Treaty, the United States will transfer to the Republic of Panama its interests in real property, including non-removable improvements, not to be used by the United States, under the Treaty. This transfer includes the Panama Railroad and some of our facilities in the port areas of Balboa and Cristobal. Title to housing owned by the Panama Canal Company prior to the entry into force of the Treaty will also pass to the Republic of Panama at the outset of the Treaty. However, the United States will retain, without cost, the use of the housing deemed necessary for the accommodation of United States citizen employees of the Canal Commission during the life of the Treaty. Housing occupied by United States Armed Forces will not be transferred at that time, except a few units which are made available to the Panamanian forces.

Real property not transferred to Panama upon the entry into force of the Treaty will pass to Panama during the term of the Treaty, if the United States agrees to discontinue the use of the area in which the property is located. During that period specified military housing units will likewise be transferred to Panama.

Upon termination of the Treaty, the Panama Canal shall be turned over to Panama in operating condition and free of liens and debts, except as may be otherwise agreed upon by the Parties. At that time, all remaining United States interests in real property and non-removable improvements used by the United States under the Treaty and related agreements, and all equipment remaining in Panama related to the management, operation and maintenance of the Canal, will pass to the Republic of Panama.

2. THE NEW LEGAL SYSTEM

Mr. Chairman, I now turn to the new legal system that will supplant the Canal Zone.

A. General structure

Upon entry into force of the Treaty, the Canal Zone will cease to constitute a separate area governed by the United States, and the Canal Zone Government will end its operation in Panama. The Republic of Panama reassumes plenary jurisdiction throughout its territory, subject to the privileges, immunities and arrangements established pursuant to the Panama Canal Treaty to protect the interests of the United States Government and American citizens serving the Panama Canal. Special provisions will apply during the first 30 months to ensure a smooth transfer of the various jurisdictional functions to the Republic of Panama.

B. Criminal jurisdiction

During that 30-month transition period, the United States will have primary jurisdiction over criminal offenses committed within areas used by the United States citizen employees of the Panama Canal Commission, members of the United States Armed Forces, the civilian component of the Armed Forces and dependents of those groups. During the transition period, the U.S. police and courts continue to exercise criminal jurisdiction and U.S. criminal law continues to be applicable. During that period, the United States may continue to incarcerate individuals in the areas used by the United States or to transfer them to penal facilities in the United States to serve their sentences.

Upon the end of the transition period, while Panama will acquire primary criminal jurisdiction over United States citizen employees regardless of the place of the offense within Panama, Panama will, as a matter of general policy, waive its jurisdiction at the request of the United States in cases of offenses committed by United States citizen employees or their dependents that are punishable under the laws of both nations. In cases of waiver of its jurisdiction by Panama, the accused must be tried outside Panama, since the U.S. courts in Panama will cease to function in all cases after the expiration of the transition period.

Upon the end of the transition period, the United States retains primary jurisdiction over criminal offenses committed by members of the United States Armed Forces, including civilian component and dependents, within the defense sites, and over offenses committed by such persons outside the defense sites arising out of performance of official duty and in certain other cases.

An accused United States citizen employee, a member of the United States Forces or its civilian component or a dependent tried by Panama is entitled to special rights, specified in detail in the Implementing Agreements. Among these are the right to a prompt and speedy trial, the right to be informed in advance of trial of the charges made, the right to confrontation and cross-examination of witnesses, the right to legal counsel and the privilege against self-incrimination.

C. Privileges and immunities

Installations owned or used by agencies and instrumentalities of the United States operating in Panama, and their archives and documents, are to be inviolable. The Parties are to agree upon procedures to be followed in the conduct of any criminal investigation by Panamanian authorities at such locations.

Agencies and instrumentalities of the United States operating in Panama pursuant to the Treaty are immune from the jurisdiction of the Republic of Panama. In addition, the United States may designate up to twenty officials of the Panama Canal Commission who with their dependents shall enjoy the privileges and immunities accorded to diplomatic agents and their dependents under international law and practice.

D. Continuation of activities and ownership rights

The Treaty contains provisions protecting established business enterprises and non-profit activities, and private ownership rights. Business and non-profit activities conducted in the Canal Zone for at least six months prior to the signing of the Treaty may be continued. They will have 30 months to come into compliance with Panamanian law. Thereafter they will be subject to all Panamanian laws applicable to similar enterprises in Panama, without discrimination. Existing private ownership rights in buildings and other real property improvements located in the Canal Zone will be recognized in conformity with Panamanian law. The Treaty assures to the owners of improvements the use of the land upon which the improvements are located, upon specified terms.

If Panama requires persons protected by the Treaty to discontinue their activities or to vacate their property for public purposes, they shall be compensated by Panama at fair market value.

E. Exemption from Panamanian taxes

The Implementing Agreements provide exemptions from Panamanian taxes for United States agencies and their personnel, including dependents, and contractors.

3. ORGANIZATION OF THE PANAMA CANAL COMMISSION

Next, Mr. Chairman, I want to provide to the Committee a brief summary of the basic organization of the new Canal Commission. As the Committee members know, the operation of the Canal will be transferred from the Panama Canal Company to a new U.S. Government agency to be known as the Panama Canal Commission.

The Commission is to be supervised by a Board composed of nine persons, of whom five will be nationals of the United States and four nationals of the Republic of Panama proposed by their government.

Until December 31, 1989, the Administrator will be a national of the United States and the Deputy Administrator a national of the Republic of Panama. After that date, the Administrator will have Panamanian nationality and the Deputy Administrator will be a U.S. national. If the Republic of Panama requests the removal of a Panamanian national from membership on the Board, the United States shall honor the request and the Government of the Republic of Panama shall propose the replacement. If the United States wishes to remove a Panamanian national, the two governments shall consult in advance to reach an agreement on such removal. The United States has the right to remove an Administrator or Deputy Administrator of Panamanian nationality. In such case, Panama shall propose another Panamanian national to replace the removed official.

In addition to the participation of Panamanian nationals at the top management level just described, there shall be an increasing participation of Panamanian nationals at all other levels and fields of employment.

A Panama Consultative Committee, composed of an equal number of high-level representatives of both nations, shall be appointed to advise both governments on matters of policy affecting the Canal's operation.

4. IMPLEMENTING LEGISLATION

Finally, Mr. Chairman, I am pleased to have this opportunity to report to this Committee on the proposed legislation to implement these Treaties that is being prepared for submission to Congress in the near future. That legislation of course will be an essential component of the overall program of implementation of the Treaties. Among the subject matters on which legislation will be needed are:

A. Organization and activities of the new Panama Canal Commission, including arrangements for establishing and collecting tolls and payment of the stipulated sums to Panama;

B. Employment practices of the Panama Canal Commission, and the special retirement program envisaged in Article X of the Treaty;

C. Adjustments of the jurisdiction of U.S. courts and law enforcement authorities during the transition period; and

D. Certain diplomatic aspects of United States-Panama relationships under the Treaty, and other matters relating to Panama's assumption of various governmental functions.

The Executive branch looks forward to working with both houses of Congress on this important legislation.

In conclusion, Mr. Chairman, I would like to assure the Committee of our conviction that these treaties establish the legal structures and relationships necessary to assure fair and just treatment of United States citizens, a smooth and effective

transition to Panamanian authority and continued efficient and peaceful operation of the Canal.

STATEMENT BY HONORABLE CLIFFORD L. ALEXANDER, JR.

INTRODUCTION

Mr. Chairman, members of the Committee on Foreign Relations, I appreciate the opportunity to appear before you today as you receive testimony regarding the impact of the proposed new Panama Canal treaty on future Canal operations.

As you know, my primary responsibility as Secretary of the Army is the head of the Department of the Army. However, the Secretary of the Army has also a major responsibility for overseeing the effective and efficient operation of the Panama Canal. Specifically, the Secretary of the Army has been designated by the President:

"As the officer of the United States to Supervise the administration of the Canal Zone Government * * * and to act as stockholder of the Panama Canal Company. In performing his functions * * * the Secretary of the Army shall act as the direct representative of the President of the United States, and not in his capacity as head of the Department of the Army."

I want to assure you that I do not take this duty lightly. I firmly believe in the importance of the Canal to our country and will be the first to identify myself with those who believe that the Canal will continue to be a valuable asset in the foreseeable future. However, I am equally firm in my support for restructuring our treaty relationship with Panama.

By negotiating a new treaty relationship with Panama, our country has shown that it can be sensitive to and respectful of Panama's needs and desires as a sovereign state, while continuing to insure United States interests and the continued effective use of the Canal by world commerce. I believe that through these treaties our country can insure that protection of its vital interests while, at the same time, put to rest the old conflicts and frustrations that have impeded the development of a cooperative partnership between our country and Panama.

The Canal treaties provide our country with an excellent opportunity to do justice to our real accomplishments in Panama, correct past inequities, protect the legitimate needs of the United States and international shipping, and rightly take into account the aspirations of the people of Panama. We can achieve all this in a spirit of cooperation and accommodation that has previously been known on few occasions in the history of U.S.-Latin American relations.

I would like to present a short opening statement outlining my views with regard to the future operation of the Canal, after which Governor Parfitt will provide additional and more detailed data. We will then be glad to answer any questions which you might have regarding current and future Canal operations.

GENERAL

Over the past 63 years the Panama Canal enterprise has provided a valuable service to world shipping. This exceptional performance by the Canal organization has often been recognized by members of Congress as well as by the users of the Canal. Under the new treaty we will continue to operate the Canal utilizing, to the greatest extent possible, tried and proven procedures—those which have been accepted by the users and the Congress. Required deviations from proven practice and established managerial procedures will be held to the minimum necessary to conform to the letter and spirit of the treaty. In my view this is most desirable, and certainly achievable under this new treaty.

I would like to comment briefly on three general aspects of Canal operations under the proposed new treaty: activities of the Panama Canal Company, the functions of the Canal Zone Government, and finally caring for our employees.

THE PANAMA CANAL COMPANY

The treaty calls for the Panama Canal Company to be replaced by a successor agency to be known as the Panama Canal Commission. The Commission will be a self-supporting United States Government agency with the same broad mission as the Panama Canal Company: The movement of ships between the oceans and the conduct of supporting functions incident thereto.

While the Commission, will control the lands and waters necessary to the transit of ships and will not be precluded from conducting any activities which are directly related to that function, it will not perform certain supporting activities which are now conducted by the Canal Company. Examples of the latter are: commercial port

operations, commercial bunkering, commercial ship repair and retail sale of goods and services.

Although the existing Panama Canal Company retail store system will be discontinued, Commission employees will be authorized use of military exchanges and commissaries for the first five years of the treaty. I will propose that after that period an additional compensation be provided to employees in order to offset the associated increase in their cost of living.

There will be an increase in toll rates at the beginning of the treaty period as a result of the increased payments to Panama. This toll increase will insure that adequate revenues are available to cover additional costs at the outset of the new relationship. We are now conducting a detailed analysis to determine the exact toll increase which will be necessary to meet expenditures. In subsequent years we would hold tolls to the minimum necessary to meet costs, as has been past practice.

I recommend that the future Canal organization continue to be operated under the provisions of the Government Corporation Act thus enabling us to utilize business and management practices which will best provide efficient operations at minimum costs to the user.

THE CANAL ZONE GOVERNMENT

Under the new treaty the Canal Zone and its Government will cease to exist six months after the exchange of ratifications. Nevertheless, in those cases where a Governmental service is essential to the well being of our employees we have retained the necessary rights for the United States to provide the needed service. Thus, health and educational functions now provided by the Canal Zone Government, which include over 67% of the Canal Zone Government's employees, will be transferred to the Department of Defense. United States citizen employees of the Commission will, of course, retain the right to use these facilities for the life to the treaty.

The Governmental functions of police, courts, customs and immigration will be assumed by the Republic of Panama on the effective date of treaty. It should be noted; however, that for United States citizen employees and their dependents, police and court activities will be continued by the United States for a period of three years after the exchange of ratifications.

While the Canal Zone postal system will be discontinued, its services will be assumed in part by the U.S. military post offices in Panama. The fire protection division will be reduced in strength and transferred to the Commission.

RIGHTS AND BENEFITS OF EMPLOYEES

One of the most important issues to be considered regarding the new treaty is how the rights and benefits of current employees of the Canal enterprise will be protected. Let me list just a few of the many actions which we will take or propose be taken in order to adequately deal with this matter.

Provision of a priority job placement program.

Provision of an early optional retirement program which would be designed to ease the impact of necessary force reductions while at the same time providing an incentive for employees with essential skills to remain with the Commission.

Assurance of the continued availability of adequate housing.

Provision of adequate educational and medical services.

Terms and conditions of employment no less favorable than those existing on the effective date of the treaty.

In short, Mr. Chairman, the treaty will provide us with all the rights necessary to adequately care for both the Panamanian and United States citizens of our dedicated work force.

CONCLUSION

Mr. Chairman, under the new treaty we would retain all of the specific rights necessary to efficiently operate the canal and adequately care for our employees.

Governor Parfitt will now provide you with more detailed information on Canal operations.

PRESENTATION BY H. R. PARFITT

Mr. Chairman and members of the Foreign Relations Committee, you have asked that I outline to you my impressions on how the Panama Canal organization will operate under the new treaty, and I will attempt to do so.

First, however, I should note that my remarks are based on an initial review of the recently signed treaty documents. Considerable further analysis must be made before precise implementation plans can be developed. This effort is underway.

A prime consideration in the determination of method of operation under a new treaty should be an assessment of how well the existing organization has functioned. On that score, one need have no reservations. From the completion of the canal in 1914, and continuing today, the canal has been operated efficiently, safely, and has provided excellent service at reasonable cost.

CURRENT SITUATION

At this point it might be helpful to briefly review the current situation. The agencies known as the Panama Canal Company and the Canal Zone Government have existed since July 1, 1951, when Public Law 811 became effective. Business operations, including operation of the waterway, are separated from the functions associated with civil government, but both organizations function as an integrated enterprise. By law, the Panama Canal Company is required to finance its operating costs, and in addition, to pay annually to the U.S. Treasury, the following: (1) interest on the net direct investment of the U.S. Government in the Company; (2) the net cost of the Canal Zone Government; and (3) a portion of the annuity to Panama. Thus the Company is required to be self-sustaining. Although appropriations are authorized to cover operating losses or for capital improvements, this has not been necessary to date.

Major contributing factors toward this success have been: (1) a stable and well qualified workforce; (2) sound preventive maintenance practices; and (3) the financial and operational flexibility of this Government corporation.

Some measure of the success of the Panama Canal Company since its formulation in 1952 can be gleaned from the few highlights of FY 1952 through FY 1976 results which follow:

A. Although transits increased 70 percent and Panama Canal tonnage increased 274 percent during the period, the full-time workforce was reduced 35 percent.

B. Net revenues of \$90 million were generated.

C. Capital investment of \$284 million was made from internally generated funds.

D. Although general, inflation indexes increased 230 percent over the period, tolls were in effect raised only 50 percent. It should be noted, however, that this increase has been required in the last three years.

Operating losses during the past four years due to rampant inflation, worldwide recession, and the reopening of the Suez Canal have been overcome by management improvements, cost cutting, and the recent adjustments to tolls. As a result we are again in the black in FY 1977.

Traffic growth is expected to continue, but at a moderate rate; and even without treaty impacts, periodic increases in tolls may be necessary to absorb the increase in costs resulting from inflation. In the short run, North Slope oil movements through the Canal could temporarily alter our growth pattern and need for toll increases. However, these movements are not expected to last more than a few years as pipeline alternatives appear to be more economical.

Given the success of the present agency, it seems logical to model the Canal Commission after it, making adjustments consistent with the requirements imposed by the new treaty but avoiding unnecessary change in the interest of operating stability.

TREATY PROVISIONS

With this in mind, I will now briefly review the most significant provisions of the treaty likely to influence the structure of the new organizational entity and its ability to perform the basic mission of transiting ships safely and efficiently through the canal.

The dominant and all encompassing change under the treaty is immediate recognition of Panamanian sovereignty and general territorial jurisdiction over the present Canal Zone. This provides a back drop against which all other changes must be viewed.

Given this basic change, the status of the new Canal Commission takes on the semblance of a business enterprise operating in a foreign country. Obviously, it is somewhat more than that since the new operating agency, the Panama Canal Commission, will be a United States Government agency and will be granted extensive rights, particularly as they pertain to the management, operation and maintenance of the Panama Canal.

More specifically, the treaty would eliminate the Canal Zone Government and the Panama Canal Company and substitute therefor the Panama Canal Commission.

This agency will have no authority to perform most governmental or commercial functions. Many of these functions will be performed after the effective date of the treaty by Panamanian government agencies or private interests in Panama. These include: the operation of the ports of Balboa and Cristobal; the operation of the railroad; provision of bunkering services; licensing of vehicles, vessels, and aircraft; customs and immigration services; and partial police and fire protection; street maintenance; and garbage collection. The total police function, the operation of the prison system, and the provision of postal, commissary and post exchange services (available initially from the U.S. military) will likewise be provided by Panamanian sources after prescribed phase-out periods. Other functions—the operation of schools and hospitals—will be transferred immediately to the U.S. military forces.

Aside from these changes in functional authority and responsibility, there are major changes in areas and facilities made available to the commission. These are identified in great detail on maps and in descriptive language in the agreement in implementation of the treaty. Briefly they fall into three categories: the Canal operating area consisting of a continuous area following the Panama Canal and generally contiguous to it, plus certain limited non-contiguous areas; specific installations and facilities; and housing areas for U.S. citizens.

The housing areas are to be administered in accordance with a regime of civil coordination, that is, a set of rules established in the implementing agreement. This regime provides that title to this housing will pass to Panama with the Commission having rights, without cost, to use, manage, maintain, improve, and rent such housing. Houses not required for U.S. citizen employees will pass exclusively to Panama and must, as a minimum, be relinquished in accord with a prescribed schedule.

The reduction in functions, activities, and area of responsibility of the Commission will have a significant financial impact. There will be substantial reduction in expenses although this will be offset in part by a reduction in revenues from transferred activities. It is also anticipated that the Commission will be relieved of the requirement to pay interest on the net direct investment of the United States in the Canal.

On the other hand, the Commission will be obliged to pay \$10 million per annum to Panama as reimbursement for certain specified public services to be provided in canal operating areas and housing areas. At the same time, the Treaty imposes obligations to pay Panama the following out of revenues: 30 cents per Panama Canal net ton transiting the canal, to be adjusted periodically for inflation; a fixed sum of \$10 million annually; and an additional \$10 million per year to the extent revenues exceed expenditures. The latter \$10 million has a provision that in the event canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed. The resulting difficulty in accumulating surpluses for application in lean years would appear to significantly restrict the flexibility of the new organization.

In net, these additional obligations are certain to necessitate an immediate toll increase of an as-yet-uncertain amount. A new study of toll economics is now underway, with results due by mid-January. This study will update traffic projections, including the likely extent and duration of North Slope oil movement, and will provide an analysis of the sensitivity of canal traffic to various levels of toll increase. The initial toll increase might range from 25% to 40% depending on several variables, key among which is the amount of revenue realized from transits of North Slope oil through the canal. If no such oil were to materialize—the worst case—the toll increase required to cover costs could be about 40%. If \$25 million in annual revenue materialized from North Slope oil—the most optimistic current projection—then tolls might only have to be raised by about 25%.

The Treaty provides that the Panama Canal Commission will be supervised by a Board of Directors comprised of five United States nationals and four Panamanian nationals. Until 1990 the Canal Administrator (the Chief Executive Officer) will be a United States national and the Deputy Administrator will be a Panamanian national. There will be a Consultative Committee comprised of an equal number of representatives from the United States and Panama which will advise the two governments on such questions as general tolls policy and on employment policies aimed at increasing Panamanian participation in canal operation. There will also be a Coordinating Committee which will establish rules and procedures necessary to implement a number of provisions of the Treaty and their related agreements.

The conditions of employment are of paramount importance, and in recognition of this, the Treaty and Implementing Agreements contain considerable detail on this subject. Unfortunately, there is no way that a change as major as the one contem-

plated can be accomplished without some adverse impact on employees and their families. Thus, efforts are being made to ameliorate any hardships. Those individuals displaced from employment will be placed, to the maximum extent feasible, in other appropriate jobs. Those employees continuing with the Commission will have, in general, terms and conditions no less favorable than those existing just prior to the Treaty effective date. Furthermore, an early-optional retirement program will be provided for all persons employed by the Company/Government immediately prior to the entry into force of the Treaty.

As a final point, the Treaty enters into force six calendar months after exchange of instruments of ratification and terminates at noon, December 31, 1999. The major effects are felt on the effective date of the Treaty; however, there will be changes through the life of the Treaty with the most important taking place during the 30-month transition period. At the end of this period the limited jurisdictional authority granted to the United States will cease.

ENABLING LEGISLATION

The impact discussed so far has been limited to that which would result from the Treaty terms themselves. In addition, enactment by Congress of implementing legislation will be necessary. Such legislation will also have a definite impact on our operations, and we have been assisting in its preparation. In my view, the legislation should incorporate changes in the Canal Zone Code, so as to:

Establish the Panama Canal Commission as the successor to the Panama Canal Company and the Canal Zone Government with respect to whatever property and functions of the government are retained;

Generally conform the toll provisions and other fiscal provisions of present law to the new Treaty;

Conform present personnel laws to the Treaty and provide special benefits to those affected by the Treaty, including liberalized retirement; and

Amend provisions concerning court jurisdiction and related law enforcement matters to conform to the treaty provisions that would govern the 30-month transition period following the effective date of the treaty.

PLANNING FOR THE FUTURE

Thus far our participation in the Treaty process has primarily been in the area of providing to our negotiators detailed technical information as well as our views on Treaty initiatives. Now that the Treaties have been made available, our first task, which we are well into, is to review and analyze the lengthy and complicated Treaty documents. We have briefed the employees and the general public in the Canal Zone on the Treaties; are identifying areas that need clarification and problems that will require resolution; and have begun detailed planning to position ourselves to implement provisions of the Treaty at the appropriate time.

More specifically, we are identifying activities which must be shed on a specific timetable and estimating their cost and revenue impacts; further identifying in the same terms the secondary impacts of shedding functions and facilities; considering required organization changes; and planning for the myriad of personnel actions that will ensue to include establishment of reduction-in-force and bumping rights and procedures, extra efforts to aid displaced employees and their families, and development of plans and programs for priority placement and training of Panamanians; planning for modification of capital programs consistent with changed responsibilities; and planning for financial changes with major emphasis on the extent to which toll rate increases are required and projected traffic sensitivity to any such increases. We are planning to pattern the new organization as closely as possible after the existing one. We are, of course, very mindful of the fact that all of this work must be done without adversely impacting on current mission accomplishment.

I want to emphasize that these essential planning efforts are only that, and no pre-implementation is involved. Finalization of plans would follow Senate approval of the Treaties. Implementation of such plans will proceed in accord with the Treaties and the related implementing legislation.

FUTURE OUTLOOK

As indicated previously, we have not yet had adequate opportunity to identify and fully address the myriad of matters involved in implementing the Treaty. We have, however, accomplished much and have a good start on the job at hand. Based on our evaluation to date, the tentative conclusions are as follows. Minimum change needs to be made in staffing and operation of activities involved directly in the operation of the waterway. There are some potential problems here stemming from interface

with port operations and certain general support activities transferred to others. Some erosion in efficiency can be expected, particularly in the early days, but this can be minimized by close coordination and the wholehearted cooperation of Panama. There is no doubt, however, that transfer of support services from the direct control of the canal administration will create some problems in obtaining services at the same level that we enjoy now.

On the basis of force projections, it appears that the shedding of activities is likely to reduce the size of the work-force by between 5,000 and 6,000 employees on the effective date of the Treaty, of which between 2,100 and 2,400 will be transferred to the Department of Defense. A further reduction of approximately 500 will occur by the end of the 30-month transition period.

SUMMARY

To summarize, the treaty eliminates the Canal Zone and recognizes sovereignty and jurisdiction of Panama. The new agency (Panama Canal Commission) will operate within a reduced area, with reduced assets and functions, but with extensive rights related to the movement of ships through the Panama Canal. The transitional period will be especially challenging. The key to success, especially at that time, but as well throughout the Treaty period, will be the ability to maintain a technically qualified and highly motivated workforce, as well as successful efforts to establish and nurture a spirit of cooperation with Panamanian officials. Legislation consistent with the spirit of commitments made to employees will be critically important. Equally important will be the ability to provide for the financial needs of the Commission, including capital requirements whose cost is apt to increase continuously due to inflation.

Mr. Chairman, in the short time available, I have only been able to touch generally on those major areas where I feel there will be a significant impact on the way the canal would be run under the Treaty. As we proceed with our large task of planning to discharge major responsibilities for the operation of the canal until the year 2000, we are mindful of the extraordinary strength of the existing canal organization—of its sound flexible financial structure and, most importantly, its personnel. We are blessed with employees who feel a deep relationship to the canal; their dedication to keeping it well maintained and smartly run, and their willingness to go the extra mile in any emergency are truly extraordinary. To the extent these strengths can be retained, our ability to meet the challenges in the months and years ahead will be enhanced. We shall lend our every effort to insure that our performance will not falter and that we shall conclude that chapter of history of U.S. presence on the Isthmus of Panama on a high note.

STATEMENT BY THE HONORABLE WILLIAM J. JORDEN

Mr. Chairman and distinguished members of the Foreign Relations Committee: It is a pleasure and an honor to appear again before this Committee. The Panama Canal treaty which you have before you for your advice and consent is a document of historic importance. I hope I will be able to provide information and insights that will be of use to you in your momentous deliberations.

A few brief biographic notes might be in order. I have been the U.S. Ambassador in Panama since April 1974. Before that, I was a senior member of the staff of the National Security Council dealing with Latin American affairs in general. Before that, I was a special assistant to former President Lyndon Johnson, helping him to organize his presidential library and write his memoirs. I have been in the foreign affairs area of government for 16 years, in the Department of State and the White House. Before that I was a newspaperman, for 14 years, almost wholly in the foreign policy area—first for the Associated Press and then for the New York Times.

Let me say at the outset, Mr. Chairman, that I have followed the course of the treaty negotiations fairly closely over recent years. I am also generally familiar with the history of our relations with Panama over the years since the 1903 treaty was adopted. Based on my own observations of the situation in Panama and my awareness of our deep interest in the Canal, I wish to say that I am wholeheartedly in favor of the proposed treaty and the related treaty concerning the permanent neutrality and operation of the Panama Canal. I believe they represent the best, the wisest, the most statesmanlike course we can follow at this juncture of history.

When I was invited to appear before this Committee. I asked myself what I could provide that would be most useful. I knew you would have heard from the Secretary of State regarding the foreign policy implications of the new treaties. You would have heard a detailed report on the treaties themselves from my two distinguished

colleagues who negotiated the agreements, Ambassadors Bunker and Linowitz. You have explored the security and military implications of the treaties with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff. As for the technical operations of the Canal itself, now and in the future, my colleagues at this session—Secretary Alexander and Governor Parfitt—can provide more detailed information than I can.

What I would like to do is to look at this matter from the vantage point of the Isthmus of Panama. How did we get where we are? Where do we go from here? What course best serves our fundamental interests? How do Panamanians look at all this? What are the prospects for a reasonable working relationship between our countries? These are some of the questions I would like to address with you.

I am sure the members of this Committee are familiar with the dubious history of the treaty of 1903 which the present agreements would replace. That treaty, written and signed in unseemly haste, is what Panamanians call "the treaty no Panamanian ever signed." As you know, it was developed and approved by a Frenchman who—it is fair to say—had little interest in the future of Panama, but a great interest in salvaging what he could of the financial interests of the defunct French Canal Company. It gave the United States rights it would have "if it were sovereign of the territory"—and it gave us those rights "in perpetuity." We agreed to pay Panama \$10 million and the munificent sum of \$250,000 a year and in the debate in the Senate which followed, one member of this august body said: "We have never had such a concession so extraordinary in its character as this. In fact, it sounds very much as if we wrote it ourselves." Incidentally, the payment to the French Company was \$40 million—four times what we paid Panama.

It was an arrangement, Mr. Chairman, greatly advantageous to the United States, and vastly profitable to the French Canal Company. But it was not much of a deal for Panama. It was an arrangement which—as the Secretary of State admitted at the time—was "we must confess, with what face we can muster, not so advantageous to Panama."

"You and I know too well," he wrote his senatorial friend, "how many points there are in this treaty to which a Panamanian patriot could object." And object they did. There is a notation widespread among our fellow Americans that Panamanian resistance to the 1903 treaty is something of recent origin, a development of the last few years. And some have portrayed opposition to the 1903 treaty as merely a product of "leftists" and "extremists." That, Mr. Chairman, is the wildest kind of distortion of history. If one takes the trouble to go back to the files of the Panamanian press of the period, you quickly find that resistance to the 1903 treaty began in 1903. And it has never ceased since.

This is an issue—probably the only issue—which brings Panamanians together in a kind of national unanimity that is rare in history. Some members of this Committee have been in Panama; I urge those who have not to make the trip. Talk with Panamanians. You will find that whether they are rich or poor, city men or campesinos, university graduates or day laborers, they are as one in their dream of a Panama that is unified and sovereign, a country that is no longer divided in half by a foreign enclave.

And this brings me, Mr. Chairman, to one of the central points I wish to make today. For us Americans, the key goal in this situation—it seems to me—is to assure that the Panama Canal is open and efficient, available to us and to world commerce, and that it be properly protected against external attack. I believe the treaties before you give us that assurance. Opponents of those treaties would have you believe that Panama's key role is to take over the Canal. That, I submit, misses the whole point, the whole explanation of Panamanian attitudes. They want a canal that works well as much as we do. They have pride in it; they benefit from it. The issue, as seen through Panamanian eyes, is not the canal at all. Rather it is the presence in a friendly country of a zone governed by the United States. It is an area over which Panama—the country in which it is located—has absolutely no control of any kind. If a Panamanian is caught speeding or is involved in an accident, he gets a ticket from a foreign policeman. If the offense is serious enough, he is tried in a foreign court, under a foreign code of laws.

You and I can well imagine what the reaction would be of Americans faced with such a situation. Suppose, for example, that history had dictated that the Mississippi River and a strip of territory on each side were controlled by a foreign power. Suppose that in going from Illinois to Missouri, or from Louisiana to Texas you had to cross that strip. And imagine, if you will, that you broke the law in some fashion—by speeding or having a tail light out, or whatever—and you were arrested by a French gendarme or a Mexican policeman. It does not take great imagination

to know what our reactions would be. Yet that is the situation that our Panamanian friends have found themselves in for the past 70 years.

That is what they have for so long wished to see changed. That is what the treaty now before you will change. And I for one say that it is high time for such change. What is our central interest in Panama? I submit that it has not changed essentially since President Theodore Roosevelt's day. It is to maintain between the two great oceans a passageway that is open, efficient, safe and neutral. Our commercial interest in that waterway continues to be significant—though in a world of changing trade patterns and changing technology, it is less than it once was. Our military interest, too, continues—though, again, it is not what it once was. I think that all of us are agreed that the maintenance of the Canal in an efficient and open way is a great advantage—to us and to the other nations of the world.

How do we best achieve that end? Not, I think by being inflexible and bull-headed. Not by simplistic formulas like "it's ours and we're going to keep it." No waterway or road, no military base or business can long remain open and efficient if it is surrounded by a sea of public hostility and resentment. But, you may well ask, don't the Panamanians realize that the Canal is a major resource that produces great benefits for them? Of course they do. They want to have the Canal open and operating well just as much as we do, perhaps more. They know better than we do what it means to them and their country.

Their feelings—and I share it—is that the best guarantee of a canal that is working well and serving us all is one in which the American people and the Panamanian people are working as partners. And that is precisely the goal of the treaty that is before you. There can be no better security for the Panama Canal than to have the people who live around it, who work on it feel that it is part of them—and that any effort to attack it or disrupt its operation is an attack on them and on their best interests.

I am sometimes asked, Mr. Chairman, whether we can "do business" with Panama? My answer is Yes—at least if in dealing with this small country we try to understand what it is really like and if we treat it as a powerful yet fair nation must treat a neighbor. I believe it is fair to say that Panama has deeper and closer ties with the United States than has any other country in Latin America. In large part that is because of the presence of the Canal and because of the many ties that have developed between us stemming from that fact of geography.

Thousands of Panamanians have attended our colleges and technical schools. They have come to know us well and to develop a respect for our way of life, for its freedom and its fairness. And if they feel some bitterness over the historical record, it is, in part, because they see such a gap between what we have sometimes done and what we have professed.

Despite some rhetorical outbursts and occasional incidents and demonstrations, there is remarkably little anti-Americanism in Panama. The vast majority of Panamanians harbor warm and friendly feelings toward our country and our citizens. They want us as friends, not enemies.

Nonetheless, I realize that some Americans living in the Canal Zone feel otherwise. They are nervous and concerned. I think we can all understand that. For they see in a new treaty an end to the very special and protected way of life they have enjoyed. They have gone through a very trying period in which they felt their future was being changed, and they were not at all sure in what direction. In the absence of hard information, many of them imagined the worst. They became vulnerable to every rumor and exaggerated prediction. And there has been no shortage of rumors and exaggerations!

Now, I think, the situation is changing drastically. With the publication of the text of the treaties, Americans in the Canal Zone realize they have not been sold down the river. They understand that their basic employment rights, job security and the like are preserved. Thanks to the efforts of Governor Parfitt and Secretary Alexander, there is a vastly better perspective as to what a new treaty means—and will not mean.

One thing that has greatly bothered many people in the Zone is the prospect of being subject to Panamanian laws and jurisdiction. To meet this concern, the treaty negotiators reached agreement on certain procedural guarantees—set forth in an annex to the treaty—that assure certain special protections to any American who, in the future, may face prosecution. Those protections include the right to a speedy trial, to a lawyer of choice, to full disclosure of charges, to have a representative of the U.S. Government present at any trial, etc., etc., down a very long list. I believe the Government of Panama has every intention of living up to these guarantees. I am sure they would not have agreed to these special features at all if they had no intention of abiding by them. Moreover, it is clear that the Panamanians want as

many Americans as possible to remain in their country for some time—to provide the skills needed to keep the Canal operative and to train Panamanians to do those jobs.

My clear impression is that, as these various features of the new treaty have become known, the outlook among Americans in the Zone has moderated. I believe that the vast majority—are ready to see how such a treaty works in practice, to give it a fair chance.

In this connection, I should point out to this Committee that there are some 3,000 American employees of the Canal Company who will be affected by a change in their life style and in the rules of the game. At the same time there are some 6,000 Americans living and working peacefully in Panama—in banks and businesses, selling and buying, teaching and preaching, in short doing all the things that Americans are doing in most other countries around the world, day in and day out—without special privileges or special rules. With time—and with good will on both sides—I think our citizens now in the Zone will find that it is not that difficult to live and work in another country.

I have been asked by friends here and in Panama how the various joint boards and committees provided for in the treaty will work out. As you know, there is provision for a consultative committee to act as a kind of policy advisory board to the Panama Canal Commission. There will also be a coordinating committee of both Americans and Panamanians to help see that the provisions of the treaty are carried out in an orderly and reasonable fashion. Similarly, on the military side, there will be a combined board of senior military representatives as well as a joint committee to help carry out the military provisions of the treaty. I cannot say, of course, how these various bodies will conduct their business. They will be breaking new ground and carrying out functions that have not previously existed.

What is clear, of course, is that the working of any body of men and women depends on the quality of people selected to do the job—and on the spirit in which they undertake their tasks. I have been assured by the highest levels of the Panamanian Government that they want these various groups to be efficient and to work in harmony. For that purpose, they have told me, they intend to pick the best possible and most highly qualified people available. Given that spirit, I see no reason why these joint groups should not work in harmony and in the best interest of both countries.

A related question is whether the Panamanians will ever be able to run the Canal. There is a kind of arrogance in the very question that I do not like. It reminds me of the way some people used to talk of the impossibility of Egyptians ever running Suez. In an earlier period, you will recall how unthinkable it was in London that a bunch of ragtag colonists could ever run their own affairs. The short answer, Mr. Chairman, is that of course Panama will be able to run the Canal. 70 percent of the work force now operating the Canal is Panamanian.

They could doubtless fill many of the administrative and technical jobs tomorrow. As for some of the more highly developed skills, there is no reason why Panamanians cannot acquire them in a reasonable time. And we can help greatly in providing the necessary technical training.

One final question that is frequently asked: In giving the Canal to Panama, wouldn't we be turning it over to a left-wing military dictatorship? My answer to that loaded question is, first, to note that under the treaty we are discussing, the United States retains the responsibility for operating and the primary responsibility for defending the Canal for the remainder of this century. The government that finally will take control of Canal operations will not be the present government. And we cannot know precisely what form of government that will be—any more than we know what our own condition will be in the year 2000.

But more than that, I would say that the American people have been given a quite distorted picture of the present Government of Panama. It is not a full-blown democracy as you and I understand that term. Frankly, there are things I would like to see changed in the system. But I am not a Panamanian and it is not for me to prescribe what is good or bad for others. That is a judgment only the Panamanian people can make—as they will over time. We can perhaps explore these matters more fully if you like. One thing I do know, Mr. Chairman: if we wish to encourage change in what we regard as a positive and constructive direction—in Panama or in any other country—we can only do so in an atmosphere of friendship and trust, of cooperation and mutual advantage. We cannot hope to see our values flourish, we cannot expect to have our suggestions heeded, we cannot work effectively with others toward the goals we cherish if we try to do so in an atmosphere of bitterness and frustration. It is to the goal of eliminating the bitterness of the past

and the frustrations of the present that the treaty now before you is so largely aimed. I hope it will receive your thoughtful and favorable consideration.

PANAMA CANAL ISSUE

Mr. MATHIAS. Mr. President, we are in the process of posing questions to the Carter administration on its proposed Panama Canal Treaty. Whether or not we ratify this treaty will depend largely on how effective the President is in making his case to us and to the country. As a very useful contribution to the ongoing debate, I should like to insert in the Record an editorial by the Cleveland Press together with the very useful response written by one of my constituents, Reed I. Irvine of Silver Spring, Md. I ask unanimous consent that this article be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

PANAMA CANAL ISSUE

After bloody riots in the Canal Zone that left 25 dead in 1964 and after tortuous negotiations since then, the United States and Panama at last have agreed "in principle" on the future of the Panama Canal.

In a historic and sensible step toward decolonialism, the Carter administration wishes to yield control over the waterway and the 533 square mile Canal Zone to Panama in the year 2000.

The negotiators no doubt feel they have accomplished a difficult feat, but the hardest part lies ahead: to convince the required 67 U.S. senators that it is in the national interest to ratify a new canal treaty.

While we may change our mind after a word-by-word reading of the treaty—it has not yet been written—the outlined agreement seems fair to both sides and we hope the Senate approves it.

The Panamanians made major concessions: Letting the Americans run the canal for 23 more years; accepting a U.S. military presence until 2000; agreeing that U.S. forces could return after that date to defend the canal, and scaling down their annual rental demands to \$50 million, which can be covered by canal tolls.

Unfortunately the canal issue is an emotional one in this country and a violent debate can be expected. Ronald Reagan and other conservatives are fond of declaiming, "We bought it, we paid for it, we built it and we ought to keep it."

In fact, "we built it" is about the only accurate part of the statement. We didn't buy it; Teddy Roosevelt used to admit proudly that he "took" the Canal Zone and all but blackmailed Panama into ratifying the one-sided 1903 treaty giving the United States rights there "in perpetuity."

However, it's pointless to argue about ancient history. What this country got away with in an era of imperialism is not what it should practice today. It makes more sense to argue about the canal's value, which is much exaggerated by its admirers.

Diplomatically it is a handicap. It is seen throughout Latin America as proof of "Yankee imperialism" and thus harms the nation's interests in the hemisphere.

Strategically it is obsolete. Big aircraft carriers, large naval vessels and modern tankers cannot fit through it. That is why this country built a two-ocean Navy. Also, the canal is indefensible; in wartime one Soviet submarine could close it with one nuclear missile.

Economically the canal is overrated. It now carries only 2 percent of this country's coast-to-coast trade. And by the year 2000 its military and economic value will be less than today's.

Americans ought to try to look at the canal through Panamanian eyes. It was stolen from them. It is an open wound dividing their country, diminishing their nationhood. It is their main natural resource—held by foreigners.

There are only 1.7 million Panamanians but they are united in their determination to regain the Canal Zone. If the Senate succumbs to demagoguery and jingoism and defeats the treaty, one can expect guerrilla warfare and sabotage of the canal.

In their struggle the Panamanians will have the backing of all Latin America. Should this country risk a nasty little tropical Vietnam over a waterway that isn't worth much anymore?

SENATE, SEPTEMBER 3, 1977.

EDITOR,
The Cleveland Press,
Cleveland, Ohio

SIR: Your editorial on the Panama Canal on August 12 was flawed by several factually inaccurate statements.

1. You said that we "built" the Panama Canal but we didn't "buy" it. Of course, the United States paid both for the construction of the canal and for the territory through which it was built. We built the canal at a cost of \$375 million, a figure which would amount to some \$2.5 billion at today's prices. We paid Panama \$10 million for the rights to the Canal Zone and we paid individual landowners nearly \$5 million for title to their property in the zone. We subsequently paid \$25 million to Colombia to compensate it for its claims on the zone. In addition we paid \$40 million to the private French company that had tried and failed to build the canal for its rights and equipment. The Canal Zone has been called our most expensive territorial acquisition.

2. You state that the Panama Canal is obsolete strategically, arguing that "large naval vessels and modern tankers cannot fit through it." Two former chairmen of the Joint Chiefs of Staff and two former chiefs of Naval Operations have sent a joint letter to the President in which they say: "As long as most of the world's combatant and commercial tonnage can transit through the Canal, it offers inestimable strategic advantages to the United States . . . Under the control of a potential adversary, the Panama Canal would become an immediate crucial problem and prove a serious weakness in the overall U.S. defense capability, with enormous potential consequences for evil." These experts note that all naval vessels except the largest (13) carriers can transit the Canal. Modern tankers carrying Alaskan oil are now transiting the Canal. Only huge supertankers cannot make the passage, and the U.S. does not have ports that can accommodate supertankers.

3. You say that the Canal is overrated economically. The New York Times says that it saves \$1.5 billion on the prices of American imports and exports. Higher prices for our exports caused by higher transportation costs could drive our already excessive trade deficit even higher, as our ability to compete with other countries weakened. The Canal is of even greater economic importance to several Latin American countries, who use the Canal for the majority of their shipping.

4. You say the Canal "was stolen" from the Panamanians. Rubbish! How could we have stolen the Canal when it was we who built it? As noted above, we paid a high price for the land, and Panama was delighted that we built the canal there and not in Nicaragua. They have reaped enormous benefits from it, including the attainment of a per capita GNP of over \$1,000 a year.

REED IRVINE.

THE PANAMA CANAL TREATIES—11

Mr. ALLEN. Mr. President, Senators are always glad to receive letters from constituents. This morning I received a most interesting letter from a constituent from Guntersville, Ala., a long-time friend, now some 85 years of age. In his letter, he gives some interesting history about the financing of the Panama Canal.

At the suggestion of the distinguished majority leader, I do ask unanimous consent that I may speak, irrespective of the rule of germaneness.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ALLEN. I thank the Chair. I thank the distinguished majority leader.

This is some information that I did not have on the early financing of the Panama Canal. This letter comes from Mr. J. P. Willis, Sr., who was formerly the president of the First National Bank of Guntersville, Ala. He is retired from that position, though he and his family still own the bank. He speaks of Senator John T. Morgan, one of Alabama's greatest Senators, who served for a period of 30 years in the U.S. Senate, and who has been called the father of the Panama Canal.

The prominent part that Senator Morgan played in the planning of the Canal and the great work that he did over the years in advocating an Isthmian Canal is related pretty fully in a most interesting book that has recently been published. It is called the "Path Between the Seas," published by Simon and Schuster this year, written by McCullough. I think it ought to be required reading for everyone who is interested in the proposed Panama Treaties. It is a most interesting book, going back to the early days of the concept of the Isthmian Canal. It speaks of the DeLesseps efforts, taking it on down to the completion of the canal.

It tells about the great work of three great Alabamians in the planning of the canal and the advocacy of the canal. Of course, Senator John T. Morgan took, possibly, the leading part in the entire Congress in pushing for the Isthmian Canal. He recommended Nicaragua, by the way, rather than Panama. We might have to go the Nicaraguan route yet, but we cannot do it if we approve this treaty, because it provides that we cannot even negotiate with another country about an Isthmian Canal without the permission of Panama. So we are going to have to defeat the treaty if we are ever going to have a sea-level canal anywhere other than Panama in this century.

Dr. William Crawford Gorgas and Colonel—later General—William L. Sibert were the two other Alabamians that played important roles in the great story of the building of the Panama Canal.

Going on about the financing of the canal, Mr. Willis writes:

As I remember the United States sold \$200 million 2 percent consoles (sic) to the National Banks of that day to use in the construction of the canal. That is they issued the amount in National Bank notes and only paid 2 percent interest on the bonds. In turn the banks had to maintain 5 percent of the amount with the Government—

I guess we would call that a compensating balance today—

to guarantee the assurance that they would repay for the bills destroyed and reissued, and would have to pay all costs of reissue and postal expense for shipment to the banks. So most of the 2 percent interest was taken up in expense, but gave some measure of publicity to the National Banks. We would receive about two shipments of renewal bills all in tens and twenties each month. We had to sign the bills as Presidents and cashiers of the banks, then cut them apart ready to put in circulation. That was no small job itself. Thousands and thousands of those bills are now in the hands of former bank officials and friends who hold them as keepsakes. I have one myself.

I am quoting Mr. Willis, not speaking for myself:

I have one myself with my name on it, and I gave some to friends. I think our bank still has a few of them. All this means the government is in that much as it is just a piece of paper but the government will have to redeem them if ever presented.

But Mr. Roosevelt redeemed the bonds—

I am sure that is Teddy Roosevelt—

and they have not have any more 2 percent money bonds. And now all currency is issued by Federal Reserve Bank.

There is a postscript to his letter, a little sheet attached. This former president of the First National Bank of Guntersville said:

I do not owe any money. I have not paid any interest in 20 years. They could not use me in Washington.

I think probably that is correct.

An interesting feature of the letter is reference to the word "consols." I must admit that my familiarity with Government securities or my lack of familiarity did not cause me to be familiar with the word "consol" as being a security. I ask unanimous consent that an excerpt marked here from the Webster's International Dictionary, second edition, which is in the Marble Room, be printed in the Record at this point.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

con' sals (kōn' sōlz; kōn' sōlz'), *n. pl.* [Contr. of *consolidated* (annuities).] The British funded government securities. In 1751 a considerable part of the public debt of Great Britain, consisting of various public securities, chiefly representing debt contracted in the form of annuities at various rates of interest on the sum borrowed, was consolidated into one fund at 3 per cent interest, the account of which is kept at the Bank of England. Since 1903 the interest has been 2½ per cent. Before the World War consols constituted more than half of the national debt, and the market price was regarded as a gauge of the national credit. *Consols* is also sometimes applied to obligations of the United States government which may legally be deposited to secure national bank notes.

Mr. ALLEN. It is a very, very interesting bit of information. I am indebted to Mr. Willis for making me familiar with this word. Possibly other Senators are familiar with it, "consol," or the plural c-o-n-s-o-l-s, a contraction of the word "consolidated":

The British funded government securities. In 1751 a considerable part of the public debt of Great Britain, consisting of various public securities, chiefly representing debt contracted in the form of annuities in the various rates of interest on the sum borrowed, was consolidated into one fund at 3 percent interest, the account of which is kept at the Bank of England.

Since 1903, the interest has been 2½ percent. Before the World War, consols constituted more than half the national debt, and the market price was regarded as a gauge of the national credit.

Then the second definition:

Consols is also sometimes applied to obligations of the United States Government, which may legally be deposited to secure national bank notes.

Since national banks no longer issue bank notes, this type of security apparently has gone out of use. I call that to the Senate's attention as an interesting sidelight of the Panama Canal issue.

I might say, also, that the Panama Canal was built at less than the estimated cost, even though they ran into all sorts of difficulties in the construction of the canal. That could not happen today in this day of cost overruns.

I ask unanimous consent that this letter from Mr. Willis be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

THE FIRST NATIONAL BANK,
Guntersville, Ala., September 10, 1977.

Hon. JAMES B. ALLEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR ALLEN: It is Great to note that you expect the Panama Canal to have your best effort to prevent the Give Away.

Glad that you have brought the name of John T. Morgan back to the memory of our people.

I think I am correct that his very early home was just over the Clay County line in Talladega County near Clairmont Springs. My visit to the old home place probably some 70 to 75 years past. A very small three or four room house such as so many people lived in at that time.

John T. Morgan deserves the name ascribed to him as father of the Canal. As I remember that the United States sold \$200, Million 2 percent Consoles to the National Banks of that day to use in the construction of the Canal. That is they issued the amount in National Bank notes and only paid 2 percent Interest on the bonds. In turn the banks had to maintain 5 percent of the amount with the Government to Guarantee the assurance that they would repay for the bills destroyed and re-issued, and would have to pay all costs of reissue and postal expense for shipment to the banks. So most of the 2 percent interest was taken up in expense, but gave some measure of publicity to the National Banks. We would receive about two shipment of renewal Bills all in 10's and 20's each month. We had to sign the bills as Presidents and Cashiers of the banks, then cut them apart ready to put in Circulation. That was no small job itself. Thousand and Thousands of those bills are now in the hands of former bank Officials and friend who hold them as keepsakes. I have one myself with my name on it, and I gave some to friends. I think our bank still has few of them. All this means the government is in that much as its just a piece of paper but the Government will, have to redeem them if ever presented.

But Mr. Roosevelt redeemed the bonds and they have not had any more 2 percent money Bonds. And now all currency is issued by Federal Reserve Bank.

I hope you are successful in defeating the give away. I tell all my friends that your conservative stand is natural as it is the Allen families that I always knew. Chesley B. Timothy and John all of Clay County. Also, Columbus C. of Gadsden. I attended court a number of times when he was attorney on the cases. However I never knew him as I did those who continued to live in Clay County.

I spoke to you a few days ago when you visited at the courthouse and as I said then I have no complaint of your record as our Senator. I know I can depend on you taking the right stand.

I am now 85 and most of all the organizations I belong to have issued life Membership.

Just this moment 2 fellows came by and will take my picture for the VFW Hall of which I am a life member.

If I am wrong on the birthplace of John T. Morgan I would like to know as my Memory is not too good anymore.

Sincerely,

J. P. WILLIS, Sr.

PANAMA CANAL TESTIMONY

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations continued its hearings today on the Panama Canal Treaties. The witnesses today were the Honorable Brock Adams, Secretary of Transportation, the Honorable Richard N. Cooper, Under Secretary of State for Economic Affairs, the Honorable Anthony M. Solomon, Under Secretary of the Treasury for Monetary Affairs, and Mr. Howard F. Casey, Deputy Assistant Secretary for Maritime Affairs in the Department of Commerce.

I ask unanimous consent that the prepared statements of these witnesses be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

STATEMENT OF BROCK ADAMS

Mr. Chairman and Members of the Committee: I am pleased to be here to discuss with you the Panama Canal treaties. I strongly support the ratification of these treaties.

As the Secretary of Transportation, I am concerned about whether the Panama Canal will serve this Nation's short term and long term transportation needs. In the short run, the treaty serves those needs, by settling long standing disputes which could have resulted in conflict hampering Canal traffic and by assuring that the U.S. will continue to manage the Canal for the next 25 years. In the long run the treaty provides a series of mechanisms whereby we can both study needed changes in the Canal to meet increased demands and then build any needed improvements together with Panama.

Decisions concerning the future role of the Canal will depend to a great extent on the demands of the market place. A shipper's decision to use the Canal will depend on the competitiveness of alternative routes and modes of transportation. These alternatives include shipments around the Horn in supertankers, new oil or slurry pipelines, railroad transport or future "land bridge" or "minibridge" developments.

These market place decisions should be made in a climate of "certainty" regarding that waterway. If potential users of the canal are assured that the canal will continue to be operated efficiently and that its capacity will be increased if economically justified, then the canal has the potential to become an increasingly important transportation link. If not then usage will be uncertain. Ratification of the treaties will provide this assurance.

You have heard testimony from Secretaries Vance and Brown, Ambassadors Linowitz and Bunker, and others on the diplomatic and national defense aspects of these treaties. Today, I would like to speak to the transportation consequences of the treaties before you and in this regard I would like to present to you factual data concerning the use of the existing Canal for commercial shipping. That data is contained in the charts appended to my prepared statement, and I would like now to have that data presented to you by Mr. Edward Scott, Assistant Secretary for Administration, who has been involved in Canal matters affecting the Department.

The treaties permit the United States to retain effective control over Canal operations until the year 2000, when as was highlighted in Mr. Scott's presentation, according to the estimates of most informed observers, traffic through the present lock Canal will be approaching the Canal's capacity.

I think that the time has come to reappraise the future of the Canal and to plan for that future. As Mr. Scott has pointed out, one of the problems of the existing Canal is that supertankers and other large specialty ships are too large to transit the Canal. The treaties give us the capability to address this problem. They commit both the United States and Panama to study the feasibility of a sea-level canal. A sea-level canal could be used by these very large ships. Further, the treaties contemplate the building of any such canal in Panama where our studies suggest it could be most economically constructed.

The treaties further grant the United States the right to construct a third lane of locks beside the present Canal. While there is much debate about the technical wisdom of such an undertaking, a third lane of locks could increase the capacity and extend the useful life of the present Canal. In any event, it is clear that the next 25 years are critical and during that time the United States and Panama must jointly make some very important decisions regarding the future of the Canal.

I believe these treaties create a climate for a technological review that will permit these decisions to be made in an orderly manner. We must take the Canal and its operation out of the political arena and undertake these next 25 years of redirection in a context of mutual respect and cooperation.

So, in summary, it is not solely a question of whether the treaties are good foreign policy or defense initiatives, which I believe they are, but I submit that they are important to the transportation vitality of the present Canal and of any future Canals.

The Department of Transportation will have an important role to play in the examination and evaluation of options for the future development of the Panama Canal. We welcome that challenge and I believe it is one which we will be able to carry out effectively in the context of the treaties which you have before you for ratification. I therefore urge, without qualification, your prompt ratification of the treaties which I believe are consistent with a framework for strengthening the overall fabric of our national transportation system.

I will be pleased to answer any questions you may have.

[Appended charts not printed in the Record]

THE PANAMA CANAL—CANAL TRAFFIC—PANAMA CANAL COMMERCIAL OCEAN TRAFFIC

Fiscal year	Transits	Average ships per day
1915.....	1,108	3.0
1921.....	3,371	9.2
1936.....	6,453	17.6
1951.....	7,751	21.2
1966.....	11,925	32.6
1967.....	12,412	34.0
1968.....	13,199	36.2
1969.....	13,146	36.1
1970.....	13,658	37.4
1971.....	14,020	38.4
1972.....	13,766	37.7
1973.....	13,841	37.9
1974.....	14,033	38.4
1975.....	13,609	37.2
1976.....	12,157	33.3

Source: Panama Canal Co., annual reports.

U.S. oceanborne cargo through Panama Canal

Year:	Millions of tons
1958.....	27.2
1959.....	28.9
1960.....	34.8
1961.....	37.5
1962.....	40.5
1963.....	35.5
1964.....	40.7
1965.....	44.1
1966.....	48.6
1967.....	53.1
1968.....	57.8
1969.....	63.9
1970.....	74.8
1971.....	77.9
1975.....	85.6

In 1975, 14 percent of U.S. oceanborne tonnage passed through Panama Canal.

Sources: Based on Paddleford, Norman J., and Stephen R. Gibbs, *Maritime Commerce and the Future of the Panama Canal*, Cambridge, Md.: Cornell Maritime Press, 1975; and Panama Canal Co., *Annual Report*, 1976.

MAJOR TRADE ROUTES IN CANAL TRAFFIC

Trade route	1976 Panama Canal ¹	Percent of total ²
East Coast United States-Asia	40,610	31.8
Europe-West Coast United States/Canada	12,293	9.6
Europe-Asia	9,639	7.5
East Coast United States-West Coast America	8,940	6.9
Europe-West Coast South America	7,206	5.6
U.S. Intercoastal (including Alaska and Hawaii)	5,213	4.0
Europe-Oceania	4,314	3.4
East Coast United States/Canada-Oceania	3,991	3.1
East Coast Canada-Asia	3,777	2.9
South American Intercoastal	3,217	2.5
West Coast South America-West Indies	2,867	2.2
West Coast United States-West Indies	2,556	2.0
Subtotal	104,623	
All other routes	23,161	18.1
Total	127,784	100.0

¹In the thousands of tons.²57.4 percent of Canal traffic originates or terminates in U.S. ports.

Source: Panama Canal Co., "Annual Report, 1976."

INCREASE IN SHIP SIZE

Fiscal year	Ves- sels ¹	Per- cent ²	Ves- sels ³	Per- cent ²
1976	3,071	25.0	4,010	32.7
1975	3,120	22.6	4,000	29.0
1974	3,201	22.4	3,843	26.9
1973	2,581	18.1	3,205	22.5
1972	2,085	14.6	2,428	17.1

¹Vessels of 600-foot length and over.²Percent of total.³Vessels of 80-ft beam and over.

Source: Panama Canal Co., "Annual Report, 1976."

Future traffic predictions also suggest Canal reaching capacity—projected canal transits

	[All types]
1976 (Actual)	13,201
1980	15,400
1985	16,100
1990	17,600
1995	19,400
2000	21,300
Theoretical canal capacity	26,800

Source: Based on Paddleford, Norman J., and Stephen R. Gibbs, Maritime Commerce and The Future of the Panama Canal, Cambridge, Maryland: Cornell Maritime Press, 1975; and Panama Canal Company, Annual Report, 1976.

CONCLUSIONS

There are decisions that need to be made concerning Canal capacity and size.

Future Canal development needs to take place in context of national transportation plans.

The treaties will provide the framework for rationally addressing these decisions.

STATEMENT BY RICHARD N. COOPER

Mr. Chairman and Members of the Committee: I appreciate the opportunity to discuss with the Committee the plans for improved economic cooperation between the United States and Panama which will complement the process of implementing

the new Canal arrangements. The programs that Under Secretary Solomon and I will discuss today are entirely separate and independent from the new treaty, although the idea of having this associated package arose during the last few weeks of the treaty negotiations. Secretary Vance and Ambassadors Bunker and Linowitz have already described for the Committee the provisions within the Treaty which will provide for Panamanian participation in Canal revenues. The arrangements we discuss today are not directly related to the Canal but, rather, are an expression of our friendship and cooperation with the people of the Republic of Panama and reflect our interest in the economic well being of that country.

As this Committee is aware, the discussion of economic arrangements associated with the Treaty were among the most difficult issues encountered in the negotiations. Panama's negotiators proposed that the United States pay Panama a large initial lump-sum payment and a very sizable annuity, either of which far exceeded the most optimistic estimates of gross Canal revenues. The Panamanian negotiators sought to justify these proposals by assigning high economic value to the economic and security benefits derived by the United States from the Canal, without comparable benefits to Panama. They further suggested that, as a counterpart to United States investment in the Panama Canal, Panama had provided its unique geographic location, much of its prime land and water resources, as well as the labor of its people to the Canal effort. Panama also cited the low remuneration received by Panama under the present treaties and the value to our security interests of the military bases and the new neutrality arrangements. In a more compelling argument, Panama's negotiators maintained that Panama's national priority lies in the rapid social and economic development of its people with wide distribution of the benefits.

Both the economic provisions within the Treaty and the economic arrangements outside it are based on our shared recognition of the special relationship created by the interest in the Canal. Panama's development would serve the interests of the United States by fostering the stability which is the underpinning for an open, safe, efficient and accessible Canal before and after the expiration of the treaty which you are now considering.

Giving the Panamanians a stake in the operation of the Canal makes political and economic sense—it will ensure Panamanian cooperation in the efficient running of the Canal operation while also building broad political support for the enterprise in Panama. The broader program for improved economic cooperation with Panama rests on a similar assumption—that improving the welfare of an increasing number of Panamanians will result in a stable political climate in which the sound administration of the Canal can continue.

As was covered in earlier testimony, for the purposes of the annuity payments in the treaty, the economic provisions in the treaty reflect the United States position that the Canal operating revenues would be the source of financing. The purpose of this formula is to give Panama an equitable share of Canal benefits and assure a vital Panamanian interest in the efficient operation of the Canal.

The arrangements outside the treaty also reflect the perception that Panama and the United States have mutual interests, specifically, in fostering economic development and the well being of the Panamanian people. Since we believe that Panamanian development during the new treaty period could serve as a means of promoting an environment helpful in the operation of the Canal during and after the new treaty period, the United States Negotiators arranged for the Panamanian negotiators to meet with representatives of the Departments of State and Treasury, A.I.D. and the Export-Import Bank to discuss Panama's development needs. Out of these discussions emerged a program which will be undertaken outside the treaty; which will introduce no special assistance devices and which is subject to all applicable procedures under existing programs. Its contents were outlined to the Panamanian Government in the form of a diplomatic note signed by Secretary Vance on September 7, the date of the signing of the two treaties concerning the Panama Canal. I understand that a copy of this diplomatic note has already been provided the Committee.

The note outlines a program, to be undertaken on a best efforts basis, which seeks to enhance Panamanian development with the participation of the private sector in the United States as well as Panama. It is composed of the following elements:

Up to \$200 million in Export-Import Bank loans, loan guarantees or insurance over a 5-year period subject to approval by the Bank;

Up to \$75 million in A.I.D. Housing Guarantees over a 5-year period; and

A guarantee by the Overseas Private Investment Corporation of \$20 million in United States private capital to the Panamanian National Finance Corporation (COFINA) for use in productive projects in the Panamanian private sector.

The Secretary's note of September 7 also proposes issuance of repayment guaranteed under our Foreign Military Sales Program not to exceed \$50 million over a 10-year period. This aspect of the program is to assist Panama in assuming its increased responsibility for Canal defense during the new treaty period. It too is designed to further the spirit of cooperation between the two countries. Like the other parts of the program outside the treaty, the Military Sales Program is not a grant to be financed by the American taxpayer. The only appropriations required would be to cover 10 percent of the annual program in the form of deposits in a special reserve account.

Under Secretary Solomon will discuss the Overseas Private Investment Guarantee and the Eximbank program. I would like to expand on the rationale for the A.I.D. housing guarantee program proposed in the Secretary's note.

The purpose of the A.I.D. housing program is to provide housing to lower-to-medium income groups in less developed countries. The program provides a full faith and credit U.S. Government guaranty to private U.S. lenders who make loans for housing projects in less developed countries. The program demonstrates the valuable contribution of private capital and foreign investment to the social and economic development of such countries.

The 5-year program proposed for Panama in the economic cooperation proposal would—as other elements of the package—fit within existing statutory authorization. The guarantee program was proposed in the early 1960's and is designed to be self-sufficient and has not required Congressional appropriations. Total current housing guarantee authority is \$1.055 billion. The proposed Panama program would conform to the statutory limitations of \$25 million per year to any one country and an average annual face value of \$15 million. In other words, we are using existing programs—which are proven tools for furthering U.S. interests in many overseas economic areas—to strengthen Panamanian development and the cooperative relationship between the two countries.

Panama has had several successful A.I.D. housing guarantee projects. To date, A.I.D. has guaranteed a face amount of approximately \$26 million in loans. Another \$15 million project is now under consideration. This represents an 11-year course of activity involving 8 projects.

The United States and Panama have agreed that the Canal should continue to be operated in an efficient manner and every effort should be made to ensure that the Commission is designed to run in a businesslike fashion. This is an important shared interest since the economic provisions of the new treaty as well as the operating cost of the Canal are to be sustained from Canal revenues. The Commission should be structured as a self-sustaining business which would finance the payments to Panama under the treaty as operating expenditures. The Executive Branch will submit to the Congress implementing legislation to the treaty which will execute these requirements.

Finally, I would like to say a few words about the treaty provisions concerning the sea-level Canal. Both Panama and the United States are committed to study jointly the feasibility of such a canal. Any arrangement for the construction of a sea-level canal must be agreeable to both countries. Panama agreed that no third country be permitted to build a sea-level canal in Panama except with our consent. In exchange, Panama asked the United States to agree to limit any sea-level canal construction to Panama. This was an acceptable stipulation—as the Committee is aware—in light of the 1970 study by the Interoceanic Canal Commission which concluded that the two preferred routes for a sea-level canal excavated by conventional means are both in Panama. Again, it appears to us that the interests of both countries are secured by the outcome of the negotiation.

That concludes my statement. I welcome your questions.

STATEMENT BY THE HONORABLE ANTHONY M. SOLOMON

I am pleased to be here to discuss the economic aspects of the Panama Canal Treaty and the economic cooperation arrangements.

You have already heard testimony on the annuity and royalty payments Panama will receive according to the new treaty. My understanding is that these payments represent Panama's share of the benefits from operation of the Canal: they will be paid out of Canal revenues, and not out of U.S. tax revenues. These payments provisions will also serve U.S. interests by enlarging Panama's stake in the secure and efficient operation of the Canal.

In addition to the payments provisions of the treaty, we have extended to Panama, as Under Secretary Cooper has noted, an offer of economic cooperation involving as much as \$295 million in U.S. loans, guarantees, and insurance, which I will presently discuss in detail.

The benefits to Panama from the financial provisions of the treaty and the economic cooperation arrangements will be significant and timely. In the decade prior to 1974 Panama's GDP increased at an annual average rate of 7.3 percent. In 1974, however, economic growth abruptly slowed to 2.6 percent, and last year there was no growth. A major cause of Panama's economic slowdown was uncertainty over the future of the Canal, resulting in a marked decrease in private investment (which increased only slightly in 1974 and 1975 and fell by 25 percent in 1976). In addition, worldwide recession, the increase in the price of oil, and the recent decrease in sugar prices also contributed to Panama's large current account deficits.

The Government of Panama attempted to maintain overall investment levels by increasing public investment to offset the decline in private investment. As a result, the central government budget deficit increased from \$69 million in 1973 to \$122 million in 1976. This, combined with borrowings to finance Panama's current account deficits, caused total public sector debt to rise from \$0.6 billion in 1973 to \$1.4 billion in 1976.

There is reason, however, for some optimism about the future of Panama's economy. Panama has negotiated two stabilization agreements with the IMF (one last year and one in March 1977), and has taken steps to reduce the government deficit and limit public sector debt. World economy recovery will help to narrow Panama's current account deficit. Above all, the single most important factor in bringing returned vigor to the Panamanian economy will be settlement of the Canal issue, and the resulting restoration of a favorable investment climate in Panama. We expect that, as a consequence, foreign and domestic private investment will rise appreciably, leading to increases in employment, reduced budgetary pressure on the Panamanian government, and improvements in its external accounts.

Panama's new economic program and settlement of the Canal issue are the fundamental requirements for returning Panama to its former path of economic growth. The payments provisions of the new treaty and the economic cooperation arrangements are ancillary to these developments, but we believe they will provide the extra boost to contribute to Panama's long-term economic development.

This is of importance to the United States, in the sense that economic stability and an improved standard of living in Panama will strengthen the ability of Panama to act as our partner in the Canal enterprise, bearing its share of the responsibilities. We have designed arrangements for economic cooperation with this goal in mind, selecting financial assistance programs which are nonconcessional, befitting Panama's stage of development, and directed at meeting Panama's present economic needs for low-income housing and a revived private sector. The U.S. will benefit additionally from these economic arrangements, through participation by U.S. investors and business in the Eximbank, OPIC and housing investment guarantee programs the arrangements entail.

I would now like to turn to the two aspects of the treaty effort in which I had a direct role. Treasury did not directly participate in the treaty negotiations. My contribution was to recommend economic cooperation arrangements, and to provide advice on the financing arrangements for the new Panama Canal Commission.

ECONOMIC COOPERATION ARRANGEMENTS

The proposed economic cooperation arrangements consist of: (1) an offer by the Overseas Private Investment Corporation to guarantee up to \$20 million in borrowings in the U.S. capital market by the Panamanian development bank, (2) an offer by the Export-Import Bank to provide up to \$200 million in loans, loan guarantees and insurance for individual U.S. export sales over a five-year period; and (3) a pledge by the Administration to consider providing up to \$75 million in housing investment guarantees over a five-year period. In addition, we will provide up to \$50 million in guarantees over a ten-year period under our Foreign Military Sales program.

These particular arrangements were selected not only for the benefits they are expected to bring to both the U.S. and Panama, but also for the reasonable level of risk they present and their compatibility with the financial assistance programs involved. All of these offers are subject to compliance with legal and managerial requirements, and, as necessary, availability of funds.

The housing guarantee aspect of the economic cooperation arrangements and the FMS offer have been addressed by Under Secretary Cooper.

As for the offer by Eximbank to provide up to \$200 million in loans, guarantees and insurance, I would like to point out that the portfolio risk to Eximbank as a result of its offer will be small. With an additional \$200 million to Panama over five years, exposure in Panama will amount to less than 1.37 percent of Eximbank's total existing portfolio. Project risk will be controlled in the usual manner, since each transaction will be subject to the normal Eximbank's financial, legal and engineering criteria—including Eximbank's statutory requirement to find a reasonable assurance of repayment.

Once the Canal issue is settled and investment in Panama accelerates, Panama will become an expanding market for U.S. exports. This projected market expansion is expected to give rise to more applications for Eximbank support, and Eximbank has indicated that its business in Panama could well amount to \$200 million over the next five years.

A guarantee by the Overseas Private Investment Corporation of \$20 million in borrowing by the Panamanian development bank would raise OPIC's exposure in Panama to only 8.5 percent of its total existing portfolio, a reasonable level of portfolio risk. The risk to OPIC will be further reduced by a Government of Panama guarantee. OPIC has also stipulated that its offer to Panama depends on terms being negotiated which are acceptable to the OPIC Board.

This will be the first time OPIC has participated in financing the expansion of a government-owned development bank, although OPIC is permitted to do so by longstanding OPIC Board policy guidelines. The Panamanian development bank, COFINA, is engaged in supporting the development of private enterprises in Panama through project lending. This function is both wholly compatible with OPIC's mission and in accord with our view that it should help strengthen the private sector of Panama's economy.

FUTURE FINANCING OF THE PANAMA CANAL COMMISSION

Turning now to the financial aspects of the Canal operations, an essential point in negotiating the treaty was that any new entity established to operate the Canal must be self-financing over the life of the treaty. Our negotiators made it clear to the Panamanians that any arrangements which did not conform to this principle would not be acceptable to the U.S. I assure you that we will continue to be guided by that principle. The Administration will make every possible effort to see that costs of the Canal operation are contained and that revenues are sufficient to cover liabilities. However, as a normal provision for management flexibility, I feel it is appropriate for the Panama Canal Commission to have the authority to borrow, as does its predecessor agency, the Panama Canal Company. Thus, the Administration will request a continuation of this authority in the implementing legislation.

I believe the following guidelines should be followed by the Commission in its borrowings. First, any borrowing by the Panama Canal Commission should be strictly limited to an amount sufficient to support the Commission's operations. The Commission should not have the authority to borrow for any other purpose, such as the general economic development of Panama. Second, all borrowing should be at a rate of interest equal to the cost of money to the U.S. Treasury for the period of time under consideration. Third, the repayment schedule will be tailored so that all borrowings will be fully repaid before the expiration date of the treaties.

Mr. Chairman, this concludes my formal statement. I will be happy to answer any questions the Committee may have.

STATEMENT OF HOWARD F. CASEY

Mr. Chairman and Members of the Committee, I am Howard F. Casey, Deputy Assistant Secretary of Commerce for Maritime Affairs. I appreciate this opportunity to appear before the Committee on behalf of the Department of Commerce and the Maritime Administration to assist you in your deliberations on the recently signed Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

Our interest in the two treaties relates primarily to the provisions regarding the commercial operation of the Canal and their potential effect on the U.S. Merchant Marine. Although both treaties contain articles that will govern future Canal operations, it is the Panama Canal Treaty that relates most directly and substantially to our concerns.

The Panama Canal has great economic significance for the United States and, in particular, the U.S. Merchant Marine. Indeed, this significance has been increased by the present necessity of shipping Alaskan crude oil through the Canal. Moreover, the Canal is beneficial for our Latin American neighbors and many other nations of the world. The Panama Canal Treaties are evidence of this national and interna-

tional economic significance. One of their principal purposes is to assure for all nations the uninterrupted use of an efficiently operated canal. Implicit, too, in the treaties is an assurance of reasonable and equitable tolls for users. This assurance is firmly provided by the Panama Canal Treaty until its expiration on December 31, 1999. Until that time, tolls will continue to be established and modified by the United States through a new U.S. Government agency, the Panama Canal Commission. Thereafter, Article III (c) of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal commits the Republic of Panama to the continued establishment of tolls and service charges that are "just, reasonable, equitable and consistent with the principles of international law." Because such conditions, if achieved, can only enhance the value and significance of the Canal for the U.S. Merchant Marine and all other users, we support these treaties.

Of course, the Canal offers significant advantages to vessel operation in terms of time, distance traveled, fuel consumed, and net delivery or laydown capability. Thus, use of the Canal on the Indonesia to U.S. Gulf trade saves 28 percent in distance and steaming time over a trip around Cape Horn. Similarly, the Canal routes from Valdez, Alaska, to the Gulf or from El Segundo, California, to the Gulf save 57 and 67 percent, respectively. The reduced shipping time that the Canal makes possible has resulted in significant reductions in the cost of intercoastal shipments and the size of the U.S. merchant fleet required for their carriage.

Both the U.S.-flag and world merchant fleets rely substantially on the Canal. In FY 1976, over 12,000 transits were made through the Canal by vessels flying the flags of 65 nations. U.S.-flag vessels made over 1,000 of these transits. Of the 117 million tons of commercial cargo transported through the Canal in FY 1976, 78 million tons or 67% were either part of the U.S. foreign or the U.S. domestic trades. This represents 9.1 percent of total U.S. oceangoing trade, a highly significant portion. Should Canal usage cease to be economically feasible for any reason, the increased costs and shipment times would undoubtedly cause many U.S. and foreign markets to face serious economic hardship. Some markets, such as the U.S. East Coast market for Ecuadorian bananas and Colombian coffee would probably disappear, while other movements such as ores and concentrates from Peru and Chile would tend to be captured by operators of larger vessels. While the loss of such markets might not be significant for U.S. consumers, the net impact on many U.S.-flag operators would be a serious loss of business.

We believe that the advantages of Canal usage to U.S. shipping will be substantial through the remainder of this century. Even though the U.S. and world economies are expected to continue to recover and to expand, Canal capacity is expected to remain adequate through the year 2000. The anticipated increase in traffic will include, at least for the next few years, the transshipment of the West Coast surplus of Alaskan crude oil to the Gulf and East Coasts.

Many of the other nations of the world rely on the Canal relatively much more than does the United States, and that reliance will continue. In 1974, approximately 73 percent of Ecuador's foreign trade and almost half of Peru's transited the Canal. In fact, most Central American and West Coast South American countries rely heavily on the Canal. The Maritime Administration sees this reliance as a stabilizing influence under the new treaties, one which should work toward the continuing availability of the Canal at reasonable toll rates for all nations.

This brings me to what I regard as my principal comment in these hearings.

The chief concern of the Maritime Administration with any change in the status of the Panama Canal centers on those factors which suggest the possibility of increased operating costs and, hence, possible economic hardship for many U.S. ship operators.

The possibility of toll hikes is of course one of those concerns; but above and beyond that is the concern that the Canal remain open and accessible to the many U.S. operators who depend on it. On balance, the Maritime Administration supports the new Panama Canal treaties as far and away the best means to assure this.

Obviously if tolls were to increase too greatly many markets would be hurt severely in much the same manner, if not to the same degree, that they would be if the Canal were completely closed.

But it is not certain what toll increase applied over what period of time would be too great. Under the new Panama Canal Treaty, we are faced with the possibility of an immediate toll hike to cover various provisions for reimbursement to the Republic of Panama, and, under paragraph 4, Article XIII, we are committed to an indexing scheme for further adjustment of payments to Panama after five years and every two years thereafter until the expiration of the treaty on December 31, 1999.

The prospective toll hikes to cover these payments would of course be in addition to the roughly 50 percent effective rate increase that has already taken place since

July 1974. The latter did not destroy the markets that I have voiced concern about, and, to the extent that future toll hikes reflect general inflationary pressures, to which all competing markets are subject, U.S. operators will very likely be able to operate under those too.

One way to look at the possible effect of any immediate substantial toll hike is to consider the price elasticity of demand for commodities that are moved through the Canal. The Maritime Administration performed such a study in 1974, and its results were mainly applicable to a short-run outlook. The Department of State, with the Department of the Army, I should note, have recently commissioned a much more comprehensive study which will address the relationship of toll hikes to Canal transits, cargo and revenue in considerable detail. The approach taken in our own earlier study, however, helps to show what the net effect of a toll hike might be. The thread of the analysis is as follows:

The average delivered value of the various commodities of U.S. trade that are moved through the Canal is about \$300 per ton. Suppose, to take an extreme case, that the Canal tolls were to be raised 100 percent, that is, from about \$1.29 per Canal ton to \$2.58 per ton. That would mean that about forty-three hundredths of a percent (0.43%) would be added to the average landed price of a Canal transported commodity. Consider the "price elasticities" of the commodities. Price elasticities are numbers which characterize the marketplace for commodity sales. They usually represent the percentage drop in quantity sold for a given percentage increase in price and are expressed as a constant ratio. A commodity price elasticity of 1.0 for example, would mean that if the price were increased by some percentage, the quantity sold would drop by an equal percentage.

According to a study done at the Maritime Administration a few years ago, the average price elasticity of the commodities that are transported through the Canal in U.S. trade is less than 1.5, meaning that the quantity of those commodities that is actually sold tends to drop by less than 1.5 percent for each 1 percent rise in price. Therefore, if tolls are raised 100 percent, thereby adding 0.43 percent to the average landed cost of a commodity, we can expect a drop in the U.S. tonnage that transits the Canal of under sixty-five hundredths of a percent (0.65%). According to the Panama Canal Company's FY 1976 figures, this translates into a tonnage drop of about 500,000 long tons. Since U.S.-flag shipping carries about 10 percent of U.S. Canal trade, U.S.-flag operators might expect to lose no more than about 50,000 tons of cargo per year overall under a 100 percent toll hike.

Should toll increases immediately following ratification of the new treaties be about 30 percent, as some have suggested, the same line of reasoning would lead us to conclude that U.S.-flag operators would lose less than 15,000 tons of cargo.

The elasticity approach helps us to illustrate arithmetically what we have understood from the start: that tolls do in fact make up only a small part of the total cost to the consumer of Canal-transported commodities, and, given that they are always adjusted to represent the fair economic value of Canal service to general users, their increase will result in only a small loss of cargo overall to ship operators. In fact, the effect on U.S. export and import trade transiting the Canal that I have noted is essentially a short-term effect. All of the economic studies we have reviewed indicate that reductions in tonnages through the Canal, for toll increases approaching 100%, tend to be more than offset over a longer term by increased Canal traffic due to trade growth.

Unfortunately, the elasticity type of analysis doesn't necessarily describe the effect of increased costs on small, differentiated markets. To return to my earlier examples, if toll hikes were to make Ecuadorian bananas and Colombian coffee more costly on the U.S. East Coast than bananas and coffee from other sources—by whatever amount—these markets, far from suffering a mere small percentage decline, would be seriously affected, possibly even destroyed. The total size of these markets is currently about 500,000 long tons per year. Of this, U.S.-flag ships typically carry 20-25 percent or 100,000 to 125,000 long tons. These figures serve to illustrate that smaller segments of a market can be affected to a greater extent than the overall, consumer oriented market analysis might suggest.

Similar economic dislocations can of course occur in any industry or in any part of an industry whenever there is a change in the price or in the pricing structure of a major service to that industry. If the pricing structure is—and remains—reasonable and equitable, however, such dislocations can be minimized.

The principal issue, then, that I see for the U.S. Merchant Marine in the new Canal treaty is the alteration in the pricing structure of Canal services that might be forced by the requirement to make payments to the Republic of Panama out of operating revenues and produced surpluses. Henceforth, if this treaty is ratified, Canal tolls can be expected to change frequently, but with an established regularity

and in highly predictable increments. This predictability should help to minimize any possible adverse effects on our industry. In addition, we can look forward to some immediate offsets to the new Panama payments which should help to reduce the amount of any new toll increases needed. I refer again to the transit of Alaskan oil and the increase in revenues that will result. Furthermore, the overall outlook for increased usage of the Canal for all commodity transport promises increased revenues at least through the year 2000.

Given the assurances for the continued availability of the Canal to all users, and the continued practice of establishing reasonable and equitable tolls and service charges, as set forth in both treaties, the risks to the maritime industry appear, on balance, to be minimal and justified. We, therefore, recommend ratification.

Mr. Chairman, this concludes my prepared statement. I will be happy to answer as best I can any questions that you or other members of the Committee may have.

THE PANAMA CANAL TREATIES

Mr. HARRY F. BYRD, JR. Mr. President, the distinguished Senator from South Carolina (Mr. Thurmond) made an excellent argument in opposition to the new Panama Canal treaties in testimony before the Senate Foreign Relation Committee this morning.

I ask unanimous consent that Senator Thurmond's supporting documents he presented to the committee be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

LATIN AMERICA

TORRIJOS, TREATY NEGOTIATORS ADDRESS CORREGIMIENTO ASSEMBLY

(By Foreign Minister Gonzalez Revilla)

Your Excellency President of the Republic, Demetrio Basilio Lakas; Your Excellency chief of government, Gen. Omar Torrijos Herrera; Mr. Vice President of the Republic, Gerardo Gonzalez; honorable chairman of the national representatives assembly, Mr. Fernando A. Gonzalez; deputy commander in chief of the National Guard and members of the chiefs of staff; minister and members of the autonomous entities; legislation commissioners; honorable president of the Supreme Court of Justice, Dr. Juan Materno Vasquez; honorable representatives:

The agreements reached in the negotiations for a new Panama Canal treaty constitute the culmination of a very important phase in the struggle of the Panamanian people for its liberation from all forms of foreign domination. Created as an independent state in 1903 and recognized by all nations of the world, the Panamanian nation immediately announced that the limitations of its sovereign attributes, imposed by a treaty that placed it in a status of dependence, would have to be eliminated. Only thus would it be possible for its position to be, in fact, equally sovereign among the other nations of the world.

From its birth, our nation has struggled relentlessly and continuously to become the master of its own fate. With the contribution, throughout the years, of great Panamanians, whose names must not be mentioned hastily to avoid unfair omissions, we are today in the final stages of a historic battle. Such effort has evidenced that we possess the essential attributes of a true nation—the deep sentiments of freedom and political maturity. The name Panama today is uttered with respect by foreigners and with pride by Panamanians in all corners of the earth.

The proud and constant struggle gave a characteristic nature to our liberation efforts. We can proudly and firmly tell our parents and grandparents that we understood their message and that we did the best we could under the circumstances, that we fought tirelessly and based our debate on historic arguments and legal consistency, honoring those who deserved to be honored without questioning their efforts, united in a single team made up of men who were always inspired by their love for their fatherland.

We may also tell them with the same pride that we shall turn over to our children a nation which has recovered its territorial integrity, which has rid itself of the colonial enclave, and which is ready to take full advantage of its greatest natural resource.

Our chief of government, Gen. Omar Torrijos, promised the coming generations of Panamanians that this liberating process would firmly establish for them a territory covered from border to border by our national sovereignty. This sovereignty includes the canal and its adjacent areas which had been cut off from the rest of our territory for 74 years.

The objective of this struggle is already in sight. The watchword of our campaign has been total sovereignty. In order, however, to consolidate this sovereignty, it is necessary to rely on the expressed willingness of the peoples of both sides through the respective ratification procedure to be carried out in Panama and the United States.

In the case of Panama, it will be done through a national plebiscite as provided by the constitution approved by this assembly. Should we fail to achieve this ratification, we shall be committed to continue our struggle under unpredictable conditions. We are confident there will be sufficient common sense on both sides to realize that an honorable solution has been found which issues a peaceful death certificate to an anachronistic situation that will cease at a fixed date.

To continue our information policy on behalf of the Panamanian people, where all sectors have equal value and rights, we offer an exposition of the main points of the agreements reached by the governments of Panama and the United States and which, in our opinion, constitute an effective program of decolonization. Thank you.

FIRST ESCOBAR BETHANCOURT SPEECH

Your Excellency, president of the republic; chief of government; president of the Assembly of Corregimiento Representatives; ministers; members of the National Guard General Staff; and representatives:

We consider it to be most historic that a detailed report on the negotiations is being submitted to this assembly. It is deeply significant for what you represent. This revolutionary government considers that the republic's new composition, its new political structure, is in actuality linked to the Panamanian people through you, because you come from all sectors of the country. It is precisely you who will have to explain in each of your communities the problem of the negotiations.

When the revolutionary government assumed power in 1968, a change took place in its international policy, a change aimed at obtaining for our country those things which needed improvement regarding its sovereignty and jurisdiction. Led by General Torrijos, for the first time in our history a Panamanian government, far from evading, opposing or attacking the Panamanian people in response to their claims of sovereignty and jurisdiction, has done precisely the opposite and has taken hold of the banners which the Panamanian people have been holding high since 1903. The struggle for the full independence of our country and for the recovery of its natural resources has become not only the slogan but also the foundation of the revolutionary government's policy. When this government is assessed by history, when the revolutionary government and General Torrijos are analyzed, the analysis will indicate that this government was basically revolutionary, because it made national liberation the slogan and the motive power of all its administrative, governmental and political activities.

A campaign to force the United States to sit at the negotiating table and to arrive at conclusions favorable to and positive for our republic began from this position.

But this is another of the great differences between this revolutionary government and our past. General Torrijos understood that a struggle for national liberation carried out at only a bilateral level was a struggle without a future, for the simple reason that it was the struggle of a very small country against the major power in the world. Then he decided, using one of his typical phrases, that the problem of Panama, the canal problem, would not be a real problem until it became a problem of the American continent and of the world. An independent international policy was drafted on this basis.

Now, when we are being criticized by certain national sectors or groups, we recall the criticism of those same groups when Panama began its independent international policy. When the general said that each country had the right to its own friends and enemies and that our country's international policy was not going to continue according to the dictates from Washington as was customary, we received strong criticism from domestic sources. During the crisis of the Panamanian ships in Cuba, when the general decided to hold direct contact with Fidel Castro's regime, the persons who bewailed his policy on that occasion are doing the same now regarding the canal. However, now they are not protesting contacts with Cuba because the United States is making such contacts. But when Torrijos did so, they said it was crazy, that it did not make sense, that it was making Panama communist, that the gringos would not tolerate it. We went through all that criticism in this country from those sectors which are now criticizing the treaty draft.

General Torrijos remained firm and imperturbable in defense of his policy and in the face of criticism. In a few years history proved him right and tossed into the wastebasket the position of those opposed to his independent policy. This policy continued with the meeting of the UN Security Council in this same building. We were strongly criticized on that occasion by local sectors and received threats from the United States and bribe offers from U.S. Government officials. General Torrijos

stood firm on that occasion. U.S. colonialist policy was denounced in this same building and all the countries of the world supported us. The United States was forced to veto the resolution.

We were told we had done something crazy, but it is these things which have given dignity and strength to our country's presence in the eyes of the world.

General Torrijos began a tour to all Latin American countries, and there was more criticism: The country's money is being spent on trips, what is he going to do in those countries? What can those countries do for us? He paid no attention to criticism. He continued meeting with the presidents of all Latin America. This was also a step, a landmark, in strengthening our dignity and our international presence.

When President Lakas went to the United Nations, Mexico and Greece, we were also criticized. Those sectors said, what is the government after? However, the visit of our president to those countries informed the world about our cause. When General Torrijos left again for Europe, for Sri Lanka, when our country joined the Organization of Nonaligned Countries, as usual the same sectors continued to criticize: What does nonaligned mean? What is the importance of Sri Lanka? The general only thinks about traveling. We who have traveled now and in the past can give the following answer: When we were students and traveled, we could not explain when we said we were Panamanians, what Panama was, because no one understood us. In some Latin American countries near ours, people were surprised that we spoke Spanish, because they thought we spoke only English. Now we can tell them that the Panamanian who leaves the country for any part of the world—the American continents, Europe, Asia, Africa, China—does not have to explain any further, once he says he is a Panamanian because everyone treats him with respect and dignity, because he is from a country which during all these years has been struggling against imperialism and for its national liberation. This is what Panamanians owe to this revolution and this man, this general. (applause)

He gave dignity even to those Panamanians who criticize us. Those reactionary Panamanians are respected abroad, not because they are reactionaries, but because they are Panamanians. Those who call themselves revolutionaries are respected abroad, not because they are true revolutionaries, but because they are Panamanians.

Everybody knows where Panama is, what language is spoken here and is familiar with Panama's struggle. This is the reason for our pride in 8 years of revolution. We have rescued our country from the world's indifference and ignominy and acquired regional and international dignity. (applause) The negotiations had a difficult beginning. As to those who say that we have not obtained enough, we would like to have seen them sit down 4 or 5 years ago at the table in the Pentagon or the U.S. State Department and ask for Ancon Hill. We were almost beaten for asking for that little hill. The negotiations were not initiated by this revolution; they began with those who died in 1964. These negotiations were generated by their corpses and blood. It began slowly, painfully and with ridicule directed toward our country by the OAS, the U.S. State Department, the Pentagon and the President of the United States. Waging a hard struggle, Panamanian men who participated in negotiations before we did brought their maximum efforts to some projects which came to an end in 1967. It was the most that the period, our country's situation and the international situation permitted. The revolution emerged, projects were studied, but despite some positive aspects, we still did not penetrate to the root of the problem—the liquidation of the Canal Zone and of the perpetuity idea. For that reason these talks were rejected and other negotiations were begun, also slow and painful.

You will ask why negotiations? The general himself has said that this is not the only way. There are other paths—armed struggle, terrorism and sabotage. We all know this. But we also know the social price we have to pay—the immolation of the people, of youth. We know what it means in destruction, pain and death. A governor who considers himself responsible avoids those paths as much as he can. A responsible leader does not send his people to sacrifice themselves, does not see his people abused, tortured and massacred. Instead, he seeks all possible alternatives to avoid such a situation, not because of fear—because there has been no other alternative we have decided on that course—but because of a sense of responsibility. When you are governing a country, you seek the paths for its political, economic and cultural development. If development can be achieved through an intelligent stance and tactics based on patience, an intelligent and prudent leader prefers this road, despite his impatience and knowledge that other roads may be faster. One of those men is General Torrijos.

We have been with him all these years and witnessed his impatience. He has a military training different from ours. Therefore, he should be more inclined to use

arms to try to solve problems, but constantly he urged us: Let us have negotiations by all means; let us develop our capacity for tolerance, because I do not want to have on my conscience the death of our youth. This he reiterated in his declaration: We have concluded this treaty in order not to sacrifice 50,000 youths.

Nevertheless, there are people who are criticizing the negotiations. We can say that there is more opposition in the United States than here. We do not even know whether the U.S. Congress will approve these treaties or not. If they do not this country will take another course. This country will take a course of violence. And when this country takes that route, all those individuals who are in their offices writing on whether neutrality is good are going to have to take off their ties and come out. We are going to make sure that they do not remain in hiding. [Applause.]

Today we are going to carry out the following program: Royo will deliver a report and an analysis to this assembly on certain aspects of the treaty, specifically on the problem of duration, jurisdiction, operation of the canal and employment policy. Later on, Minister Ahumada is going to explain the armed forces statute which has been negotiated between Panama and the United States as part of the treaty and the problem of the defense of the canal. Nicolas Ardito Barletta, planning and economic policy minister, will analyze the economic aspects of the treaty. Edwin Fabrega will give you a detailed explanation of the lands and waters problem. Later, we will again explain the neutrality issue and the option for a new sea-level canal. Finally, General Torrijos will speak, and in the afternoon we will be back to answer all your questions.

SPEECH BY PLANNING MINISTER BARLETTA

Gentlemen representatives, colleagues, ladies and gentlemen: It is my duty to inform you about the economic aspects of these negotiations, aspects which are fully as important as the others because at this stage we are all convinced of the necessity that a strong national economy must be the basis for obtaining and fully implementing our freedom of action. They are important also because the real valorization of our geographical position as a natural resource was at stake as well as Panama's obtaining of revenue equal to the value of that geographical position. This means, as a result, the real possibility of accelerating Panama's general development and providing an answer to the important needs of our people in this process. In other words, it would be one thing to have dignity and sovereignty with hunger and quite another to have and to consolidate the dignity and the sovereignty with the integral development of our people. And this has been our aim through the economic aspect of these negotiations in attempting to consolidate the value of our geographical position and the resources and revenue which respond to it so as to use it in our development.

The agreements reached in this aspect are as follows: An average income of \$80 million per year, I repeat, average, for the next 23 years; that is, a total of \$1.8 billion in the 23 years. The majority of this income is subject to a clause of inflationary correction so that the annuity consistently maintains its purchasing value, based on the year 1977. The income for the first year is estimated to be \$65 million. By the end of the treaty, the amount will reach approximately \$100 million in real values of 1977, that is, corrected against any inflation that may occur during that period. The mean of this gradually increasing sum gives us the average amount of \$80 million. This income is itemized as follows: \$0.30 for each ton of cargo that transits the canal. According to traffic projections through the canal, this means an average income of \$55 million per year which in the first year will amount to about \$42 million, to reach \$70 million by the end of the century.

The second item of this round sum is \$20 million per year, of which \$10 million is guaranteed each year, the rest depending upon the level of income of the Panama Canal Company in that year. If in 1 year the second half of the \$20 million cannot be covered, the deficit caused would be covered in the subsequent years to maintain the \$20 million per year payment. And a third item of approximately \$5 million per year of income will come from several businesses and operations being transferred to the national government, such as ports, railroads, sale of fuel, repair of ships and so forth. Therefore the total sum of \$80 million is composed of these three items that I just discussed.

Another aspect gleaned from the canal operation is the transference to Panama—as Edwin Fabrega will explain shortly—of buildings and infrastructure for a current value of \$82 million. Aside from this aspect, which is what Panama would derive from the operation of the canal and from the transfer of physical assets which currently exist in the Canal Zone, there is a parallel and corollary package of economic cooperation. This package reaches an amount of \$345 million, above all, within the next 5 years, and is itemized as follows: loans from the Export-Import

Bank up to the amount of \$200 million in the next 5 years; loans for the construction of housing guaranteed by AID up to \$75 million in the next 5 years; loans guaranteed by a U.S. agency called OPIT for \$20 million for Cofina, our development bank, and other loans and equipment, principally military equipment, for the amount of \$50 million in the next 10 years.

In short, all of these elements of economic benefits which I have mentioned in structures, payments and loans for development will in 23 years amount to the sum of \$2.262 billion. This is compared to what Panama would receive under the current treaty during that same period, which would be the ridiculous amount of \$52 million. This, then, is the difference between what this treaty means as far as economic benefits and what Panama would receive under the current treaty.

Aside from the foregoing, it must be emphasized that all the rest of the existing structures in the Canal Zone, that is, the canal itself and the rest of the civilian and military installations, will be returned to Panama, free of charge, on 31 December 1999. And these structures have an approximate value of \$3 billion currently. Aside from that, we must also point out that Panama will receive from the company that operates the canal the amount of \$10 million per year, also with inflationary correction, to cover the cost of the public services which Panama will administer in the exercise of its jurisdiction in the zone area, for these services which are generated by reason of the existence and operation of the Panama Canal. Therefore, lending these services will cost nothing to the national treasury.

In brief, what is the significance of these figures? We can say that in the next few years, the next 3 or 4 years, the amount of the annuity alone, without taking into consideration the economic cooperation, is 19 percent of the national government's budget, that is, it is a considerable increase, one-fifth. It is 25 percent of the operational expenses of the current budget and is 15 percent of the program of investments of the public sector. As the national government's intention for the time being is to devote the majority of these resources to solving the problems of our nation, the problems of our people through its investment program, we have to take into consideration that this amount—the annuity only, which in the first few years will be approximately \$65 million per year—means at least 15 percent more for the program of investments being carried out by the country. This amount can become a figure of more impact through financing which can be negotiated on the basis of this income. We can also say—as another manner of illustrating what these figures mean, because they are so large that one often does not see them in real terms—that this means considerably speeding up the program of investments which we are developing. All of us here are aware that during the past year we have had to reduce investment in order to face the serious economic crisis which the country and the world have been experiencing. We will now once again be able to accelerate the program of housing construction for the people at reasonable prices, generating employment for all this accumulation of public investments.

It will be possible to take advantage of the important opportunities for national development which we have, opening up all our resources throughout the national territory. And we will therefore enter, through this aspect together with all the others already mentioned, a stage of enormous creativity and national realization in the next few years through the results that have been attained.

Having responded with dignity during the last 2 years, withstanding the sacrifice that we have had to accept for the recession, we now find ourselves facing the possibility of entering a path of great economic activity, of growth in production and of distribution of the benefits of that growth to all the people throughout the national territory. In this respect I honestly and firmly believe—and I do not believe I am using superlatives—that Panama, with the united revolutionary effort of growth and distribution, with the participation of all our people and with this complement which we have obtained, may become an example among Third World countries as to how development within our historical and geographic reality with justice and with the participation of the entire people can be achieved.

LABOR MINISTER AHUMADA

President Lakas, General Torrijos, Commander Carcia, assembly president, representatives, government officials, gentlemen:

The agreements in principle reached between Panama and the United States, especially during the efforts made last week and which are continuing this week in the drafting stage, contain what we consider to be a clear and categorical program of the country's decolonization from a military standpoint. They contain the program which marks the beginning of the end of the country's military occupation by foreign forces. This is important because up to now, contrary to the will of the Panamanian people and government, our country has been virtually occupied by an

overwhelming number of foreign forces in comparison to our nation's military forces. The agreement in principle thus means that from the moment the canal treaty goes into effect there will be substantial reductions in U.S. military forces in our country until 2400 on 31 December 1999.

In this respect there are various problems and theories which have been debated. Those who will oppose any treaty regardless of whether it is a good one, such as this one, believe that the agreement in principle legalizes U.S. military forces in Panama. Consequently, to them, any treaty which directly or indirectly has any reference recognizing in any way the existence of any military base in Panama is a bad treaty. They argue that the joint defense of the Panama Canal agreed in principle is a step backwards and not a step forward in our country's final goal for its liberation. This theory basically considers that in matters of international policy, in regaining its international personality, and on sovereignty, jurisdiction and liberation, Panama must follow the line historically taken by an ostrich—in other words, it should hide its head underground so as not to see what is going on in the rest of the world. U.S. military installations in our country, objectively and independently of our will, exist and operate against our will.

In the face of this reality, there were only two alternatives: Either you conduct negotiations to have these military installations slowly disappear by 31 December 1999, the date when all these military installations will be finally liquidated, or simply, according to international law and the views of great authors and essayists, be satisfied with saying that those installations are illegal and for that reason they will automatically and by the very will of the United States, disappear. These latter views are mirages of a historic nature which the Panamanian people cannot accept because they are deceiving attitudes which prolong the problem instead of solving it. [Applause.]

For this reason Panama and the United States have reached an agreement of a military nature, which in first place accepts the role of the United States in the protection and defense of the canal. Panama's participation will increase greatly from the date the treaty goes into effect, while U.S. participation will decrease until the date the treaty ends.

But this responsibility for protecting and defending the canal—which is shared with Panama in a combined military board which must submit consultations and coordinate actions for Panama's increasing participation according to equal [paritaria] representation between Panama and the United States—is properly established in the agreements which have been approved.

What does this mean? It means that now, at this moment, the U.S. military force is operating freely, according to its own creed and beliefs, according to its own criteria, whatever they may be, but, according to the agreement or principles, that military presence is solely and exclusively for the protection and defense of the canal and not to attack any country or to interfere in the problems of other countries. [Applause.]

This military force must be harnessed by some sort of legal or political restraint, which will define its extent of legal activity in Panama. Therefore, the broad range of action without limitations will be, according to the agreement in principle, subject to rules and very definite laws and regulations that the two countries have agreed upon. Additionally, these are not final—not in their wording or application—because they may be revised every 2 years.

This agreement is known as the statute on armed forces in Panama [estatuto de fuerzas armadas en Panama]. It establishes that at the defense sites that will remain, in the military complexes that will remain—and Fabrega is going to explain how and which ones are involved—out of the 14 bases we now have, four will remain and they will gradually disappear by the year 1979. [Applause.]

These defense sites, which will not be islands off from the national scene and from the country's juridical and political systems, will be separate in as much as the treaty provisions provide that no soldier of any rank can directly or indirectly interfere politically or in any other manner in the affairs of this country. To us this is an extraordinary step forward for the consolidation of our freedom as a country that will now be truly sovereign and independent. [Applause.]

Therefore, these defense sites will also be subject to Panamanian jurisdiction. There will be no separate juridical arrangement there; we are not going to make four small zones out of the Canal Zone. Panamanian law will apply there also, and if a Panamanian who works there or goes there breaks the law in any way, he will be judged by Panamanian authorities and not by a U.S. military court.

Nevertheless, since this is an objective and serious report, information that is commensurate with this act must be provided, and some things must be said, because not everything in the treaty is beautiful. The treaty also has things which

are not liked by neither you, nor us the government, but, since it is not a capitulation by Panama to the United States, but a negotiation, the treaty obviously will have some things we would prefer were not in it. But its essence, that which gives it its essential character, leads us to feel that it is an instrument of liberation.

For example, if a U.S. soldier commits a misdemeanor within a defense site, he will be tried by the authorities of the military forces themselves. This on the surface appears to be a concession, but it seems to be military practice each time the forces of a country must for some reason move outside their borders. We know, for example, when the Panamanian National Guard had to fulfill such an important peace effort as that in the Middle East, it was obvious that if some National Guardsman committed a criminal act, Panama could not be so naive as to allow this guardsman to be subjected to the rigours of the trial given him, for example, in some of the Arab countries or Israel. Consequently, Panama retained the power to try that guardsman. This is more or less—keeping in mind the differences of the examples—the present case. If that U.S. soldier commits an offense outside the military installation, then he will be tried by Panamanian authorities except if he commits an offense against another soldier, so long as it is a misdemeanor, an offense for which he will be tried by military authorities. But if it is one of the graver crimes which our laws provide for—homicide, for example, or robbery, or rape—and for which there is no bail according to our law, then the competency to try falls within the jurisdiction of the Republic of Panama, even though it is a U.S. soldier. If a U.S. soldier commits an offense against a Panamanian within a military base, then he will also be tried by Panamanian authorities even though he is a U.S. soldier.

And if the Panamanian is the one who commits the offense against the soldier, that Panamanian will also be tried by Panamanian authorities, even though he committed the offense against a U.S. soldier. Consequently, this means that the defense sites which may remain at the outset of the treaty—which, we must learn, are not defense sites in perpetuity because the only perpetuity which may finally remain here is the revolutionary process and its capacity to solve the people's problems [Applause.] [Ahumada does not finish the sentence.]

On the other hand—Mr. President, will you allow me? I will soon finish. Here's another problem. Up to now the number of U.S. soldiers in Panama has been unlimited. In military terms, this is known as the level of forces [nivel de fuerza]. Others call it force strength [pie de fuerza]. So, then, it has been agreed, to avoid the impression—which is real and not imaginary—of an occupied country, an impression resulting from the unlimited presence of U.S. troops around us, that this force level or amount of soldiers will never, never—unless there is a worldwide conflict or an extremely serious, uncontrollable situation, in which case we are not even going to have the resources to be aware of it—the number of U.S. soldiers in Panama can never be greater than the number of troops in the Panama National Guard. Therefore, our capacity for action will not be limited by an overwhelming foreign presence. [Applause.]

Royo mentioned the flags question. In effect, even though it is a case of military sites managed by the United States, the flag flown there will be the Panamanian flag. They can put theirs inside, according to agreements they can do this. This point caused a tremendous bemoaning, but is logical. After all, they are North Americans and it is quite logical for them to struggle to prevent their flag from disappearing completely. But it must go inside. And even when it flies inside, it must be beside the Panamanian flag, and even when it is beside the Panamanian flag, the Panamanian flag must occupy the position of honor.

For those of us who have had an opportunity to discuss these things with the colossus, the work that has been done is cause for extraordinary pride. A great Colombian thinker has said: Extreme modesty is the pride of the hypocritical. Without reaching the execrable levels of pedantry, we believe that General Torrijos and President Lakas' leadership has been able to produce a good agreement which will place us in a situation to say definitely that we have already begun the stage of military withdrawal from the country. [Applause.]

I will make this clear: The relationship between Panama and the United States from now until 1999 will be a bilateral one. The two countries will participate in the protection and defense of the canal. It will be this way until 1999 when only Panama will be responsible for the defense of the canal. From now until 1999 there will be a bilateral relationship. Both countries will participate in the protection and defense of the canal until 1999, when Panama alone will defend the canal and when only Panamanian troops—from 31 December 1999 onward—will be allowed anywhere in the Republic of Panama. Only Panamanian troops. And this joint defense, this bilateral participation, will naturally demonstrate that on all fronts Panama is

capable of operating this canal, even more efficiently than the United States can, and that this canal will be defended even more efficiently than they can defend it, because in the final analysis the defense of the canal consists of two fundamental factors—one, the capability of the specialized force, and two, the love and faith of the Panamanian people who know that this is their canal and that consequently every Panamanian has to become a defender of this international waterway, which is a part of the country's natural resources. [Applause.]

This is why, in considering a treaty of this nature—and I am not going to talk about the neutrality aspect, which will be discussed by the head of the negotiations team, Dr. Escobar Bethancourt—I will only say that the military ties will end on 31 December 1999.

At this moment I recall a statement I recently read in an international report published in Panama, a statement which was very sad and painful to me. Two Panamanians by birth—according to the Panamanian constitution a person cannot lose his nationality—made a statement that they are not interested in the canal, that they are concerned only about the Torrijos dictatorship and that if the treaty is signed, it would be between the United States and Torrijos, but not between the United States and the Panamanian people. With a problem as large as this one, so large that people set aside their political attitudes, it is not a matter of what you or I think or what political leanings, crusade or ideology one advocates but of whether or not one loves one's country. At such a time, when a problem arises that is above domestic disputes, when Panamanian nationality and the state and the elimination of a state within a state are at stake, these Panamanians made this statement. It was a sad and depressing comment that could cause pessimism among those who are not politically aware.

The truth is that when I gained political awareness at an early age, I began to understand that in the political dictionary of all countries, including ours, there is one clear and precise word to describe this type of action and position. That word is treason. This is so because, in any effort to inflict temporary wounds of a political nature, such people do not hesitate to grab a poisoned knife and thrust it into the loving heart of the fatherland! Thank you.

EDUCATION MINISTER ROYO

Mr. President, Mr. General, Mr. President of the Assembly, Mr. Vice President, second commander in chief, fellow government officials, members of the staff, honorable representatives:

The subject of the duration of the treaty is related to the subject of abrogation. The 1977 treaty points out that this treaty supersedes all the other agreements that Panama has signed with the United States.

This means that the 1903 Hay-Bunau-Varilla Treaty, the 1936 and the 1955 treaties and all the annexes, exchanges of notes and any other documents in conflict with the present treaty are abrogated. This treaty will have an approximate duration of 23 years. It will expire on 31 December 1999 at 1200 o'clock [as heard].

This treaty clearly establishes the principle of nonintervention. Neither U.S. civilians nor U.S. military forces will have the right to intervene in the domestic affairs of Panama or to participate in Panamanian political affairs.

Regarding the operation of the canal, there will no longer be a governorship in the Canal Zone. There will no longer be a governor of what? [Applause.] There will no longer be a Panama Canal Company in the form it has been operating up to now. There will be other organizations which will be explained immediately. The United States has primary responsibility for the administration of the canal until 31 December 1999. Panama will have a continuously increasing participation in the administration of the canal while U.S. participation will decrease, as will be explained later together with the employment policy aspect.

However, they will have primary responsibility [until 31 December 1999] in line with the Tack-Kissinger agreement.

This does not mean—and we want to use this opportunity to make this clear—that foreigners working in the canal will be persecuted or dismissed. There will be no Belgian Congo here. There will not be an Algerian case here to expel the French. Those persons who have been working in the Canal Zone for years will be able to remain at their jobs. However, they have an obligation. In the first 5 years after the treaty goes into effect, they are under the obligation of reducing the foreign labor force by 20 percent.

Lies have been reported, lies to the effect that all those who have been working in the present Canal Zone will be dismissed. We can tell them—making use of this opportunity—to rest assured and to sleep well, because although we had a 9 Janu-

ary of 1964 here, and despite all the interventions we have suffered, this is not a vindictive country.

Finally, we would like to refer to a point which is perhaps more important from an emotional, rather than a practical, point of view. This is the problem of the flags.

It is said that the flag problem is what caused the events of 1964, but this is not true. What caused it was the symbolic problem. The flag problem was a real one. It involved the recovery of our sovereignty in the Canal Zone.

Regarding the flags, here has also been an important recovery: Throughout all the territory that now constitutes the Canal Zone, excluding the office of the Canal Commission—with only this exception—only the Panamanian flag will fly on the flagpoles. [Applause.]

NEGOTIATOR FABREGA ON LAND RECOVERY

Half of Fort Amador will revert to Panama with all the corresponding installations on the 1st day of the treaty, as well as the islands of Naos, Perico and Flamenco. [Applause.] From the Bridge of the Americas you see all the installations of the fuel tanks, of the Port of Balboa, and which extend to Diablo Heights, including the northern part of Diablo Heights, where there is an antenna field. All this land will revert to Panama immediately and it will be known as the Balboa Port complex, including areas for expansion. Albrook Field will revert to Panama on the first day of the treaty. Curundu Heights will revert to Panama 3 years later, as well as the antenna field across from Panama University. Ancon Hill will revert to Panama on the first day of the treaty, [applause] with two exceptions, namely Gorgas Hospital, to be used for military use by the U.S. Armed Forces and U.S. civilian personnel, and the area where the Quarry Heights offices are now located, which will serve as headquarters of the combined military board which will be in charge of planning and carrying out everything concerned with the defense of the canal—a combined defense. This board will be evenly divided, that is, it will have the same number of representatives from Panama and the United States. The rest of Ancon Hill will revert to Panama on the first day of the treaty.

The railroad with all its installations will also revert to Panama on the first day of the treaty, as well as a coastal strip, from beneath the Bridge of the Americas at the entrance of Farfan Beach to Veracruz so that the residents of Veracruz will not have to transit a defense site. The strip has the best beaches closest to Panama City and every Panamanian may, as of that date, have access to those beaches, which are the best close to Panama City.

On the Atlantic side, in the city of Colon, the port of Cristobal with all its installations will revert to Panama on the first day of the treaty, [applause] as well as Rainbow City and the towns of Paraiso and Pedro Miguel.

To conclude, we want to point out that the agreement in principle does not grant lands and waters and installations, but the right to use them, according to the agreement, so that the United States may operate, maintain and defend the canal as a primary right, until 31 December 1999 at noon.

We see, then, a Panama fully liberated from a condition that limited its political, economic and social geography. According to the new treaty, we shall have a truly free nation. Thank you. [Applause.]

SECOND ESCOBAR BETHANCOURT ADDRESS

Mr. President, General Torrijos, distinguished representatives and general public: We will now report on two very controversial points in the negotiations—one is the neutrality pact between Panama and the United States and the other is the problem of the option to build a new sea-level canal. We feel that the best way to explain this is by pointing out the details of how this negotiation was conducted and what things Panama accepted or rejected, because that will allow you to see the real scope of the neutrality pact.

One of the conditions originally established by the United States before beginning negotiations with Panama called for a neutrality pact and a military pact between the two countries. The military pact had to be concluded before the end of this century so that it could go into effect after 2000. This created a deadlock in the negotiations for some time because Panama opposed the signing of a military pact. And it opposed such a pact because the military pact entailed two things: First, the U.S. military presence in Panama after the expiration of the new treaty. Second, as a great power, the United States is often involved in wars in other parts of the world and we did not want a situation in which, on the basis of a military pact, our country's future generations would be required to fight in U.S. waters under the pretext that they were fighting because the war was being waged to defend the Panama Canal. That was a position Panama maintained until the United States

stopped insisting on the military pact, and discussions began only regarding the neutrality pact.

One of the problems that arose had to do with granting preferential transit through the canal to U.S. warships. They said they had two problems: First, they had to please their Pentagon and had to present them in this matter of the treaty. Second, they said that since they are leaving after the expiration of the treaty they should at least have that [preferential treatment] because they had constructed the canal.

We told them that we admitted that they had in effect constructed the canal, but that to put down in the neutrality pact that U.S. warships were entitled to preferential transit in relation with other ships violated the neutrality pact itself, contradicting the very idea of the pact we were negotiating. This was another subject of long debates and thorough analysis. They kept looking into their books, we into ours; they kept quoting their treaty writers, we kept quoting ours, for this is the way in which these debates are conducted.

So this is the framework of the neutrality pact. The criticism being made against it—some of which you may have heard or read—by a number of people who like to nitpick is that we are giving the United States the right to intervene in our country after the year 2000. Those people believe that the right to intervene is granted, but nobody grants the big powers the right to intervene. They intervene wherever they damn well please with or without a pact. [Applause.]

When they landed in Santo Domingo they did not have any military pact with Santo Domingo, nor did they have any right to intervene in Santo Domingo. But just the same they landed there. But there are people here who believe that it is the articles in a code which tell a country whether or not it has the right to intervene.

They do not know that is the bayonets and cannons and the atomic bombs which give a country the right to intervene. A country like the United States can land its troops in Panama whenever it pleases after 2000 with or without a neutrality pact. But it cannot land its troops in Russia, even if Russia told them to do so. This is reality. In other words, with the neutrality pact we are not giving the United States the right to intervene. What we are giving them is an assurance that the canal will remain permanently neutral, that we are not going to close the canal to their ships or those of any other country.

Why this neutrality pact? Because they think that maybe in the year 2000 this country will become socialist and will turn into their enemy and they feel it is better to make sure right now that even if our country becomes socialist, it cannot prevent them from using the canal. To be even more frank, they do not need that neutrality pact to tell them whether or not they may intervene. They need it to show to their Congress; in order to be able to tell their Congress: Look, we are turning the Canal over to the Panamanians, but we still have the right to watch over them so they behave. That is the truth. It is a question of their internal policy. They are solving an internal problem regarding a Congress that is largely opposed to these negotiations and which even has members who have not been elected of their own free will, turned into members of the U.S. Congress. They are Panamanians who live here and in Miami. [As heard.] [Applause.]

The other problem we discussed was that of the option for the construction of a sea-level canal. In all these years the problem of a sea-level canal was hardly discussed at all at the negotiating table. There were about two talks on this. We discussed this, nothing came out of these discussions and then came the Bogota conference with the presidents. That is where the option problem really reached a crisis. It reached a crisis because a very direct and continuous communication was established among all the presidents meeting there and President Carter through negotiators Bunker and Linowitz as well as with us through Dr. Giogenes de la Rosa, who was there at the time, and our Ambassador Gabriel Lewis Galindo.

But they made a proposal to us on that option and that is why the issue reached a crisis. They proposed that Panama grant them an option to build a sea-level canal without setting any date. Second, they wanted Panama to promise that no other country would construct a sea-level canal. We rejected that proposal in Bogota. We read it to the presidents. That was the proposal brought the previous evening by several of our negotiators and we read it to them. The negotiations between the two countries was practically broken in Bogota. So much so that I remember that at one point General Torrijos told the presidents: Well, we called this conference several days ago for a celebration of a new treaty and it turns out that we have come for the wake. The struggle between the two countries began in Bogota. And I say the two countries because the rest of the presidents got as involved as if they had been Panamanians. We must really be very grateful to the presidents that met with the general in Bogota. Regarding this problem they acted just like any of us; they even

wanted to walk out mad. The Mexican president wanted to get on his plane and leave; he was very furious. They all became Panamanians regarding the option problem.

When the United States finally realized that there was no way in which an agreement could be reached regarding this option in the terms they were proposing and that the issue had reached an impasse, they asked for a recess. During that recess we continued our discussions with the presidents meeting in Bogota.

The Panamanian delegation then prepared a draft which all presidents liked. They said it was correct and fair. We then called the United States, they examined it for a while and finally accepted it. I think that it would be a good idea to read the text of this draft to you so that you will see how the option problem came out. It reads:

Article 3. Possibility of building a third set of locks or a sea-level canal.

First, the Republic of Panama and the United States of America acknowledge that a sea-level canal can be important for future international navigation. As a result of this, after approving the treaty of the existing canal and for the duration of this treaty, both countries promise to study jointly the viability of such a canal. In the event that the need for such a canal is viewed favorably, they will negotiate its construction in the terms agreed on by both countries. This is how the option issue came out. [Applause.]

As you can see, it is not even an option to build a sea-level canal. It is an option to promise to study the viability of it. That is the true option. The true commitment is to sit down with the United States to study whether or not it is viable to build a sea-level canal. If the two countries feel it is viable, then they will sit down to negotiate the terms agreed on by the two countries.

This is the panorama we have before us. This is the famous neutrality that is being criticized in these negotiations. The real problem, or rather the two real problems that those who oppose these negotiations will have to face, will be to prove to us that the 1903 treaty, the Buneau-Varilla Treaty, is better than this one. That will be their first problem—to prove that the perpetuity clause we now have and the present Canal Zone is better than this. That is something they will have to prove to us and our people. They will have to prove that the \$2 million we now get is economically better for all the coming years than what has been presented by our planning and economic policy minister. That is something they will have to prove.

We do not mind being criticized by those who say they do not want the treaty because, as Ahumada said, they do not like General Torrijos because he is a dictator and they do not want the treaty to be signed under a dictator. That is nonsense. At the bottom of this problem, those who oppose this treaty will have to prove to us that perpetuity, the Canal Zone's existence, the existence of a foreign jurisdiction here and the anarchic existence of military bases is better than what we are proposing. And those who do not attack us on that side, but on the contrary, say that we are not revolutionary enough, will have to prove it to us by getting their knapsacks and their grenades and entering the zone to get the gringos out of there. That is how they will have to prove it to us. Not with little speeches or documents.

SPEECH BY GENERAL TORRIJOS

Esteemed fellow members of the government, honorable representatives: You have heard a compact account of what has been 70 years of struggle for the Panamanian people.

I say that it has been 70 years of struggle for the Panamanian people because America and the world know that many of the cemeteries of rebels in this country are full of the crosses of youths who sacrificed themselves to see their sovereignty and their dignity respected.

This triumph, which I come to present to you here, is a triumph which results from the greatest conviction that we have triumphed [as heard]. It is a triumph which comes from the conviction that the country will take another path and a triumph which comes from the conviction that, had we not organized the country politically and given this people authentic representation in the administration of their destiny, no government or leader, no matter how great or how good a pathfinder, could have presented to the nation a treaty which has as its most important feature the fact that it sets the date for the eradication of each of the colonialist stakes [surrounding the zone] which exist at present. [Applause.]

I can tell you that this is a triumph which fills me with pride because to change the term perpetuity to 23 years is a triumph of this generation. I tell you that I am proud of the negotiating team, because they set a deadline on perpetuity, which in other words meant eternity plus one. And I tell you that I am proud because I am convinced that the great objectives of sovereignty can only be achieved through this

struggle which the country has waged, which I call the aplinism [alpinismo] of generations. I call it alpinism of generations because we would be very selfish if we failed to admit that all the past generations, within their own circumstances, fought with all their effort, valor and determination to eradicate the colonial enclave which divides the fatherland. [Applause.]

Never before have I felt more respect for those who participated in this effort. I had not felt such respect because I was unaware of the pressure to which they had been subjected. Sirs: If one were not a leader with a good mental attitude, if one were not a leader who is inspired daily by love for our youth, if one were not a leader overly prepared to withstand pressure, today one would be in a mental asylum. One is subjected, in this type of negotiation—when one chooses the route of negotiation to liberate the country, one chooses a somewhat shorter, but which would entail the sacrifice and immolation of no less than 50,000 Panamanian youths who, being overly devoted to the cause of their fatherland, would have demonstrated that they are the aristocracy of the country's patriots. We would have left future generations headless, completely without future leaders, because the best—the aristocracy of patriotism, the aristocracy of talent and the aristocracy of courage—would have been sacrificed in the 1,142 square kilometers of the Canal Zone.

What will happen? I know that there is question in the minds of all the people—will we recover this piece of land in order to change its owners? To exchange white masters for brown masters? This is the great question and the great doubt which I wish to clarify right now. We are not going to exchange that great piece of land which we are now incorporating under our sovereignty for new masters. We are going to make the most collective use possible of those recovered installations and of those square kilometers. [Applause.] When I say the most collective use, I refer to the use by which the greatest portion of the Panamanian people may enjoy the fruits of their labor.

I visualize, with the idealism of a leader, I visualize Fort Amador, when I pass overhead in a helicopter, as the home of 20,000 Panamanian children playing on those fields, playing on those lawns, sheltered in those installations, without the fear that someone will say that their presence is illegal and that they are intruders on the soil which belongs to them. [Applause.]

I visualize the children of the [national] institute—and when I say the children of the institute I refer not only to those who are registered there but all those who have the philosophy of the institute, since the philosophy of the institute has been the greatest quarry of rebelliousness that has nourished the patriotism of the fatherland. [Applause.]

I visualize the children of the institute climbing Ancon Hill as they please and from there, looking down at the canal, the city, and wherever they wish without a foreign policeman arresting them and accusing them of the usual charge—disturbing the peaceful existence of 50,000 Zonians. Thank God that not everything in this country was badly designed, because he who had enough vision to install the national institute near the Canal Zone was doing so with the clear understanding that he was establishing there an outpost of national dignity so as to prevent those who had arrogantly usurped our territory from sleeping in peace for 70 years. [Applause.]

And now we are in the stage of drafting, of the academic polishing of the treaty. After the Panamanian Government accepts it, accepts this draft as what has been agreed upon, the U.S. Government will have to do likewise. This will take 3 or 4 weeks. Then two alternatives will remain. President Carter is not averse to the idea of coming to the country to sign this document in a setting which was a source of shame for them for 60 years, and in the presence of all the leaders of Latin America. He is not averse to the idea, but on the other hand he is also too busy [empenado], too busy trying to get the treaty through the Senate, and this might possibly prevent his being present. If this is so, then we will have to fly to the United States to sign the treaty and immediately begin disseminating information in order to saturate the public with information on what is being approved or disapproved.

We must stipulate that the government does not consider criticism of the treaty as criticism against the government and that all the government wants is for these opinions on the agreements to be expressed in a responsible manner. We must stipulate that the treaty will be submitted to a plebiscite and that every Panamanian who goes to the ballot box should be aware that what he is depositing in the box is a message from his own conscience. [Applause.]

It was possible to obtain this treaty due to the fact that a long time ago, following the moral scandal of Watergate in the United States, there a team of men began to be formed in the top political leadership of that country who gave a deep, funda-

mental importance to morals. This team of men believed and believe, know and are convinced, that there is no juridical code that legalizes a colonial enclave. They are a team of men with a deep sense of shame and who balanced out the correlation of forces between a big nation and a small one. It balanced out the correlation of forces, not because the United States had become militarily weak, and Panama militarily powerful, but because conscience, honor and morals on both sides reached an equal level at which it was possible for us to reach an agreement.

In this we must admit that President Carter has shown that he is not a president elected only to have the national anthem played for him, but to make decisions which will prevent his country, which is the great nation of the north, from continuing to live with the shame of maintaining a colonial enclave based on the principle that the United States is much stronger than we are. We must admit that this man has had the courage to tell his people not an agreeable truth but rather the logical truth and to tell his people that to continue treating Panama in this way is something which should shame each one of the 200 million U.S. citizens. [Applause.]

Soon—the date has not been determined yet—we will have to confront a general mobilization, a mobilization that will bring to the polls the greatest number of Panamanians able to exercise the right to vote. We have to do it because not doing it, not going, not being present en masse at the polls is to deny the idea that this cause stopped being a cause and became a national religion and later a religion of Latin America. We are soon going to have to deal with this situation, and I hope, and am completely certain, that no Panamanian with the right to vote will be indolent in responding to this call from the fatherland.

And I am completely sure, because each member of our generation, one way or another, has been humiliated in that enclave which today we are dismantling by means of this treaty which we are proposing. [Applause.] I am completely sure that we will be present at the polls to give the country and the leaders a testimonial to the fact that, having given me a blank check to negotiate this treaty, you are now accepting the results of this act of faith and confidence. You are accepting it with satisfaction, and you do so because it is a treaty which decolonizes and does so rapidly because it is a treaty which returns to us all that had been taken from us by force; and because it is a treaty which will strengthen our personality as Panamanians and will give Panamanians more dignity everywhere in the world.

And I know that you will be present, because no Panamanian throughout history, faced with the hidden [as heard] demands of the fatherland, confronting a vehement appeal by the fatherland, no Panamanian in history has failed this call or these demands; nor will they fail this call now made by the country—the call which consists of the casting of their votes in the ballot box in the plebiscite. By this vote, they are expressing what their conscience and dignity as Panamanians and their position as the men of this country tell them they should do. Thank you very much.

AGREEMENT ON TREATY PRINCIPLES SUMMARIZED

Listeners of the state radio broadcasting system through the country: This is Danilo Caballero. Along with Arqueles Morales, we are going to read a summary of the agreement of principles signed between Panama and the United States to reach a new Panama Canal treaty. This document was prepared by the Foreign Ministry and the introductory paragraph is signed by Foreign Minister Gonzalez Revilla. It is for the Assembly of Corregimiento Representatives and was distributed to them this morning for them to study, to read during the recess and at 1500 when today's special meeting reconvenes. They will thus have a basis—with this document and the expositions made this morning—on which to ask pertinent questions to the members of the negotiation team.

This document is especially important because it is the first time that the general content and specific data of the new canal treaty, which is of the highest interest to our people, are being submitted to the 505 representatives for their analysis.

It is necessary to clarify, as Dr. Romulo Escobar Bethancourt did in his speech this morning on the contents of the treaty, that this is not the full document. That is, it is not the complete and absolute text of the draft agreement, the agreement of principles, for the simple reason that the document will only have domestic and international validity when it is signed by our Chief of Government Brig Gen Omar Torrijos Herrera and by U.S. President Jimmy Carter. Regarding the duration of the treaty, the document says: The 1977 treaty will have a set duration; it will expire on 31 December 1999. On that date, the Republic of Panama will begin to manage and defend the Panama Canal exclusively.

Regarding jurisdiction, which historically has been one of the most debated problems in our people's historical struggle to recover sovereignty, the text at our

disposal reads: There will be no Canal Zone government or governor. Only Panama will exercise such governmental functions as police, firemen, customs, justice, postal services and so on. This transfer will be completed in a 30-month period after the treaty takes effect. Only Panamanian civil and penal laws will apply.

The Foreign Ministry document goes on to say that the canal administration commission will not be allowed to carry out commercial operations and that these activities will be completely regulated by Panamanian laws. In this regard, the following activities and functions being carried out by the Panama Canal Company and the Canal Zone Government would cease:

Wholesale and retail sales of merchandise of all types in commissaries, stores, optical shops and others, the preparation of food and drink and milk products; the operation of bakeries, public restaurants and cafeterias and the sale of articles using automatic vending machines; the operation of movie theaters, bowling alleys, billiard halls and other entertainment centers charging admission; laundries and drycleaning facilities that are not operated for official use; outlets to repair and service private automobiles or sell fuel and lubricants, including service stations, garages and outlets to repair or retread tires; repair shops for other privately owned property, including electronic and electrical home appliances, irons, motors and furniture; cold storage and cargo warehouses that are not being operated for official use; commercial supplying and servicing privately owned ships, including the sale of fuel and lubricants, towing services not related to the canal and other U.S. Government operations; the repair of private vessels except when it is necessary to remove damaged ships from the canal; nonofficial printing plants; ocean transportation for public use; mortuary services and cemeteries; educational services, including schools and libraries; the postal services; the customs, immigration and quarantine services, excluding those needed to ensure the cleanliness of the canal; the construction and repair of ships and supplying them with water, fuel and lubricants; the docks and the movement of cargo and passengers.

Regarding the principle of nonintervention, the document distributed today to the 505 Corregimiento Representatives reads as follows: The U.S. military forces and civilian personnel will abstain from all political activities in the Republic of Panama, as well as any other intervention in the domestic affairs of the Republic of Panama.

Regarding neutrality, Panama unilaterally declares the neutrality of the canal so that in times of peace or war it will remain open and at the service of the shipping of all nations of the world in terms of absolute equality and so that the canal and consequently the Isthmus of Panama will not be subjected to reprisals in any armed conflict between the nations of the world. Panama and the United States agree to maintain its neutrality so that the canal can remain permanently neutral. Panama and the United States will promote the support of all nations of the world for the protocol of neutrality.

Regarding the canal's operation, this important document says the following: The United States will be mainly responsible for the operation of the canal until 31 December 1999, when the canal and its auxiliary projects will pass completely to Panama. The canal will be operated by an agency of the U.S. Government. This agency will be called the commission. This commission will have a board of directors made up of nine members, five of whom will be U.S. citizens and four will be Panamanians chosen by the Panamanian Government. From the moment the treaty comes into effect until 31 December 1989, the deputy manager will be a Panamanian and the manager will be a U.S. citizen. Starting on 1 January 1990 until 31 December 1999, the manager will be a Panamanian and the deputy manager will be a U.S. citizen.

Referring to the canal's operation, the document also says there will be a consultative committee made up of an equal number of Panamanian and U.S. representatives that will advise the governments of the two countries on policies related to the canal's operation.

Regarding the employment policy, non-Panamians will be employed only when there are no competent Panamanians to fill the vacancies. This means that when there is a vacancy, it should be filled by a Panamanian. If there is no Panamanian able to fill the post, then foreign or non-Panamanian personnel will be employed. Within the 5 years following the treaty's implementation, the number of U.S. citizens employed in the former Panama Canal Company will be reduced by 20 percent. The employees of U.S. citizenship contracted after the treaty is in effect will be able to work only for a 5-year period. There will be no discrimination in matters regarding salaries, services or labor benefits because of nationality, sex or race. That is to say, there will be no gold roll or silver roll. There will be no security posts, which were held only by U.S. citizens.

One of the most important matters included in the document distributed to the 505 representatives refers to the canal's defense. In this respect, the text reads as follows:

The Republic of Panama and the United States will be jointly responsible for the protection and defense of the Panama Canal during the new treaty's duration. The Republic of Panama will have a growing participation in the canal's defense. There will be a joint board with an equal number of military officers from each of the two countries who will be in charge of coordinating and consulting on matters related to the protection and joint defense of the canal without restricting the identity or lines of command of the Panamanian National Guard.

The United States will station, train and transport military forces only in the manner described in the regulations for the U.S. armed forces in Panama. In times of peace, U.S. forces in Panama will not surpass the level in the Canal Zone prior to the treaty. After the Panama Canal treaty ends, only Panama will manage the canal, maintain military forces, defense sites and military installations in all its territory.

Regarding flags, one of the most irritating matters for Panamanians for over 70 years, the summary of the agreement presented by the Foreign Ministry to the representatives of the assembly says:

The Panamanian flag will be flown in all parts of Panamanian territory. The U.S. flag will be flown only at the office of the Panama Canal administration commission and within defense sites, where our flag will always have an honored place. That is, the Panamanian flag will always be in a honored location at all sites.

The document also refers to the possibility of building a sea-level canal. For the treaty's duration, the two countries, if they believe a sea-level canal may be important, will commit themselves to a joint study of the feasibility of such a canal. If they do this, they will negotiate to try to reach an agreement for its construction under terms which could be established by the Republic of Panama and the United States at that time.

This means that the agreement on principles does not include any clause which commits Panama to building a sea-level canal in conjunction with the United States. This agreement on principles merely provides for the possibility of a joint study with the United States of the feasibility of building a sea-level canal.

The economic aspects of the negotiations we believe to be too complicated to set forth in this short report we are presenting to you via Radio Libertad.

Regarding lands and waters, the document states the following specific points: When Panama grants the United States the right to use, until the year 1999, the lands and waters needed for the efficient operation of the canal, our country thereby liberates almost 70 percent of the lands and waters now occupied by the United States, including the following: Ancon Hill, the railroad, the ports of Balboa and Chistobal, half of Fort Amador, the Naos, Perico and Flamenco islands, part of Coco Solo, France Field, all the towns of Rainbow City, Pedro Miguel and Paraiso, the littoral area from the Bridge of the Americas to Veracruz, Gatun and Alajuela lakes, Fort Randolph and Fort Gulick, Curundu Heights and Albrook Field, Summit Botanical Gardens, Fort San Lorenzo—part of our national historical heritage—the Mount Hope Cemetery, the Balboa and Ancon court buildings and a number of sports facilities. Some of these installations will revert to Panama on the first day after the signing of the treaty, and others 3 and 5 years later. Therefore, from the first day of the new treaty there will be no more Canal Zone. We shall have a canal without a colonial enclave.

Well, this is a summary of the agreement on principles between Panama and the United States which was distributed this morning at the legislative palace to the honorable Corregimiento Representatives. It is a document drafted by the Foreign Ministry and signed by Foreign Minister Nicolas Gonzalez Revilla.

NEGOTIATORS ANSWER ASSEMBLY'S QUESTIONS

[Education Minister Royo] Regarding the question of whether Panama will have to repay the loans from the United States: In referring to discussions of economic aspects, Don Gilberto, we are speaking of two areas. One area is the payments which the United States makes to Panama and which are derived generally from the canal revenues. These include tolls derived from Panama's use of the ports of Balboa and Cristobal.

Another, different area is the package which is called the economic cooperation agreement. That agreement has one goal: for Panama to achieve improved economic development, as Minister Arditio Barletta explained, and, on the day we have to administer the canal 100 percent and defend it, for Panama to have a level of economic development that will allow it to assume that tremendous responsibility.

This economic cooperation agreement provides for loans which Panama definitely must repay. For example, the loan from the Eximport Bank will be \$200 million, and that loan will be made through what are called concessionary loans which are long term—20 and 30 years—with grace periods of 5 to 10 years and, moreover, at an interest rate of between 5.5 and 7 percent. This rate is what is called a soft interest rate and it allows Panama, at the end of 30 years when it repays the \$200 million, the payment at that time, at the values current at that time, will be much less than the amount we are receiving today [sentence as heard]. For this reason, it is said that these are loans paid for by the devaluation of the currency itself.

[Representative Luis Castillo] Mr. President, distinguished negotiators, dear comrade: I would like to ask the negotiators about the plebiscite. Since this is the means by which the Panamanian people will ratify the treaty and is related to the ratification by the U.S. Congress, I would like to ask whether a date has been set for the plebiscite and whether it has considered that it is important for the plebiscite to be held before the U.S. Congress ratifies the treaty. The idea is that once the results of the plebiscite are known—and we feel sure the Panamanian people will approve the treaty by a majority—this would have an impact on the U.S. Congress.

[Romulo Escobar Bethancourt] About the plebiscite. The date for the plebiscite here in the Republic of Panama still has not been set, because naturally this depends on when General Torrijos and President Carter sign the treaty, and also on the amount of time allowed for public debate. After that period for debate—if it is decided here in Panama that, let's say, the debate will take place over a period of 4 weeks beginning on such and such a date—the plebiscite will take place. But the date for it can be set as soon as the two chiefs of government sign the treaty. I understand the electoral tribunal is already taking action and studying the mechanics of the plebiscite. We of course attach great importance to the plebiscite.

I would point out that the revolutionary government is so honest and scrupulous regarding the negotiations with the United States that the 1972 constitution provides for this plebiscite. That is, a constitution dictated by this very same government. What does this mean? Simply that, as General Torrijos has said from the beginning, the problem of relations with the United States is not the problem of one leader or one administration, it is the problem of all Panamanians. If all Panamanians are to be affected for good or for ill by a treaty with the United States, then all Panamanians must have the right not only to express their opinions but to decide whether or not that treaty should stand. For the first time in the history of our republic and under our revolutionary government, that kind of political participation has been established. We honestly agree with you that in a plebiscite here, after our people become truly informed about this treaty and the profound change it implies for the country, an overwhelming majority will be in favor of the treaty.

This revolutionary government, despite the fact that this is a small country, is the only one that has confronted the United States in a really dignified and strong manner.

As for the U.S. Congress, there is a big problem, to be frank with you. They have a big problem, worse than you can imagine. The United States is a country where people have been brought up thinking that the Canal Zone and the Panama Canal belong to them. All their lives they have been taught this in school, at home, through publications—that is the background of the American people. As a product of that training, they, or most of them, feel that this step which President Carter's administration wants to take is a step to give up part of the United States. Many of them feel that if the United States give Panama jurisdiction over the Canal Zone and the Panama Canal afterwards, it is as if they were giving up, for example, the Florida Peninsula. Because that is the training which they have had.

Logically, then, the problem goes to congress. Why? Because the U.S. congressman, as a good political, acts as the instrument of those electing him. He is always aware of how the voter of the district or state that elects him feels. As there are sectors in the United States which feel as I have told you, there are congressmen who, because of their own training, because they were also educated that way, and, because they act according to the desires of those voting for them totally oppose the treaty with Republic of Panama.

[Representative Luis Emilio Veces] I wish to clear up a point of order, because the secretary has declared that the vote was unanimous [for the resolution approving the accomplishments of the Panamanian negotiators regarding the treaty]. I wish to explain my abstention from voting. With the indulgence of those at the presidential table, the vice president, the cabinet ministers and fellow representatives, I wish to explain that I am incapable of begrudging the merits with which the resolution credits those persons abroad who have expressed their solidarity with our country. However, there is a basic issue which has caused me to abstain from voting for that

resolution. It is the fact that I cannot share the pleasure of those at this meeting or the pleasure expressed by the government team today for a treaty which I have not yet seen.

The agreement on principles as submitted by the negotiating team undoubtedly presents the positive portions of the agreements reached. Nevertheless, I do not want to talk about the agreement on principles excessively, because I am not able to express a knowledgeable opinion. I want to inform my fellow representatives and the government team of two or three concerns which have caused me to abstain from voting for that resolution.

I have already expressed my concerns to Captain Ocalgan [head of the General Directorate for Community Development—DIGEDCOM] who visited the Chorrera Municipal Council during its last session. According to the national press and the government team, we have ample guarantees permitting a debate on the new treaty draft. Nevertheless, the same government team has made a series of threats of a political nature against persons who oppose the treaty. I wish to state clearly that in such a situation, it would appear that we are left only to take it or leave it.

I do believe that one of the statements made by Romula Escobar Bethancourt is true. Right now it would appear that any academic lucubration of the treaty is unnecessary because it would in no way alter the agreement on principles or the treaty draft, because the negotiating stage has ended. I am also worried about a number of ideas being expressed, such as that those who oppose the government or the treaty are traitors to the fatherland. These are ideas which given the pretense that there is a democratic atmosphere, constitute a threat for anyone in this country who has the power to reason.

Now, those who participate in politics in this or any other country have to accept the consequences of their participation, whatever they may be, and we know this. However, I believe that this whole process of consultation is being besmirched. This is not detrimental domestically because here we all know each other, what we want and where we are heading, and we do not deceive ourselves, but on the international level where this type of threat sometimes denotes fascist ideas, such as accusing of treason two Panamanians in exile in Venezuela who made statements against General Torrijos.

Frankly, I know of one Latin American government which has stated that whoever is against it can be labeled a traitor and lose his nationality, and this is General Pinochet's government.

Other than that, not even General Somoza, the dictator closest to us, has made such a statement, as far as I know. I also wish to express to my fellow representatives and to the government team my deep concern over the fact that a political debate can be held that will affect not only the treaties, but the whole government as well. However, I sincerely believe that this is not the time for the country to undertake a debate on the national government's situation, because what is at stake is not the government's situation but the country's situation. Consequently, I believe that no one in this country should make any statement at this time on whether General Torrijos' government is appropriate or not, because what we must decide at this time is whether the treaties are appropriate or not, and it is the national government who must lead the debate.

[Chairman interrupts] Fellow Representative Veces is reminded that he has 30 seconds until the end of the permitted 5-minute speaking period.

[Veces] Honorable representatives and members of the government team, I do not believe that there is any doubt in Panama about that reality. I would like to strongly suggest that the government team seriously consider this fact.

[Escobar Bethancourt] My reply to Representative Veces is the following: We are promoting a public and open debate and we are not leveling political threats at anyone. We believe that this is going to be a very democratic debate. However, it will probably not be a one-way democracy, but a two-way democracy. For example, if a person is against the treaty drafts and states it publicly, we will publicly explain the points which the person is opposed to. That is what we call a debate.

However, if a person makes a statement in a newspaper, as we observed recently, that not even Bunau-Varilla would have done this—"this is a democracy," as one published statement read—that person had better not believe that we will remain silent after being compared to Bunau-Varilla. He should be prepared for our reply. This is not a threat. Some individuals believe that democracy consists of criticizing the government and that the government must simply accept it. We will not do that. Any person who during the debate objects to the approval of the treaties because Torrijos is a dictator will receive our reply explaining why we do not consider Torrijos a dictator, and in addition we will reprimand that person.

That will be the debate, at whatever level people choose to engage in it, but whoever decides to enter the debate should know that he will get a reply. It would be a threat if we said that anyone who opposes the treaty would be put in jail, fired from his job or persecuted. That would be a threat. However, having the right to reply to an individual's proposals, I would call true democracy, Veces. Some persons frequently bring up the question of the exiles in reference to the treaty. Let us address this matter. They were not exiled due to the treaty. When they were sent into exile, the negotiations for the treaty had not been completed, and at that time they had said nothing about the treaty, either for or against. They were sent into exile for other reasons, for political reasons, and I do not personally like to see anyone in exile. However, every government has a right to defend itself, and I believe that this government defends itself very mildly. In other countries people are not sent into exile. I have visited all of Latin America. I am going to propose to the general that he send you on a Latin America visit so that you can see what fascism is and what they do to their opponents, how they make them disappear from their homes.

The problem of the exiles is a problem that should be solved. When we visited Cancun, Mexico, we met with the lawyer Turner and we told him we should return to Panama because he had spent too much time abroad, that he should return and see for himself. Turner came to Panama, visited everywhere he wanted, talked to anyone he wished and returned to Mexico. We published a long list of persons who are permitted to return to the country. Do you know why many do not return? Because they are working in those countries and earning much money. That is why they are not returning. In Miami they have already bought a bank. They are not over there suffering. We have many poorer people right here, who have no jobs, right here in our country. In Miami they live in a golden exile.

ASSEMBLY RESOLUTION SUPPORTS NEGOTIATIONS

The National Assembly of Corregimiento Representatives has issued a resolution of support for the negotiations at this stage that is so crucial for the total liberation of the country. The representatives who met with Chief of Government Gen. Omar Torrijos Herrera and the negotiating team yesterday were extensively briefed on the treaty draft concluded by our country and the United States.

The assembly's resolution notes, among other things, that the briefing indicated that the new treaty will be instrumental in achieving national liberation because it eliminates the colonialist enclave imposed on our country 73 years ago, that the new treaty will have a specific deadline, when Panamanian territory will be free of any form of alien presence; and that the results obtained were possible due to the solidary support of Latin America and many other countries throughout the world. The resolution says that the assembly hereby decides to issue an appeal to the Panamanian people at this historic moment to renounce before the altar of the nation all their differences and to consolidate national unity by unanimously supporting the treaty. They urge the Panamanian people to fulfill their civic duty by means of a massive turnout for the plebiscite to cast a vote that their patriotic conscience tells them is a sign of their political maturity.

In addition, political circles of the General Directorate for Community Development [DIGEDECUM] have voiced their support in a resolution, which states: Since the nation has been engaged for 13 years in negotiations with the United States to reach a new treaty over the so-called Canal Zone, and since the agreement on principles for the new treaty eliminates the perpetuity clause and guarantees full sovereignty and jurisdiction over national territory, they support the country's revolutionary leaders and the negotiating team.

DIGEDECUM officials also feel that the next step is to work toward the ratification of the new treaty because it embodies the supreme aspirations of the Panamanian people.

LABOR LEADER ANDERSON INTERVIEWED ON TREATY

[Question] How do you view the attitude of the Canal Zone workers right now and what is the labor leaders' position on the agreement of principles recently reached between Panama and the United States?

[Answer] To us it has been very interesting to participate in the negotiating process which resulted in the agreement of principles. As far as the Canal Zone workers are concerned, it could be stated that they are generally quite pleased; first, because a treaty has been reached after so many years of negotiations and it is definitely a treaty that meets the aspirations of every good Panamanian—namely, that Panama wants to be a free, sovereign nation with jurisdiction over its entire territory.

Many feel that since the employer in the Canal Zone is the U.S. Government there is a negative feeling toward Panamanian aspirations. Our experience is that this is not so. Panamanians who work in the Canal Zone are very much aware of Panama's struggle. They share it and, in most cases, actively support it.

Concerning the labor aspects, there is uncertainty among the workers because the specifics have not been disclosed.

I think that after we hold several information meetings, after we issue public communiques and leaflets and after we use the mass media to brief the entire Panamanian labor force in the Canal Zone, there will be a great deal of acceptance of the content of the treaty.

As leaders, we feel that the protection set forth in the treaty is very adequate, and this is not a rash judgment but a comparative judgment. It is significant that today we have certain benefits and that we have achieved a number of conquests for Panamanian workers in the Canal Zone. Those conquests and benefits have been achieved since the 1955 memorandum of understanding which contained only three labor clauses. Today we are faced with a treaty which includes about 25 labor clauses and none are unfavorable to Panamanian workers. This is indicative of why we accept the treaty.

Today we have had the opportunity of participating directly in the negotiations. We did not have that opportunity in 1955 or 1967.

There is also a great deal of acceptance because the Panamanian Government has fully met its promise of not only seeking to protect current benefits, but of correcting a number of ills existing in the Canal Zone which, despite many struggles, the labor leaders had been unable to correct.

Concerning private business in the Canal Zone, there were 3,000 Panamanian workers whom we could not protect because this area was outside the scope of the law. We were unable to obtain any benefits for them even though this union in particular put all its manpower and funds behind that struggle for the past 15 years. This is one of the issues that the new treaty corrects.

About 82 percent of workers of nonbudgeted activities such as clubs, pools, sports fields and libraries on the military posts were not covered by any labor benefits. This treaty corrects that.

If we view it from the standpoint of just these two specific conquests, we would have to say that it is an extremely favorable treaty for Panamanian workers.

[Question] How do you view the social security benefits that will become effective with the treaty?

[Answer] There has been some confusion or misunderstanding over the benefits. The treaty does not stipulate any major change in labor benefits. However, from the first day of the treaty, those who start to work in the Canal Zone, whether for a State agency or a U.S. Government agency, will be covered by the Social Security Service.

As far as present workers are concerned, there will be no change in their benefits. The changes that could occur are optional for the worker and that would also have to be explained. There will be several employers in the Canal Zone. There will be employees of private business, employees of those activities that go from the U.S. Government to the Panamanian Government and employees of activities that will be entirely administered by the U.S. Government. All those employees who will continue working for the U.S. Government will have the same benefits that they now have with minor differences such as medical care at Gorgas Hospital. The treaty stipulates that after 3 years no Panamanians will receive medical attention at Gorgas Hospital or any other hospital administered by the U.S. Government in the area. But here we are just saying that employees will receive care from other private institutions in Panama or, if they prefer, from the Social Security Service.

[Question] What is the status of the workers who will be laid off and what possibilities do the labor leaders see of resolving this problem?

[Answer] It would be impossible to specify now how many workers will be laid off. However, this is a matter of profound concern to us. In certain areas we have been given almost total assurances that there will be no layoffs and in other areas the very nature of the treaty poses the possibility that there will be layoffs, and this is a matter of deep concern to us.

The fact that Panama will assume complete jurisdiction over political and criminal matters within a maximum of 3 years after the treaty goes into effect means that all the government apparatus which the U.S. Government maintains in the Canal Zone will disappear. The strictly economic and commercial functions will also disappear. We confronted this reality not now, after a treaty has been reached, but before, when we foresaw this as a logical consequence of a treaty. We proposed early retirement as a means of keeping the loss of employment from becoming a serious

problem, not only for the working classes within these specific activities but also within the broader framework of the country's economy. As a matter of fact, when we spoke of a Canal Zone worker and the effects of his dismissal, we in fact said that the dismissal of a worker there would have the same results as the dismissal of three or four workers. Referring specifically to a document published here which referred to [the dismissal of] 3,000 to 8,000 employees, this would have the same effect as the closing of two breweries, Cemento Panama and two or three of the largest companies in the country. We do not really believe that so many employees will be dismissed, but we are aware of the fact that a meaningful number of workers could be dismissed. Let us see now what kind of protection can be given these workers. I believe that they can be given an early retirement so that those dismissals do not become a trauma for the workers or the national economy. In the specific case of the commissaries, we had mentioned that General Torrijos had suggested the possibility of creating cooperatives that would replace these commercial activities administered by the U.S. Government. This would be one of the many ways to solve the problem. However, these specific aspects would have to be studied as the various stages of the treaty develop. It is impossible now to make predictions because no one has any clear-cut concept. No one, not the U.S. Government, the Panamanian Government or we, the unions, have a clear-cut concept of how many jobs will be affected.

[Question] Is there any possibility that your centrals, in solidarity, will press strongly to influence the Senate regarding the treaty's ratification?

[Answer] All the unions now operating in the Canal Zone, except the Colon Portworkers Union, are affiliated with the AFL-CIO. The solidarity you referred to has been evident since 1974. Our federation, at a national level, has supported Panama's just aspirations in the United States. This was the result of a proposal which Local 907 presented in the congress held that year in Honolulu. Our federation's support was very real. It was published by the federation's official news media and also by mass communications media in the United States. What we can assure you is that our federation maintains this attitude of support for Panama and that this support is growing with a treaty which definitely protects the rights we have acquired. In my opinion, based on the study of the treaty's clauses, if the treaty's labor aspects, which is what should interest all labor organizations, are observed, we will be committed to support the treaty. The treaty is a document which protects both Panamanian and U.S. citizens. Any possible opposition to the treaty by the labor unions would be provoked by other reasons, not laboral.

[Question] What, in your opinion, will be the status of the existing labor code and the unions now existing in the Canal Zone?

[Answer] This question is difficult to answer because we will have to await the legislation to implement the conceptual clauses of the treaty. Nevertheless, everything seems to indicate that the labor code will be applied mainly in the areas of private employment and not in those activities under the direct administration of the U.S. Government. Regarding our organization—Local 907—we operate structurally with the labor code. We have had legal standing since 1954 and have always operated under an administrative structure based on the labor code principles.

[Question] How does the union leadership view the employment of many Panamanians in jobs formerly considered security positions?

[Answer] I think that this is not a matter of human qualities. At this time it is we who run the canal. The security positions are really privileged positions to insure the continuity of U.S. personnel at the job and not because the position required a professional or technological level not obtainable in the Republic of Panama. The apprenticeship program begun in the Canal Zone 16 years ago has trained Panamanians at a level capable of carrying out the efficient administration, operation, repair and maintenance of the Panama Canal. The security positions are a great fallacy. One sees, for example, that in the Canal Zone police there are security positions. The Canal Zone fire department desires security jobs. Certain levels of engineering common in Panama are classified as security positions. I rather believe that the problem of running the canal efficiently will fall in the realm of our administrative systems—the administrative systems applied by the republic as sovereign and owner of the canal—and not whether we have the human resources capable of operating it.

It would be wrong to think that, as Panamanians, we could object to a treaty which returns to Panama the total jurisdiction over all of its physical territory. We could object to a labor clause affecting our interests, just as we have protested in the past over the clauses which prevented the full utilization and development of Panamanian workers in the Canal Zone. But we could never object to a treaty which is the aspiration of all good Panamanians, and this organization will back

this treaty even if it contains certain clauses detrimental to our interests. What we would do is simply to wage a struggle at a labor level to correct these irregularities.

RATIFICATION OF THE PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, today the Committee on Foreign Relations continued its hearings on the Panama Canal treaties hearing as witnesses Senators Thurmond, Hollings, and Allen, and Congressmen Stratton, Flood, and Commissioner Corrada from Puerto Rico. For the information of the readers of the Record, I ask unanimous consent that the prepared statements of the witnesses be printed in the Record. Senator Hollings did not have a prepared statement but his remarks will be available for reading in the transcript in the committee offices.

There being no objection, the statements were ordered to be printed in the Record, as follows:

STATEMENT BY SENATOR STROM THURMOND

Mr. Chairman: I am here this morning to present to the Committee and the American people my reasons for opposing the treaties with Panama.

My interest in the Panama Canal is longstanding. Over the years I have introduced several bills to modernize the Panama Canal. In the 94th Congress, I offered a resolution signed by 38 other Senators opposing the surrender of this waterway to Panama. Last August, I visited the Canal Zone for briefings and study to ascertain any changes since my previous visit several years before.

While I recognize the need for some adjustments with Panama concerning the Panama Canal, I see the retention of U.S. sovereignty as basic to continued "practical control" of the Canal, which even the President has expressed himself as being necessary.

My 1976 resolution was more than sufficient warning to both the Ford and Carter Administrations relative to the Senate's concern in this matter and to warn the government of Panama that the treaties would be scrutinized closely. Yet the treaties have been signed with great fanfare, and the threats from Panama strongly suggest either we ratify or pay the consequences of violence and disruption in the Canal Zone. In fact, Panamanian chief negotiator Escobar Bethancourt went so far as to say " * * * This country (Panama) will take a course of violence" if the treaties are not ratified.

At no time in my memory have such threats and pressure been exerted on the Senate as is the case with these treaties. In making our decision, however, we must rationally decide what is in the best interest of our Nation, irrespective of the pressures and threats directed toward us.

IMPORTANCE OF CANAL

I disagree completely with Ambassador Linowitz's statement to this Committee last week that the Canal has become "economically obsolescent." This statement is designed to denigrate the importance of the Canal and thus make the proposed treaties more palatable.

The Canal is one of a very few vital world waterways. It permits rapid two-ocean commerce very beneficial to our Nation. In 1975 about 14,000 ships transited the Canal. Approximately 70 percent of the traffic originated in the United States or was bound for the United States. It is estimated that 45 percent of Alaskan oil will be shipped through the Canal by 1980.

Furthermore, its value from a national security standpoint is attested to by heavy use during the Korean and Vietnam Wars. Approximately 98 percent of our Navy can use this Canal. As an example, in FY 1968, about 70 percent of U.S. Government cargo headed for Vietnam used the Canal. U.S. Government vessels passing through the Canal increased from 285 in 1964 to 1,504 in 1968; 1,376 in 1969; and 1,068 in 1970 during the height of the Vietnam War.

Also, we must not forget our Navy has declined from 900 ships to less than 500. Admiral Thomas Moorer, immediate past Chairman of the Joint Chiefs, states we no longer have a two-ocean Navy. All of our current major war plans are contingent on the interchange of ships between the Atlantic and Pacific Oceans. Ships of the Third and Seventh Fleets in the Pacific may have to bolster the Second Fleet or

even the Sixth Fleet. All of our military services—Army, Navy and Air Force—depend on logistical support which transits the Canal regularly.

Four former Chiefs of Naval Operations have attested to the strategic importance of the Canal in a personal letter to the President. These four great naval strategists, Admirals Anderson, Burke, Carney and Moorer, have retired from the active service and speak from great experience. In their letter to the President, they warned:

“Loss of the Panama Canal, which would be a serious setback in war, would contribute to the encirclement of the U.S. by hostile naval forces, and threaten our ability to survive.”

Now that we have clearly established the importance of the Canal. I want to reject outright the slogan that “Use of the Canal is more important than ownership.” A more sensible slogan would be “Ownership assures control.” As a matter of fact, it can be argued that our giving up ownership of the Canal would diminish our chances for having free access to the Canal, particularly when we consider, for example, Panama’s historic instability. Once the U.S. gives up sovereign and effective control of the Canal Zone and Canal, it will be, in effect, an outsider with highly questionable authority to intervene if the neutrality of the Canal is threatened. This Country would be in a very difficult position internationally and domestically if it had to resurrect “gunboat diplomacy” and intervene in Panama after we surrender sovereign rights.

WHY OPPOSED?

In an effort to be brief and avoid repetition of prior testimony, I will attempt to list my reasons for opposing the treaties.

I. Nature of Panamanian Government

I do not believe we should negotiate on such a vital issue with a government leader who deposed an elected President by military force and over a period of 9 years has not provided the people of Panama free elections. In this period, the Torrijos government has pushed the national debt from \$167 million to over \$1.5 billion. Today, about 39 percent of the Panama budget goes to service this national debt. Furthermore, this government of 1.7 million people has promoted close relations with Cuba and the Soviet Union, two expansionist powers unfriendly to our Country. I seriously question why we should make national heroes out of government officials who have virtually eliminated all political and civil rights of their people. The documented human rights record of the Torrijos government is one of the worst in the world.

One might ask, Once sovereignty is given to Panama, will that government remain friendly to the U.S.? Does the Panamanian government have the political strength or will to resist outside interference? Does it have the economic vitality to maintain and protect one of the world’s vital waterways? What will we be paying after the year 2000 to keep the Canal open? If Panama finds it is unable to cope with the complex operation of the Canal, to whom will they turn? If to us, it means great outlays of cash. The only other great power to which it could turn would be the Soviet Union, through its figurehead Castro.

Mr. Chairman, I wish to point out that in the prepared statements of Ambassadors Bunker and Linowitz, Secretary Brown and General Brown, before this Committee, not one single time did any of these witnesses mention the name of General Torrijos. That should tell the Committee something about the nature of the Government to which we are being asked to turn over an approximate \$8 billion national and world resource.

II. Sovereignty surrendered

I further oppose this treaty because it grants to Panama sovereignty six months after ratification, not in the year 2000, as the public has been led to believe. Once sovereignty is surrendered, control is lost for all practical purposes and control governs use.

III. Property surrendered

Six months after ratification of the Treaty, the Canal Zone ceases to exist and about 65 percent of the land and 10 of the 14 U.S. bases are given to Panama. The remaining land adjoining the Canal itself is under limited U.S. control for the purpose of operating the Canal. We oblige ourselves to pay the Panama government huge sums in various ways, totaling up to nearly \$1.5 billion over the next 22 years. By the year 2000, we will be turning over an investment valued at approximately \$9.3 billion.

IV. Military pact rejected

Our negotiators sought but failed to obtain a military pact with Panama for minimal base rights which would have greatly enhanced our ability to assure the Canal's neutrality after the year 2000. Negotiator Bethancourt stated in his address to the Panama Assembly on August 18 the U.S. desire for defense forces after the year 2000 "created a deadlock in the negotiations for some time because Panama opposed signing of a military pact." Instead, we accepted an ambiguous neutrality pact.

V. Foreign troops allowed?

While U.S. negotiators claim the Neutrality Treaty allows only Panama to maintain troops on its own territory after the year 2000, the Treaty is silent on prohibiting foreign troops prior to the year 2000. There is nothing to prevent Panama from introducing Cuban, Soviet or troops of any other nation into those areas of the Canal Zone we surrender six months after the proposed ratification of the treaty in 1978. Changing political events could prompt Panama to take such a step. In my judgment, a prohibition on foreign troops prior to the year 2000 was one of the many errors made by our Canal negotiators.

VI. New canal prohibited

Another part of the Treaty with which I find fault is the provision prohibiting our construction of a sea-level canal prior to the year 2000, except in Panama or only with the permission of Panama. In this instance, we have surrendered an option which may be forced upon us. While I feel a sea-level canal is unnecessary, why have we foreclosed this option? In doing so, we place ourselves at the mercy of the government which controls Panama.

VII. Privileged passage

The right to priority passage is also denied us in Article VI of the Neutrality Treaty. Instead of "priority passage" through a canal we built and have maintained for the world's benefit, we are promised only "expeditious passage." Mr. Bethancourt has stated privileged passage sought by our negotiators was specifically rejected. The differences in statements made by the negotiators on the two sides make it unclear what our rights would be in a given situation, although priority passage through the Canal could be vital to our national security in an emergency or war.

VIII. Unfriendly ships assured passage

Presently, as a result of our control of the Canal, we could deny passage to adversary ships as a practical matter in time of an international crisis or war. Under the Treaty we surrender this right as it cannot be exercised once practical control of the Canal is surrendered. This means ships aiding an enemy of the U.S. could transit supplies through the Canal.

IX. Neutrality treaty

One of my most significant concerns is the ambiguity contained in the Neutrality Treaty. Ambassador Linowitz and others have maintained that no limits were spelled out in the Treaty, so we will be free to take whatever steps are necessary to protect the neutrality of the Canal. These remarks might be reassuring to the American public, except for the comments made by Chief Negotiator Bethancourt on these provisions to the Panama Assembly on August 19. He stated:

"Those people believe that the right to intervene is granted, but nobody grants the big powers the right to intervene. They intervene wherever they damn well please with or without a pact." [Applause.]

Additionally, in an August 24, 1977 radio broadcast, Mr. Bethancourt is quoted as saying:

"The pact does not establish that the United States has the right to intervene in Panama. This word (intervention) was discussed and eliminated * * *"

Later he stated:

"* * * the neutrality pact does not provide what the United States will say when neutrality is violated."

Indeed, Mr. Chairman, Articles IV and V of the Neutrality Treaty are so ambiguous as to lend themselves to various interpretations. This reason alone is sufficient to reject the Treaties.

BROAD CONCERNS

Mr. Chairman, these are some of the specific concerns I have relative to these Treaties. There are other broader issues involved. Will our ratification of these treaties be seen as a pattern of withdrawal in view of our retreat in Korea,

Southeast Asia and possibly Taiwan? This misguided direction of our foreign policy engenders consternation on the part of our Allies and audacity on the part of our adversaries.

This type of audacity has even been highlighted by the reckless and provocative statements of Mr. Bethancourt and others about violence.

We cannot hope to deal effectively with other Nations as a world leader if we yield to blackmail. That is the only word to describe the threats of violence and sabotage which treaty proponents are broadcasting far and wide, and using as their chief argument for ratification. If the Senate were to ratify a treaty in the face of such threats, it would show the world a new policy alien to our national character and our history and which would invite further exploitation.

While I will leave to others the history of our acquisition of this property, no one can deny its benefits to Panama.

BENEFITS TO PANAMA

Between 1946 and 1973, according to the House Appropriations Committee hearings, Panama was the recipient of \$342 million in total U.S. aid, more per capita aid than was granted to any other country in the world. Benefits to Panamanians in 1975 alone amounted to \$29 million in direct purchases in Panama by U.S. agencies; \$108 million in wages to non-U.S. citizens; and \$39 million in expenditures by U.S. employees. We have not exploited Panama; rather, our aid has enabled its people to enjoy one of the highest GNPs per capita among all 19 Latin American nations, and the highest per capita income in Central America. Panama has from 1960 to 1974 a per capita growth rate surpassed only, and barely, by Brazil. Furthermore, U.S. private investments represent 50 percent of the capital investment in Panama.

POSITIVE ALTERNATIVES

Mr. Chairman, I am not opposed to a new arrangement with Panama, but strongly opposed to this treaty. In the past, I have supported the Terminal Lake-Third Lock Modernization Plan. This would provide for approximately \$2.5 billion in capital investments over a 5 to 10 year period. Such a major step will provide an opportunity between the people of the United States and the people of Panama.

Under no circumstances, however, can we afford to cede sovereignty over the Canal to Panama. Stability for the Canal can only be maintained by U.S. control. Without sovereignty, we have no control. No provision of the treaties is more detrimental to our National interest than the provision which relinquishes sovereignty and control.

In conclusion, Mr. Chairman, neither our interests nor the interests of the people of Panama are served by the treaties. The only outcome of ratification can be danger ahead.

STATEMENT BY JAMES B. ALLEN

Mr. Chairman, thank you very much for affording to me an opportunity to state to you and to the distinguished members of the Committee on Foreign Relations my reasons for opposing ratification of the proposed Panama Canal Treaty and the proposed, so-called neutrality treaty. Although the defects in both documents are legion, in my judgment there are five major flaws, each of which on its own ground would warrant complete rejection of the arrangements negotiated, inasmuch as each would independently damage the national interest of the United States to such extent as to render it improper for the Senate to give its assent.

The five major defects, at least as I see it, are (1) the failure of the Canal Treaty to provide for an adequate defense of the Canal during the proposed 23-year term of the treaty, (2) the failure of the neutrality treaty to grant to the United States the unilateral right to intervene to assure the neutrality of the Canal Zone, (3) the astonishing provision of the Canal Treaty which forbids the United States even to negotiate with another nation for construction of a sea level canal without the express consent of Panama, (4) the decision embodied in the Canal Treaty and related loan agreements to pay to Panama some \$2.262 billion, and (5) the failure of the Canal Treaty to require Congressional authorization for its proposed cession to Panama of United States territory and property.

DEFENSE OF THE CANAL

In order to understand the defense provisions of the proposed treaty, care must be taken to examine in detail the Executive Agreement in Implementation of Article IV of the Canal Treaty. Moreover, further study must be given to the annexes to the

executive agreement, to the annexes to the annexes, and to the various notes, minutes, and protocols—all of which form the fabric of the joint military defense we would undertake with Panama.

I am particularly concerned, Mr. Chairman, that the drafters of the Canal Treaty saw fit to set forth the major substantive defense provisions not in the Canal Treaty in its Article IV, which is entitled "Protection and Defense," but instead in the Executive Agreement in Implementation of Article IV—an agreement which is several times as large as the entire Canal Treaty itself. Article IV of the Canal Treaty does not cover a complete printed page, yet the Agreement in Implementation of Article IV is some 53 pages long, excluding annexes and excluding an additional 22 pages of agreed minutes, the minutes themselves having their own annexes. So, Mr. Chairman, we have critical defense provisions not in the text of the treaty but rather in this executive agreement and in other extrinsic documents which could be modified from time to time by the executive branch with no requirement whatever to obtain the assent of the Senate.

Moreover, Mr. Chairman, the defense provisions set forth in the executive agreement are themselves unworkable and portend a complete withdrawal of the U.S. forces from the Canal Zone well in advance of the projected date of 2000 AD. The Administration proposes in this first executive agreement to surrender 10 out of 14 bases. Thus, we are asked at the outset to permit the surrender of 10 out of 14 military bases and to permit our forces defending the Canal to be hemmed in from day one in 4 relatively small enclaves. These bases would indeed be enclaves because our freedom of action outside of the 4 bases would be severely limited by the treaty requirement for approval of operations by a joint military board in which the United States and Panama will have equal authority. Apparently, the doctrine of unity of command is imperfectly understood at the Department of State, but the Panamanians no doubt recognize fully that this provision of the executive agreement would give a *de facto* veto of United States operations outside of the 4 retained bases.

So our forces would be restricted to 4 relatively small enclaves, and only the naive would doubt that we would very soon see pressure on our forces to withdraw from the 4 sites retained. That process of withdrawal would be facilitated by the fact that the executive department could close down any one or all of the remaining bases by amendment of the executive agreement with the stroke of a pen without the consent of the Senate or the consent of the Congress. Now, Mr. Chairman, the members of the distinguished Committee may not think that this process of accelerated withdrawal is contemplated, but I would call attention to the provision of the executive agreement implementing Article IV which provides explicitly that the agreement will be renegotiated every two years or upon the request of either government and thus tacitly acknowledges what is coming.

This treaty is for a proposed term of 23 years. Yes, we are going to need tough-minded negotiators if we plan to hang on to these 4 defense sites for a term of 23 years with the Panamanians hounding us daily for complete withdrawal and with our own government already proposing to negotiate the matter on a biennial basis or upon request. Frankly, Mr. Chairman, these 4 defense sites would rest on a foundation of sand if, by Senate ratification of the Canal Treaty, the Department of State were to be given the right to agree—and they seem pretty agreeable with this dictator down there in Panama—if the Department of State were to be given the right to agree with Panama more or less at any time that the time was propitious to shut down another base.

Finally, Mr. Chairman, I would ask the Committee to consider carefully the feasibility of successful joint military operations with Panamanian forces. Over the long term we can expect problems. How can we expect full cooperation from an Army whose recruits are taught to chant in unison at their recruit training base at Fort Cimmaron, "Down with the Yankees, death to the Yankees, to the wall with the Yankees." No, Mr. Chairman, over the long term we would be naive in the extreme to expect full cooperation from Panama in any joint defense of the Canal.

CANAL NEUTRALITY

Closely related to the issue of defense is the failure of the executive branch to negotiate for the United States a right to defend the neutrality of the Canal after 2000 AD. Much has been said in the media to the effect that the United States could unilaterally preserve Canal neutrality after a full withdrawal of U.S. forces from the Isthmus of Panama, but, Mr. Chairman, a careful reading of the neutrality treaty makes it evident that, in fact, the United States would have no such right whatsoever.

The neutrality treaty simply declares that the Canal Zone is neutral and sets forth an agreement by the United States and Panama that both parties recognize the Canal's neutrality. Nowhere is the United States granted permission to determine that the neutrality of the Canal is endangered or has been violated and nowhere is the United States granted the right to intervene to insure that the Canal is not made available to an enemy nation while being denied to our Navy and merchant ships.

Additionally, Mr. Chairman, the so-called right of expeditious transit given to United States warships is totally meaningless. The failure of our negotiators to insist on privileged passage for United States war vessels could permit Panama in an emergency to delay the movement of United States warships by simply requiring those vessels to transit the Isthmus on the same "expeditious" basis as merchant ships of all nations.

As Dr. Romulo Escobar Bethancourt, chief negotiator for Panama, put the matter, "If the gringos with their warships say, 'I want to go through first,' then that there is their problem with the other ships there." Regrettably, Mr. Chairman, Dr. Escobar's analysis of the practical meaning of our right to expeditious transit, although stated undiplomatically, is nevertheless precisely correct. His complete rejection of any claim that the United States is given the right to send troops to preserve Canal neutrality also accords accurately with the language in the text. In fact, the truth is, Mr. Chairman, that Dr. Escobar's construction of the neutrality treaty, is unlike the construction placed on it by our own executive department, is a construction based on the language of the treaty itself rather than on wishful thinking or on the assertions of the mass media.

SEA LEVEL CANAL

From the language in the Canal Treaty rather than from press reports, we also learn that the United States would agree not to negotiate without Panamanian consent with any country except Panama for the right to construct an interoceanic canal on any route in the Western Hemisphere. Mr. Chairman, knowing you as I do, I feel certain you share my astonishment that the negotiators for the United States saw fit to preclude any possibility of construction of a new interoceanic canal, perhaps at sea level, without our country first obtaining the express consent of a pro-Marxist and highly unstable military dictatorship. Why was this concession necessary? What did the United States gain from the concession?

I notice with some amusement, Mr. Chairman, that the Republic of Panama purports to grant to the United States of America the right to add a third lane of locks to the existing canal. Inasmuch as the United States already has the right to add a third lane of locks to the existing canal, surely our negotiators did not think that a meaningless concession of that variety was sufficient consideration for giving the Panamanians a veto over any other project we may wish to undertake to connect the two oceans. Certainly, the negotiators for the United States could not have felt that the Panamanian agreement to commit Panama "to study jointly the feasibility of a sea level canal" warranted a countervailing commitment from the United States not to do anything whatsoever without Panamanian permission—but perhaps so. The bizarre behavior of our negotiators has produced other results equally as startling.

In any event, Mr. Chairman, one thing is sure and that is that the Panamanians know they got the best of this bargain. Discussing the sea level canal issue, chief Panamanian negotiator, Romulo Escobar Bethancourt, on August 19, 1977, with pride explained to the Panamanian National Assembly the unilateral benefits of the so-called sea level canal options. Dr. Escobar's remarks on the subject, like his remarks on neutrality, are illuminating and are worth studying in full. As Dr. Escobar explains, instead of the United States obtaining an option to build a sea level canal, the United States negotiators gave to the Panamanians the option to veto construction of a sea level canal by the United States anywhere in the Western Hemisphere.

Now, Mr. Chairman, committing the United States to deal only with Panama about building another canal is a serious mistake. As the distinguished Chairman knows, the best route for a sea level canal is in Nicaragua, that being the route that Senator John Tyler Morgan favored during consideration of Isthmian routes in the early part of this century. Senator Morgan of Alabama, who was Chairman of the Senate Committee on Interoceanic Canals, felt strong strongly that Nicaragua provided a more favorable political and geographical solution to the immense problems involved in constructing a canal between the two oceans. Retrospectively, he may well have been correct, yet our present treaty negotiators propose to foreclose entirely the option Senator Morgan and many others favored, an option which

should at least be kept open. Certainly, with the great volume of Alaskan oil which is only now beginning to come on stream and which must move to Gulf and East Coast refineries, any relinquishment of the right to negotiate for a sea level route in Nicaragua is a very grave mistake indeed.

\$2.262 BILLION TO PANAMA FOR THE RIGHT TO CEDE THE CANAL ZONE TO PANAMA

So, Mr. Chairman, we are presented a treaty which does not provide for an adequate defense of the Canal, does not give the United States the right to intervene to guarantee neutrality, and does not allow the United States to initiate new canal projects except with Panama's consent. The Canal Treaty does, on the other hand, give the Canal Zone to Panama; it does eventually also give the Panama Canal Company to Panama; it does immediately give the most lucrative operations of the Panama Canal Company to Panama; it does give 10 United States military bases to Panama; it does give Panama political jurisdiction over 37,000 United States citizens living in the Canal Zone; and finally, Mr. Chairman, it gives to Panama over the life of the treaty \$2.262 billion in 1977 dollars.

You know, Mr. Chairman, ordinarily the grantee pays the grantor, but our clever negotiators have figured out a way for us to give away the Canal Zone and pay the recipient at the same time. I will not insist on going into great detail on how this \$2.262 billion in 1977 dollars is to be paid to Panama because I know the Committee is fully familiar with the financial ramifications of this proposed arrangement. However, I would recommend to the Committee a careful reading of a speech given on August 19, 1977, before the Panamanian National Assembly by Panamanian Planning and Economic Policy Minister Nicolas Ardito Barletta. Minister Barletta's analysis of the cash flow of this arrangement is, in my judgment, valid, and it is from his work that I have drawn the figure \$2.262 billion.

Why are we proposing to pay these tremendous sums to Panama? Why would we permit these proposed toll increases which will surely burden commerce and inflate consumer prices in the United States? The only reason I can ascertain is a desire to provide Panama with funds to repay outstanding loans from the large international banks.

The Library of Congress did a study at my request which indicates that the external public debt of Panama is some \$1.7 billion.

Interest on that sum is a tremendous burden on this small country of only 1.7 million inhabitants, and already 40% of current revenues in Panama go to carrying present indebtedness. Stating the matter bluntly, Panama is on the verge of bankruptcy and many of our large banks hold loans which may soon be bad debts, that is, of course, unless the United States taxpayer rescues the banks by providing the funds to Panama for repayment.

Mr. Chairman, sooner or later the Congress must draw the line and stop robbing American taxpayers to extend funds to bankrupt Third World countries so that international banks can collect principal and interest on shaky loans. In my judgment, the international banks should be required to write off their bad debts, to write off at least some portion of the loans they made in error, and the international banks should be put on notice that the American taxpayer will not always guarantee a profit in any loan transaction with unstable governments. Perhaps, rejection of the Panama Canal Treaty would be a good method to send that message.

THE CONSTITUTION IGNORED

The final major defect in the treaties is perhaps the most significant since it represents a direct assault by the executive branch on the prerogatives of Congress and since it would set a precedent extending the authority of the executive branch far beyond the bounds contemplated by the authors of the Constitution of the United States.

Article IV, Section 3 of the Constitution provides that Congress "shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Mr. Chairman, I know that the Attorney General has advised the Committee that the proposed treaties do not in any respect violate this clause, but with all due deference to him as a very able lawyer, I cannot share his rationalization of the clear language of the Constitution or his characterization of consistent past practice in our dealings with Panama.

In 1936 and again in 1955, cessions of United States territory to Panama were made contingent on Congressional authorization. Yet now that a truly major cession of virtually all United States territory in the Isthmus of Panama is contemplated, the executive branch has seen fit to assert a novel theory by which the Administration would circumvent the Congress. The reason for development of this novel

theory of Constitutional law is, I believe, a matter of practical politics rather than legal scholarship since public opposition to giving up the Canal is so overwhelming that any Congressional authorization of a cession of territory would be difficult, if not impossible to obtain.

But beyond the immediate question, if we in the Senate permit this circumvention of the role of the Whole Congress in any cession of United States territory, we will be setting a very dangerous precedent which will surely be used again by this or future administrations to assert power in an area heretofore preserved to the Congress. My own guess is that we would next see this precedent applied to the Guantanamo Naval Base in Cuba, but perhaps other cessions of territory or property are also in the works.

So, Mr. Chairman, this Committee should not lightly endorse a departure from sound Constitutional principles simply for the political expediency of the moment. This Committee, should, instead, amend the proposed treaty at all appropriate points to make cessions of territory subject to the enactment of authorizing legislation by the Congress. I would hope that such an amendment would be one of many adopted in Committee to correct these glaring defects I have discussed.

RESERVATIONS, AMENDMENTS, AND THE FILIBUSTER

In summary, Mr. Chairman, I believe that the Senate should play a significant role in the formulation and revision of these proposed treaties so that the terms of any new arrangement with Panama can be made acceptable to the American public and so that the national security interests of the United States can be protected.

Mr. Chairman, I am sure you know of the early practice of including Senators in delegations sent to foreign countries for the purpose of negotiating treaties. That practice has unhappily in large measure ceased, and the Senate has been more and more asked for consent rather than advice. These treaties provide an excellent opportunity for the Senate to reaffirm its Constitutional prerogative and, indeed, duty to advise the Executive—to advise the President—in matters of foreign policy, particularly with respect to treaty negotiation. The Senate can give its advice through the amending process. These treaties should be amended to cure their obvious defects, and since any amendment will require a renegotiation of the amended treaty, the Administration will be advised by these Senate amendments of what is acceptable to the Senate and to the people and what might later receive Senate consent.

Reservations to these treaties would be of little or no value. Reservations simply state the opinion of the Senate and do not have the full force and effect of law. No, Mr. Chairman, the defects in these treaties require outright amendment, and I strongly urge that the Committee take in hand the process of amending the treaties before reporting the treaties to the Senate, at which time the Senate will first receive them as the Committee of the Whole. Although there will be ample opportunity, I am certain, for amendment in the Committee of the Whole and on the floor of the Senate, certainly the Committee on Foreign Relations should play the leading role in molding and amending these documents and giving thereby to the Administration its advice on arrangements with Panama.

Finally, Mr. Chairman, I would comment that I do not foresee a filibuster of these proposed treaties. I do foresee a full discussion, legitimate debate, and consideration of substantive and serious amendments. A filibuster would be pointless, both because a filibuster could be stopped by 60 Senators whereas the treaties could be stopped by 34 Senators and because both treaties present questions which should be disposed of without undue delay.

Inasmuch as the concerns of the citizens of the United States are fairly evident, the Senate should with deliberations, but nevertheless promptly, discharge its duty in considering ratification. No good purpose would be served by having these proposed treaties more or less hanging around for years. They should be put to the test of ratification expeditiously, and it is my own sincere hope that the wisdom and desires of the people of the United States will be respected and that accordingly the treaties will be defeated.

Thank you for the opportunity to appear before this distinguished Committee and before its distinguished Chairman, who is my friend and senior colleague.

TESTIMONY OF CONGRESSMAN SAMUEL S. STRATTON

Mr. Chairman, I appear here in opposition to the Panama Canal treaties "in their present form." I am recommending three "reservations" which I believe should be incorporated in these treaties before they will properly protect the national interest and so be suitable for ratification.

Thus my position differs from that of some other treaty opponents. I am not, for example, opposed to some adjustment in the existing canal treaty. I have been to Panama and have seen the glaring economic disparities there between those who live in the Zone and those outside. I recognize the potentialities for civil disturbance and even guerrilla warfare. I would agree we should take steps to eliminate many of these glaring inequities that are more appropriate for an earlier age. We ought to turn over more of the operation of the canal to the Panamanians, and make available to them a greater share of the financial benefits of the canal, if indeed there are any left.

So I do not quarrel with the general thrust of the principal treaty pending before you. What disturbs me is that these treaties go too far. Clearly they throw out the baby with the bath.

The Panama Canal is still a valuable American asset. It is important to our sea-borne commerce. One might argue that it is not quite as valuable today as it was 30 or 40 years ago. But it is still valuable and will continue to be valuable into the future, especially as we begin to ship our new Alaskan oil around to the East Coast.

Thus whatever changes may be made in the operation or financing of the canal, it is absolutely essential the canal remain available to us and control of it be denied to our enemies into the indefinite future—which certainly means well beyond the next 22 years.

That is why, throughout all these negotiations, and in the subsequent debate over the treaties themselves, the question of canal defense has been fundamental. The main treaty spells out in Article IV the right of the United States to defend the canal until the year 2000. In addition, all the statements made by the negotiators and by Administration spokesmen have asserted that the second treaty, the so-called neutrality treaty, gives the United States the right to defend the canal after the year 2000.

Unfortunately, as recent hearings here and before several House committees have disclosed, this later assertion is simply not true. An alleged right of defense is supposed to be implicit in the text of Article IV of the neutrality treaty. But the word "defense" never appears there. Article IV provides that:

"The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral * * *"

It doesn't say one word about defense. How exactly do you get "defense" out of "neutrality"?

In his original press conference on the treaty President Carter, commenting on Article IV, said "we will have an assurance in perpetuity following the year 2000 that the Panama Canal will be neutral, that our ships will have unlimited access to the canal, along with the ships of other nations; we have no constraints on the action that we can take as a nation to guarantee that neutrality."

But there is a world of difference between "no constraints" placed on the action we can take to preserve neutrality, and a clearcut, unambiguous right of defense.

Indeed the Panamanian Foreign Minister, Dr. Romulo Escobar Bethancourt, declared in a news conference in Panama City on August 24th that "The treaty does not establish that the United States has the right to intervene in Panama." Just how meaningful can a supposed defense right be when a high official of one of the contracting parties publicly denies that the treaty assures such a right?

The only possible conclusion is that these treaties are seriously deficient in protecting America's vital interests. They have been presented to the American people under gravely misleading colors, as containing what they do not in fact contain.

Therefore, Mr. Chairman, my first proposed reservation is that these treaties must specifically spell out the right of the United States, after the year 2000, to defend the canal from any aggression or hostile action that might close it off or threaten to close it off to United States ships or render the canal itself inoperable. With possible threats against the canal from Cuban or Soviet action in the Caribbean, we simply cannot rest our vital national interests on abstruse interpretations of vague and ambiguous language that have already been repudiated by the other signatory power. For the Senate to ratify these treaties without insisting upon this important change would be a dereliction of duty.

General George Brown and other military leaders were quoted in the Washington Post as having assured this committee on September 27th that "U.S. interests will be safeguarded by those treaty provisions giving the United States the right to intervene against threats to the canal's neutrality." Just where do these officers find that particular right in the two treaties? What legal experts told them that even though no such right is spelled out in the text it is there nevertheless? Since

when does it make sense for the most vital item of all not to be clearly and unambiguously spelled out in two treaties that devote hundreds of other precise and intelligible words to items of far less significance? If it is there, what's so wrong about stating it plainly?

In testimony before the House International Relations Committee former Secretary Kissinger expressed concern that this defense right was not expressed in the treaty. And on September 26th before this committee Ambassador Linowitz was reminded by Senator Stone that Foreign Minister Escobar's statement contradicted all these repeated assurances of a specific right of intervention. Mr. Linowitz's only reported response was to say that regardless of what the Panamanians said, the United States still considers its own interpretation "binding on Panama."

Famous last words! This was precisely the approach that got us in trouble with the SALT I treaty. Too many important items were either not mentioned at all or were referred to ambiguously. So when the Soviets began to do things we regarded as violations of the spirit of the treaty, it turned out there never were any such provisions in the treaty—only the conflicting interpretations of the two signatory powers. Let's not do this all over again with the Panama Canal treaties.

In his September 26th testimony Mr. Linowitz offered to resolve this difficulty by "seeking some kind of clarification from the Panamanian government." Well, no amount of "clarification" merely from the Panamanian government can assure the American people this point. The only proper place to clarify the matter is in the text of the final ratified treaty itself. And that clarification can only be made by means of a specific reservation insisted upon by the United States Senate.

Directly related to this principal reservation, I recommend two other reservations. The first is that this defense right be incorporated in the basic treaty itself, not in a separate treaty. So long as there are two treaties, one before 2000 and the other after 2000, disputes will always arise as to which is the real treaty and which should ultimately prevail. As far as defense is concerned, we can tolerate no such ambiguity. We must make it perfectly clear in the basic treaty that all the things we are agreeing to do up to the year 2000 are in direct consideration of the explicit defense right that is being guaranteed to us after the year 2000. Otherwise, the treaty process becomes just a one-sided giveaway.

Finally, if any defense right after the year 2000 is to be meaningful, the United States must have in Panama itself the means to mount such a defense. Yet Article V of the Neutrality Treaty specifically forbids the United States to "maintain military forces, defense sites and military installations" within the Republic of Panama. So a third reservation is required.

Here, too, the testimony of the Joint Chiefs of Staff is seriously deficient. Repeatedly in his comments on the canal General Brown has insisted that the canal is basically "indefensible." If he really believes that, it doesn't matter whether our right to defend the canal is unambiguously assured or not. But I gather that what General Brown really means is that the canal is basically indefensible against an aroused Panamanian people. This may or may not be true. But defense against the Panamanian people is not the major military problem after the year 2000. Once the Panamanians are cut in on the operation and financial benefits of the canal, as this treaty does, they would have to be out of their minds to interrupt regular canal operations.

Our major defense problem after 2000 is the Cubans and the Russians. Panama is not a major military power. Therefore, once United States forces have withdrawn completely from the canal there will be a sizable power vacuum, and with it a strong temptation for other military powers to take the canal away from the Panamanians. If Cuba can send a force of 10,000 combat troops to Africa, what is to stop her from sending paratroopers to Panama to take over the canal? Or what would prevent the Soviets from forcing special concessions out of Panama by moving several cruisers or nuclear submarines just off the coast of Panama City?

If we are to oppose or, better still, deter any such efforts to capture the canal and deny its use to us we need a base located in the immediate vicinity of the canal. Otherwise our "defense" would amount to trying to recapture the canal from bases in Florida, Texas, or Guantanamo. But once the Cubans or the Russians were in physical possession of the canal, I wonder if America would really be willing to retake it in a contested amphibious landing? On the other hand, if U.S. military forces are still in place, if our defensive radar is working, and if our patrol planes are on station out of an American air base, then we can almost certainly deter any such attack well into the 21st century.

So I propose, Mr. Chairman, that we insist, as part of our right to defend the canal, at least one United States base in Panama, including an airfield. Presently we have 13 or 14 there. If the treaty really gives us the right of defense, then it

should also give us the capability of exercising that right effectively. This base would not, of course, be on American soil; it would be on Panamanian soil. And we would be there under treaty to aid Panama in the canal's defense. Anything less than that would make a mockery of the whole issue of American defense rights.

I recognize that these reservations would require reopening negotiations. But let me point out that this would not have been necessary had the executive branch made a serious effort to listen to the American people and to the Congress while these negotiations were under way rather than after they had been concluded. Woodrow Wilson made a similar mistake in 1919 and lived to regret it.

With these reservations the treaty is not quite as generous to the Panamanians as in its present form. But, after all, we are promising not only to give them the canal, but to pay them very generously, perhaps too generously, for taking it away. Surely in return for all these concessions it is little enough to ask that we have not just an implied, but a specific and meaningful right to protect and defend this engineering marvel we built and have successfully kept in operation.

The American people have been led to believe that that right is actually contained in these treaties. You and I know better. Therefore, it is up to the Senate, and to a lesser extent the House, to see that this very serious omission is corrected.

PANAMA CANAL: THE PROBLEM AND THE REASONED SOLUTION

(By Hon. DANIEL J. FLOOD)

Mr. Chairman, as a student of Panama Canal history and problems, I long ago recognized them as inexhaustible subjects. My interest was first aroused in early youth when former President Theodore Roosevelt used to be an occasional house guest at my grandfather's home in Hazleton, Pennsylvania. During those years, I listened many hours to that great American leader while he discussed the difficulties he had to face in launching what was then, and still is, one of the most stupendous industrial enterprises in history. He naturally became my youthful ideal and inspired an interest on my part in the Canal question that has increased over the years. It has been a privilege, indeed, since being a member of the Congress, to have been an instrument in the protection of the most strategic waterway of the Americas as a vital asset of the United States for interoceanic commerce and national defense.

Instead of making a long and detailed statement, I ask that the following documents be appended to my testimony:

Hay-Pauncefote Treaty of 1901 with Great Britain and the April 22, 1977 letter of the Raja of Patiala to the Prime Minister of India.

My statement before the House of Representatives Subcommittee on Inter-American Affairs, September 22, 1971.

My address on "New Panama Canal Treaty Report: Fallacies Clarified and Constructive Program Proposed." Congressional Record, September 9, 1976, pp. H9657-60.

H. Res. 92, 95th Congress.

H.R. 1587, 95th Congress.

Dr. Karl Brandt et al. "Panama Canal Sovereignty and Modernization: Memorial to the Congress," 1975.

Press release of environmental organizations of September 6, 1977 and their telegram to the President of September 6, 1977.

Panama Canal Pilot Association urges Major Modernization as Solution of Panama Canal Problems. Congressional Record, November 15, 1973, p. H. 10091.

Mario Lazo. "Panama Canal Giveaway: A Latin American's View." Washington, D.C.: Council for Inter-American Security, 1977.

Letter to the President by four former Chiefs of Naval Operations of June 8, 1977, and its forwarding endorsement by four Senators of June 15, 1977.

In my studies of Isthmian canal policy questions, I have had the benefit of extensive consultations with the best informed authorities that I could find. They included experienced engineers and geologists, Panama Canal pilots and other navigators, marine biologists, lawyers, historians, and distinguished officers of the Armed Forces with high command experience.

Though canal problems are immensely complicated, when reduced to their essentials they are relatively brief and simple. The two central ones are: (1) The question of U.S. sovereignty over the Canal Zone; and (2) the increase of transit capacity coupled with operational improvements.

From a study of extensive evidence, it is clear that one of the prime reasons for the tremendous success of the United States in the construction of the Panama Canal and its subsequent efficient maintenance, operation, sanitation, protection and defense, with tolls that are "just and equitable," during two World Wars, the Korean and Viet Nam Wars, and the Cuban missile crisis, was the exclusive sovereign control of the Canal Zone by the United States.

When the present Panama Canal questions are evaluated from their most significant angles—engineering, marine operational economic, legal, environmental, defense and diplomatic—the only commonsense solutions are: (1) retention by the United States of its undiluted sovereign control over the Canal Zone; and (2) the major modernization of the existing canal under the well known, extensively documented and strongly supported Terminal Lake-Third Locks solution. This proposal, which was developed in the Panama Canal organization as a result of World War II experience, was submitted to higher authority through official channels and won the approval of President Franklin D. Roosevelt as a post war project.

Such major modernization, on which more than \$171,000,000 have already been expended, would improve the maintenance and operation of the Canal enormously, bring huge benefits to Panama, serve interoceanic commerce by increasing canal capacity and its operational efficiency for larger vessels, including larger tankers with Alaskan oil, and serve to increase employment in the United States as well as in Panama. Moreover, it is covered by existing treaty provisions, which authorize "expansion and new construction," and thus does not require the negotiation of a new canal treaty. (Congressional Record, July 24, 1939, p. 9834.) In addition, the Terminal Lake-Third Locks solution is recognized by experienced navigators, including Panama Canal pilots, as providing the best operational canal practicable of achievement and, I may add, at least cost.

In connection with costs, one of the main reasons for the insistence by the United States upon exclusive sovereign control over the Canal Zone was to protect the huge investment involved in the construction and fortification of the canal as well as the costs of its later improvements.

As a member of the Subcommittee on Defense, House Committee on Appropriations, I believe that I reflect the view of a majority of the House of Representatives as well as the people of the United States when saying that both will demand adherence to that historic U.S. canal policy.

In contrast to the modernization of the existing Canal, the much publicized proposal for a so-called "sea-level" canal, which is actually one of tidal lock design, would be operationally inferior to the existing canal as well as economically extravagant. Nevertheless, it makes a strong appeal to the inexperienced and others who think they may benefit from such a vast project. It periodically reappears as a "hardy perennial" no matter how often the impossibility of realizing any such scheme within realistic limits of cost and time may be demonstrated.

Historically, the advocacy of a "sea-level" design has been based on the alleged vulnerability of the lake and lock type.

In 1905-06, during the "battle of the levels," its supporters used the danger of "naval gunfire" as their major justification.

In 1938-39, prior to World War II, they stressed the hazards of "enemy bombing."

In 1945-48, its proponents held that "vulnerability to the atomic bomb" and other new weapon dangers "dictated" the construction of a "sea level" canal for reasons of "security and national defense."

In 1964, its advocates argued that "two sticks of dynamite" could destroy the present canal.

In 1970, they contended that the alleged "vulnerability" of the existing canal to "many forms of attack" required a tidal lock design.

In 1974-75, its supporters stressed that the dangers of "guerilla warfare" and even "earthquakes" required construction of the "sea-level" type.

The only new points in support of the "sea-level" proposal have been the use of different hobgoblins. Such advocacy is primarily based on the fallacious assumption that it is possible to construct a canal of "indestructible proportions."

The advent of nuclear weapons has negated all such assumptions, for any navigation project, regardless of type, is vulnerable to destruction by such weapons and no amount of sophistry can alter this fact. The true criteria for decision as to type are not passive defense measures embodied in canal design but "ease and safety of navigation" and this test leaves no doubt as to what type is required at Panama.

The 1947 Report under Public Law 280, 79th Congress, recommended only a "sea-level" project in the Canal Zone near the existing canal. It failed to receive Executive approval and was transmitted by President Truman to the Congress without comment or recommendation, and the Congress took no action thereon.

When the 1960 report of an independent inquiry under the House Committee on Merchant Marine and Fisheries was submitted, it opposed the construction of a "sea-level" project in the Canal Zone, as previously recommended in 1947, because of the possibility of massive slides involving a "long interruption to traffic" (H. Rept. No. 1960, 86th Congress, p. 5.)

In 1970, the report under Public Law 88-609, 88th Congress, as amended, recommended only a "sea-level" project in the Republic of Panama about 10 miles west of the existing canal.

The 1947 and 1970 "sea level" canal reports, costing about \$6,000,000 and \$23,000,000, respectively, were not the products of independent broadly based commissions subject to Senate confirmation, but of Executive appointed consultants to justify the predetermined decisions of a small professional and industrial group.

The maintenance, operation, sanitation and protection of the Panama Canal and its indispensable protective frame of the Canal Zone are technical problems of great complexity, requiring not only a depth of expert knowledge and experience but also the strong logistical support of a great and powerful nation.

The solution of these problems, including that of major modernization, does not consist of surrendering U.S. sovereignty over the Canal Zone and, ultimately, the Canal itself to a small, weak, technologically primitive, and unstable country but the assumption by the United States of its responsibilities as the great power leader of the Free World.

As was previously indicated, the reasoned solution is two fold: (1) re-affirmation by the Congress of full U.S. sovereign control over the Canal Zone; and (2) the major modernization of the existing canal under existing treaty provisions. Measures to implement these objectives are now before the Congress and should be promptly approved.

As to the much propagandized assertion that all of the Latin American countries desire the United States to surrender its sovereign control over the Panama Canal and Canal Zone to Panama, this is plain poppycock. I know of no better summary of Latin American feeling than that by the late Dr. Mario Lazo, a distinguished Cuban lawyer and author. In his 1977 posthumously published article, when commenting on the proposed surrender, he stated: "The almost universal reaction among the educated people of Latin America who are not politicians to a promulgated Kissinger-Bunker giveaway treaty would be, at first, incredulity, then sadness and eventually ridicule and even contempt for the once greatly respected nation that had shown itself no longer to have the will to maintain its responsibilities." (Mario Lazo, *Op. Cit.*, p. 10.)

The situation on the Isthmus is not a mere local conflict between Panama and the United States but a focal issue in the U.S.S.R. campaign for world domination by gaining control of strategic waterways. The strength of the U.S. Navy has been reduced from some 1,000 vessels a decade ago to about 460 ships today. Thus, the Canal is a more vital element now for U.S. seapower than for many years. We can surrender its sovereign control only at our peril for with the loss of sovereignty all other aspects would become irrelevant. Such giveaway would quickly transform the Caribbean Sea and the Gulf of Mexico into Red lakes.

As to current efforts to polarize proponents of surrender of the Canal Zone and their opponents as liberals and conservatives, respectively, this is a monumental deception. The Canal question transcends all partisan considerations and must be resolved on the highest plane of national interest for it is a crucial issue in the current global situation, involving the security not only of the United States but also that of the entire Free World.

In these connections, I would stress the following:

The proposed new canal treaties ignore the obligations of the United States under the Hay-Pauncefote Treaty.

They disregard the rights under that treaty of the successor states of the former British Empire and other important canal users that provide a substantial portion of Panama Canal traffic.

They represent an abject surrender to threats of violence if the treaties are not ratified.

Their ratification will extend U.S.S.R. power in the strategic Caribbean-Gulf of Mexico areas and impair the influence of the United States not only in this area but also throughout the world, especially among canal user nations.

There is ample authority to deal with local problems within the framework of existing treaties without any new ones.

The present treaties are workable. The proposed treaties would saddle the United States with grave responsibility without adequate authority, which would be an entirely impossible situation and would not work.

Finally, Mr. Chairman, the program that I recommend, which is derived from experience and is historically based, is simple:

1. Rejection of the pending treaties in their entirety;
2. Re-affirmation by the Congress of the historic U.S. policy for perpetual undiluted U.S. sovereign control over the Canal Zone;
3. Enactment of measures for the major modernization of the existing canal under existing treaty provisions.
4. Authorization for a Delegate in the Congress from the Canal Zone.
5. Reactivation of the preWorld War II U.S. Navy's Special Service Squadron with home base in the Canal Zone.

As recognized by many informed Latin Americans, this program will be best for the United States, best for world commerce, best for Panama and best for other nations of Latin America that use the Canal.

TESTIMONY OF THE HONORABLE BALTASAR CORRADA

Mr. Chairman, Members of the Committee: My name is Baltasar Corrada, Resident Commissioner of Puerto Rico to the United States Congress, and Member of the House of Representatives. I am very pleased to be given the opportunity to testify today on the proposed Panama Canal Treaties. I have a short statement that I would like to read and I will then answer any questions that you may have.

I have asked to be heard by the Committee because it seems to me that we Puerto Ricans are in a very unique position as citizens of the United States as well as residents of the Caribbean of hispanic heritage, to understand the significance of these treaties for our nation and for our relations with Latin America. Puerto Rico lies halfway between the U.S. mainland and the Canal. From our particular vantage point, I will share my views with you.

Although I am aware of the concern of some people about a possible threat to our national security, I do not believe that our safety is imperiled as a result of the ratification of these treaties. I would like to state from the outset that the proposed treaties have my full support as well as the endorsement of the Governor of Puerto Rico, the Honorable Carlos Romero Barcelo. Governor Romero was one of the first governors to encourage the ratification of these treaties in a speech given at the recent Southern Governors Conference held in San Antonio.

We realize and share in the strong belief that these treaties represent a fair and just resolution of a long standing and delicate dispute between our nation and the Republic of Panama. A dispute, may I add, that has become an issue in terms of our relationship with all the nations of Latin America who will judge our actions in this matter to view us as fair and open-minded or as recalcitrants who insist in perpetuating an old agreement not morally justified on the basis of today's standards for international relations.

A major question and one which I find people are most concerned about revolves around what they perceive to be a giving away of something that is rightfully ours. A close examination of the provisions of the Hay-Bunau-Varilla Treaty, particularly Articles II and III, however, will show that while the words "in perpetuity" were used in granting the United States control over the land for the purpose of the construction of the canal, and that Article III provides that "the United States would possess and exercise (as) if it were the sovereign of the territory," the United States has never asserted sovereignty in one very important characteristic inherent to a claim of full territorial jurisdiction: the citizenship of persons born within its boundaries. Children of non-U.S. nationals which are born within the boundaries of the Canal Zone are not considered U.S. citizens. I believe this to be a very important point as we have extended our citizenship to those persons born in places where we have full jurisdiction; the absence of that policy in this case shows that we never intended to assert full sovereignty over the Canal Zone.

In addition, there are two other points which we need to emphasize in order that our people will fully understand the purpose of these treaties. First, the continued protection of our national security interests are ensured by the provisions in the treaties which continue our exercise of control over the defense of the Canal until the year 2000 and guarantees the neutrality of the Canal into the 21st century and beyond. Moreover, the United States is guaranteed passage of its ships during a time of war regardless of the nature of their cargo, and the United States will continue to supervise the access to the Canal area on both the Atlantic and Pacific ends. We are thus assured that, should the need arise, the uninterrupted use of the Canal would be guaranteed.

A third main point concerns the commercial use of the Canal. In recent years our use of the Canal has declined as it is not equipped to handle the super-tankers used

today. Many people are not aware that only about 4 percent of the trade between the East and West coasts of the United States is handled through the Panama Canal today. Even so, this commercial navigability is not endangered or precluded by the ratification of the Canal Treaties; on the other hand, both the United States and Panama commit themselves to a joint study to determine the feasibility of a new sea-level canal. Such a study and possible construction, I submit, would not have been possible without an overall evaluation of the 1903 Treaty. Looking at it pragmatically, by the enactment and ratification of these treaties we are ensuring the possibility of increased use of the canal by our ships and tankers through the expansion of the existing Canal or the construction of a new one, something which would otherwise have been extremely difficult, if not impossible under the terms of the existing treaty.

Lastly, we must remember that Ambassadors Bunker and Linowitz are men of vast experience dedicated to the achievement of a mutually equitable treaty. If people would read and analyze the provisions of these treaties, the notion that this is a one-sided deal, beneficial to the other party at the detriment of our interest, would be dispelled. Our interests and security have been and will continue to be protected by the ratification of these treaties.

This brings me, Mr. Chairman, to what I consider to be a significant consequence of these treaties; our enhance reputation in the world community, particularly amongst our neighbors in Latin America. The 1903 Treaty has long been considered a blot in our international reputation. While one can understand and sympathize with the pressing need in the United States during the early 1900's for a route connecting the Atlantic and Pacific oceans, one cannot help but be critical of the 1903 Treaty. It seems inconceivable that a fair and equitable treaty could be worked out within days of the proclamation of the new Republic of Panama. It is not surprising that the Panamanians later resented the terms of the treaty. The 1964 riots exacerbated an already smoldering situation and determined without question that a solution had to be reached in order to avoid a major crisis. It was impossible to maintain the status quo but it would have been foolish to undertake any precipitous agreements. The fact that the negotiations spread over a fourteen year period under Presidents Johnson, Nixon, Ford and Carter attest to the thorough deliberations that took place. We can be justly proud and sure that the ratification of these treaties will result in a better appreciation and support of our intentions in the area.

Mr. Chairman, the United States has traditionally been the defender of the interests and rights of other people. Here we are putting our words to action by correcting a situation which concerns our friends and allies and offered grounds for criticism to our enemies. We had entered into a treaty where the two parties had not been equal in the fullest sense of the word; we can remedy that situation by the ratification of these treaties and I urge the Senate to act favorably on these treaties.

Thank you.

THE PANAMA CANAL TREATIES

Mr. THURMOND. Mr. President, earlier today I testified before the Foreign Relations Committee on the provisions of the pending treaties that would give the Panama Canal Zone to the Republic of Panama. During my testimony opposing these treaties, I raised the point that Panamanian officials are putting a different interpretation on some of the treaty provisions from those interpretations expressed by U.S. officials who support the treaties.

I have now been handed a wire from the American Embassy in Panama to the U.S. Secretary of State. It was obtained by Senator Robert Dole and corroborates my statement this morning about Panamanian interpretations of the treaties differing from those expressed by proponents in this country.

Mr. President, I ask unanimous consent that a news release on this matter by Senator Dole and the wire to the Secretary of State be printed in the Record.

There being no objection, the news release was ordered to be printed in the Record, as follows:

DOLE: "CONFIDENTIAL" CABLE PROVES PANAMA CANAL TREATY FLAWED

WASHINGTON, D.C.—Senator Bob Dole today released the text of a Confidential State Department cable which he said proves "beyond a doubt" that U.S. and Panamanian officials have far different interpretations of key defense provisions in the proposed Panama Canal Treaties. Dole has requested comments from Secretary of State Cyrus Vance on the contents of the cable, which the Senator received a copy of on Monday of this week. "This document demonstrates beyond a doubt the vast differences in interpretation of the most important part of these treaties—that portion which bears directly on our vital national defense interests," Dole said.

Senator Dole, who is due to testify before the Senate Foreign Relations Committee Wednesday morning, said that the Senate "must clarify our defense rights by Amendment, not by weak 'understandings' that have no legal and binding effect." Senator Dole is the only Senator to have introduced Amendments and Reservations to change the language of the Canal Treaties proposed by President Carter.

The State Department cable was received from the American Embassy in Panama last Thursday, September 29, and described Panamanian negotiators as "disturbed" over testimony by Secretary of State Vance and U.S. Ambassadors Ellsworth Bunker and Sol Linowitz before the Senate Foreign Relations Committee last week. One Panamanian negotiator confirmed that the U.S. would have no military intervention rights under the Treaty, and there would be no "preferential passage" for U.S. warships through the Panama Canal. Secretary Vance, along with several other Administration witnesses, indicated in his testimony last week that such American rights were "understood" within the language of the Treaties.

Senator Dole said it is "essential" that the United States retain unilateral authority to step in and defend the Canal militarily at any time it is threatened. He said it is also essential to have clear-cut rights to priority passage through the Canal during wartime. Senator Dole has already introduced Amendments to the Treaties which would guarantee both rights to the United States permanently.

In other remarks prepared for the Committee, Dole said defects and omissions in the Treaties must be corrected by Amendment or Reservation, both of which would be legally binding, rather than by Understanding or Declaration, which have only an interpretive purpose for the party that makes them.

Dole described in detail his six Amendments and two Reservations which, in addition to those described above, would cut U.S. payments to Panama in half; guarantee the U.S. right to construct a new interoceanic canal anywhere in the Western hemisphere; extend the transition period for transfer of U.S. jurisdiction over the Canal Zone; insist on human rights observance in Panama for U.S. and Panamanian citizens; and give the House of Representatives a right to act on the Treaty proposals.

STATE DEPARTMENT CABLE

Subject: negotiator's concern over hearings:

1. The political counselor called Carlos Lopez Guevara on another matter this morning and found him disturbed over some of the testimony before the Senate Foreign Relations Committee—particularly the first day. Two matters seemed to trouble him most:

A. Interpretation of the expeditious-passage clause that U.S. war vessels get "preferential" treatment or that they may "go to the head of the line". Lopez Guevara said that Royo and Escobar tentatively accepted preferential treatment for us and Panamanian war vessels, but in a later session this was specifically rejected by Panama and the word "expeditiously" was substituted. B. Assertions that the treaty gives the U.S. any right to "intervene" in Panama. He said that Article IV means nothing more than what it says. "Intervention is simply forbidden by international law," he said. "Panama cannot agree to the right of the U.S. to intervene." He urged that U.S. officials stop using the term "intervention" in describing its rights under the treaty. He also expressed the view that those testifying before the committee on Monday had made too much of General Torrijos' statement that Panama was under the umbrella of the Pentagon. "The general was stating a fact, not giving the U.S. any right to intervene." He said he had no way of knowing what Torrijos thought of the testimony, but he, Lopez, personally was disturbed with many of our interpretations. He promised to "set the record straight" in a speech he is to make tonight.

2. The political counselor pointed out some statements which Panamanian negotiators had made which do not accord with our understanding of the neutrality agreement. He said that, on balance, the positions on neutrality given by Escobar and Boyd, while not identical with our interpretation, were moderate in the Panamanian context. However, certain statements taken by themselves and out of the

overall context, have proved difficult to explain to skeptical Senators. He pointed out that most of the difficulties in the Senate so far have come from uncommitted Senators such as Baker and Stone, rather than hardline treaty opponents. He suggested that it might be useful if the Panamanians would establish a standard position, rather than speak extemporaneously on this delicate question.

3. Lopez Guevara said he understood the difficulties which U.S. negotiators face and asked for copies of some of the offending remarks. However, he cautioned that, no matter how necessary in the American process, there were some things that no Panamanian Government could accept.

4. Comment: As the negotiators are aware, Lopez Guevara, though a moderate and reasonable man, is relatively inflexible on some questions. As he pointed out, he was at the head of those who did not accept the concept of priority passage for U.S. war vessels. He is considered a technician within the government, but he is influential. As we talk with other negotiators and officials who are campaigning for the treaty here, we will urge caution on any statement concerning U.S. rights under the neutrality treaty. But we are likely to be faced with increasing irritation over—and perhaps public disavowals of—our interpretations. Any assertion which deems to claim a right to intervene in Panama's domestic affairs is almost sure to be challenged here.—Gonzalez

Mr. HARRY F. BYRD, JR. Mr. President, will the Senator yield?

Mr. THURMOND. I am pleased to yield to the able Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, I have seen the wire to which the distinguished Senator from South Carolina refers. It is a wire from the American Embassy in Panama to our State Department.

It is a very significant statement. I am glad the Senator has put it in the Record. Earlier today, I inserted in the Record the testimony given by the Senator from South Carolina before the Foreign Relations Committee today. In that testimony, the Senator from South Carolina brought out many facts which I think are very important for the Senate to know.

Mr. THURMOND. I thank the distinguished and able senior Senator from Virginia.

PANAMA CANAL TREATIES—NO. 12

Mr. ALLEN. Mr. President, this is the 12th speech in a series dealing with the proposed Panama Canal treaties. Yesterday I testified before the Senate Committee on Foreign Relations, and in lieu of full remarks in the Senate on the canal treaties, I obtained unanimous consent to have printed in the Record my testimony at the Foreign Relations Committee hearing. Today, Mr. President, I will discuss the historical background against which the United States negotiated the Hay/Bunau-Varilla Treaty, the treaty of 1903, which made possible the construction of the Panama Canal. Frankly, there is so much misinformation on this subject that perhaps the Senate will find advantage in a review of the facts as they actually occurred.

Although an isthmian canal had been contemplated from the time of Cortez, the first significant event leading to the construction of the canal was the treaty of 1846 with Colombia, then known as New Granada. Under the provisions of the treaty, New Granada guaranteed to the United States the exclusive right of transit across the Isthmus of Panama—the State of Panama, which was then a province of New Granada—“upon any modes of communication that now exist or that may be hereafter constructed.”

So this language is really the forerunner of the rights and the property rights that the United States gained under the treaty of 1903 “upon any modes of communication that now exist or that may be hereafter constructed.” In exchange, the United States guaranteed “positively and efficaciously” the “perfect neutrality” of the isthmus—I repeat, this sort of language goes away back, more than 100 years; the United States guaranteed “the perfect neutrality” of this area “positively and efficaciously,” and further guaranteed New Granada’s right of sovereignty in the isthmus. Pursuant to this agreement, the United States constructed the Panama Railroad, which now crosses the isthmus in the vicinity of the Panama Canal.

The discovery of gold in California in 1848 intensified the interest of the United States in a route across the isthmus. Ultimately, however, the single event which focused the full attention of U.S. citizens on the desirability of constructing a canal was the dramatic 1898 voyage of the battleship *Oregon* at the beginning of the Spanish-American War from the west coast of the United States around the Horn and into the Caribbean. Our first true modern battleship, the *Oregon* was in San Francisco when the *Maine* blew up in Havana Harbor. Victory over Spain in the Caribbean was dependent on the *Oregon*’s presence. The warship was a beautiful and well equipped vessel, and with determined sailing, she did arrive off Cuba in time to play a crucial part in the battle of Santiago Bay. However, the trip took almost 70 days, highlighting the great necessity for an Isthmian Canal for expedited American naval operations. The long voyage of the *Oregon* was the great catalyst in firming American resolve to sever the continents.

Years prior, in 1850, as a first step, the construction of the Panama Railroad had begun. The railway was finished 5 years later at a cost of \$8 million, six times the initial estimate. The

world's first transcontinental railroad, its high construction cost which would just be a drop in the bucket compared to the costs today, of course, made it the most expensive rail line on Earth. Nevertheless, at a price of \$25 in gold for a one-way ticket, it earned massive profits for its stockholders. Twenty-five dollars in gold, Mr. President, a high price in that day, was nevertheless considered quite a bargain inasmuch as a passenger could thereby reduce greatly the length of time required to remain in Panama during a transit from one ocean to the other. Panama was considered the most unhealthy region in the civilized world, and the less time spent there by a traveler, the better. During the construction of the railroad, for example, more than 6,000 construction workers died of cholera, dysentery, yellow fever, malaria, and small pox—all diseases for which there was then no known cure.

So, Mr. President, thanks to this treaty of 1846 with New Granada and thanks to American initiative, the isthmus at Panama was spanned. So we have a long history of operations in Panama, in moving from one ocean to the other, then by railroad and now by canal. Under the terms of the treaty with New Granada, the United States was obliged to keep the railroad open and to protect it against any potential enemy, by force of arms if necessary. As a result, U.S. naval vessels were customarily stationed in the Caribbean off Colon and Panama City.

Way back then, Mr. President, we were given the right to defend the railroad and to keep the railroad open. So there is a parallel history between the situation regarding the canal today and the Panama Railroad of a century and a quarter ago.

That is one of the big objections to this treaty today, that it does not properly provide for defense of the canal. The construction of the terms of the treaty are in doubt, with Panama saying one thing and our negotiators saying another. I would say, Mr. President, that the express terms of the treaty would indicate to my mind that the Panamanians have the proper construction of what the treaty means.

Way back 125 years ago it was provided that we would have a right to defend this method of going from one ocean to another, transiting the isthmus.

Now the point of recalling these facts, Mr. President, is to refute some of the present-day mythology surrounding the history of the efforts of our country in the Isthmus of Panama. The true facts are that the United States was deeply involved in Panama from a very early stage and that the work of the United States has been the critical element in establishing and maintaining safe routes of travel between the two oceans. A reexamination of the history of U.S. efforts in Panama confirms the tremendous investment of life and materiel required of the United States in its great national adventure in the Isthmus at Darien.

Most of us, for example, have forgotten the hard work of Admiral Ammen, who led seven expeditions to Central America between the years of 1870 and 1875 for the purpose of obtaining knowledge about where a canal should be built. Frankly, Mr. President, it was not at all obvious that the best route was the route ultimately taken, and much debate, as well as engineering surveys, ensued from the time of Admiral Ammen's initial expeditions until the

time of decision to use the present route. The expeditions of Admiral Ammen were carefully done, and his results formed a basis for future efforts. Commenting on the Ammen expeditions, then President Grant commended the canal project to the American people with the statement, "An American canal, on American soil"—not a bad recommendation and certainly a sound concept.

To be sure, Mr. President, other nations attempted to compete with the United States in efforts to connect the oceans. Most notable of these was the effort made by the French under the leadership of Ferdinand de Lesseps. De Lesseps' claim to fame was considerable since he supervised the construction of the sea level canal at Suez. However, Suez had no relationship to Panama and de Lesseps met with no success when he tried to transpose the methods used at Suez to the pestilent-ridden jungles of Central America. The French effort collapsed in 1899 amid charges of embezzlement and corruption. Subsequent attempts to renew French construction succumbed rapidly to the returning jungle.

In 1899, after the events of the Spanish-American War, the United States established the Isthmian Canal Commission and placed the agency under the leadership of Rear Adm. John G. Walker. The Commission was charged with selecting a route somewhere across the isthmus and was given the further objective of recommending the type of canal to be built. Nicaragua, not Panama was recommended, and candidly, Mr. President, absent political considerations, the Nicaraguan route may well have been the proper choice and indeed may well be the proper choice now if the United States does choose to construct a sea level canal for the transit of major warships and supertankers.

So, Mr. President, Nicaragua was the preferred route; Nicaragua was viewed as a country with a healthier climate and a more stable government than Panama; Nicaragua had very strong support in the Congress, particularly in the Senate under the leadership of the great Senator from Alabama, John Tyler Morgan. Senator Morgan, of course, is known as the father of the Panama Canal, even though initially he supported the Nicaraguan route. Once the decision was made to construct a canal in Panama, Morgan, as chairman of the Senate Committee on Inter-oceanic Canals, threw his full energies into the Panamanian project.

But as I said, Mr. President, initially Nicaragua held the favored route; ultimately, however, at the culmination of what was then known as the Battle of the Routes, Congress on June 28, 1902, passed the Spooner Act to authorize the construction of an inter-oceanic canal in Panama.

This is in support of the discussion today, as to whether the entire Congress has to pass an act in addition to the Senate giving its advice and consent to the treaty.

You know, Mr. President, back in those days it was thought that the Congress had to authorize the President to take a major step in foreign policy, such as the initiative required to obtain canal rights in Panama. So they did pass this act called the Spooner Act to give to the President the authority to proceed. The Spooner Act involved the acquisition of territory, and we have certainly come a long way since those days because now we have an administration asserting, notwithstanding the clear language of the Constitution,

that there is not even a need to obtain congressional authorization to cede U.S. territory to another nation. Yes, Mr. President, we are light-years removed from the way Government was conducted in 1902, even though only 75 years have elapsed.

The Congress gave the President authority in the Spooner Act to acquire from the Republic of Colombia "perpetual control of a strip of land" not less than 6 miles in width from the Caribbean Sea to the Pacific Ocean, and having obtained such property, thereafter to excavate, construct, and "perpetually maintain, operate, and protect thereupon a canal." So the Congress authorized the President to acquire this strip of land, and of course eventually President Theodore Roosevelt did acquire the strip of land. Yet the 95th Congress is being avoided entirely now that the administration wants to give this strip of land away.

But look at this, Mr. President. The Spooner Act contained some further provisions which should be of interest to the Senate. The President under the Spooner Act was further directed to maintain U.S. "jurisdiction over said strip and the ports at the ends thereof to make such police and sanitary rules and regulations as may be necessary to preserve order and preserve the public health thereon and to establish judicial tribunals as may be agreed upon thereon as may be necessary to enforce such rules and regulations."

The point I am making, Mr. President, is that this canal was no project lightly entered into by the United States. The Congress and people were deeply involved every step of the way. Great forethought went into the negotiations with Colombia and later with Panama. Great forethought went into the conditions under which the United States felt it would be acceptable for the United States to undertake the tremendous financial and human sacrifice that would be required to build this manmade wonder of the world. The matter was debated, studied, fought over, covered extensively in all the periodicals of the time, and only when great national consensus emerged was the project finally initiated.

How much different is the situation we face today. Our people are united in their resolve against these ill-advised, imperfectly drafted, and dangerous treaties, yet the administration and much of the national mass media have joined forces to attempt to ram these proposals down the throat of the Senate, to attempt to revise history, to attempt to reeducate our people—our people, Mr. President, understand already the history of the Panama Canal, because most of them grew up being told in their homes that its construction was perhaps our Nation's greatest peacetime accomplishment.

So, Mr. President, our people are going to have to be reeducated quite a bit if their resolve in opposition to these treaties is to be seriously shaken. It is going to take around-the-clock work by revisionist historians to convince our people that the construction of the Panama Canal was not a glorious achievement representing the very best of what is good about our country, a great work for peace and for humanity, an effort which produced benefits in medical science we are still enjoying today, and an achievement which lifted the Province of Panama from abject poverty, ignorance, and misery to a position of wealth and respect among Central American nations.

Efforts to revise history are well underway. For many months now and with greater and greater frequency, we hear accounts implying that the United States stole the Canal Zone from Panama and somehow, through intrigue, euchred the Panamanians out of their most valuable asset. These accounts conveniently overlook the simple fact that the only asset held by Colombia and later Panama was an accident of geography covered by a jungle into which only the brave or foolhardy dared to tread and from which few emerged.

Tomorrow, Mr. President, I plan to discuss the final events leading to the negotiation of the treaty of 1903, the Hay/Bunau-Varilla Treaty. My purpose will be to explain the circumstances under which the treaty was agreed upon and hopefully to refute the allegations of misconduct on the part of the United States in obtaining our rights in Panama. In my judgment, study of the history of the treaty of 1903 is a worthy pursuit for all of us, because the American people are being told by many that we have something to be ashamed of in our acquisition of the Canal Zone. Mr. President, rather than shame, Americans should feel—and do feel—an immense sense of pride. A reexamination of the history of the period, rather than causing embarrassment, should reinforce our sense of appreciation for a great national achievement and should strengthen already strong resistance to any proposal which would tear down a work well done.

THE PANAMA CANAL TREATY CABLE

Mr. DOLE. Mr. President, I want to take just a few minutes to comment on a matter of grave concern to me and—I hope—to many of my colleagues. That is the question of just how far this administration is prepared to go to protect itself from embarrassment over the proposed Panama Canal Treaties.

On Monday of this week, I was handed a copy of a September 29 State Department cable which gave me great cause for concern. The cable contained information—previously unavailable to either the Senate or the general public—which conflicted with testimony presented by key administration witnesses on the canal treaties last week. That was testimony on American rights under the proposed treaties to protect our defense interests.

The cable verified what many of us suspected all along: That American and Panamanian negotiators have far different interpretations of just what rights we would keep under the permanent neutrality treaty provisions.

Since this vital question bears directly on the Senate's decision as to whether the treaties should be ratified, I felt it should be brought to the attention of the Foreign Relations Committee. And since the administration has been promoting an entirely different interpretation of these treaties before the American people, I felt they were entitled to know the full story, as well.

Yesterday, State Department sources contacted the Ethics Committee staff to inquire as to whether my action in releasing the cable might have violated some Senate rule or ethic. I resent and reject that clear effort at intimidation.

A CONFIDENTIAL CABLE

My copy of the cable indicated it had been classified "confidential" and for "limited distribution." Why it was classified in this way, I cannot begin to understand.

The cable contained no military secrets. Instead, it described a Panamanian negotiator as "disturbed" over descriptions of the treaties being promoted by American officials. It was obvious that its release would in no way endanger our national security. In fact, its release appeared more likely to enhance our national security by revealing just how much the treaties jeopardize our interests in the Panama Canal passageway.

So why was this cable—which directly contradicted administration testimony on treaty "protections"—to be so carefully guarded from Congress and the public?

I am forced to conclude that this cable was classified for narrow, short-term political advantage. Contradictory information about America's defense rights under the treaties was being concealed under a questionable "confidential" classification. If this was not intentional misuse of a "national security" cover, then it was at best an error in judgment that deserved correction.

Whatever became of the "open government" that our President promised during his campaign last year? If there is one thing that the people of this Nation have learned from the mistakes of the

past, it is that political coverups at the highest levels of Government are themselves hazardous to our national security. Indeed, we should ask: Just whose confidence was at stake in this "confidential" cable? Was it the administration's, or was it the confidence of the American people in the integrity of administration spokesmen?

Whether intended to advance a cause, or to prevent political embarrassment, government coverups have no place in the American system.

PUBLIC ACCESS TO FACTS

What else do we not know about the proposed Panama Canal treaties? What else is being "glossed over," because full disclosure might embarrass the Carter administration? I believe the State Department should provide the Senate with copies of all documents, memorandums, and cables, I might say, as requested by the distinguished minority leader on more than one occasion, anything exchanged between our two countries during the negotiations. And I commend the Foreign Relations Committee and the distinguished minority leader, Senator Baker, for their repeated efforts to obtain these materials.

In my opinion, the greatest danger that could arise from the Panama Canal issue would be in giving the public too little information about these treaties, not too much.

I challenge the Carter administration to lay all its cards on the table, and let the American people judge for themselves whether or not the Panama Canal treaties are worthy of their support. Only then can the Senate proceed confidently in its ratification responsibilities next year.

Mr. President, I yield.

MR. BAKER. Mr. President, I commend the distinguished junior Senator from Kansas for his statement this morning, for his interest in this matter, and for his service to the country.

On the first day of the hearings before the Foreign Relations Committee I indicated that I had decided not to decide how I will vote on those treaties until those hearings were finished.

At that time Secretary Vance, Ambassador Linowitz and Ambassador Bunker testified. I brought to the attention of those three gentlemen certain statements attributed to high Panamanian officials which seemed at variance with their interpretation, the American interpretation of the treaties, particularly the neutrality treaty as suggested by the Senator from Kansas.

At that time I suggested that the Foreign Relations Committee and indeed the Senate itself as a full constitutional partner in this matter should have full access to the negotiating transcripts, the minutes, the cable traffic, the Presidential review memoranda, and any other document in the possession of the executive department that would aid and assist our reconciling the apparent difference in the interpretation between the American point of view and the Panamanian.

I also said then that if that information was not forthcoming I felt it would seriously prejudice and jeopardize the final advice and consent of the Senate to the ratification of these treaties.

Mr. President, the disclosure yesterday of this cable by the Senator from Kansas, which I think was appropriately brought to the

attention of the Senate Foreign Relations Committee, intensifies the absolute requirement that the Senate be given access, on whatever reasonable conditions the executive department may require, to the source material that will enable us to decide how the Panamanians view the interpretation of these treaties, particularly on two points:

One, the expeditious passage through the canal of American war vessels—whether or not that is privileged, priority, or routine; and, two, the right of the United States to intervene unilaterally to protect the regime of neutrality after the year 2000 as contended by the U.S. negotiators and interpreted by the administration.

Mr. President, I believe the Senator from Kansas has done a great service in highlighting this problem.

Moreover, I believe that now, in the face of this new information, it is imperative that the administration give the Senate full access, freely and voluntarily and without any concern for separation of powers or executive privilege or any other legalism, to the source data and material that will permit the Senate as a constitutional partner to make its judgment on these treaties.

Mr. President, I have still not made up my mind on how to vote on these treaties. I am not threatening. I deplore the action of the administration in contacting the Ethics Committee yesterday and I say to them now that if that is the game they are going to play, these treaties are going to be in for a tough time.

I have still not made up my mind, but unless the President of the United States and the Secretary of State decide to give the Senate the material we need to make an honest judgment, now that this matter has been brought to our attention, I believe there is no chance that these treaties will be approved.

Mr. DOLE. Mr. President, I thank the distinguished minority leader, and I will say that I do not understand why the State Department finds it necessary to contact the Ethics Committee to see if the Senator from Kansas may have violated something. It seems to me that they may have violated the confidence of the American people by not disclosing the very documents the Senator from Tennessee has been trying to obtain for 2 or 3 weeks.

Mr. BAKER. I thank the Senator.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. BAKER. Mr. President, if I have time remaining I am happy to yield to the Senator from Alabama.

The ACTING PRESIDENT pro tempore. The Senator has 5 minutes remaining.

Mr. ALLEN. Mr. President, if there is no objection, this can come out of my allotted time.

I commend the distinguished minority leader, the Senator from Tennessee, (Mr. Baker) and the distinguished Senator from Kansas (Mr. Dole) for the expression of their views with respect to the differing interpretations placed upon the language of the treaty by the Panamanians and by our negotiators.

I believe, however, I differ somewhat from what I perceive to be the position of the distinguished Senator from Tennessee with respect to the method of curing this grievous wound to the treaties. I do not believe it will be sufficient to exchange notes or exchange correspondence between the negotiators. What we have before the

Senate is the wording of the treaties, and any extraneous matter, any interpretation that we gather by exchange of notes or exchange of correspondence is not going to remedy the defect in the conflicting interpretations that the negotiators place on it.

This treaty has been faulted. It contains this serious fault, and the only way to cure the fault would be to amend the language of the treaty—not a reservation, not an understanding, but an amendment of the treaty.

We all know the instability of the Panamanian dictatorship; and whereas we might have some sort of understanding in correspondence and exchange of notes between Panama and the United States as to the meaning of the treaty, suppose there is a change in the government down there. Suppose another dictator comes in. Suppose the force of public opinion down there requires them to repudiate any understanding that is reached as to the meaning of this treaty. Why must we have each nation interpret the meaning of a treaty? The meaning ought to be plain and explicit in the language of the treaty itself.

So to suggest that possibly this needs to be straightened out by statements and correspondence is not going far enough. It cannot be straightened out through exchange of notes by the parties. This treaty must be amended.

What happens after the amendment? It goes back for further negotiations. A new treaty has to be entered into. It has to go through the same process this treaty is going through. But in my judgment it would be folly indeed for us to give our advice and consent to the treaty relying upon an exchange of correspondence or notes between the parties. An out and out amendment, stating exactly what the understanding is, must be insisted upon. I believe that the treaties have been faulted beyond repair. I do not believe that the treaty can recover from the damage that has been done by the disclosure of this conflicting interpretation by the parties.

MR. BAKER. Mr. President, if I have any time remaining under the standing order, I yield it back.

THE ACTING PRESIDENT *pro tempore*. Under the previous order, the Senator from Alabama (Mr. Allen) is recognized for not to exceed 15 minutes.

THE PANAMA CANAL TREATIES—NO. 13

MR. ALLEN. I thank the Chair. I have already commented on my views as to the conflicting interpretations placed upon the language of the treaty.

The disclosure of this cable is not the first time that it has been apparent that there is a difference of opinion between the interpretation that the Panamanians place on the treaty and the interpretation that the U.S. negotiators place on the treaty, because Dr. Escobar, their chief negotiator, reported to the Panamanian legislative body these very two points of difference of interpretation: That is, first, on the right of the United States to send in troops to defend the canal, the right of the United States to determine when the neutrality of the canal is in danger, Dr. Escobar says that right is not given under the treaty. Second, Dr. Escobar says that the

interpretation we place on the expeditious passage of our warships is not the interpretation they place on that. Dr. Escobar says that our ships would just have to get in line with other ships that might be wanting to transit the canal.

Minister Barletta of Panama also raises the same point, and gives a differing interpretation to the language of the treaty. So throughout their government, it is quite obvious that they place a different interpretation on the treaty from that which we place on it.

Suppose they do say, "Well, we are wrong in our interpretation. The gringos," as Dr. Escobar calls us, "are right in their interpretation."

Well, that is not going to stand up. You cannot amend a treaty by exchange of notes. That is just not possible.

Even though the negotiators, the separate teams of negotiators, worked for 13 years on this treaty, I will have to say they did not do a very good job of drafting the language, if it is susceptible of so many different constructions. I believe we can wait another 13 years, Mr. President, while they give attention to redrafting these treaties, and then submit them back to us here in the Senate.

How could there not have been a meeting of the minds? We all know that in a contract—and a treaty is a contract; it is a high level contract, but it is a contract, and as in all contracts, there has to be a meeting of the minds. There has to be an understanding, where both parties have the same understanding, for it to be valid.

A treaty is the same way. If one party leaves the negotiating table and says that the treaty means this, and the other party to the negotiations leaves the negotiating table and says the treaty means something diametrically opposite, we have not had a meeting of the minds. It is elementary as to a contract—and as I say, a treaty is a contract—that you must have a meeting of the minds, and since there has been no meeting of the minds, the treaty has been faulted, as I see it.

So it is going to be necessary to amend this treaty in many particulars. We have got to amend the provision that says that for 23 years we cannot even negotiate with another nation on the building of another canal. Well, we certainly do not want to build another canal in Panama, because we are having to give them this canal, and I assume they would want the other canal. If we cannot negotiate with Panama, whom are we going to negotiate with? Well, we cannot negotiate with anybody under this treaty for 23 years.

I do not know whether the present canal will take care of the traffic for the next 23 years. As I say, we certainly do not want to build Panama another canal at the expense of the American taxpayers. So that has got to be changed.

This treaty needs to be changed in at least seven or eight major particulars.

What would be the effect then? Well, even if the treaty is approved with these major changes in it, it could not then be agreed to by Panama by accepting our amendments. It would require renegotiation of the treaty. The treaty, if amended in these particulars, would be a nullity insofar as being a treaty is concerned. This

document so amended, while not valid as a treaty—and Panama could not breathe life into it would serve as a guideline.

We hear a lot about guidelines here in the Federal Government. This document would serve as a guideline to our negotiators.

They could take this treaty draft as amended by the Senate and they would be armed with the view of the United States Senate in further negotiations.

Well, the Senate ought to have been in on this anyhow, Mr. President. For 13 years, the negotiators negotiated without any consultation, so far as I know, with Members of the U.S. Senate. Nobody knew what was in the provisions. Nobody knew the progress that was being made in the negotiations. It was a carefully kept secret. That is one of the failures in this negotiating process, that the U.S. Senate, which is supposed not only to consent but to advise, was not given any opportunity to advise in the treaty negotiation process.

President Wilson, at the end of World War I, fell into this very same trap. We have not learned any lessons from the history of the Versailles Treaty. I am a great admirer of President Wilson, but he took upon himself to negotiate the Versailles Treaty. He did not have Senators involved in the negotiations, and when it came back to the Senate, the Senate felt that it was something that they had no part in, and they were just asked to consent to the treaty rather than to advise and consent.

So, Mr. President, after this treaty is amended in these particulars that I speak of, then the Senate would have given some advice to the executive department as to what the people of the United States, speaking through their U.S. Senators, speaking through the Senate of the United States, are willing to accept. So the amendment process is what we need to follow in the Senate with respect to this treaty and let that document, as so amended, serve as the guideline to our negotiators as they negotiate again.

I would be perfectly willing, as a Member of the Senate, to see this annuity that we pay Panama—something like \$2.3 million a year now—increased tenfold or even more out of the canal revenues. But I feel that we definitely must keep sovereignty over the Canal Zone. We must keep the operation and management of the canal. We must keep the rights to defend the canal. So I would not object to an overall amendment of this treaty, raising this annuity, but leaving all other provisions of the 1903 treaty in full force and effect. I could conscientiously vote for that.

I do not think we need to pinch pennies. It is not a question of the money involved, though I do not look with favor on this multi-billion dollar subsidy that is being arranged in the manner of loans, plus the addition to the annuity. But I do not think we should be too much concerned about the cost of raising the annuity. As I say, I would be willing to see it raised tenfold or more. Let us keep the sovereignty of the zone. Let us continue to operate and manage the canal. Let us continue to defend the canal.

Mr. President, yesterday I reviewed in some detail the events leading up to the passage of the Spooner Act, which directed the President to acquire from the Republic of Colombia perpetual control of a strip of land not less than 6 miles in width from the Caribbean to the Pacific and instructed the President to operate,

construct, and perpetually maintain, operate, and protect an inter-oceanic canal. Today, I will trace the history of our negotiations with Colombia and with Panama for the purpose of making plain the fact that the United States did not behave improperly in acquiring the Panama Canal Zone and for the further purpose of demonstrating the folly of ratifying these dangerous treaties out of some misplaced feeling of obligation to Panama or out of some vague desire to correct a past wrong which is more imagined than real.

After adoption of the Spooner Act, several months of arduous negotiation ensued between then Secretary of State Hays and Tomas Herran, charge d'affaires of Colombia. The result was a canal treaty very favorable to the United States. The treaty was concluded and signed by both parties on January 22, 1903, and consented to by the U.S. Senate on March 17 of that same year. The Colombian Senate was called into session on June 20, 1903, to consider the treaty. However, the Colombian Senate declined to give its assent.

Many have assumed that Colombia failed to ratify the Hay-Herran Treaty out of motives of patriotism and national pride. Although to be sure those elements may well have been factors in the debate at Bogota, careful students of the matter recognize that foremost in the minds of a majority of Colombian senators must have been the fact that the rights of the French company, the so-called New Panama Canal Co., were due to expire in the course of several months and as a result the Colombians would be eligible to receive a \$40 million payment scheduled by the United States for payment to the French company for the purchase of its rights, all with the result of increasing Colombia's take from \$10 million to \$50 million.

So, Mr. President, Colombia, motivated at least in part by greed, decided to gamble by rejecting the Hay-Herran Treaty in the hope that in a few months a better deal, a more lucrative deal, would result. Of course, from Colombia's point of view, the unfortunate outcome was the secession of Colombia's province, Panama, and the negotiation of the treaty of 1903.

A web of outrageous misinformation has been spun by the Department of State and supporting propaganda has been shrilly proclaimed by Panama's dictator, all for the apparent purpose of creating the impression that the United States instigated the Panamanian secession in order to seize control of the Panamanian canal route. I would not be surprised, Mr. President, if even a majority of the Senate has adopted the false belief that the U.S. Navy landed troops and seized the Canal Zone from the Panamanians under duress.

The opposite is the truth. Panama seceded from Colombia under leaders who understood exactly what they were doing. Panama seceded from Colombia entirely out of motives of self-interest, seeking enrichment and the vast benefits destined for the new nation if the United States could be induced to undertake the canal project. Panama argued hard against the Nicaraguan route and actively sought the support and protection of the United States for her secession from Colombia. The United States, on the other hand, did

not intervene, did not land troops, and did not prevent the landing of troops from Colombia sent to quash Panama's secession.

Why was the Panamanian revolution entirely bloodless, and why did Colombian troops in Panama rapidly make terms with insurgent forces and in some instances even change sides? The principal reason was near unanimity among Panamanian leaders in their desire to conclude a treaty with the United States for the construction of a canal. These leaders, who effectively controlled Panamanian politics, were Jose Augustin Arango, Dr. Manuel Amador, Frederico Boyd, Nicanor de Obarrio, Carlos C. Arosemena, Manuel S. Espinosa, Tomas Arias, and Ricardo Arias. They each understood that rejection of the Hay-Herran Treaty by the Colombian Senate meant the United States would switch to the favored Nicaraguan route. Panama, in short, would remain a jungle pesthole.

The first meeting of the secession movement was held on July 25, 1903, soon after the rejection by Colombia of the Hay-Herran Treaty. Panamanians always had held the government in Bogota in low regard, but its rejection of the Hay-Herran Treaty was the final straw and animated the secession conspiracy. The uprising occurred on the evening of November 3, 1903, and was conducted entirely by the Panamanian insurgents. The presence of U.S. Naval vessels off Panama City and Colon did, to be sure, inhibit Colombian actions in attempting to retake the province of Panama, but effectively the coup d'etat was accomplished within 24 hours, making Colombian efforts largely unavailing. Many Colombian troops joined the rebels, many others withdrew, and at no time were shots fired by either side.

Thereafter, the successful conspirators formed a provisional government and designated Bunau-Varilla as the new country's negotiator for a canal treaty. Bunau-Varilla was named to this important post because the Panamanian leaders believed correctly that Bunau-Varilla would be in a position to persuade the United States to stand by the Panamanian route, notwithstanding the continued efforts of Senator John Morgan and others in the American government to urge negotiation of a treaty with Nicaragua.

The Treaty of 1903 was signed by Secretary of State Hay and Bunau-Varilla on November 18, 1903. Its provisions were quite similar to the provisions of the Hay-Herran Treaty, save that they contained many amendments offered by Senator Morgan when the Herran Treaty was under consideration in the Senate. These amendments were included in the text of the Treaty of 1903 to preclude Morgan's objections. In any event, the text of the treaty was cabled immediately to the provisional government in Panama and was unanimously approved by the new Republic of Panama on December 2, 1903, before the U.S. Senate acted to give its own assent to the treaty's ratification.

Mr. President, the Republic of Panama was born under the protection of the United States. The Panamanians received from the United States what they most desired: construction of an inter-oceanic canal by perhaps the only country in the world capable of undertaking that task successfully. The Panamanian economy boomed; the new nation received a tremendous good endowment and was assured of regular gold annuity payments and the benefits of massive U.S. investment.

The lesson taught by this history is simple. Men tend to forget what is convenient to forget and to hold fast to that which is of present value. I trust that the people of the United States will hold fast instead to the facts, will recognize the great and good role our country played in constructing the Panama Canal, and will reject totally the concept that we should adopt these treaties, dangerous to our own national economy, out of motives of shame.

I yield back the remainder of my time.

DOUBTS ABOUT THE CANAL TREATIES

Mr. HARRY F. BYRD, JR. Mr. President, several weeks ago the chief Panamanian negotiator of the Panama Canal Treaties, Romulo Escobar Bethancourt, addressed his National Assembly.

In that address he described the terms of the treaties and gave his interpretation of the meaning of several controversial provisions.

Mr. Escobar's interpretations do not square with those of the Carter administration and this divergence of interpretation has become a major focus of Senate concern.

An article in the October 8 issue of Human Events discusses the effects of the Escobar statements and I ask unanimous consent that it be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

SENATE REMAINS SKEPTICAL ABOUT PANAMA CANAL TREATIES

The Senate Foreign Relations Committee kicked off the hearings on the Panama Canal treaties last week, but the Administration, despite trotting out its heavy artillery—Secretaries Cy Vance and Harold Brown and Joint Chiefs Chairman George Brown—ran into some serious skepticism, even from such liberals as Senators Claiborne Pell (D-R.I.) and Clifford Case (R-N.J.).

Both Pell and Case are up for reelection next year, so that may help to explain their attitude, but there is no question that important doubts about the wisdom of the new treaties exist among many of the senators who have been called upon to give their approval.

What clearly bothers senators the most are the astonishing interpretations placed upon the treaties by Panama's chief negotiator, Romulo Escobar Bethancourt, who is clearly emerging as the Administration's No. 1 hurdle to ratification. In close to half-a-dozen instances—many of them disclosed in these pages previously—Escobar has directly contradicted our own negotiators on crucial points.

Indeed, so alarming have Escobar's statements been—and so unsatisfactory the responses of Secretary Vance and negotiator Sol Linowitz—that both Pell and Sen. Howard Baker (R-Tenn.) have now demanded to see the negotiating minutes and other written documents for the purpose of finding out whether the Panamanians actually place the same interpretation upon these pacts as does the United States.

Baker, in fact, told Linowitz that he should get the current government officials in Panama to repudiate Escobar's explanations of the treaties, hinting that his decision to vote for or against them may hinge on such a repudiation.

The Administration, however, has not been eager to meet Baker's demands in any area of his concerns, and whether it will do so is problematical.

Just how evasive the Administration was in regard to the Escobar matter was brought out in the give-and-take between the senators and U.S. officials.

Sen. Case, for instance, raised with Vance the meaning of the "expeditious" passage provision in the neutrality treaty. Vance said it meant that U.S. vessels of war and auxiliary vessels will be entitled to go through the Panama Canal ahead of ships from other nations. But Case pointed out that Escobar specifically denied this to the Panamanians.

Linowitz then cut in: " * * * I think too much is being made of a statement that was made by the negotiator in Panama which has not been repeated. * * * " In

other words, Linowitz thought "too much" was being made of the words of none other than Panama's chief negotiator!

When Baker pressed Linowitz later on in the day about Escobar, Linowitz shifted ground somewhat, this time saying he and other Administration officials had been "disturbed" by what the Panamanian was saying.

Following up on Case's point, Baker read a statement on "expeditious passage" which Escobar had given at an August 22 press conference. At that time, Escobar said "expeditious passage" did not mean "privileged passage." "As a matter of fact," said Escobar, "the concept of privileged passage was rejected" and the Panamanians did not agree that U.S. warships could go through first. "We cannot go that far," he emphasized.

Baker also read to Linowitz Escobar's statements on the neutrality provisions. While both Vance and Linowitz insist the U.S. has the unilateral right to intervene militarily to ensure that the canal remains open and is not closed off to any country, Escobar flatly stated: "The neutrality pact does not provide that the United States will say when neutrality is violated." Unless both sides concur in what the neutrality treaty means, said Baker, "there is no agreement."

Linowitz's response was hardly reassuring to Baker. "We know of these statements," Linowitz said, "We are disturbed by them. We have discussed them with our Panamanian colleagues. I don't think you will hear such statements again."

But will "we hear a repudiation of them?" asked the Tennessee lawmaker.

Sidestepping the question, Linowitz responded: "The circumstances under which they were made were that he was trying to build the kind of attitude [in Panama] toward support. * * * His colleagues with whom we have discussed his comments, and these include some people very high in the Panamanian government, have assured us that we will not hear similar statements in the future."

"Were you told," said Baker a bit later on, "that those statements were not the position of the Panamanian government?"

Linowitz again evaded: "We were told that those positions would not be asserted again in the future."

Baker also asked Linowitz: "Do you think you could successfully get a communication in writing from the Panamanian government saying this statement by Mr. Escobar in the August 22 press conference is not the position of the Panamanian government, and it does not take that position with respect either to expeditious passage or intervention * * *?"

Never promising anything, Linowitz replied: "We will try. We will ask for it."

Baker actually seemed put out with the struggle he and others had in trying to pin down the Administration on the Escobar matter. " * * * I might say," Baker finally told Linowitz, "that unless we can have a clear understanding that these [Escobar] statements are not the interpretations placed on these treaties by the Panamanians, I think the chances for advice and consent are greatly diminished."

But Baker wasn't the only one exasperated with Linowitz & Co. In discussing our rights—and the Panamanian interpretation of those rights—under the neutrality treaty, Sen. Pell told Linowitz: "The thing that concerns me the most is whether we have in perpetuity the right to ensure that our vessels, our war vessels and Merchant Marine vessels, have the right of passage through the canal. I understand from Article IV of the second [neutrality] treaty is that this right is understood by us. . . . But where is the evidence that the Panamanians have the same understanding? * * *"

Linowitz: "Senator, we wrote the language; they know how to interpret it * * * They are certainly aware of what we are telling you today. * * *"

Pell: "The language itself does not really say that as I read it. Therefore, I would hope it would be abundantly clear [that we have the perpetual right to intervene to ensure our ships' passage through the canal]. * * * I doubt from reading the treaty that a Panamanian citizen would understand that we have this right. * * *"

Pell then pressed for a clarification of this point. "Do you have any notes from the negotiating sessions relaying the Panamanian viewpoint that would reinforce your view that this is Panama's understanding as well as ours?"

Failing to respond directly, as so often seemed to be the case, Linowitz said: "Certainly it was discussed in the course of the negotiation and certainly they know the interpretation we are placing upon the words. * * *"

But "I wonder," Pell pressed, "if there would be any way" of making those negotiating notes and transcripts "available to us in the committee"? At this point Secretary Vance leaped in, saying he would "take that under consideration and respond to you promptly."

Pell closed off his questioning: "I think this is really the key issue, the gut issue that bothers me and I think bothers many of my compatriots the most—do we have

the right to [maintain the canal's neutrality] in perpetuity under their interpretation as well as under ours."

Both Case and Baker, sensing a reluctance by Administration officials to furnish the negotiating documents urgently requested by Pell, joined in the demand. Case said he would hope that "on all key matters" of this sort, "there would be no question" but that the Administration would furnish applicable material. Sen. Baker said it is "absolutely vital."

Throughout the first week of hearings, the Administration continued to duck, bob and weave about in dealing with the looming importance of the Escobar statements and the demands of the senators that there be some clear language from the Panamanians about U.S. rights under the neutrality treaty. When senators began to talk of adding reservations to the treaties, the State Department appeared adamant against any such strategy, contending that such clarifying provisions would force the negotiations to be reopened.

And so by the end of the week many senators were wondering: How solid can these treaties be, if even our own negotiators can't readily produce any substantive evidence that the Panamanians accept the U.S. position on the pacts' most vital clauses?

PANAMA CANAL TREATY TESTIMONY

Mr. SPARKMAN. Mr. President, yesterday the Committee on Foreign Relations continued its hearings on the Panama Canal Treaties hearing as witnesses Senators Gravel, Laxalt, Dole, Scott, and Helms, and Congressmen John M. Murphy, Larry McDonald, Donald M. Fraser, and Robert L. Leggett. For the information of the readers of the Record, I ask unanimous consent that the prepared statements of the witnesses be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

STATEMENT OF SENATOR MIKE GRAVEL

Mr. Chairman and Members of the Committee. Thank you for this opportunity to appear before you in support of the newly negotiated Panama Canal treaties.

You have already heard from numerous expert witnesses on these two treaties. You have been told of their importance to the continued efficient operation of the canal, of how they preserve the U.S. interest in nondiscriminatory access, and of how they provide the surest guarantee that the military significance of the canal will be protected. You also have heard the lasting effect Senate action on these treaties will have on the whole of Latin America, and the role they can play in realizing long-standing and legitimate Panamanian aspirations.

JUSTICE

You also doubtless have heard one other reason for ratifying these treaties: Justice. We sought to ratify them because it is right to do so.

I happen to think that's one of the best reasons of all. And I don't accept the label "bleeding heart" that some would try to pin on this conviction. Justice is not, after all, out of fashion. It has always been a characteristic of the noble and the strong—not the mean and the weak—to set their injustices right.

And there can be no real doubt that the 1903 treaty with Panama fell somewhat short of complete justice. The historical record is unequivocal on that point.

On June 2, 1902, the Congress authorized the President to acquire a specified strip of land and additional rights and territory from Colombia (of which Panama was then a part) for the construction and operation of a ship canal. But when negotiations with Colombia fell apart, President Roosevelt took things more into his own hands and sent gunboats to stand off-shore while the Panamanians declared their independence. Only three days later the administration hastily recognized the new republic and immediately set about negotiating a canal treaty with a Frenchman named Philippe Bunau-Varilla, who consistently acted purely in his own self-interest and who repeatedly engaged in deceit to win approval for actions detrimental to the Panamanian national interest.

What is more, U.S. officials at the time were aware of, and therefore complicitous in, these injustices. President Roosevelt so characterized it himself in 1911 when he

stated, "I took the isthmus * * *"—a statement upon which he later elaborated by explaining he took it "because Bunau-Varilla brought it to me on a silver platter."

Having ignored his instructions to consult at all points with the Panamanian government's official delegates, Bunau-Varilla drafted a treaty which was described at the time by Secretary of State John Hay as "vastly advantageous to the United States" and "not so advantageous to Panama." This document was signed at Hay's home on the evening of November 18, only 15 days after Panama had declared its independence. Not a single Panamanian was present, or had ever even laid eyes on the document. No member of the Panamanian ruling junta spoke or read English.

That same evening Panama's delegates arrived in Washington and attempted to reopen negotiations with the Department of State. They failed. Both the Department and Bunau-Varilla were now intent upon getting the treaty ratified. This they did by suggesting darkly that if Panama did not act with dispatch the Colombians might make a better treaty offer, leading the United States to withdraw its support from the new nation.

Although the Roosevelt administration had no such intention, rumors were abroad in Panama that Colombia might yet try to regain its lost territory, and the government feared for the worst. On November 26 they cabled their willingness to ratify the treaty as soon as it arrived by boat from New York. Six days later, on December 2, they did so after having the 31-page document only 20 hours, and only an English version besides. Almost from the start, the Panamanians have been dissatisfied with the treaty. This is not hard to understand. Its terms grant to the United States "in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection" of a canal "of the width of 10 miles." The treaty further grants to the United States "all the rights, power, and authority within the zone mentioned. . . which the United States would possess and exercise if it were the sovereign * * * to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority." In return for these generous concessions the United States agreed to pay the Republic of Panama \$10 million and an annuity during the life of the treaty of \$250,000 (raised to \$1.9 million in 1955 and subsequently adjusted for inflation in 1971 to \$2.3 million).

We must try to put ourselves in the Panamanians' shoes, to see it as they do. The best way I know to do this is to cite an analogy which has great currency in Panama. It goes like this:

"Imagine a strip of land extending 5 miles on each side of the Mississippi River within which a foreign power, by virtue of treaty rights granted under suspicious circumstances in 1773, exercises complete control as "if it were sovereign" and through which a resident of Illinois must pass to go to Missouri, during which passage he is subject to arrest by a foreign power and trial in a foreign court under a foreign system of laws."

Of course, we would not tolerate such a situation within our borders. The Panamanians have no choice. The United States is a superpower and they are one of the world's weakest countries. Our military forces stationed in the Canal Zone are equal in size to Panama's entire National Guard. It is no match at all.

On their side the Panamanians have only logic. They ask us to ratify a new treaty. They point out that total U.S. control over a portion of Panamanian territory is a vestige of colonialism. They ask us to understand how it offends their national honor and pride as a people to have a U.S. police force, U.S. courts, and U.S. jails enforcing U.S. laws on Panamanian citizens within their own country. They show us how total U.S. control over land area in the Canal Zone limits the urban growth of their two largest cities, how U.S. control of all deepwater port facilities restricts the productivity of their country, and how U.S. commissaries unfairly compete with local businessmen.

How do we answer these charges?

The most common way of justifying the present treaty arrangements is to cite the benefits which have accrued to Panama. The most important of these, it can be conceded, is her independence. Without the United States she would not have had it. Admittedly, a certain turpitude may attach to the United States motives in guaranteeing it, but to the Panamanians, who had hankered after their freedom for some three quarters of a century, it is certainly a great blessing.

What is doubtful is that this justifies an arrangement under which she signed away "in perpetuity" the most important part of her birthright. To say that it does is like saying that the United States should be forever indebted to France, without whom her revolution could never have succeeded.

This is history now. The relevance of that history for today is that it shows the very structure of the relationship from the beginning was one in which we con-

sciously took advantage of the Panamanians. All the real sacrifices were on their side. They yielded up, forever, their nation's greatest resource—the land over which the canal was constructed. What should have been theirs has become ours.

Some would suggest that Panama has been adequately compensated for this "use" of her territory by the \$10 million the United States paid when the treaty was signed, plus the annuity she has been granted since. The facts belie the truth of this assertion, however. The annuity, for years set at \$250,000 per annum, is today only \$2.3 million per year. This is a mere pittance when compared, for instance, with the Panama Canal Company's fiscal year 1976 total operating revenues of more than \$250 million. That is more, the U.S. Government has always set Panama Canal tolls at a breakeven level. The Panama Canal Company does not lose money, but neither does it make a profit.

According to a study by International Research Associates (IRA) of Palo Alto, California, the effect of this policy has been to produce a surplus to users of an amount equal to the difference between the maximum possible revenues recoverable under an alternative tolls policy and the breakeven costs actually recovered. The IRA study projects that for 1975 the magnitude of the surplus would be equal to approximately 55 per cent of the revenue recovered under present toll structures. Applying this to the IRA-projected 1975 toll revenue figure of \$119.5 million, we see that the surplus which could have been recovered was on the order of another \$65.5 million.

The benefits of this surplus, rather than going to the people of Panama, now accrue to three groups: (1) those who purchase commodities that pass through the canal; (2) those who produce such commodities; and (3) those who move the commodities from producers to purchasers. Rightfully, this \$65.5 million should have gone to Panama as its earning on its fundamental resource.

It can, of course, be argued that Panama has received extensive indirect economic benefits from the canal, as well as improved health conditions, sanitary facilities, etc., all of which must be taken into account in assessing the present treaty. All these things are indisputably true, but they completely miss the point. They alone cannot make the arrangement either just or unjust. It is unjust by the fact that it prevents Panama from reaping the economic advantage of her primary resource. Moreover, it does so almost gratuitously. Panama can be returned the control over her resource without it materially affecting our own economic or strategic interests. In truth, our strength and greatness will lie not in continuing to demean ourselves by insisting upon some legalistic interpretation of our "rights," but in recognizing that an injustice has been done and acting to correct it.

What, indeed, are the United States interests in the Panama Canal?

ECONOMIC IMPORTANCE

Despite widespread impressions to the contrary, the canal is not of any great economic significance to the United States. It is often said that approximately 70 per cent of canal traffic either originates or terminates in U.S. ports, thus making the canal vital to the U.S. economy. While this figure is correct, the manner in which it is usually presented tends to misrepresent the truth. The "approximately 70 per cent" figure is derived by adding the 40 per cent of cargo tonnage originating in the United States to the 28 per cent terminating here. But it is incorrect then to conclude that the United States accounts for 68 per cent of the tonnage passing through the canal. The United States, both as shipper and receiver, is on only one end of the transaction. Therefore this figure must be halved, revealing that only 34 per cent or one-third of all canal cargo is U.S. oriented.

But even this figure does not provide a proper measure of the economic importance of the canal. We have to ask, 34 per cent of what? If the Panama Canal is largely not used, then the fact that 34 per cent of its use is attributable to the United States becomes rather meaningless.

The United States is, in fact, the major user of the canal, but many alternative trade routes now exist for the most important products and commodities, and more would become economically competitive if the canal were closed. In terms of overall importance, the canal is much more significant to certain Latin American countries, particularly those on the west coast of South America, than it is to the United States. For instance, in 1972 only 16.8 per cent of U.S. waterborne commerce passed through the canal. For Nicaragua the figure was 76.8 per cent, for Panama 29.4 per cent, for Peru 41.3 per cent, for Chile 34.3 per cent, and for Colombia 32.5 per cent.

Increasingly, the Panama Canal is becoming outmoded. Larger and faster ships, as well as innovations such as container technology, are making alternatives to the canal more and more attractive. The shipbuilding industry—in constructing super-tankers—increasingly discounts the canal, which cannot handle their size. More

than 1,300 vessels are now too large to pass through the canal, and another 1,700 can use it only when not fully laden. Ely Brandes, president of International Research Associates and an economic adviser to the canal, has put it succinctly: "When it was in its financial heyday, nobody paid much attention. But now that people are fighting not to give it up, the thing isn't worth arguing about."

The most meaningful perspective from which to view the economic value of the canal is an assessment of the impact it has on the total U.S. and world economy. At present only 5 per cent of total annual world seaborne trade transits the Panama Canal. According to the IRA study on "The Economic Value of the Panama Canal," if the canal were to be closed through an act of sabotage or some other means, the total impact on the world economy for the decade 1975-85 would be only \$100 million per annum. Of this amount, the U.S. share would be only \$34 million annually. In our trillion dollar-plus economy, which exports in excess of \$100 billion a year, this impact is utterly trivial.

This minimal impact of complete loss of the canal must be counterpoised against the harm which this volatile issue can cause in our relationship with all of Latin America, and in fact the entire Third World. The minor economic benefit which accrues to us from the canal would certainly be more than offset by the hostility we would engender by failing to resolve the canal issue in a way viewed as equitable by the world community. Even the strictly economic effect alone would surely be in excess of \$34 million. Last year our exports to Latin America were on the order of \$15 billion. And as was clearly demonstrated by the gathering of heads of state on September 7th, these nations have placed their prestige on the line in support of the treaties.

I do not mean to imply that the Panama Canal is of no economic importance. It is now and will continue to be for some time into the future a convenient means for waterborne transport. But in the words of the IRA study, "it cannot in any sense be regarded as either overwhelming or crucial."

MILITARY VALUE

Much the same may be said of the military value of the canal. While certainly of military significance, the Panama Canal is by no means vital to our national defense. Its primary military value lies in its contribution to strategic and logistical mobility—the ability easily to shift military forces and supplies between the Atlantic and Pacific Oceans, and to offset the shortage of U.S. port facilities on the Pacific coast.

The availability of the canal gives us an elasticity for rapid expansion of our maritime capability. Without it we could be delayed months if not years in developing the major thrust of a war effort. The capital investment to build this versatility into existing ports and other elements of our transportation network would run into the billions of dollars, and its use, except in terms of emergency, would be uneconomic. The canal is certainly the preferable alternative.

Military planners point out, however, that any fixed facility such as the canal must be considered quite vulnerable to attack, and its availability therefore discounted. U.S. strategy has, in fact, proceeded on the assumption of the canal's nonavailability, and has maintained two virtually separate navies in the Atlantic and the Pacific. The changed nature of naval vessels over the years has also significantly reduced the strategic value of the canal. Our aircraft carriers are too large to pass through, and submarines must surface to transit it, which makes it totally impractical for them to use in the event of hostilities in this hemisphere.

The vulnerability of the canal arises from the fact that it laces for 50 miles through the jungles of Panama and could be rendered inoperative for as long as 2 years by such simple means as landslides or the destruction of locks or dams. A submarine launched missile with conventional warhead could achieve this purpose in the event of hostilities with a major world power, but it could just as well be accomplished by a single saboteur with a few sticks of dynamite. In the words of the Department of Defense, "the Panama Canal * * * can be defended, even in a hostile environment," but "the continuous operation of the canal could not be insured in that environment." This would remain true no matter what force levels were deployed in the Canal Zone.

For this reason, the good will of Panama is crucial to our ability to defend the canal. The security of the canal is most effectively safeguarded in a friendly environment through a cooperative relationship between the United States and Panama.

SEA-LEVEL CANAL

Once the emotional aura is stripped away from the Panama Canal, perhaps its most striking feature is how fast it is obsolescing. It is already of only marginal economic value to the United States, and trends in world shipping will rapidly make this true for other nations as well. Militarily the canal is important but not vital. Its vulnerability to attack severely limits its reliability, and its strategic significance is clearly not what it once was.

The most striking evidence of the dated character of the Panama Canal is its inability to handle economically the transshipment of Alaskan oil. By next spring Alaska's North Slope will be producing oil at the rate of 1.2 million barrels per day. Within a relatively short time this will be increased to 1.6 million barrels. Even at the lower 1.2 million barrel level, this will produce a West Coast surplus of 500,000 barrels per day.

This surplus oil must be moved to the nation's population and industrial heartland in the East and Midwest. At present the only way to do so is through the Panama Canal or around the tip of South America. The latter, Cape Horn route is prohibitively expensive, so that leaves only the Panama Canal. This alternative in itself is far from desirable, however.

Alaskan oil will be delivered in tankers ranging in size from 70 to 190 thousand deadweight tons (dwt). But since the present canal cannot handle ships larger than 65,000 dwt, the oil must be lightered to smaller vessels for passage through the canal and up to the Gulf Coast. Needless to say, this is a very inefficient, and costly, operation.

Where I visited Panama last March, as an Alaskan Senator I was particularly sensitive to these high costs of transporting our oil. When I sat down with the Panama Canal Company's economists I inquired about the feasibility of a new sea level canal. It was then that I learned that in 1964 President Lyndon B. Johnson appointed the Atlantic-Pacific Inter-oceanic Canal Study Commission to assess the practicality of building a sea-level canal.

In 1970 the Canal Study Commission completed its exhaustive, \$22 million examination of the issues and reported that the construction of a sea-level canal is physically feasible. It estimated the cost of construction to be approximately \$2.88 billion at 1970 price levels. In their letter of transmittal to the President, the Commissioners explained that the possibility of amortizing this cost from toll revenues would depend upon (1) growth in traffic, (2) the time when the canal would become operative; (3) interest rate on indebtedness, and (4) payments to the host country. They further emphasized that the national defense and foreign policy benefits of such a canal would justify a substantial financial risk.

In spite of these generally positive findings, action on a sea-level canal was not taken. The reasons are varied and complex, but undoubtedly the most important was that the Panamanians had no interest in becoming involved in a new canal until the dispute over the present one was resolved. This was especially true since the Commission had envisioned that the new canal would be owned and operated by the United States. It is hardly imaginable that the Panamanians could accept such terms after their years long battle to win control of the existing canal.

I believe that new attention to a sea-level canal is warranted by the following five factors:

1. Present and projected discoveries of oil and gas in Alaska have the potential of vastly improving the economic viability of a sea-level canal.
2. A new sea-level canal, fully owned by the Panamanians, has the potential of defusing the controversy over the present canal.
3. Construction of a sea-level canal will give the United States needed flexibility to avoid increasing dependence on foreign energy sources.
4. The availability of a sea-level canal will give the United States billions of dollars of investment in new energy transmission infrastructures.
5. At relatively marginal costs, a sea-level canal would greatly enhance U.S. defense capabilities.

Each of these reasons alone probably constitutes justification of further examination of the sea-level canal possibility. Together they certainly do.

Any final decision to construct a sea-level canal will be arrived at only after balancing a number of factors. The temptation is always to assume that the only matter to be evaluated is the strict financial feasibility of such an undertaking. Namely, will a sea-level canal pay for itself in a reasonable number of years? But as the Canal Study Commission pointed out, other factors, such as defense and foreign policy considerations, must enter into the equation. A sea-level canal might, all things considered, be a good buy even if we were certain it could never pay for itself in conventional economic terms. Nonetheless, its financial feasibility will be central

in the decision to build a sea-level canal, if for no other reason than to determine what portion of costs might have to be written off for other purposes.

According to the Canal Study Commission's report, a reasonable basis for assessing financial feasibility is to determine if construction costs can be amortized over a 60-year period. To make this determination it is necessary to find those combinations of operating costs, payments to the host country, interest rates, canal opening dates, traffic levels, and toll rates which would permit recovery of capital costs from toll revenues.

The Commission found that the preferred canal route is financially feasible at reasonable toll rates, assuming a construction cost of \$2.88 billion and a high potential traffic growth rate. While this would seem to suggest that a sea-level canal is financially feasible in its own right, certain caveats are in order.

First, inflation in this type of construction has been approximately 80 per cent since the Commission issued its report in 1970. According to the Army Corps of Engineers, the original \$2.88 billion estimate must be raised to \$5.29 billion. This means that toll revenues must be increased substantially to amortize costs. Of course, inflation will also have affected the level of sustainable tolls. Presumptively inflation rates will be comparable and construction costs will not seriously have outstripped the ability of tolls to amortize these costs.

Second, there is some question whether we may reasonably expect traffic growth rates at the higher level projected by the 1970 study. Traffic levels in the past six years have not, in fact, borne out this high projection. This shortfall is arguably due to the worldwide recession of the early 1970s, from which we are only now beginning to emerge. This is strongly suggested by the upward turn of canal traffic in the past year. A more thorough analysis is needed to establish that this will be a long-term pattern.

An important factor in any reassessment of a sea-level canal's feasibility will be potential traffic growth deriving from new discoveries of oil and gas in Alaska. As I have already mentioned, by next spring Alaska will be producing 1.2 million barrels of oil a day, creating a surplus of 500,000 barrels a day on the West Coast.

There is every likelihood that these figures, as high as they are, will at least double in the next several years. The probability that large quantities of oil will be recovered from the Alaskan Gulf, National Petroleum Reserve No. 4, and other areas of Alaska, both on and off shore, is very high. According to conservative projections by the U.S. Geological Survey (USGS), recoverable reserves in Alaska may be five times as large as already demonstrated reserves.

I believe it is a conservative estimate that Alaska will be producing an additional two million barrels of oil per day within 2 to 5 years, and yet another two million barrels per day within 5 to 10 years. Figures of this magnitude are confirmed by an Atlantic Richfield Company estimate that the West Coast oil surplus could be as high as 2.4 million barrels per day in 1990.

As these Alaskan oil reserves are brought to production, a sea-level canal becomes increasingly attractive. It would require 120 million tons of canal traffic per year to move a surplus of 2.4 million barrels per day through the canal. This represents almost exactly one-half of the Commission's entire potential tonnage forecast for 1990. They included in their 239 million tons per year estimate only 41 million tons of petroleum, or about one-third the volume that now appears likely to materialize.

If this oil and the accompanying gas is to reach U.S. markets where it is needed, it must be transported by tanker to the Gulf of Mexico and the East Coast, or else it must be moved inland by pipeline from the West Coast.

The pipeline alternative has considerable drawbacks. The nation's pipeline infrastructure for the delivery of oil and gas runs south to north, fanning out from the Gulf Coast States to serve the Midwest and Northeast. The explanation for this pattern is simple. Historically, oil and gas was discovered in the Gulf region and was moved to the nation's population and industrial center.

This infrastructure represents a \$7 billion capital investment in the case of oil lines and \$12.7 billion for gas lines. There is also an investment of approximately \$19 billion in Gulf Coast refining capacity. If it were to become necessary in the next several years to move our energy supplies from west to east, rather than from south to north, much of this infrastructure would have to be replaced at capital costs much higher than the original investment.

For at least the next 2 to 3 years there is no real alternative to using the existing canal for transporting West Coast surplus oil to regions of the country which have a crude oil deficiency. But because of the inefficient lightering operations that are involved, transit charges on this route are sufficiently high that pipeline alternatives become attractive even though new pipeline investment costs would be required.

A number of such projects have been proposed to deliver surplus oil to markets in either the Central or Gulf States. (See Table 4.) The most important of these are as follows:

Trans-Mountain Pipeline. This is an existing line which at present carries oil east to west from Edmonton to the Vancouver area. Atlantic Richfield Company (ARCO) proposes a partial reversal of the flow to move 165 thousand barrels per day of Alaskan crude from Cherry Point in Washington to the so-called Northern Tier refineries in Montana, North Dakota, Minnesota, Wisconsin, and upper Michigan. The capacity of this line would satisfy the needs of these refineries. Capital investment costs would be a relatively minimal \$115 million and transportation costs into Chicago would be \$2.30 per barrel of oil. This project has, however, run into stiff environmental opposition in the State of Washington and may not get the necessary permits.

Northern Tier Pipeline. This proposal calls for the construction of 1570 miles of new pipe at a capital cost of \$1.6 billion. It would move 600,000 barrels per day of Alaska crude from the Port Angeles area in Puget Sound to Clearbrook, Minnesota, thus serving the refineries in the Northern Tier States. It would deliver to the Chicago area at a cost of \$2.78 per barrel. It faces environmental objections in the State of Washington at least equal to those confronting the Trans-Mountain project.

Kitimat Pipeline. This project would involve the construction of 753 miles of pipe from the town of Kitimat in British Columbia to Edmonton, Alberta. It would there interconnect with existing lines to serve the Northern Tier States and the upper Midwest. It would have a capacity of 525,000 barrels per day and would entail an investment of some \$696 million. Transportation costs to Chicago would be \$2.38 per barrel of oil. At present the sponsors of this project are inactive, but it could be revived if competing proposals fail.

Sohio Pipeline. Standard Oil Company of Ohio (SOHIO) proposes to convert to oil service existing gas lines running from Midland, Texas to Redlands, California. With the construction of an additional 219 miles of pipe, this would allow Sohio to move Alaskan crude from Long Beach to Texas at a rate of 500,000 barrels per day. This is the most economical of all the proposed pipeline projects, as it would transport the oil to Chicago for \$2.29 per barrel and into Houston for only \$2.06 per barrel. The Sohio project faces two major hurdles. First, the State of California has been extremely reluctant to issue the necessary permits because of concern that further degradation of air quality in the Los Angeles area might result. Second, both Federal Power Commission and California Public Utilities Commission approval are required for conversion of the existing gas lines to oil service. This approval may not be granted due to new discoveries of gas in the Mexican Yucatan. Mexico could very economically move its gas into Texas and then transport it through the existing system to California.

Trans-Guatemala Pipeline. The Central American Pipeline Company proposes to transport Alaskan crude 227 miles across Guatemala for marine delivery to the Gulf Coast. Investment costs would be \$934 million for a 1.2 million barrel per day pipeline. Transportation costs would be \$2.52 into the Chicago market and \$2.16 into Houston. The major drawback to this proposal is that it involves the effective export of Alaskan crude, which is currently not permitted. To change this policy would require that difficult political hurdles be cleared.

To summarize, existing pipeline systems in the United States are designed to deliver oil and gas from the Gulf Coast to the Midwest and Northeast, where the nation's energy needs are the greatest. Now that our major source of domestic supply is shifting from the Gulf region to Alaska, we must either build new pipeline infrastructures at large capital costs and potentially significant environmental costs, or else we must find an economical marine delivery route that will enable us to bring Alaskan crude into Gulf Coast ports for transport through existing lines. Although a number of new pipelines have been proposed, each has severe political or financial hurdles to overcome. Moreover, even should one or two of these projects be built, their capacities would not be sufficient to handle the surplus supply of Alaskan oil expected on the West Coast ten years from now.

This set of facts, taken into conjunction with the generally positive findings of the Canal Study Commission, appear to make a sea-level canal a very attractive option. To further check this out I compared the oil transportation costs via the combined pipeline-marine routes I have just been discussing with an all marine route through a sea-level canal.

The pipeline costs vary from \$2.06 to \$2.73 per barrel of crude, and to be competitive transport costs through a sea-level canal would have to fall within this range. Apparently they do.

I asked Arthur D. Little, Inc., using the same computer model from which the pipeline transport costs were derived, to calculate costs between Valdez and Houston via a sea-level canal. Here is what they found:

\$1.74 per barrel for 160,000 dwt vessels;

\$1.35 per barrel for 225,000 dwt vessels;

\$1.31 per barrel for 265,000 dwt vessels.

To these figures must be added a reasonable toll figure, which I have calculated to be 44 cents per barrel of oil. (This compares with a toll of 27 cents per barrel of oil through the present canal.)

This means that transport costs through a sea-level canal may be preliminarily estimated to fall somewhere within a \$1.75 to \$2.18 range. As can readily be seen the low end of this spectrum is 31 cents less, and the high end 60 cents less, than the respective low and high ends of the cost range for combined pipeline-marine routes.

Clearly, if these figures are sustained upon a more thorough analysis, a sea-level canal is a highly competitive alternative for transporting surplus West Coast oil. If we assume an oil surplus of only 500,000 barrels per day (the amount we definitely will have next spring), a sea-level canal would in ten years save the American public \$1.3 billion as compared with the existing canal. Over a similar period of time, the savings would be \$565 million when the sea-level canal is compared with the most economic of the pipeline routes, the Sohio projects. (See Chart 2.)

In addition to the capital investment costs for pipeline and refinery infrastructures which may be offset against the cost of construction of a canal, there are extremely important military and foreign policy values to be realized through a sea-level canal. Under agreements already entered into or soon to be concluded, much of the east coast of the United States will in the near future be dependent upon Algeria, and possibly the Soviet Union, for its natural gas supplies. Although such an arrangement is satisfactory at the present time, the desirability of long-term energy dependency on these two countries is questionable at best. The severe harm which could be done to the economy of the eastern seaboard by a cut-off of these foreign supplies is truly inestimable, but we may be certain it would run into the billions of dollars. A sea-level canal would enable us to meet these domestic energy needs with Alaskan gas, and thus provide us a great deal more foreign policy flexibility.

From a more strictly military point of view, a sea-level canal offers quite significant strategic and logistical advantages over the present canal. It would be almost totally invulnerable to long-term interruption by military attack, whereas the present locks canal can be incapacitated for as long as 2 years with relative ease. This means that the canal's important role in providing logistical support to military operations in the Pacific area would be wholly dependable. To get some sense of what this would be worth in dollar values, we may observe that since its inception in 1904 the U.S. Government has expended \$5.31 billion—or approximately six times the net civilian investment in the canal—to defend the canal. These defense expenditures, as important as they are for the present locks canal, could be greatly reduced for a sea-level canal because of its invulnerability.

In addition, a sea-level canal could be transited by our aircraft carriers, which are too large for the present facility. At present, a Carrier Task Force moving from one ocean to the other must send part of its force around South America while the remainder transits the canal, only to lie idle for 10 days while the rest of the force catches up.

As an example of the strategic shortcomings and military inefficiency of the present canal, let us assume there is an emergency in the Mediterranean which calls for reinforcement from a Carrier Task Group stationed on the West Coast.

Under present conditions, the Task Group's cruiser and 15 of its destroyers would sail through the canal, reaching Gibraltar in 15 days. Meanwhile, the carrier and an additional 10 destroyer escort would steam the additional 5,000 miles around Cape Horn, not reaching Gibraltar for 25 days.

If a sea-level canal were available, the entire Carrier Task Group could reach Gibraltar in 15 days, at a savings of 47,000 barrels of fuel and \$870,000. The strategic flexibility this would provide our Navy would be equivalent to adding an entire Carrier Task Group to our arsenal. In effect, this would provide us an additional \$20 billion in defense capability at no extra cost to the taxpayers.

As the Committee knows, President Carter has taken a strong interest in a sea-level canal. Specifically, he instructed our negotiators to seek provisions relating to a sea-level canal in the new treaty with Panama. This was accomplished in Article XII. Unfortunately, there has been some misunderstanding of these provisions. I

would like to attempt to clarify them for the Committee, as I have been involved with this issue perhaps more closely than anyone else.

Those individuals critical of this part of the treaty have centered their objections on paragraph 2(b) of Article XII. That paragraph reads as follows:

"During the duration of the Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree."

The hue and cry has gone out that in this provision the United States has given away its right to consider other countries than Panama for a sea-level canal, and that it has done so without getting anything in return.

First, I would point out that the United States did get something in return. Critics have generally overlooked or not understood the meaning of paragraph 2(a) of this same article, which reads as follows:

"No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provision of this Treaty, or as the two Parties may otherwise agree."

The effect of this language is to provide the United States a right of first refusal to be involved if a sea-level canal is built in Panama. In other words, Panama has agreed that it will not build a new canal in cooperation with Japan, OPEC, the Soviet Union, or any other third party unless we concur.

Second—and this is equally as important—the concession we made to Panama not to build a canal in any other Central American country is of no practical consequence because Panama is the only place it makes any sense to build a canal in any case.

The Canal Study Commission initially examined 30 possible routes, one or more of which would have traversed Mexico, Nicaragua, Costa Rica, Panama, and Colombia. This field was then narrowed to 8 routes—the only ones the Commission judged sufficiently feasible to warrant in-depth investigation. Of these 8 routes, 4 were entirely within Panama, and a fifth was partially within Panama. One of the 4 routes outside Panama involved construction of a lock (not a sea-level) canal, and was studied only for comparative purposes.

The remaining 3 non-Panamanian routes were: Route 8 in Nicaragua and Costa Rica; Route 23 in Panama and Colombia; and Route 25 in Colombia.

Of these 3, routes 8 and 23 were eliminated by the Commission because they required excessive excavation. They were also longer, considerably more costly, and located in areas where no harbors to accommodate deep draft vessels were available.

The third non-Panamanian route, No. 25 through Colombia, was selected by the Commission as feasible only if nuclear excavation were employed. Otherwise it would be prohibitively expensive. But the Commission also rejected nuclear excavation as both technically and politically unacceptable. Consequently, they also rejected Route 25 as not viable.

Of the remaining 4 Panamanian routes, the Commission narrowed its choice to Routes 10 and 14, giving first nod to Route 10. (See Map 4.) This preferred route involves relatively small excavation quantities; retains the full Panama Canal capability at minimum risk during construction and for as long as desired after construction; and has good supporting facilities available. It lies approximately 10 miles west of the existing canal, just outside the present Canal Zone. Construction of a canal on Route 10 would not require a shift in Panama's metropolitan centers.

SUMMARY

Taken together, the military and foreign policy values, the savings from retaining existing energy delivery infrastructures, and the reduced transportation costs of a sea-level canal would appear to justify such a project even in the absence of strict financial feasibility, which, as we have seen, is not itself obviously lacking. But there is even one further advantage of a sea-level canal. It has the potential of defusing the controversy over the present canal.

The United States—perhaps in conjunction with other interested parties such as the State of Alaska, the international oil companies, Japan, Mexico, Venezuela, and countries on the west coast of South America—could guarantee the bonds to finance a new sea-level canal fully owned and operated by the Panamanians. It would be strictly a business arrangement with a Panamanian guarantee of access and reasonable tariffs as the only quid pro quo. This would provide Panama the economic control over her resources she demands, and would at the same time defuse the present controversy. The United States, for her part, would obtain the economic advantages already pointed out, and would achieve her ultimate goal of a defensible canal available to all at reasonable rates.

These advantages which would accrue to the United States through construction of a sea-level canal make it well worth our while to maintain the good will of the Panamanians, which I feel certain can be done if we ratify the treaties now before us.

TABLE 4.—TRANSPORTATION ALTERNATIVES ALASKAN CRUDE WEST COAST SURPLUS (JANUARY 1977)

Project	Thru-put ¹	Projected start-up	Capital investment ²	Transport costs by route ³	
				Chicago	Houston
Trans-Guatemala	1,200	1/81	934	2.52	2.16
Transmountain	165	1/79	115	2.30	.....
Northern tier:					
Phase I	500	1/81	1,630	2.78	.....
Phase II	800	1/84	⁴ 118	.....	.....
Sohio: Phase I	500	1/79	472	2.29	2.06
Panama Trans-shipment		(⁵)	.....	2.83	2.46
Cape Horn		(⁵)	.....	3.53	3.14

¹ Thousands of barrels per day.

² Millions of dollars.

³ Dollars per barrel.

⁴ Incremental.

⁵ Immediate.

CHART 2.—SEA-LEVEL CANAL SAVINGS

	Cost of transportation ¹	Total per day ²	Total per year	Total for 5 yr	Total for 10 yr
Existing canal	\$2.46	\$1,230,000	\$448,950,000	\$2,244,750,000	\$4,489,500,000
Sea-level canal	1.75	875,000	319,375,000	1,596,875,000	3,193,750,000
Savings .....	.71	355,000	129,575,000	647,575,000	1,295,750,000
Sohio line	2.06	1,030,000	375,950,000	1,879,750,000	3,759,500,000
Sea-level canal	1.75	875,000	319,375,000	1,596,875,000	3,193,750,000
Savings .....	.31	155,000	56,575,000	282,875,000	565,750,000

¹ Dollars per barrel.

² At 500,000 bbl/day rate.

STATEMENT BY SENATOR LAXALT

Mr. Chairman, I am pleased to appear before this distinguished Committee to offer my views on the proposed Panama Canal treaties. Let me say at the outset that I oppose these treaties and I intend to vote against ratification when they are submitted to the Senate.

My objections range from what the treaties represent to specific problems with what they actually say. In addition, I am quite concerned about how the Carter Administration is going about "selling" them to the American people.

WHAT THE TREATIES REPRESENT

The proposed treaties pose a grievous risk of loss within 22 years and constitute a certain loss after that time of a vital strategic and economic asset for the United States. To my mind, they also set a defeatist tone for our overall foreign policy which is unworthy of our people.

For me, the crucial question to be considered in assessing the treaties for possible ratification is one of trust. In hard practical terms, how much confidence should we as one Nation put in even the most solemnly pledged word of another nation when our vital national security assets are at stake? And, in this case with respect to Panama, does the nature of its government and the character of its leader add credence to the proposed undertaking?

Mr. Chairman, I suggest in this uncertain world that we need to be very careful in selecting those upon whom we rely in basic security matters. What is more, insofar as international partners are concerned, the present Panamanian government is hardly one in which I would repose a lot of confidence much less the guardianship of a vital U.S. asset.

We must remember as we consider these treaties that in the international arena each sovereign state is the ultimate judge of its own actions. We can and we should

discuss in detail precisely what is in the treaties. But, we also need to look beyond the treaty language. We need to evaluate above all the credibility of the present Panamanian government.

How close is General Torrijos to Havana and Moscow? How secure is his tenure? Is he likely to demand rapid renegotiation before the ink is dry on these pacts? Would his potential successors? As a law-abiding Nation, we tend too frequently to assume that the word of other nations is as good as our own once pledged. Many times it is. But memories of Yalta, Potsdam, and Suez, should teach us to look beyond the specific language in international negotiations to the character of our potential partners before trusting them with important assets under even the most tightly written treaty. I suggest, Mr. Chairman, that General Torrijos' Panama will fail to withstand this test if this Committee chooses to apply it with its customary rigor.

As important as the credibility of the Torrijos regime in assessing the context of the treaties is the message which Senate acceptance of them would send to our allies and adversaries around the world. I agree fully with Secretary Vance who said in his statement opening these hearings. "How we respond to an issue such as the Panama Canal will help set the tone for our relations with the rest of the world for some time to come."

Where I differ with the Secretary, of course, is in the kind of tone which I believe these treaties set for our foreign policy. In my judgment, the domestic debate on the acceptability of the treaties is between those who see them as an expression of historical generosity and those who view them as a rather abject lesson in capitulation. I am afraid that to me they represent much more of the latter and as such are decidedly unworthy of our people.

Since the end of World War II, the United States has played an active role in maintaining the balance of power throughout the world. Out of a renunciation of prewar isolationism came ANZUS, NATO, bilateral relations with Japan, Taiwan, and Israel; all of which have served our Nation very well.

In my judgment, the great architects of post-war U.S. foreign policy, General Marshall, President Truman, and Senator Vandenburg, are owed a real debt of gratitude for this. They recognized that pre-war isolationism was not healthy either for this country or the world at large. They knew that our prosperity, our security, and even the future of our democratic institutions were all intimately bound up with the fate of other democratic nations.

I personally feel that the Panama Canal treaties pose a direct threat to the multilateral security structure created by these far-seeing visionaries. Not necessarily in isolation, but as part of a larger mosaic of U.S. hesitancy and withdrawal, serious questions will sooner or later occur to our allies and essential confidence will be impaired. Because it is this confidence which binds our security structure, that structure can only be impaired when serious discussion begins to "de-recognize" Taiwan, when proposals are made to abandon development of important strategic missile systems, and now when we propose to give away an important piece of real estate for the pure and simple reason that when push comes to shove, we do not think we can hold it?

To me this is precisely what the proponents' position boils down to. They cite fears of sabotage, guerrilla warfare and the alienation of Latin American opinion. The military leaders among them even draw distinctions between concepts of possession and use of the Canal. But, the essence of the proponents' position is that because the United States is not physically able to maintain its sovereignty over the Canal Zone, we should relinquish it before it is taken away from us.

This to me is a rather sorry spectacle. Although Santayana did say that those who do not learn from history are condemned to repeat it, I believe that we should not be frightened into giving up important strategic assets by scary specters of our own creation.

The violence argument is thus worthy of detailed comment. Ambassador Linowitz stated it in perhaps the clearest way when he said in a Voice of America broadcast: "Expectations have been raised so high in Latin America that failure to get the treaties ratified could bring a whole range of consequences including violence."

I do not believe that the issue of potential violence should be ignored, but I do feel that we need to inquire closely as to its origins. To me, the treaties represent the worst possible way of dealing with potential security threats to the Canal from within Panama. The expectations of Panamanian extremists have certainly been raised by the prospect of taking over the Canal. But treaty proponents need to ask themselves whether those expectations will be satisfied by asking extremists to wait 22 years, or whether violence and sabotage are now possible, irrespective of Senate

ratification, simply because of the atmosphere of heightened expectations which the treaties create without really satisfying.

In view of this tinderbox situation, I see Senate refusal to ratify as providing at least some deterrence to violence by demonstrating that the power of the United States remains behind its legitimate interests. Ratification of a half-way house treaty, on the other hand, because it represents a clear capitulation under threat of force without satisfying extremist expectations, would be a signal to potential rioters and saboteurs that they need not wait 22 years. All they need do is push just a little harder because the United States would have clearly demonstrated its willingness to treat with violence. Then it would be open season for extremists to attack not only the Canal but the property and persons of U.S. nationals throughout Latin America.

The Administration's eagerness to conclude a Canal agreement, under these circumstances, is of serious concern to me. A fundamental decision was made at the end of World War II that the United States could not retreat into itself and maintain its security unilaterally for long. Granted, there is a certain weariness resulting from a prolonged land war in Asia. But, that weariness has not occasioned any lack of will among our people to maintain U.S. sovereignty in an area much closer to home. Quite the contrary. Recent polls indicate that a vast majority of the American people favor keeping the Canal.

In truth, the weariness is on the part of this Administration. I believe our people without being bellicose, do want to play an active role in the world. I believe our people do recognize certain areas beyond our borders as vital to our national interests. And, I think they will decisively reject a foreign policy which falls short of their standards. President Carter has promised to give this Nation a government as good as its people, but his Panama Canal treaties simply fail to measure up.

WHAT THE TREATIES SAY

The terms of the treaties are no better than the overall tone which they set for American foreign policy. I am opposed to the front-end concession of the key principle of sovereignty. I believe the rapid turn-over of crucial support services to the Panamanians bodes ill for the effective operation of the Canal. I think the human rights of Americans left in the Zone and our ability to guarantee the neutrality of the Canal are inadequately protected. And, it is to me an absolute scandal that we are proposing to pay the Panamanians to take the Canal off our hands.

1. *Sovereignty*

The main purpose of the treaty is hardly concealed. The preamble to the agreement opens by "acknowledging the Republic of Panama's sovereignty over its territory." Quite clearly at the very core of the nature of the present relationship between the United States and the Panama Canal is our own sovereignty over the Canal and Canal Zone. In my judgment, it would be bad enough if this new treaty confined itself to passing sovereignty to the Panamanian government. But, as I read the existing language, it recognizes that Panama already has sovereignty. Thus, the Panamanians could presumably exercise their right to expel the United States from their country whenever they desire. Accordingly, we are not only giving away our Canal, we are asserting that we have never had it.

2. *Effective canal operation*

Despite some obvious disputes over the running of the Canal, particularly reflected in demands by Panama over the years for more revenue and control of the Canal, nearly everyone agrees that the Panama Canal Company has operated an extraordinary safe, fair, and efficient operation. It has made a major contribution to the development of world trade and maintained our own security interests in the Western hemisphere.

In scrutinizing the terms of the new agreement, I cannot help but wonder whether the operation will continue in the same equitable and efficient manner in the future. Article X requires that the American work force must "within five years . . . be at least 20% less than the total number" of those working there at present. And, under section four of the same Article, now non-Panamanian employees can only work for terms of five years duration (aside from some special circumstances). Thus, discrimination is mandated in the treaty against the very personnel whose qualifications are necessary for the continued operation of the Canal.

Quite simply, Panama does not now have, and cannot have within the short period of time required, the skilled personnel to fill adequately the jobs of those who will leave their present jobs, whether voluntarily or under duress. Jobs such as the ships' captains that navigate the vessels through the Canal now require twenty

years of training and experience. Panama does not have such qualified people. At present, only two out of the two hundred ships' captains are Panamanians. Until recently, no school even existed in Panama to train ship's captains and the country has virtually no navy. Nonetheless, the treaty requires that Panama assume control of an increasingly large portion of the skilled jobs in the operation of the Canal.

To make matters worse, the United States does not even have the option of building an alternative Canal if the proposed arrangement with Panama does work out in practice. Under Article XII, the United States is prohibited from negotiating "with third states for the right to construct an inter-oceanic canal . . . in the Western hemisphere" without the consent of the Panamanian government. Thus, regardless of how poorly this agreement may work out, Panama holds an absolute veto power over the United States pursuing an alternative route for the next 22 years.

3. Human rights

The worst fears of the workers who now live in the Panama Canal Zone are fully realized under the terms of the proposed treaty. In all the discussion of alleged grievances and rights of Panama, we have curiously ignored the rights of the American citizens who live in the Canal Zone. In the treaty, we consciously expand Torrijos' authoritarian rule to include the Zone without ever raising a question about the abysmal human rights record of this regime and its consequences for the Americans who live there.

Under Article XI, section 2, Panama does permit the United States to continue to have the "primary right to exercise criminal jurisdiction over United States citizens employees" of the Canal, their dependents and other American military forces. But this protection is limited to only certain areas and, most importantly, lasts only for the transition period of thirty months. After this period of time, these people fall completely under Panamanian legal jurisdiction.

The human rights question must be squarely faced. The Zonians have lived under the mantle of freedom provided by the United States in the Panama Canal Zone. Are they now to be abandoned? Simply in anticipation of the new agreement, many employees have already left the area and in a three year period this emigration could turn into a flood.

One specific provision of the treaty reveals most conspicuously the rapid deterioration of the rights of Americans remaining in Panama. Under Article V, rather innocuously titled "Principle of Nonintervention", American nationals must "abstain from any political activity in the Republic of Panama as well as from any intervention in the internal affairs of the Republic of Panama". This requirement appears rather reasonable until one realizes that under the treaty the definition of Panama includes the Canal Zone area where these people live and work. Naturally, the Republic of Panama will have the right to determine what constitutes intervention and thus the definition could easily be broadly construed to include even union activities and ordinary grievance procedures, or any kind of public or private meetings even in one's own home.

4. Security guarantees

Presumably, to protect the United States' vital security interests, a separate treaty provides for the permanent neutrality of the Canal. Thus far, this entire section has been enveloped in a conflict of interpretations between American and Panamanian negotiators. If disputes have arisen before the agreement is even ratified, this certainly bodes ill for its prospective implementation.

In the discussion thus far concerning American rights under the Permanent Neutrality Treaty, the Panamanians have made a much more convincing case for their position. Rather than a genuinely joint declaration, the Panamanians have insisted that since the main treaty acknowledges their sovereignty over the Canal, they alone can declare the neutrality of the waterway. And, under Article I for the second treaty, the language indicates only that "The Republic of Panama declares that the Canal . . . shall be permanently neutral". Thus, if Panama alone can declare neutrality, then unless other specific language indicates otherwise, the United States has no right under the treaty to proclaim unilaterally a threat to that neutrality and intervene to thwart such a threat.

In testimony before this Committee last week, Article IV of the neutrality treaty has been cited as a basis for the American right of intervention. This article does allude to both the United States and Panama agreeing "to maintain the regime of neutrality established under this Treaty". The last four words of this quote clearly mean the kind of neutrality that Panama has declared already in the treaty and not an American right to determine this. Thus, it is entirely understandable that the chief Panamanian negotiator has told his own national assembly that "The treaty

does not establish that the United States has the right to intervene (that is send in troops) in Panama". Similarly, earlier this year, General Torrijos himself stated that after 31 December, 1999, "the duties and responsibilities will be assumed by our country solely and exclusively". The language of the Panamanian view of what this agreement does could hardly be more specific.

On this point, as well as many others, the most lucid discussion that has thus far appeared of the nature and direction of the negotiations has derived from the Panamanians. They have indicated that the original language proposed by American negotiators was unacceptable to them and, ultimately, on the crucial issues they have prevailed. I cannot help but conclude, as the Panamanians have, that the United States under the terms of the Permanent Neutrality Act has sacrificed all meaningful rights to maintain the security of the Canal.

5. The high cost

While most Americans oppose giving the Canal to Panama, they are literally livid at the prospect of paying Panama to take the facility off our hands. Thus, the economic arrangements require special attention by this Committee and some plausible justification must be provided to explain why, in the course of transferring this multi-billion asset to Panama, we must at the same time provide for payments to Panama of upwards of \$50 million per year.

Of course, under the language of the treaty, the United States does not directly pay this money to the Panamanian government, but the net result is the same. Under Article XIII, dealing with the Economic Participation by the Republic of Panama, the agreement provides for Panama receiving \$.30 per ton for each vessel transiting the Canal. Moreover, five years after the new treaty goes into effect, this figure will be adjusted upward each two years to reflect changes in the American wholesale price index.

Some have contended that this provision places a ceiling on the amounts that the tolls may rise for the next 22 years. But, more likely, the effect will be a rising floor for future toll increases. Coupled with the per ton figure, the United States also quadruples the annuity payment to Panama to \$10 million and promises another \$10 million if Canal revenues exceed expenses. This last provision may seem to provide an incentive for the efficient operation of the Canal, but more likely, this will simply encourage a rise in tolls that will permit the \$10 million to be extracted.

All of this money derives from the revenues collected by the new Panama Canal Commission. The estimates of the total amount varies depending on the volume of cargo. But, on the basis of last year's volume of 117 million tons of cargo, this would have meant approximately \$45 million, or about twenty times as much as Panama receives under the 1903 treaty. If the Canal has its anticipated rise in traffic this coming year, but still runs a deficit, this figure would rise to over \$50 million.

In order to compensate for this huge new expenditure by the operators of the Canal, Ambassador Linowitz has already indicated that tolls will have to rise by 25% to 30% upon ratification of the treaty. This would represent the single largest increase in tolls since the Panama Canal began operations in 1914. This rise relates largely to compensation being provided the Panamanian government. But as indicated in the analysis above, probably larger incentives will have to be provided to skilled workers to remain in Panama under the new treaty.

Despite the fact that the revenues going into the Panamanian treasury derive from the general operation of the Canal, the actual expense shall be borne by those ships that transit the Canal and through them the producers and consumers of the goods shipped. This could have severe repercussions on some products, such as American agricultural goods being exported from the Gulf Coast to the Orient or oil flowing from Alaska to our Gulf Coast. Therefore, although the payments to Panama are indirect, the American taxpayer will bear much of the burden of the increase which presumably will rise each year due to the indexing procedures.

Overall this constitutes a radical alteration of the concept of the Panama Canal. While the United States has always viewed the Canal as facilitating world commerce, the Panamanians clearly view the waterway as their own OPEC in miniature, their monopoly over travel from one ocean to the other. And, given the veto power they hold over the American right to negotiate building another canal, Panama can effectively stymie any prospective competition.

Having expended an estimated \$7 billion over the past 74 years in order to bring into existence and operate the Canal and all its related facilities, the American people have a right to ask why they must pay to have this enormous asset, run so efficiently and fairly for so long, taken off their hands by the Panamanian government. This is particularly true when sales of only several million dollars to other nations in Latin America have been suspended due to criticisms of the nature of their government.

Yet, with respect to Panama, no concern surfaces over the nature of the military dictatorship in the country that the United States will in effect be rewarding with one of the largest gifts ever bestowed voluntarily upon another nation. If the government of Panama appeared as a reliable friend of the United States, perhaps some justification for this enormous behest might be offered on foreign aid grounds. Instead, the Torrijos regime has constantly extolled Fidel Castro as a great Latin American leader and proceeded on its own social revolution that has substantially destroyed the Panamanian economy. In my judgment, if these treaties were to be ratified, the United States would be rewarding the wrong government, in the wrong place, at the wrong time, and in the wrong manner.

THE SALES JOB

In addition to my concerns about what these treaties represent and what they say, in closing, I would also like to express my concern about the manner by which they are being sold to the American public. Governor Reagan rightfully termed the whole affair a "medicine show." And, I can only accuse President Carter's chief political strategist, Hamilton Jordan, of understatement when he told the Baltimore Sun: "We are going to spend a tremendous amount of political capital to get the treaty ratified."

I have found one of the most intriguing developments resulting from the Panama Canal treaty issue to be the negative approach most proponents have adopted in their efforts to "sell" the document to the American people. Actually, "intriguing" is not a graphic enough description of the sales effort being promoted. "Insulting," although harsh, is probably a much more accurate description of a campaign which is calculated to frighten people into accepting a bad agreement by attempting to persuade them that because the Canal is vulnerable to attack by elements within Panama, this facility can only be insulated from destruction through acceptance of the current treaty.

This "argument" is the most prominently mentioned of the reasons for relinquishing control of the waterway. According to this line of reasoning, since the Canal is susceptible to attack, and the Panamanian government has raised the spectre of guerrilla warfare unless we deliver—either our country accepts the treaty negotiated and turns the Canal over or it will be put out of commission with everyone losing in the process. Upon largely this basis, the Canal treaty proponents are mounting what they refer to as an "educational" program to apprise Americans of the purported dangers.

Of all the approaches, those who favor ratification could have chosen to "educate" the people with, in my opinion, this is the least likely to succeed. It won't succeed because the American people will reject it. Treaty supporters have maneuvered themselves into the unenviable position of attempting to convince the American public that they should forego a valuable strategic asset because violent actions have been threatened if we don't knuckle under.

I personally do not believe that an "educational" program heavily resting on the foundation of the "violence argument" when there is ample evidence that the document itself is faulty, dangerous and inequitable will have any chance of success. Possibly this is the only really viable avenue of approach for treaty proponents because the treaty is so poor as to be indefensible on most other grounds.

Mr. Chairman, the whole concept of a propaganda campaign is disturbing in our American context. It is quite obvious that the Canal treaty is uniformly unpopular with the public. Polls show this to be the case as do recent political developments with the ratification vote being put off until sometime next year, maybe, when it is hoped more votes are found somewhere in the Senate.

Certainly, the Administration has the right, indeed even the obligation, to take its case to the people. But, the vehemence of their propaganda effort must be a function of the recognition that they have an uphill battle since the Panama Canal agreement certainly will not sell itself. This approach will, without doubt, be found wanting by our people. But what concerns me is the arrogance of those who, again, underestimate the capacities of the people and assume the role of pedagogue. What we have is the same tried, old coalition of elitists in government, business, and labor purporting to prescribe to the masses for their own good while each is determined to "sell" the document for its own reasons.

There is almost a feeling of *deja vu* today as, one after the other, familiar names and faces of those who ran our foreign policy in the 1960s reenter the scene to bless the Panama Canal treaty. I get the distinct impression they have once again found it comfortable returning to the arena where many programs they designed a decade ago are now being carried out. Yet, this is not particularly comforting since the era

of "the best and the brightest" was not one renowned for its foreign policy successes.

It looks like Big Business is concerned enough about ensuring its investments in Panama to back the treaty. It is no secret that the Torrijos regime is teetering close to the edge of financial collapse. If the walls caved in on this government, American dollars heavily invested in the country would be lost. With this treaty and its extravagant pay-off plans, the Panamanian economy would be pumped up and many American businessmen saved from a financial drubbing. Additionally, I think the business community has bought the "violence argument" and is willing to have taxpayer dollars bail them out of imagined Latin difficulties.

The third leg of the establishment triad offering support for the Panama Canal treaty is Big Labor. There is so much politics tied in with their endorsement that I am not sure the merits of the treaty were a consideration. But then, I have never been close enough to labor circles to be party to their concerns. Suffice to say that George Meany has found ways to thank the Carter Administration for its support of the labor reform package.

So, what we have it seems to me is a classic case of establishment arrogance. The power blocs which deal in this town have decided to "educate" the masses on the necessity of ratifying the Panama Canal treaty. Such patronizing is insulating to the American people.

Mr. Chairman, I sincerely doubt that any propaganda campaign, no matter how skillfully handled, could "sell" this very dangerous and inequitable treaty to the American people. The fact that there is nothing really positive to commend it has led to a campaign based largely on simple scare tactics. Mr. Chairman, Americans will not buy it. We have responsibilities which must be met now and in the future and such responsibilities will not be dismissed by threats of blackmail which carries with them undesirable precedents. It will be impossible to "educate" our people to accept something that is wrong.

STATEMENT BY SENATOR BOB DOLE

Mr. Chairman and Members of the Committee: I appreciate this opportunity to appear before the Committee today, to comment on the two Panama Canal Treaties now pending before the Senate.

You gentlemen have already had an opportunity to hear from a series of Administration witnesses on this important issue. As one who shares the responsibility of deciding whether or not these two Treaties should be ratified, I can appreciate your desire to gain as many perspectives on the issue as possible.

I, too, hope to learn a lot more about all that is involved here in the weeks ahead. But I cannot agree with many of the key assessments and conclusions about these Treaties which the Administration's spokesmen offered to you last week.

I cannot agree, for example, that our ability to continue to use the canal, and to defend the canal, is adequately guaranteed under the provisions of these Treaties. I cannot agree that our nation's economic interests are protected by granting exorbitant annuity payments to Panama, and by giving Panama a major chunk of toll revenues. I cannot agree that the United States Canal Zone territory should be turned over to Panama without the express consent of both Houses of Congress. I hope to offer some helpful perspectives at this time on how we should properly approach these Treaties in order to protect our vital interests.

On September 23, I became the first Member of the Senate to introduce amendments and reservations to the Panama Canal Treaties. I want to explain why I feel this is a responsible approach to this Treaty issue. In doing so, I will review the details of the Treaty modifications I have proposed, and explain why I disagree with the Administration's spokesmen on these critical points.

A SENATE RESPONSIBILITY

Article II of the United States Constitution gives the President the power to make treaties with other nations "by and with the advice and consent of the Senate." Our advisory role is clear. And our responsibility to scrutinize treaties before giving our consent is evident.

Yet, the Administration seems bent upon forcing the Panama Canal Treaties through the Senate without modification. We are told that anything less than "unqualified" Senate approval will jeopardize the Treaties. General Torrijos takes the same narrow view. "The negotiations are over," he says. "The Treaties have been signed. I'm not interested in what is said."

The Treaties have been signed, but the debate has only started. Our Constitution guarantees that we, on behalf of the American people, will have the final say on Treaty proposals, and I don't think we should shirk our responsibility.

MAKING MODIFICATIONS

The State Department tells us that amendments or reservations to the Canal Treaties would be fatal. It is likely that legally binding modifications like these would require renegotiation, at least on those particular portions of the Treaties.

But I do not think that proposing amendments should be equated with efforts to "kill" the Treaties. In fact, it is not an effort to destroy, but to improve these documents which bear so heavily on our national interests. I studied both Canal Treaties in detail, and found them grossly unacceptable in certain areas. I have offered reasonable proposals to modify those portions, in line with our Constitutional responsibility.

The Panamanians have understood our ratification system all along. They were aware of the Senate's responsibilities of review, and its right to modify, if necessary.

I say that we should amend if necessary, and register reservations if necessary, and at that point the ball is in Panama's court. If they refuse to reconsider these points, then the blame is theirs, not ours. But I suspect that they will be ready to renegotiate rather than to lose these Treaties which give them so much.

BEGGING OUT WITH "UNDERSTANDINGS"

One thing should be made very clear: simple "understandings" by the Senate will have no legally binding effects on the Canal Treaties. Understandings merely constitute interpretations of this or that point in the Treaties, and do not necessitate renegotiation.

However, they are *our* interpretations, not Panama's. When an issue or dispute arises in years to come, we will point in vain to our "understanding." The Panamanians will say: "That may be the way your Senate interpreted it, but this is what the Treaty says, and we interpret that differently."

If we really feel strongly about weaknesses or ambiguities in these Treaties, we should be bold enough to correct them in a straightforward and non-apologetic manner. If we must amend a Treaty provision to remove all doubt about its meaning, then so be it.

If we simply "buy time" now by deceiving ourselves with "understandings" that have no binding impact, the next generation may have to bear the consequences. It will, of course, be easy to soothe our consciences by attaching weak "interpretations" to the Canal Treaties. Politically, it may be a very easy thing to do.

But I say this: If we end up next year ratifying these Treaties with nothing more than a bunch of meaningless, half-baked "understandings" attached, we will have failed our Constitutional duty to the national interest and the American people.

Mr. Chairman, I would ask the Committee's permission to insert, at the end of my prepared statement, excerpts from several authoritative sources comparing the effects of Treaty amendments, reservations, and understandings.

AMENDMENTS TO TREATY

Mr. Chairman, in accord with my feeling that the Senate has a responsibility to modify these Treaties where necessary, I have introduced a series of six amendments and two reservations. The amendments would directly modify, or add to the language of the Treaties, while the reservations express specific conditions under which our agreement to ratify would be made. All of these would, in my opinion, better protect the nation's vital interests and substantially improve upon both the basic Canal Treaty and the Treaty on permanent neutrality.

I will not spend a lot of time describing these proposals, since I believe you have all had an opportunity to review the statement I made on September 23, at the time of introduction. I do want to emphasize, however, that I feel very strongly about the Treaty defects which prompted each of these proposals. My amendments and reservations represent sincere and earnest efforts to correct these problems, in a manner that is legally binding. Without these corrections, I think both treaties jeopardize our interests and are therefore unacceptable.

MILITARY INTERVENTION AND PRIORITY PASSAGE

Mr. Chairman, I am positively convinced of the Canal's importance to the United States' defense interests. If there was ever any question in anyone's mind about this importance, I would think that the letter to President Carter last June, signed by four former Chiefs of Naval Operations, would remove that doubt. One of those officers, Admiral Thomas H. Moorer, testified persuasively on this point before the

House International Affairs Committee last week, and I would commend his testimony to the attention of this Committee.

Therefore, with respect to the Treaty on permanent neutrality, I propose to amend Article IV to specifically guarantee our authority to intervene militarily whenever we determine the Canal's neutrality to be threatened. In addition, I propose to amend Article VI to guarantee that U.S. vessels of war will have "priority passage" rights through the Canal whenever our nation is at war. Both of these points are ambiguous within the Treaty, and have been interpreted differently by American and Panamanian negotiators. It is clear that clarification of the language is badly needed. An "understanding" will not do the job.

Last week, Secretary of Defense Harold Brown testified that "we felt strongly [during Treaty negotiations] that the United States should take whatever action was necessary to maintain neutrality," and U.S. Ambassador Sol Linowitz insisted that "it is for the United States to make the determination as to how we should respond and how we should defend our rights * * *"

However, the Chief Panamanian Negotiator, Escobar Bethancourt was quoted in an interview on August 24 as saying that the United States will not determine when neutrality is violated, and that the Treaty "does not establish that the United States has the right to intervene in Panama."

Secretary of State Cyrus Vance testified to you that, "in practical terms, as I understand it, our ships can go to the head of the line" in gaining passage through the Canal. This is under the 'expeditious passage' clause in the Treaty. The Panamanian negotiator, on the other hand, specified that "expeditious passage does not mean privileged passage," and that if "the Gringos with their warships say 'I want to go through first,' then that is their problem with the other ships waiting there."

EMBASSY CABLE

Despite efforts by the Secretary of State, Secretary of Defense, and others in the Administration to "smooth over" these discrepancies, there is no question that serious differences in interpretation still exist.

This was brought clearly to my attention earlier this week when I was handed a copy of a confidential cable sent to the State Department by our Embassy in Panama. This cable reveals just how widely our interpretation of the "intervention" and "expeditious passage" clauses differs from that of Panama's negotiators. I have already asked the Secretary of State to comment on the contents of the cable.

Rather than read it verbatim, I will summarize its contents:

"Our political counselor at the American Embassy in Panama found one of the Panamanian Treaty negotiators 'disturbed' last Thursday morning by testimony that had been presented before the Senate Foreign Relations Committee.

"Specifically, the Panamanian Negotiator, Carlos Lopez Guevara, was said to be troubled by testimony presented on Monday regarding the Carter Administration's interpretations of the 'expeditious passage' clause, and of our rights to defend the Canal's neutrality. That would be the testimony by Secretary Vance, and Ambassadors Ellsworth Bunker and Sol Linowitz.

"NO 'PRIORITY' OR 'INTERVENTION' RIGHTS

"Guevara is said to have stated that 'preferential' treatment for American ships was specifically rejected during the negotiations, in favor of the term 'expeditious'—and as having a far different meaning.

"Furthermore, Guevara told our political counselor on Thursday that Article IV of the Treaty on Permanent Neutrality does not give the United States the right of military intervention to protect the Canal. He is quoted as follows: 'Panama cannot agree to the right of the U.S. to intervene.' He further urged that U.S. officials stop using the term 'intervention' in describing our rights under this Treaty.

"According to the cable, our counselor at the Embassy then told Guevara that certain statements by Panamanian negotiators—and I assume this refers to remarks by Escobar Bethancourt which I quoted above—are proving 'difficult to explain to skeptical Senators.' In response, Guevara is said to have stated that no matter how necessary in the American process, there were some things that no Panamanian government could accept.

"The cable ends with a notation by our Embassy that Guevara 'is influential' within his government. It is advised that the Administration is likely to be faced with 'increasing irritation over—and perhaps public disavowals of—our interpretations. Any assertion which seems to claim a right to intervene in Panama's domestic affairs is almost sure to be challenged' by Panamanians."

WE CANNOT ACCEPT AMBIGUITY

Mr. Chairman, I have decided to include this cable as part of my testimony for a very important reason. It demonstrates beyond a doubt the vast differences in interpretation of the most important part of these Treaties—that portion which deals directly with our vital national defense interests.

It appears that the Panamanian officials are trying to sell one version of the Canal Treaties to their people, and that the President is presenting a totally different picture. This may be good strategy for gaining ratification, but where does it leave us in years to come during a period of crisis?

From the standpoint of our national defense interests, it is essential that the United States have unilateral authority to step in and defend the canal militarily at any time. It is also essential that we have a clear-cut right to priority passage through the canal, especially during wartime.

We cannot accept ambiguity on these points. The Senate must clarify our defense rights by *amendment*, not by weak interpretations that have no legal and binding effect. Otherwise, we will be haggling over "understandings" at some critical point in the future when our national security is directly at stake. I believe my amendments will provide the best acceptable assurance for our defense needs.

NO RESTRICTIONS ON LOCATION OF NEW CANAL

Treaty Amendment No. 1 ensures that the United States will not be committed to construct a new sea-level canal in Panama, if we should decide at some point that a new interoceanic route is desirable. Article XII of the Panama Canal Treaty would, in fact, bind the United States to construct such a canal in Panama. Yet, there is no commitment on the part of Panama to agree to permit construction of the canal—we are only prevented from constructing one elsewhere.

I certainly don't suggest that we rush right down and build a new canal in Central America. That project may or may not be vital to U.S. defense and economic interests at some point in the distant future. But the President has been talking a good deal lately about a new sea-level canal, and I suspect that the vast majority of American people will want to know first why we are giving up one canal in order to build another. They want to know why we would commit ourselves to build another in the same country that is now demanding possession of the old one.

My amendment will strike that section of Article XII which would foreclose our options, and substitute in its place a clause specifically rejecting any restrictions on U.S. negotiations with other countries, for the right to construct a new canal somewhere in the Western Hemisphere. In my opinion, it is absolutely necessary that this freedom of choice is maintained.

REDUCE PAYMENTS

My second amendment would reduce Panama's share of the canal operating revenues, as outlined in Article XIII of the basic Treaty. The payment provisions concern many Americans, because we already seem to be giving up so much under this Treaty.

I really think this "pay-away" plan is a puzzle. Are we providing rent, ransom, or "conscience" money?

The United States currently pays the Panamanian government an annuity of \$2.3 million. By State Department estimates, Article XIII will provide Panama with between \$60 and \$70 million per year. Panamanian estimates place the figure at between \$70 and \$80 million per year. It is a windfall in any case, particularly when we consider the value of real estate and equipment that will be given without charge to the Panamanian government under the Treaty terms.

CUT PAYMENT IN HALF

The amendment I am proposing would reduce the payments provided in Article XIII by more than one-half. First, it would reduce Panama's share of the canal's annual operating revenues from 30 cents per-net-ton to 15 cents per-net-ton for each vessel transiting the canal. Second, it will eliminate altogether the biennial adjustment of this rate according to changes in the U.S. wholesale price index, as is mandated in the Treaty. Finally, my amendment will strike that provision supplying Panama with "up to" \$10 million per year depending upon revenues. Although this provision is billed as contingent upon the profitability of the canal in any given year, it in fact guarantees payment of the full annuity "from operating surpluses in future years" whenever annual revenues are insufficient.

Even with this amendment, the Panamanians are still provided a fixed annual annuity of \$10 million, plus an equitable share of canal revenues, plus receipt of

U.S. loans and zonal property. No one, I think, can seriously dispute the generosity of this arrangement.

MINIMIZE SHIPPING COSTS

By reducing Panama's share of canal revenues, we reduce the pressure for immediate toll increases. The canal is already operating at a deficit, and the Governor of the Canal Zone testified before this Committee last week that the Treaty provisions will probably add to the need for an immediate toll increase of twenty-five to forty percent. Of course, any significant increases in shipping costs will adversely affect our ability to compete for foreign markets and could have serious negative effects on the American farmer.

Much of midwestern grain supplies, for example, are shipped to the Orient through the canal. Higher tolls would decrease American agriculture's ability to compete with Australia, Canada, and other exporting nations for Asian markets. Thus, we help protect our economic interests by assuring only reasonable and equitable payments to Panama.

NO PAYMENT IF CANAL IS CLOSED

Finally, my amendment provides that the fixed annual annuity will cease during any period in which the canal is inoperable. It would be unfair and irresponsible to continue that payment during a time in which the canal is closed, whether due to natural catastrophe, functional breakdown, or intentional sabotage. The United States would be expected to bear the major economic burden of reopening the canal in any case. It simply does not make sense for the U.S., through the Panama Canal Commission, to continue paying Panama for a passage route that is out of order. My amendment will protect the United States on this point.

EXTENSION OF TRANSITION PERIOD

Consistent with the intent of Article XI of the basic Panama Canal Treaty, to provide for an "orderly transition" of jurisdiction over the Canal Zone, I propose an amendment which would extend the period for transfer of jurisdictional arrangements. This Treaty is being marketed by the Administration as a "23-year" transition document. Careful reading of the Treaty provisions, however, suggests that this is not a 23-year transition treaty—it is a 30-month transfer of title.

Article XI returns full jurisdiction over the Canal Zone to Panama as soon as the Treaty enters into force, and transfers all U.S. judicial, administrative, and regulatory authority to Panama within 30 months. After that, American citizens will be subject to Panamanian law, and subject to Panamanian civil and criminal justice as well.

This does not constitute "orderly transition." I don't know of many Americans who are willing to subject themselves to Panamanian justice and authority. This provision will drive Americans out of Panama. I believe we will see a mass exodus of U.S. engineers, pilots, and other canal personnel within the next two and one-half years if this provision prevails.

My amendment will permit the Panama Canal Consultative Committee to study the issue after the Treaty takes effect and, with the benefit of actual experience, make a recommendation as to when the period of transition should formally end. However, in no case will this be prior to January 1, 1990. This date coincides with transfer of the administration of the Panama Canal Commission from U.S. to Panamanian leadership. It is logical that primary U.S. authority over both the canal and the Canal Zone should expire at about the same time. By doing so, we will allow for a more orderly and gradual phase-out of American employees in the area, and of judicial and administrative control over them.

HUMAN RIGHTS

I have proposed both an amendment and a reservation to address the human rights question. My amendment would protect the civil and political rights of those who live and work in the Canal Zone region. My reservation conditions Treaty ratification on the understanding that the Panamanian government will make "significant progress" towards observing the human rights of all its citizens during the basic Treaty period.

For an Administration which has made the subject of human rights a basic element of its foreign policy, particularly towards Latin America, the White House has been strangely silent on the issue with respect to the Panama Canal negotiations. President Carter calls General Torrijos "an enlightened dictator." I'm not sure I understand exactly what that term means, but most of us are familiar with

the extremely poor human rights record in Panama as identified by "Freedom House" and by Panamanian exile groups.

Why have we ignored the human rights issue altogether in Panama, while the Administration lambastes other Latin American nations on this point? I don't know the answer. But in the interest of moral principle, as well as consistent foreign policy, it's important that we address the subject of human rights observance within Panama. My amendment and my reservation will do this for the benefit of both U.S. citizens in Panama and for Panamanian citizens.

TRANSFER CANAL ZONE PROPERTY

Finally, my second reservation reaffirms the constitutional responsibility of the House of Representatives to participate in transfer of ownership of the Canal Zone territory. Without reviewing all of the historical precedents and court decisions which support this argument, I will simply say that disposal of Canal Zone "territory and property" clearly falls within the realm of Article IV, Section 3, paragraph 1 of the United States Constitution. As such, not only two-thirds of the U.S. Senate but a majority of the U.S. House of Representatives must approve the proposed Treaties.

My reservation clearly states that, before the Canal Treaty enters into force, "The Congress" must adopt appropriate legislation to transfer the Canal Zone to the Republic of Panama. This would protect the right and the responsibility of the House of Representatives to participate in this significant decision.

NO APOLOGIES

Mr. Chairman, I want to say that the people of the United States owe Panama no apologies for our involvement with the canal. The generosity of our government in building the canal, in operating and maintaining it for 65 years, and in thereby enhancing the standard of living for Panamanians, requires no remorse on our part. Free of any sense of guilt, we should proceed to analyze these Treaties in an objective and responsible manner.

But the Panamanian government must know that we will never relinquish our presence in the Canal Zone because of veiled threats or direct pressures. They must know that we expect priority passage for our ships during periods of crisis. They must be told that we expect to see substantial progress in the area of human rights, and that we expect to share a reasonable, but not exorbitant amount of the canal tolls with them.

I have outlined the reasons why I cannot support the Panama Canal Treaties in their present form. I have offered reasonable proposals for amending the Treaties to protect our vital national interests.

You gentlemen will have an influential voice in determining the final form of these Treaties that is voted on by the Senate. It's my opinion that the Treaties will not be approved unless modified. It's my own opinion that they *should not* be approved unless modified in a way that is truly effective—that is, by direct amendment or reservation.

STATEMENT BY SENATOR WILLIAM L. SCOTT

Mr. Chairman, I appreciate this opportunity to appear before the foreign relations committee and to express my personal views on the important matter now under consideration. I am aware that the administration in urging ratification has stressed the long period of negotiations under four Presidents, emphasized the support of Latin American countries and the need to yield to world opinion to relinquish the Canal Zone to Panama. However, in this country sovereignty resides in the people and not the President or the officials who negotiated the proposed treaties. Therefore, it would seem that the will of the people should be reflected in our decision. There is little doubt that the American people are opposed to the ratification of the treaties, and I have great faith in the collective will of the majority. My own mail is roughly 5% in favor of the treaties and 95% in opposition, and I expect each Senator's mail is quite heavy. So perhaps in the final analysis rather than the White House educating the American people, the President and the Department of State may receive an education in American Government. I would certainly hope that this will prove to be the case.

My views are based not only on mail from constituents, but upon two recent trips to Panama and South American countries. A thorough reading and rereading of the treaties and background information, independent investigations, listening to testimony before the subcommittee on separation of powers of the Senate Judiciary Committee and studies made by the Library of Congress.

There appear to be many objectionable provisions in the canal treaty which should be eliminated or clarified, such as the prohibition against the United States constructing a new canal anywhere within the isthmus without the consent of Panama, and the doubtful interpretation of "expeditious passage".

However, the beginning of article I of the Panama Canal treaty, to my mind, is by far the most objectionable feature because it provides for the abrogation of all prior treaties with the phrase, "this treaty terminates and supersedes" the treaties of 1903, 1936, 1955 and "all other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama concerning the Panama Canal * * *"

Under the 1903 treaty we guaranteed the independence of the new country of Panama, paid \$10 million and agreed to an annual payment of \$250,000 and obtained both title to the Canal Zone and sovereignty over it. Other actions taken by our government to perfect our title included the purchase of the French canal properties for \$40 million; what was tantamount to a quitclaim and recognition of our title from Colombia for the sum of \$25 million; and the purchase of private rights from owners and squatters expressly excluded from the 1930 treaty. All this, however, would be vitiated by the first sentence of article I of the present canal treaties.

It is true that under numbered paragraph 2 of article I, the Republic of Panama grants to the United States for the remainder of this century "the rights necessary to regulate the transit of ships through the Panama Canal and to manage, operate, maintain, improve, protect and defend the canal." But we would be managing, operating, maintaining, improving, protecting and defending property belonging to the Republic of Panama rather than American property as the situation is today.

Mr. Chairman, as you know, a valid contract must contain consideration. We speak of something of value flowing from one party to the other, mutuality, but in my judgment these treaties are for the benefit of Panama alone. I find no new benefits for the United States.

It does not appear, Mr. Chairman, that there is serious concern within the executive branch of government to the role of the Congress under article IV of the Constitution. As you know, the second paragraph of section 3 of the article provides: "The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States: * * *"

To determine the proper role of the House under article IV, I requested a study be made by the Congressional Research Service which responded with an excellent and objective legal memorandum dated August 4, 1977, concluding that precedent indicates Congress has exclusive power to dispose of property in the Canal Zone. I ask, Mr. Chairman, to include a copy of this memorandum in the record.

Attorney General Bonaparte, in an opinion dated September 7, 1907 (26 Att'y Gen. 376), stated that sovereignty over the canal zone was not an open or doubtful question and applied what he stated was the first rule of construction, "that plain and sensible words should be taken to mean what they say." The Attorney General added: "The omission to use words expressly passing sovereignty was dictated by reasons of public policy, I assume; but whatever the reason the treaty gives the substance of sovereignty, and instead of containing a mere declaration transferring the sovereignty, descends to the particulars 'All the rights, power, and authority' that belong to sovereignty, and negatives any such 'sovereign rights, power, or authority' in the former sovereign."

Now, Mr. Chairman, I realize that some of our people in the executive branch are attempting to convey the impression that we do not possess either title or sovereignty but this is contrary to the opinion of Secretary of State Hay in 1904 who stated, "that the grant accomplished by the treaty was a grant of land and sovereign right thereover, and not a mere concession or privilege, is shown by the granting clauses and also by the references to the grant in subsequent clauses of the treaty; * * *". Later he said: "It cannot escape observation that the legislative branch of the Government of the Republic of Panama by legislative enactment declared the zone to be 'ceded to the United States,' and dealt with accordingly." And still later he stated: "The United States at all times since the treaty was concluded has acted upon the theory that it had secured in and to the Canal Zone the exclusive jurisdiction to exercise sovereign rights, power and authority." Mr. Chairman, I ask that this entire letter of Secretary Hay be inserted in the Record.

The Supreme Court in the case of *Wilson v. Shaw*, 204 U.S. 24 (1907), stated that we hold a valid title to the Canal Zone and compared our title with the then territory of Alaska. The court added: "It is hypercritical to contend that the title of the United States is imperfect and that the territory described does not belong to

this Nation because of the omission of some of the technical terms used in ordinary conveyances of real estate."

Mr. Chairman, I ask that a copy of this unanimous opinion by the Supreme Court also be included in the record.

In 1971, The Fifth Circuit Court of Appeals in *U.S. v. Husband R. (Roach)* 453 F. 2d 1054, cert. den. 406 U.S. 935 (1972), stated: "The Canal Zone is an unincorporated territory of the United States." So, Mr. Chairman, the first article of the canal treaty is an attempt to transfer United States property and sovereignty over the Canal Zone.

These are opinions of both cabinet officers and our highest court made near the time we acquired the zone and the exhaustive study of authorities made by the Library of Congress in its paper dated August 4, 1977. The only rationale I know for persons presently holding positions within the executive branch of government to deny that we hold title or sovereign rights in the Canal Zone is to close ranks in support of a treaty signed by the President.

I wonder if each Senator early in his school experience didn't learn that the United States acquired the Canal Zone, rid the area of disease, constructed the canal and has operated it under the American flag since the beginning of this century. At a time when world domination is being sought by a form of government entirely different from our own, it appears untenable to give away this vital artery of commerce, to pay Panama for taking it and to commit ourselves to defend it.

This view is shared by Admiral Thomas H. Moorer, chairman of the Joint Chiefs of Staff from 1970 to 1974, who testified before the Senate subcommittee on separation of powers. Toward the end of his testimony on July 22 of this year, Admiral Moorer made these statements: "Surrender of U.S. sovereignty over the Canal would inevitably lead to the transformation of the entire friendly character on the Caribbean and the Gulf of Mexico. Everything would depend on the attitude of those who held sovereignty and ownership * * * I might say that in military affairs there is no substitute for ownership of the territory and the ability to control or to deny the waters and the airspace."

Of course, Mr. Chairman, Admiral Moorer, retired as our number one military officer and is in a position to candidly express his opinion at this time and I believe we can well understand the hesitancy of some active members of our military forces publicly disagreeing with their Commander-in-Chief. We need only to reflect on General Singlaub being called back from Korea and being reassigned because of a candid statement made by him and the rebuke of General Starry by the Secretary of the Army to realize that active duty officers and even civilian government officials are not entirely free to express opinions contrary to the administration's position.

Before these rebukes, however, on March 11, 1977, during a closed session of the Subcommittee on Manpower and Personnel of the Committee on Armed Services, Admiral Maurice Weisner, presently Commander-in-Chief, Pacific, or in other words, the Commander of all of our Armed Forces for one half of the globe, with headquarters in Hawaii, responding to specific questions regarding the importance of the canal to the United States. This testimony is reported at page 2378 of the hearings on military procurement for the fiscal year 1978 and I ask unanimous consent, Mr. Chairman, to include the page in the Record. He was asked for his views as to the importance of the Panama Canal; whether there would be any adverse effect on his command if the Panama Canal were not under the control of the United States. Let me quote his response: "I can see adverse effects, Senator Scott. It takes considerable time to move items by sea from the East Coast to the Pacific. Without the Panama Canal, you are adding 3 weeks' time in shipping critical items such as ammunition from an East Coast port rather than from a West Coast port."

Then I asked the Admiral if he would see a need for an increase in our naval strength if we did not control the Panama Canal. Admiral Weisner responded: "Yes, we would have to put these critical items being shipped by sea over a greater area." This, of course, is a response of an active duty military commander before the Singlaub affair.

Returning briefly now, Mr. Chairman, to the conclusion of the testimony by Admiral Moorer before the Judiciary Committee, he states, and I quote: "Anyone in this country who thinks that Soviet Russia is not staring down the throat of the Panama Canal is very naive, and I think it says something to note that the Soviets understand the importance of the Panama Canal apparently far more than many in our own country."

On September 8th of this year, retired Admiral John S. McCain, Jr. also testified before our Subcommittee on Separation of powers and I am quoting this 4-star

Admiral: "From my combined military experience which includes Europe, Asia, the Pacific, the Caribbean and the United Nations, it is my conviction that U.S. interests are best served by keeping the canal, by retaining undiluted sovereignty over the U.S. Canal Zone." He added(and again I quote: "Finally, I would like to re-emphasize the importance of the June 8, 1977 letter of the four greatly distinguished chiefs of naval operations to the President that was quoted in the testimony of Admiral Moorer. Their conclusions reflect a vast background, including combat experience, and are more pertinent today than ever. Retired military officers are completely free to voice their inner-most convictions. Active duty officers have an obligation to support the policies of their commander-in-chief."

I would hope, Mr. Chairman, that this committee will call more retired military officers in whom you have confidence and who are free of constraints from their commander-in-chief and ask their candid, personal opinions on the dangers of our Government parting with title to the Canal and the gradual turnover of full control to the Republic of Panama.

Mr. Chairman, we sometimes hear that Latin America favors the transfer of title and control of the Canal Zone from the United States to Panama but I have taken two trips to Latin America this year and have had the opportunity to talk with chief executives and other principal officials of a number of Latin American countries, with embassy personnel, with intelligence officers, with American citizens, as well as foreign nationals within the countries visited.

In Colombia I learned that because of kinship with an adjoining Latin country, Colombian officials do favor the transfer of the canal but are very much concerned about the contemplated increase in tolls, stating that the only practical way to transfer material from one part of their country to another is through the canal.

Brazilian officials didn't seem to have any real concern regarding the proposed transfer, referring to it as a matter between the United States and Panama. Perhaps this is because Brazil fronts on the Eastern coast of the South American continent and is not among the prime users of the canal.

In Argentina, officials indicated that they did not make extensive use of the canal but expressed fear that it might come under communist control.

Chilean officials were even more concerned of the possibility of Communist influence or control of the canal indicating that 95 percent of their commerce used the canal and that they could not afford an increase in tolls or to have this vital artery subject to direct or indirect control by Communists. Chilean officials indicated that our contemplated action in giving up the canal appeared to be contrary to the best interest of the world community and they would much prefer that we retain complete control of the canal.

In Peru, we again heard that Panama was a neighboring country and because of this they favored the transfer to Panama. However, officials indicated their country would suffer greatly if the tolls were raised as appears to be inevitable if the treaties now under consideration are ratified. Contrary to some suggestions, officials of every South American country visited indicated that there would be no repercussions from their country if the Senate failed to ratify the treaties.

Within the Canal Zone itself, we heard the strongest opposition and the greatest fear of communism. American citizens complained of violation of human rights, they spoke of lack of expertise and management ability, of the differences between salaries within the zone and the Republic of Panama. Many indicated that they would not continue to work within the Canal Zone if it came under the control of Panama.

I inserted a detailed statement of the Panamanian trip in the August 4, 1977 Congressional Record and included a statement by the heads of various civic groups within the Canal Zone. Should any Senator have any doubt about the feeling of American citizens living in the Canal Zone, he might want to refer to this statement. It concludes, and I quote: "for ourselves as U.S. citizens living and working thousands of miles from our homeland, we can say, 'pack us up tomorrow. We're ready to go.' But for the sake of U.S. commerce and the U.S. national interests in general in the western hemisphere we urge you to examine the proposed treaty in minute detail.

We urge you to visit here for more than three days, to observe the situation with your own eyes and not to depend solely on briefings by U.S. or Panamanian Government officials. The new treaty with Panama will have long-range repercussions that coming generations will have to live with; we urge you not to ratify a new treaty solely because the State Department says that a treaty is the cure-all to problems with Panama. The Russia-Cuba axis and the American electorate are waiting to see which way the treaty goes. A hasty decision on the part of our

Congressmen without giving deep and thoughtful study to the question would please the former and infuriate the latter."

Now, Mr. Chairman, on this question of Communist influence, Mr. Charles Conneely, a member of the professional staff of the Armed Services Committee, and myself talked privately in a number of Latin American countries with Embassy officials, with military intelligence officers, with CIA officials, with both American citizens and foreign nationals about the possibility of Communist influence. We first visited in Panama and were somewhat skeptical, or thought perhaps the Americans living within the zone might tend to exaggerate the question of Communist influence. Yet, the statements they made were verified in private conversations with the American intelligence community in various Latin American countries. In acting upon this treaty we may well be considering not only future control of the Canal Zone but future control of the Caribbean.

Therefore, it would seem important enough to the defense of our own country and that of the free world to have military and civilian intelligence officials, both active and retired, to testify under oath in closed sessions regarding Communist influence, within Panama and other nations of Latin America. Time after time we heard the names of leading political figures in Panama identified as Communists and were told that there were strong Communist influences throughout the Panamanian Government. I call these statements to the attention of the committee because of their repetition by so many people during our South American visit and suggest that the committee endeavor to ascertain the truthfulness of falsity of their allegations.

I believe the committee and the Senate will want to consider these factors in determining whether to advise and consent to the treaties.

My own opinion, Mr. Chairman, is that these treaties should be defeated. But I would hope that the administration could then be encouraged to negotiate an arrangement for joint control by the United States, Panama and a limited number of Latin American countries but with ownership of the Canal Zone remaining in the United States.

STATEMENT OF SENATOR JESSE HELMS

Mr. Chairman, and distinguished members of the committee: I come before you today not to give you some pre-set opinions of my own, but to raise some questions which I have not yet seen fully answered by the distinguished witnesses who have appeared before you. I would not be candid if I did not admit that the texts of the treaties have done little to convince me that the basic principles of the Kissinger-Tack agreement of 1974, upon which the treaties are based, are themselves adequate to support the national interest. But no one can prudently adopt an attitude of a closed mind. Indeed, should the treaties pass—and I hope they do not—it will still be best that all aspects of the treaties and their implications be fully aired, and fully understood by all concerned. I therefore raise these questions today in the hope of creating an intelligent dialogue.

QUESTION NO. 1: THE REAL ISSUE

Let us take the slogan, frequently heard, "our true national interest is in the continued use of the Canal, not in ownership." Is not the real question rather whether the continued use of the Canal will be better protected by the present treaties or by the proposed new treaties? Will we be better able to keep the Canal open, safe, and efficient under the present system where we exercise exclusive command and control over a clearly demarcated area, or will it be easier to keep it open, safe, and efficient under the mixed administrative system with a combined defense and interlocking, overlapping areas of responsibility?

QUESTION NO. 2: U.S. SOVEREIGNTY IN THE CANAL ZONE

Let us now take the question of what kind of control we actually have there. Is it really true that the United States does not exercise the full rights of a sovereign in the Canal Zone? I am distinguishing the rights of a sovereign from the rights of a property-owner. Sovereignty is not some abstract concept like title. It means power. The 1903 Treaty is quite explicit. We exercise absolute power in perpetuity; Panama specifically quits claim to any exercise of power in perpetuity. I would like to ask the distinguished Committee if it has found any statement by the United States Congress, by any U.S. President, or by any U.S. Secretary of State—or any international agreement with Panama, previous to the Kissinger-Tack Agreement of 1974—which specifically abrogates our rights to the exercise of sovereignty as found in the 1903 Treaty. Is there a single statement of this kind?

QUESTION NO. 3: U.S. OWNERSHIP OF THE CANAL ZONE

There is a similar problem with regard to ownership. As you know, this is a separate problem from sovereignty. Many people today are making statements that we do not even own the Canal Zone. But that is obviously not true. Does not the record show that we acquired property in the Canal Zone by four different methods:

First, by a grant in perpetuity of national lands of the Republic of Panama, for which we paid \$10 million;

Second, by purchase from the bankrupt French canal enterprise of lands held in fee simple, improvements, equipment, concessions, and stock in the Panama Railroad, \$40 million.

Third, purchase in fee simple of individual tracts held by private owners, as well as payments to squatters who held rights through adverse possession, \$4 million. Fourth, recompense to Colombia for her reversionary rights in the French concessions, \$25 million.

Is it therefore not true that we bought it and paid for it? Did not the U.S. Supreme Court in 1907, in a holding which has never been reverse, declare that it was hypocritical to contend that our title was imperfect? Did not the Court say, and I quote:

"The fact that there may possibly be in the future some dispute as to the exact boundary on either side is immaterial. Such disputes not infrequently attend conveyances of real estate or cessions of territory. Alaska was ceded to us forty years ago, but the boundary between it and the English possessions east was not settled until within the last two or three years. Yet no one ever doubted the title of this Republic to Alaska." (204 U.S. 32-33)

I would further point out to this distinguished Committee that the United States Congress has always treated the Canal Zone as U.S. territory within the meaning of its authority in Article IV, Section 3. Congress serves directly as the legislature for the Canal Zone. Under Article IV, it has erected a District Court, and a Canal Zone Code. The laws which we make for the several States apply or do not apply to the Canal Zone as we see fit. Congress has the right to determine that under Article IV. For example, the question of citizenship for persons born in the Canal Zone was raised here the other day as though that were a test of U.S. sovereignty. The fact is the Congress has the authority to determine the requirements for citizenship. And if you look at 8 U.S.C. 1101 (a), you will find that the definition of the term "United States" specifically includes the Canal Zone for the purposes of the law of citizenship.

QUESTION NO. 4: WILL WE HAVE REAL CONTROL

It is of course clear that Panama will exercise complete sovereignty in the area of the present Canal Zone as soon as the treaty goes into effect (except for a few transition items). But is not the effect of the treaty upon U.S. ownership nothing other than a scheduled timetable for nationalization of U.S. property—nationalization, incidentally, without compensation? We turn over some properties immediately; we turn over others on schedule. We receive nothing in return.

Even though the last parcel is not turned over for 23 years, is it really true that we will have any effective control over those properties and their operation? I note that according to the terms of the treaty, there will have to be a reduction of some 20% of U.S. citizen employees within five years. At present we have 3,395 U.S. citizen employees; 567 of these are in so-called "security" positions necessary to the preservation of civil order and to the continuity of canal operations under emergency conditions. Many of the civil order positions will be abolished and the duties turned over to the Panamanian National Guard; others are among the high-salaried, skilled and executive positions that will be most sought by Panamanian nationals. Will not practical control, as distinguished from theoretical control, rapidly diminish simply through attrition?

And as for the legal structure of the proposed Panama Canal Commission, I note that it will be an agency of the U.S. government, but that its board of directors will be composed of five U.S. nationals and four Panamanian nationals. I have been unable to find any precedent for an operating agency of the United States government with such a strong participation of foreign nationals. Perhaps this Committee can find some; if they exist, they should be studied carefully. Will the United States be able to maintain objective control of the Commission's operations when foreign nationals are privy not only to all decisions, but also to all proprietary information and financial accounting?

In addition to the Board of Directors, the treaty and its annexes provide at least six other boards: The Combined Defense Board, the Joint Commission on Environment, the Panama Canal Consultative Committee, the Coordinating Committee for

the Implementation of Article III (Operations and Management), the Coordinating Committee for the Implementation of Article IV (Combined Defense), and the Ports and Railroads Committee. There may be more that I overlooked. In each of these, the representation on both sides is equal. The U.S. does not have a majority on any of them. Is this not setting up a situation where there could easily be a stalemate over policy, or even a diplomatic incident? Do we really control these operations?

QUESTION NO. 5: DEFENSE

The same situation exists with regard to defense. The Senate Armed Services Committee is already studying the many problems which abound in this area very carefully, and I will not take the time of this committee with specific issues. But is not the very concept of combined defense the fatal flaw that makes these treaties untenable? The fundamental premise of the proposed treaties is that our present status is no longer viable because of the threat of sabotage from disgruntled Panamanians. But after we surrender our sovereign command and control, retaining only an undefined "primary responsibility" for defense, will we not be totally indefensible against the sabotage of dissidents? The treaties make our supposed vulnerability worse, not better. Will that improve our defense?

QUESTION NO. 6: THE TORRIJOS REGIME

A second fundamental premise is that the treaties will eliminate or reduce Panamanian dissidence, giving us the cooperation of a friendly Panama. But human nature is not so tractable. The treaties make us partners with a regime that is seriously flawed in many respects. There is a serious body of evidence that General Torrijos and his immediate family are heavily involved in controlling the flow of cocaine and other drugs from South America to North America and other markets. The General wields enormous personal power; he is not responsible to anyone. Although there are many military regimes in Latin America, most are composed of military juntas who took power reluctantly in the midst of social and economic chaos.

There was no such overwhelming reason when President Arias was thrown out after ten days of office. If you look at Article 277 of the 1972 Constitution of Panama, you will see the full extent of just those powers to which Torrijos admits to having. In practice, the Torrijos government is arbitrary and corrupt. By becoming a full partner, indeed, even the guarantor of this regime, do we not open the door for future agitation, particularly when the mixed administration and combined defense arrangements offer so many opportunities for misunderstandings and agitation? There is fruitful ground here for infiltration, subversion, and the overthrow of the Torrijos government by outside forces determined to control Panama and, through Panamas sovereignty, the Panama Canal.

Moreover, the background of Torrijos himself is not encouraging. Although he is probably too undisciplined and self-seeking to submit directly to Communist control, it is well known that his parents were active Communists, and that he and his brother and sister were active members of the Communist youth movement. Perhaps that is why he has gathered men around him of the same stripe: mercurial, Marxist, anti-American. Several of the negotiators themselves have been in and out of the Communist Party. Torrijos and his advisors continue to express admiration for the Cuban revolution and for Libya's Qaddafi. They have formally aligned Panama with the so-called Third World group. Even if the Torrijos regime is not overwhelmed by Communists, is this the kind of government that is going to be cooperative and friendly to our interests and our interpretation of the treaties?

QUESTION NO. 7: THE U.S. EMPLOYEES

Even those who believe that the Canal should be given to Panama will admit that the Canal's outstanding record is attributable to the dedication, loyalty, pride, and morale which the employees of the Canal have shown in their work. This is particularly true of the U.S. citizen employees. Even if Panamanians are to be phased into their jobs, we still cannot operate the Canal and train Panamanians without their assistance. Yet a recent poll indicated that 62.8 percent say that they will not remain under Panamanian jurisdiction.

These are the Americans who know the Torrijos government best. A substantial percentage of them are intermarried with Panamanian families and understand too well what will be in store for them. Some of our diplomats charge that the Zonians are a privileged caste, reluctant to give up a privileged way of life. In a sense they are privileged—in that same sense that all Americans are privileged to live under the U.S. Bill of Rights, with competent policemen, fair courts, and equal taxation. By forcing them to give up these rights if they wish to continue their jobs, we are

breaching the terms of their employment contracts. The treaty does not protect their rights if they choose to leave; they get transfer rights only if their jobs are eliminated. Would it not be sensible to offer a reservation to extend diplomatic immunity to every U.S. citizen employee? The treaty provides for 20 top officials to get immunity; if it is necessary for those 20, why not for all? Including dependents, it would affect 9,400 U.S. citizens in a country of 1.6 million people.

This compares with a total of 18,879 people with diplomatic immunity in the Washington, D.C. area, with a population of 3 million. If this treaty is ratified, the U.S. will become a co-conspirator to deny these employees the civil rights they deserve as Americans. Do our diplomats think that they are the only ones who need privileges and immunities while living in a repressive society?

QUESTION NO. 8: OUR POSITION IN THE WORLD

It is often said that all of Latin America is demanding that we give back the Canal Zone to Panama. But the available evidence is rather scanty. Panama's immediate neighbors, and those Latin American countries given to Marxism, socialism, and expropriation of American investments have found the issue one more excuse to denounce the gringos. But I have been in several Latin American countries—some of the largest and most important ones in South America. I have talked to Presidents, Foreign Ministers, and Joint Chiefs of Staff. Without exception they all told me that they were deeply disturbed by the thought of the Canal going to Panama, not only for their economic interests, but because of Torrijos' Marxist leanings. They have told other of our colleagues the same thing. They are all disturbed by the lack of leadership and our apparent surrender of important international interests to a weak country. If we are so concerned about Latin America, why have we not consulted the Inter-American Defense Board with regard to this treaty? The IADB is the only independent multilateral organization concerned with the defense of the Western Hemisphere. It was organized in 1942. Would it not be wise to consult with Latin American defense experts before changing the status of a strategic defense installation?

QUESTION NO. 9: THE BY-PASSING OF THE ROLE OF CONGRESS

The final question relates to the State Department's handling of the treaty negotiations. We have a situation where the overwhelming majority of the American people are opposed to giving away the Panama Canal. It has also been clear that substantial portions of both houses of Congress are opposed and have been opposed. Yet instead of dealing honestly with the problem, the State Department has taken the position that Congress can be bypassed. Would it not have been better, given the political problem, for the State Department to have worked through Congress, rather than by-pass Congress?

For example, on the Article IV, Section 3 issue, why did not the State Department go the last mile and seek Congressional authority to dispose of the Canal Zone, instead of denying that authority was needed? For example, why wasn't the Kissinger-Tack agreement submitted to Congress as a joint resolution? It would have required only a majority vote, and the negotiators would have had a clear mandate. Why is the Administration now stating that the House of Representatives need not play a role? Why is Panama being paid benefits out of tolls, bypassing the appropriations process? Why are major military and economic benefits being funnelled through military credits and loan guarantees, by-passing the authorization process? These techniques are not calculated to reassure the American people. They will continue to ask questions and to demand answers.

STATEMENT OF THE HON. JOHN M. MURPHY

Mr. Chairman, Members of the Committee, I greatly value the opportunity to appear before this committee which has had such an important role in the history of the conduct of foreign relations of the United States.

Let me begin by emphasizing that as chairman of the House Committee on Merchant Marine and Fisheries, I do favor the concept of a new treaty relationship with the Republic of Panama with respect to the Panama Canal. For example, I indicated as long as seven years ago, when I chaired the House Subcommittee on the Panama Canal, that real estate adjustments can be made in Canal Zone boundaries. I also think we can find a way to bring additional economic benefits to Panama from the Canal, although we cannot demean the gigantic benefits that Panama has reaped from the waterway over the years. Further, every assistance should be afforded to Panamanian private enterprise to take advantage of the economic opportunities which the Canal Zone offers.

While I agree with President Carter that there is a need for a new treaty relationship, the haste and self-imposed deadline that characterized the most recent phase of the negotiations has resulted in defective treaties which do not achieve the objectives they sought to attain—"an open, safe, efficient, and neutral Canal" under a treaty relationship that "protects the national security interests of the United States". Neither will the said treaties help to endear us with our Latin American neighbors, nor will they better protect the Canal against sabotage.

I want to make clear that my observations on the treaty today are not meant to reflect in any way on the dedication and patriotism of our fine negotiators, Ambassadors Bunker and Linowitz. They worked hard in attempting to resolve one of the most difficult foreign policy questions that has ever faced this Nation. Perhaps they have come up with as good a set of documents as could be permitted by the time limitations that were imposed by Ambassador Linowitz's six-month appointment, but I submit that such haste and failure to seek the assistance and guidance of many Members of Congress has resulted in a fatally defective treaty which will create more problems than it will solve.

In this statement I will briefly outline some of the defects in these treaties which make them unacceptable in present form, and then discuss those matters with respect to the documents which, in my view, are in need of special analysis. I will also address the overstatements and inaccuracies that have unfortunately served as somewhat faulty premises for adoption of the proposed treaties.

The circumstances which attended negotiations in recent times have led to the following flaws in the Panama Canal Treaty and the Treaty for Permanent Neutrality of the Canal:

1. The bypassing of the House of Representatives in the matter of disposal of U.S. property and territory;

2. The bypassing of the House in the matter of appropriations;

3. The absence of clear and unequivocal language to allow U.S. action to protect the canal in times of hostility;

4. The absurd prohibition until the year 2000 precluding the U.S. from negotiating for a new sea level canal with any country other than Panama, a prohibition which places the U.S. in a totally dependent position without any logic or reason;

5. The formulation of an overgenerous economic compensation package which will likely ruin the economic viability of the canal as a self-sustaining operation and result in enormous U.S. subsidies to run the canal in future years;

6. The location of many key items with respect to control of the canal in accompanying executive agreements rather than in the body of the treaties, thus allowing for piecemeal erosion of the tenuous and limited rights found in the treaties themselves;

7. The pervasiveness of vague and ambiguous language, and, in fact, the absence of language, with respect to many important subject areas, including:

- (a) The U.S. rights of intervention;

- (b) The boundaries of the properties being immediately taken over by Panama;

- (c) The taxation of canal properties by Panama;

- (d) The obligation to turn over the canal to Panama in the year 2000 free from debt and in good operating condition;

- (e) The Panamanian takeover and the U.S. use of docks, housing, railroad, etc.

8. The failure of the treaties to address the disposition of other relevant canal agreements such as the U.S.-Hay-Pauncefote Treaty of 1901 which sets forth the international obligations in connection with the neutral operations of the canal, and the Thomson-Urrutia Treaty of 1914, which gives to Colombia certain privileged rights with respect to transit.

In terms of precedents, the most harmful aspect of the entire treaty process could be the circumvention of the House of Representatives in disposing of the properties belonging to the United States in the Panama Canal and Canal zone. This circumvention results from the administration's incorrect interpretation of what should be the appropriate constitutional process in this matter.

You have recently heard administration officials state that the congressional power to dispose of U.S. territory and property is a concurrent Constitutional power that does not override the treaty-making powers of the President, and that the power of the Congress to legislate for the Canal Zone does not preclude the disposal of this territory by treaty. The support for this view is based on cases involving Indian treaties, boundary treaties and a few instances of congressional acquiescence which are fundamentally different from the transfer of Canal Zone properties comprising a major U.S. territory and a seven billion dollar investment.

Cases involving Indian treaties are fundamentally different from the disposal of the Canal Zone because:

1. They involve a recognition of the existing Indian rights over the particular territory.

2. In each instance the Indian tribes conveyed by treaty to the U.S. enormous tracts of land and selected members of the tribe were allowed to retain small reservations for their own use. Thus, it could be readily argued that there was no disposition of U.S. property.

3. The U.S. retained residual rights in connection with the lands reserved to the Indians and, of course, maintained its rights of eminent domain.

4. Even if such reservations could be deemed disposals, the Congress authorized the same and acquiesced to executive action over a long period of time.

5. More than a century has passed since Congress withdrew its acquiescence to transfers of property by treaty, and the Senate concurred.

6. The status of the American Indians interest in land in the U.S. is unique and entirely different from that which would entail a transfer of the Canal property to a foreign sovereign.

The boundary treaties which are put forward as one of the chief precedents for the disposal of the Canal Zone by treaty are distinguishable by reason of the fact that they involved property that, for purposes of jurisdiction, was in dispute and entailed an exchange of, rather than a disposition of, property.

If the practice of disposing of U.S. territory and property has followed various procedures, as the executive contends, then past practice with respect to the disposition of Canal property and Canal Zone territory ought to be the key to a decision with respect to relinquishing the Canal Zone. The past practice is clear. The House of Representatives has tenaciously asserted its role, and the general rule has been that the disposal of property is accomplished only by a legislative enactment of Congress. In 1932, 1937, 1942 and 1955, property was transferred to Panama after the House and Senate authorized it. If the House as well as the Senate played a key role in the process of divestment of relatively minor assets in the Canal Zone, it seems only logical to obtain House approval in the determination of the fate of the entire Canal Zone and Panama Canal and the disposition of billions of dollars of U.S. properties.

The case for the involvement of Congress under the property clause in the Constitution (article IV, section 3, clause 2) rests, of course, upon U.S. property interests in the Canal Zone. It is indisputable that we do have such property interest. On August 17, Ambassador Bunker acknowledged that interest before the committee I chair. It is sufficient for our purposes here to state that the United States holds much of the land in the Canal Zone in fee simple, that deeds to such lands were obtained, and that Panama ceded even reversionary rights to the French canal company assets and property purchased by the United States.

All of the U.S.-owned property with respect to the Panama Canal and the Canal Zone constitute property interests of the U.S. within the purview of the congressional powers vested under Article IV of the Constitution. Such ownership, of course, includes the waterway, appurtenant installations, buildings and other structures in the zone, as well as the assets of the Panama Canal organization and military departments and U.S. government agencies in the zone.

With all due deference to the Honorable Griffin Bell, I should like to respond briefly to the statements made by him on September 29th before this committee.

Attorney General Bell places great emphasis on some selected references to the constitutional debates which indicate that territorial disposal rights were of major concern in connection with treaties. This, of course, begs the question, since it could be argued that the insertion of article IV, section 3, clause 2 in the Constitution giving such powers of disposal to the Congress obviated the concern of authorizing the President to dismember the Republic by treaty.

In Elliot's Debates, p. 501, James Madison responded to Patrick Henry's concern that two-thirds of a quorum could make a treaty and "relinquish and alienate territorial rights." Mr. Madison stated:

"He thinks that, by the power of making treaties, the Empire may be dismembered in time of peace. The King of Great Britain has the power of making peace, but he has no power of dismembering the Empire, or alienating any part of it. Nay, the King of France has no right of alienating part of his dominions to any power whatsoever. The power of making treaties does not involve a right of dismembering the Union."

Article IV, section 3, clause 2 of the Constitution gives to the Congress not only the "power" to dispose of, but also the power to make "all needful rules and regulations respecting the territory or other property belonging to the United States * * *." The use of the word "all" clearly indicates that such power is exclusive.

The *Percheman* case, cited at page 10 of this committee, involved an attempt to confirm title to property claimed by virtue of a grant from Spain in 1815 before the 1819 treaty in which Florida was ceded to the U.S. The court held that the cession of property from one sovereign to another cannot interfere with private property. It does not explicitly or implicitly stand for the proposition that Congress' power to make all rules and regulations respecting American territory could be implemented by self-executing treaty. Nor did the court rule that power to be concurrent. The case involved statutory construction—not constitutional interpretation.

Moreover, Congress did act in connection with the 1819 treaty with Spain and authorized the President to take possession of the Spanish cessions and to provide rules for their government. By implication, it is obvious that by expressly accepting the territories of Florida, the Congress also acquiesced in the fixing of the boundary line between the two countries to the east and west of the Mississippi.

Furthermore, we are again dealing with an adjustment of a boundary line dispute which, even absent congressional approval, would be quite different from the proposed transfer to Panama.

The Congress has limited the President's power under the Panama Canal Zone Code to acquisition of additional land or exchange of land. No authority was granted by Congress to the President to dispose of land in the zone and prior practice in connection with property disposals in the Canal Zone clearly indicate that no such authority was ever intended.

It would also appear that the treaty provisions for transfer of property of the United States with Congressional approval runs counter to the language contained in the last sentence of article IV, section 3, clause 2, namely: " * * * nothing in this constitution shall be so construed as to prejudice any claims of the United States." Clearly, the United States has "claims" in the Panama Canal Zone and the treaty clause should not and must not be construed to prejudice such claims.

Governor Randolph, during the debate in the 1788 Virginia convention, in specifying the limitations and restraints of the President and the Senate under the treaty-making authority, stated:

" * * * will not the last clause of the 4th article of the Constitution secure against dismemberment? It provides that 'nothing in this Constitution shall be construed as to prejudice any claims of the United States, or of any particular State.' And if this did not constitute security, it follows from the nature of civil association, that no particular part shall sacrifice the whole." (*Elliot's Debates*, pp. 504-5).

Attorney General Bell shrugs off the fact that the U.S. Supreme Court has consistently, in literally dozens of cases over two centuries, ruled that the power of the Congress under article IV, section 3, clause 2 is exclusive. Because these cases related to the authority of the executive and judicial branches does not diminish the relevance or impact of such clearly established authority just because "none of them dealt with the * * * power of the treaty-making authority to make such disposition." The fact is that the Supreme Court has never held that the powers of Congress under article IV are not exclusive and certainly none of the decisions dealing with Indian treaties could be so construed.

The dictum of *Holden v. Joy* is not controlling because of its irrelevance to the case as stated by the court in its opinion " * * * but it is not necessary to decide the question in this case, as the treaty in question has been fully carried into effect, and its provisions have been repeatedly recognized by Congress as valid."

Furthermore, the decision of the Supreme Court in a much more recent case, *Sioux Tribe of Indians v. United States* (316 U.S. 317) (1942) appears to be controlling. In that case the court stated:

"Section 3 of Article IV of the Constitution confers upon Congress exclusively 'the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States' * * *."

"Concededly, where lands have been reserved for the use and occupation of an Indian Tribe by the terms of a treaty or statute, the tribe must be compensated if the lands are subsequently taken from them. * * *"

"Since the Constitution places the authority to dispose of public lands exclusively in Congress, the Executive's power to convey any interest in these lands must be traced to Congressional delegation of its authority." (316 U.S. 317, at 342).

In *Youngstown Sheet and Tube Company v. Sawyer* (343 U.S. 579) Mr. Justice Jackson noted that opinions of Attorney Generals are partisan comments. Justice Jackson was, of course, a former Attorney General fully aware of the atmosphere in which the attorney General opinions are written. The attorney general is, in fact, the President's lawyer. But, if we are to look to opinions of Attorneys General in this matter, then may I refer you to an extract from an opinion rendered by Attorney General Harlan Stone in 1924 to the Secretary of the Navy:

"The Constitution (Art. IV, Sec. 3, Cl. 2) gives to Congress the power to 'dispose of * * * property belonging to the United States' and Mr. Justice Thompson, sitting in Circuit in *U.S. v. Nicoll* 27 Fed. Case 15879 (pp. 149-50) said:

"No public property can therefore, be disposed of without the authority of law either by an express act of Congress for that purpose, or by giving the authority to some department of the government, or subordinate agent."

"It follows then that property once acquired by the Government may not be sold, or title otherwise disposed of, except under the authority of the Congress, and in the manner provided by law, and this prohibition extends to any attempt to alienate a part of the property or in general, in any manner to limit or restrict the full and exclusive ownership of the United States therein * * *" (34 Op. Att. Gen. 320, 322).

In summary, the text and history of the Constitution, case, law, and prior practice in connection with disposal of property in Panama all support the proposition that the disposal of territory and property belonging to the United States requires congressional approval.

The 1903 treaty with Panama was entered into by virtue of the powers granted by Congress (the Spooner Act of 1902). No less than full congressional approval should be required for the annulment of this historic treaty.

I hope that this committee will uphold the view that one of its previous chairmen took in 1942 when, concerning a dispute over the role of the House in disposing of canal property, Senator Connally said:

"Those who are opposing the measure object because the matter is brought before the Senate in the form of a joint resolution. They say it should be in the form of a treaty.

"Mr. President, I am and have been and in the future shall continue to be ardent in my maintenance of the integrity and the rights of the Senate of the United States in all its proper functions as a branch of the Government; but the matter covered by the joint resolution has to be passed by the Congress sooner or later in some form, for the simple reason that under the Constitution of the United States, Congress alone can vest title to property which belongs to the United States. The Constitution itself confers on Congress specific authority to transfer territory or lands belonging to the United States. So, if we had a formal treaty before us and if it should be ratified, it still would be necessary for the Congress to pass an act vesting in the Republic of Panama the title to the particular tracts of land; because 'the Congress' means both bodies. The House of Representatives has a right to a vote as to whether any transfer of real estate or other property shall be made either under treaty or otherwise.

"Another reason why it is not necessary to embody the provisions of the joint resolution in a treaty or treaties is that so far as Panama is concerned, most of the results sought to be attained by means of the joint resolution have already been accomplished. We already have the sites; we already are occupying them; we already are putting installations upon them for the proper defense of the Canal Zone. The instrumentalities involved comprise not only airfields, but detector stations, searchlight stations, and all the other various instrumentalities for the proper protection of the Canal and its approaches." (88 Con. Rec. at 9257).

Now we are dealing with much more than sewer and waterworks systems or navigation aids or airfields. We are dealing with our entire property interests on the isthmus. I therefore urge that the only treaty the Senate ought to accept is one which includes congressional authorization for disposal of U.S. canal property as one of its provisions. Absent that provision, the treaties should be remanded to the negotiators.

I sincerely believe that we as members of Congress are trustees for the powers vested in us by the Framers of the Constitution, and as such, have the duty to preserve and protect such powers. With your permission, Mr. Chairman, I would like to submit for the record several documents, including a memorandum of law, which more fully discuss the interpretation of article IV, section 3, clause 2 of the Constitution. Also, if the committee wishes to make inquiry into the boundary treaties, the Indian treaties, or other contentions with respect to the property clause, I will be happy to address those matters.

There is another constitutional question here of great importance—and that involves the constitutional requirement that "no money shall be drawn from the Treasury, except in consequence of appropriations" (article I, section 9, clause 7).

In spite of these requirements, the proposed treaty requires the payment of billions of dollars to Panama without specific approval by the House of Representatives.

The provisions of the proposed treaty for payment to Panama "out of canal operating revenues" are appropriations of public funds that under the constitution require prior action by the Congress.

The proposed Panama Canal treaty provides that the United States will operate the canal "by means of a United States Government agency called 'The Panama Canal Commission' which shall be constituted by and in conformity with the laws of the United States." The functions to be assigned to the new agency are now performed by the Panama Canal Company and by the Canal Zone government.

The treaty does not purport to further specify the form of the government agency to be established for the indicated purpose and the Congress might well establish the agency either as a government corporation, such as the Panama Canal Company, or as a non-corporate establishment, such as the Canal Zone government. In either case, the canal operating agency would be subject to the laws of the United States applicable to the disbursement of public funds, and payments of expenses by the new agency, including the payments to Panama, would have to be provided by appropriations. Provision for such payments out of canal operating revenues without appropriation by the Congress is clearly in contravention of Article I, Section 9, Clause 7 of the Constitution.

In addition to the paramount constitutional questions, I must, as chairman of the House committee which oversees canal operations, voice my concern as to the economic compensation package provided in the Panama Canal treaty.

The Panama Canal's commercial value rests upon the provision of efficient service at reasonable toll rates. As one financial expert said, the reliability of user charges and open disclosure of financial results are the key to the financial worth of the canal. The increase in tolls of approximately 40 percent or more that will be required immediately under the new treaty, and the inflationary indices that will cause future toll increases, will inevitably result in diversion of traffic from the canal and strike a mortal blow at the concept of operation of the canal on a self-sustaining basis. The required toll increases will simply be beyond the capacity of the canal to handle. I find it difficult to understand how we can aggressively pursue minimizing tolls at the St. Lawrence Seaway and maximizing them at the Panama Canal.

The U.S. will be forced inevitably to directly subsidize the operation of the canal through appropriations. This result, of course, does not comport with the frequently made assertion that there will be no additional burden on the taxpayer as a result of these treaties. The discontinuance of the payment to the Treasury of interest on the investment of the U.S. in the canal, which is implicit in holding a tolls increase to 40 percent, will itself diminish the Treasury of the United States by a half-billion dollars by the year 2000, and in effect, result in payment to Panama of interest on funds invested by the United States.

In summary, the abrupt changes in canal finances that will result from the proposed treaty will have irreversible consequences that will pose a threat to use of the canal and the economies of the U.S., our allies, and nations in Latin America.

While my testimony to this point has addressed the organic defects of the proposed treaties, it is clear that the underlying premises for these treaties are a major part of the on-going debate. In very brief fashion, I would like to address the three premises upon which approval of the treaties is suggested. All three of the premises have been so overstated or inaccurately drawn that they often bear little resemblance to reality.

It is said that the Panama Canal is of diminishing and minor importance to the United States both commercially and militarily. This is incorrect. Commercially the canal is of major and continuing importance to the United States and militarily the Panama Canal and Canal Zone remain major military assets of our country, and in essence, constitute the southern flank of our defenses.

There are many statistics which point to an increasing rather than decreasing role for the canal in our commerce and security. I have appended some of those statistics to this statement and ask permission that they be inserted for the record.

It has also been said that should the treaties fail to gain approval there will be violence and sabotage of the canal. Selling these or any treaties that must endure for generations on the basis of response to a threat of violence does great injury to the conduct of our foreign relations. This issue is not a proper one for consideration.

Threats always cut two ways. If we are going to respond to threats, could that provoke disgruntled canal employees or fanatic superpatriots to proclaim they will sabotage the Panama Canal if the United States can no longer own and control it? The General United States policy to resist threats from terrorists has worked well. We must apply it in this debate on the treaties. To support or oppose a treaty because one side or another is more prone to violence is most unwise.

The Panama Canal is only one of many major facilities that are vulnerable. The U.S. Capitol was vulnerable to the Weathermen several years ago.

Finally, it is said that the Panama Canal treaties are the top issue on the Latin American agenda, and that the U.S. would face hostility from Latin America if the treaties are rejected.

This overstatement is contradicted by the experience of many of our officials in Latin America. None of us can believe that the countries on the west coast of South America or the countries in Central America will be happy about the tolls increase that is implicit in the treaty. In fact, at the gathering of the Organization of American States in Grenada this year, that organization voted 19 to 0 (The U.S. abstained, Panama did not vote) for a resolution stating that canal tolls should reflect only the actual operating costs of the waterway.

The success that Panama has had in garnering support in Latin America should be juxtaposed against the fact that Panama has consistently failed to obtain the degree of Latin American support she has sought for her position in reference to the Panama Canal. With respect to the treaties themselves, in September, despite some pressure salesmanship from the U.S. the Latin countries refused to endorse the agreements and signed only a watered-down resolution.

In conclusion, the proposed treaties should be accepted or rejected on the basis of whether they serve the best interests of the United States, not on the basis of who is supporting or opposing them, not on the basis of party, or region. A properly-conceived treaty arrangement may serve U.S. and Panamanian interests, but I do not believe the treaties should be accepted in their present form. Above all, I think we should be realistic enough to recognize that because of the manner in which these treaties were negotiated, an atmosphere has been created in which violence or stoppage of the canal will probably occur regardless of approval or disapproval of the treaties.

Thank you.

APPENDIX

DATA IN SUPPORT OF THE CONTENTION OF THE CONTINUING IMPORTANCE OF THE PANAMA CANAL AND CANAL ZONE

COMMERCIALLY

The Panama Canal is a U.S.-oriented Canal because two-thirds of the vessels transiting have a port in the U.S. as a point of origin or destination.

The Maritime Administration estimates that by the year 2000 U.S. exports through the Canal will have doubled and U.S. exports will be at 2½ times today's levels.

The percentage of the total dollar value of U.S. ocean foreign trade transiting the Panama Canal has steadily increased in the last generation, and is expected to increase in the future.

96% of the U.S. fleet and 92% of the world's merchant fleet can transit the Canal today. The great majority of those supertankers which cannot transit the Canal were built for trade routes which do not come near the Isthmus of Panama.

70% of all the cargo that has transited the Canal has done so in the last 25 years.

MILITARILY

The lack of a true two-ocean navy while the U.S. has commitments in five oceans makes the Canal's availability for transit ever more important.

98% of our naval fleet can transit the Canal. Only our Nimitz class aircraft carriers cannot transit. The trend toward naval ship design is toward a smaller and faster vessel.

The Canal has been a major resource in hostilities and confrontations that occurred in World War II, Korea, the Cuban Missile Crisis, and Vietnam.

The Canal Zone has the only major ship repair facilities within 1,600 miles on the Atlantic side and 2,500 miles on the Pacific side.

The Canal Zone also has the only U.S.-controlled air base within 1,000 miles, and it is a military and communications crossroads of the hemisphere.

The only existing trans-Isthmian pipeline for ship bunker oil and aviation fuel are in the Zone.

The lack of adequate West Coast port facilities for the loading of supplies and ammunition makes the Canal crucial to U.S. military efforts, especially those in the Pacific theater.

TESTIMONY OF REP. DONALD M. FRASER

Mr. Chairman, I appreciate the opportunity to appear today to give my full support for the approval of the Panama Canal treaties. In my statement I will concentrate on the implications of your action for Panama and the other countries of Latin America.

Geography and history determined that the United States and Latin America share a hemisphere. Both North and South America were objects of European exploration and exploitation. Both found independence from Europe through wars of revolution. Both retained in their independence the culture and politics of the parent continents.

But geography and history have also destined different developments for North and South America. The United States became a world power in the 20th Century in part through its involvement in two world wars. Latin America remained largely isolated from those conflicts and from the industrial revolution. But geography continued to link these increasingly disparate continents.

Panama is the actual and the symbolic link between these two objects of European colonization. The Isthmus of Panama not only ties us together but also blocks access to the Pacific and to the Far East. The United States, in a vigorous and determined effort, broke that barrier with the unprecedented achievement of a lock canal through the jungles and mountains of the Isthmus. It was an achievement that drew the admiration and respect of South as well as North Americans. No country is more proud of the canal than Panama itself.

But as the United States grew more powerful in the world, its enclave traversing Panama became a symbol of another kind. Why, the Panamanians asked, should our country be forever in two pieces, separated by foreign territory? Latin America waited also for the answer to that question. The continuing poverty and political instability of Latin America makes that question much more urgent for its citizens than for our own. Even today, with the treaties before the Senate, this question concerns Latin Americans much more than it does our own people.

Despite efforts to create more interest in the canal treaties in the United States, our people are much less interested in who owns the Canal Zone than they are in whether or not the canal will continue to function. In Latin America, there is a reversal of priorities. Latins assume the canal will always operate but that the territorial presence of a superpower, even a friendly one, is intolerable. We may not fully understand that intolerance, but how we deal with it may well influence our relations with Latin America for the next century.

Most of the Latin American countries are under some form of military government. But the future of political development in Latin America is uncertain. These countries have also had some experience with democratic governments. Political movements, some of them associated with European democratic parties, exist in every Latin country. There are significant pressures toward a resumption of democracy in most Latin countries. These pressures are deep and broad.

Our country has not done nearly enough to encourage these democratic tendencies in Latin America. For too long we over-valued stability and neglected the nourishment of democratic development. Happily we seem today to be on a corrective course. This Administration's attention to human rights as an important element in our foreign policy has had a strong impact in Latin America. As both the Congress and the President restated our commitment to human dignity, the Latin American countries watched carefully. They are watching today.

The Panama Canal treaties are a test of this country's sincerity. If the treaties are approved, Latins who aspire to emulate the democratic ways of the United States will be reinforced. The United States model of political and industrial development will gain new strength. A major test of fairness and open-mindedness will have been met by the United States.

Approval of the canal treaties will not solve the problems of Latin America nor of its relations with the United States. But without that approval we will forfeit a large measure of our constructive influence.

I do not know how much influence we can exert in the coming years for democracy and human rights in Latin America. But the best opportunity for influence will come if we show Latin America and the rest of the developing world that we are capable of fair play despite our great power. When that test is met, Latin America will be far more impressed with the United States than it has been in the past. If we fail that test, we would tell Latins something about ourselves that we should be reluctant to concede.

I urge, therefore, the Committee to see this issue as not a matter of the canal, whose worth and utility is unquestioned. The issue is, rather, how the United States can adjust its responsibilities in a world still seeking models of political and indus-

trial development. It is a test and a responsibility that we ought to meet honestly, openly and affirmatively.

STATEMENT OF THE HONORABLE LARRY P. McDONALD

Mr. Chairman. I appreciate the opportunity to testify against the give away of the United States' Canal in Panama. I say that because, after reading the proposed treaty that is before this body, there are no possible benefits for the United States. The United States is simply leaving and paying the Panamanian Dictator Omar Torrijos to take the Canal off our hands. It is a bad treaty and should be rejected forthwith.

The presentation of this Treaty to the United States Senate is the culmination of a long process that started in 1946 when Alger Hiss, then head of the Office of Political Affairs at the State Department, sent to the United Nations a list of so-called "U.S. occupied territories" which included the Panama Canal Zone. The concept was presented to the world by Hiss that this country is renting that land in Panama and some day, inevitably, America would have to give it back.

From the beginning, this was the wrong premise. Those payments to the Panamanians are in annuity, not a rental fee. The United States' sovereignty has been affirmed in repeated court decisions. All the relevant court cases are cited in the hearings held by the House Committee on Merchant Marine and Fisheries Subcommittee on the Panama Canal entitled: "Panama Canal Finances" April 6, 7, and 9, 1976. The Canal is not leased territory for which we pay Panama a rental fee but a "grant in perpetuity" for which we pay an annuity. The only real right Panama has to this land and property is a reversionary interest should the United States ever cease to exercise its treaty rights in the areas designated, nothing more.

Therefore, contrary to the ponderous announcements by the Department of State, this is United States land and property, thus requiring under Article IV, Section 3, Clause 2, of the United States Constitution that the House of Representatives concur in any transfer of land or property. In this connection, I should mention that I am a party to two law suits on this matter now before the U.S. Supreme Court, and it is my fervent hope that the Justices rule in favor of the U.S. Constitution for a change and permit the Representatives of the people to participate in this decision. The people of Panama live under a dictatorship. Their voices cannot be heard on this issue. The voice of the American people should be heard.

Now I would like to go to the question of the Canal's strategic importance. The President and the Department of State are attempting to mislead the American people on this issue. The facts are that this country now has a one ocean Navy with two ocean responsibilities. The Carter Administration has turned its sole attention to Europe. Dangerously neglecting the rest of the world. If another war were to break out in Asia, this country would vitally need control of the Canal in Panama. The United States cannot depend on the whims of a hostile leftist dictatorship when its Navy needs to move through the Canal.

I would remind the Committee that 94 percent of the world's merchant ships can transit the Canal and so can all our warships, except the supercarriers. Let us also remember that the Canal Zone is the southern and western anchor of our position in the Caribbean, a Caribbean with Soviet nuclear submarines now prowling about. Together with Guantanamo Bay in Cuba, Roosevelt Roads in Puerto Rico and the Florida Keys area, the United States can prevent the Caribbean from being turned into a Soviet lake. Abolish our Panamanian bases and the task becomes difficult.

Thirteen major trade routes funnel through the Caribbean Sea-Gulf of Mexico-Panama Canal region. It carries all of our commerce from the prosperous sun belt, and increasingly, it carries Alaskan oil to the east coast.

Even our right to expeditiously use the Canal in wartime has been challenged under the treaty by the Chief Panamanian negotiator, Romulo Escobar Bethancourt. He told newsmen in Panama on August 24th, "The United States wanted privileged passage through the canal as a means to seek support from the Pentagon in the negotiations with Panama. This is the truth . . . And when they saw that there was no way we would allow privileged passage, then they told us: We have to seek a formula so that the Pentagon will see that we are somehow taking them into consideration.

"This is how the expeditious passage came about. Now, I do not believe that when they explain the 'expeditious passage' term they are entitled to go through first.

"They have to sell their merchandise. It is the same merchandise, but with different wrappings because they do not think as we do. They have to sell this treaty to their country, and for this reason you see that both of us give different information on the same provision."

Administration spokesmen say that this country has a right to defend the Canal after the year 2000. However, nowhere in the so-called Neutrality Protocol is this stated. President Carter has been misleading to the American people, because he has not mentioned that in the present state of international law, the word "neutrality" can be given almost any meaning.

Escobar knows that the treaty does not give this country the right to intervene. Escobar told the National Assembly of Panama on August 19th, the the Americans, "proposed that Panama and the United States declare that the Canal was neutral and that the United States would guarantee that neutrality.

"Panama was opposed to this concept, explaining that we did not want that with the excuse of neutrality, the United States would maintain a guarantee over the state of Panama. This was another cause of discussion that kept the negotiations detained until the United States gave up on the idea of its having a guarantee of neutrality over the canal."

Escobar's statements clearly represent the view of the Panamanian dictatorship. This was confirmed by the State Department document released by Senator Dole yesterday.

Our right to defend the Canal is nonexistent after 2000. The Senate will be derelict in its duty if it ignores this fact.

While examining provisions for the defense of the Canal after the year 2000, the distinguished Senators should not overlook the fact that most aspects of the treaty come into force much sooner than the year 2000. Only six months after ratification, the treaty will enter into force and Panama will assume technical sovereignty. At that time, Panama then grants to the United States only certain specified rights until the year 1999. Most of the treaty provisions go into full force in 30 months.

In that connection, it should be noted that after 30 months of the treaty being in effect, the Americans in the Panama Canal Zone have essentially no more rights than Panamanians, in other words none, since Panama's respect for human rights is rated on a level with the Soviet Union and Cuba. In fact, Panama has the lowest rating according to Freedom House of any non-communist nation in the Western Hemisphere.

This treaty gives Dictator Omar Torrijos control over the canal: He can close it at any time, and under the Treaty we cannot negotiate with any other country to build a canal anywhere else without his permission (until the year 2000). Thus the United States will be dependent on Dictator Torrijos or whatever or whoever replaces him.

The cost of this treaty should also be of great concern. Section 4 of Article XIII provides that from the date of the inauguration of the new agreement, Panama will henceforth receive 30 cents for every ton of cargo passing through the Canal. But beyond this, we find that this amount "will be adjusted to reflect changes in the United States wholesale price index for total manufactured goods" every two years. Thus, the 30 cents per ton figure only remains in effect for five years and thereafter every two years it will rise by the amount of change in the American wholesale price index. This agreement will be reflected in large toll increases.

If these tolls have been in effect in 1976 on the 117 million tons of cargo that passed through the Canal, the Panamanian Dictatorship would have extracted a total of \$35 million. This amount could easily be projected to \$46 million by 1980. A 60,000 ton American oil tanker passing from Alaska to the American Gulf Coast would thus pay Panama \$18,000. By 1985, the expected cargo of 184 million tons would give Panama \$55.5 million.

The proposed treaty in effect give Panama an OPEC style transportation cartel for the next 22 years. Beyond the termination date even more exorbitant charges can be expected. Some Panamanians have already spoken of raising tolls by 400 percent. Even former Ambassador Linowitz has acknowledged that the Treaty will entail an immediate rise in tolls of 25-30 percent—the largest increase in the history of the Canal.

Can we expect Panama, even if its outlook were not Marxist, to smoothly operate the Canal? There are 202 men qualified to pilot ships through the Canal. Only two of these are Panamanians. Only ship captains can qualify for this position and they must have 20 years active experience to qualify. Panama does not produce ship captains and it only recently opened its first navigational school, yet Panamanians must replace those Americans who resign rather than work for the dictatorship.

A lot has been said about Omar Torrijos. He is unquestionably a dictator and a fervent admirer of Fidel Castro. However, our Department of State says that if you do not conclude a treaty with him, the leaders who may replace him are even worse. Mr. Chairman, I submit that neither Torrijos or those "worse" should have control of our shipping life line.

Cuban Communists wield enormous influence in Panama. Torrijos at one point hailed Castro as "an example and a light". The Communists have consistently demanded that the U.S. give up the Canal. Then Assistant Secretary of Defense Califano, referring to the 1964 riots said that "known and identifiable Communists, members of the Communist Party of Panama and people who belonged to the vanguard of National Action, which is . . . the Castro Communist Party in Panama," participated in these riots in which 23 Panamanians and four U.S. soldiers were killed. Reports of Cuban cadres in Panama, training selected persons in guerrilla warfare and sabotage, are too frequent to be ignored.

There is also the question of Torrijos himself. Brig. Gen. Omar Torrijos Herrera has ruled Panama since 1968 when he led Panama's National Guard in an armed uprising which overthrew the elected government. After taking power, Torrijos dissolved all political parties and exiled 20 members of the Communist Party, including Ruben Dario Sousa and the rest of the Party's top leadership. The Communist Party of Panama is officially called Partido del Pueblo and is directed by Moscow. After exiling the top leadership, Torrijos made an agreement with the remaining Communist Party functionaries that as long as they supported his policies, they could continue to function. The agreement was made with Moscow's approval, and in 1973, the exiled leaders were readmitted to Panama.

Communist Secretary-General Dario Sousa wrote in the official international Communist journal, *World Marxist Review*, for March 1973, that Panama is, "another weak link in the chain of imperialist oppression, one of the fronts in the great struggle for liberation." Dario Sousa expressed support for the activities of the Torrijos government in pressing for the takeover of the Panama Canal.

Torrijos maintains a personal dictatorship and has suppressed the free press. He has appointed members of his family to positions of power, including his 3 brothers and 8 sisters. One brother Moises Torrijos, also known as "Monchi", has a currently pending indictment in the United States for trafficking in narcotics. Nevertheless, Omar Torrijos appointed "Monchi" as the Panamanian Ambassador to Spain.

While Torrijos, himself, is not an ideological Communist, despite press stories to that effect, he is extremely pro-Communist and relies upon his close associate, Romulo Escobar Bethancourt, to serve as his liaison with both domestic Communists and foreign Communist governments.

Torrijos is a heavy drinker who becomes uncontrollable and incoherent while drunk. He is hardly a stable type of person and should never control a vital world sea way like the Panama Canal.

Mr. Chairman, recent history has shown the results of allowing irresponsible demagogues to control vital international waterways.

We should not forget the history of the Suez Canal following its nationalization. The Suez Canal has been closed twice since Egypt took it over, once for 8 years. Contemplate the increased costs to the American consumer if this should take place in Panama.

Who besides the Communists would benefit by our giving up the Canal? Only the banks who have loaned Torrijos money to the point where 40 percent of the Panamanian national budget is absorbed by debt service. I submit that there was a serious conflict of interest for Mr. Sol Linowitz who served as co-negotiator while retaining connections with a bank that had made large loans to Torrijos. What was the role of these New York banks in these negotiations? What have they been promised? Are the American taxpayers going to be asked to pay increased prices for their goods because we are giving Torrijos carte blanche to raise tolls in order to pay off his debts? The Senate has been disinclined to investigate these questions. I think it should investigate these areas lest these questions forever cloud the Treaty.

Lastly, I want to discuss the alleged threat of violence used as an argument for surrender of the Canal by Administration spokesmen. It is clear that there will be violence whether or not the Treaty is approved.

Chief Panamanian negotiator Escobar invited violence against the United States during an August 12, 1977, address to the Federation of Panamanian Students, an organization with a long history of extreme anti-American violence. Escobar said, "There are still theories that we can get more, much more, through confrontation. I believe this is true . . . We are not asking for confrontation, but neither will we give permission to anybody for a confrontation. Whoever wants to start a confrontation can do so himself."

"In the past, when we set bombs against our oligarchy, when we challenged the regimes established in our country, we never asked anyone for permission. You have never asked anyone for permission. . . ."

"When one wants confrontation, one puts his knapsack on his back, his bomb at the waist and goes to stage the confrontation. This is not written in any book. If one triumphs, one wins, and if one does not triumph, he dies."

After Escobar's speech, the radical students were harangued by their Secretary-General Robert Gomez. He said that while the treaties, "resolve part of the problem . . . much remains to be done to totally eliminate the last symbol of the overwhelming presence of U.S. imperialism. The banners of the FEP will not be lowered in the struggle, because this struggle will be continuous and prolonged until the last invading soldier leaves.

"Contrary to what many think, the new agreement will not, and cannot, signal the end of the process or of the struggle for national liberation. * * * Hail the unity of the patriotic forces and support for the liberating process! The struggle against imperialism and its internal allies will be continuous and prolonged. Liberation or death! The FEP is on the move! No one and nothing can stop it!"

Romulo Escobar Bethancourt is the closest associate of Dictator Torrijos. He was appointed by Torrijos as Chief negotiator of the treaties now before this Committee of the Senate. Escobar is the main foreign policy advisor to Dictator Torrijos and is his personal emissary to Communist Cuba. Escobar says he was a close personal friend of Ernesto "Che" Guevara, the Communist revolutionary who helped Castro take power and who later organized Marxist terrorist groups throughout Latin America and in Africa.

Escobar was a leader of the Communist Party unit at the University of Panama and an organizer for the Party. In 1949, he violated Communist Party discipline by accepting a scholarship to leave the country and attend school in Brazil. Despite his expulsion he remained a Marxist-Leninist and in recent years has served as Torrijos' liaison with both the Panamanian Communists and with foreign Communist governments.

If the United States cannot defend the Canal against Communist guerrilla attacks and sabotage, how can we expect to defend it in wartime? The position of the United States is that it will never submit to terrorist demands. Even when the lives of American diplomats are at stake, the United States does not pay ransom. Why then should this country submit to the extortionist threats of terrorism from such tin horn bandits as Torrijos and Escobar. To yield to their extortion demands for control of our Canal will only encourage other terrorists or tyrants through out the world to view the United States as an easy target.

It is the duty of the President of the United States to protect the lives and property of Americans, terrorist threats notwithstanding. If the President were to neglect to exercise this duty he would be derelict in his duty as Commander-In-Chief.

I urge this Committee to reject these treaties, which are against the interest of the people of the United States and would only benefit our Communist enemy and those bankers that put profit above patriotism.

This concludes my formal statement.

STATEMENT OF THE HONORABLE ROBERT L. LEGGETT

As a Member of Congress concerned about this nation's posture in the world, I have been a serious student of U.S.-Panamanian relations for several years. I served as Chairman of the House Panama Canal Subcommittee during the 93rd Congress, and have been the Ranking Majority Member of the Subcommittee subsequent to that Congress. I have conducted several inspection visits of the Canal Zone since 1973, and have had occasion to discuss the Panama Canal issue with high officials of the Republic of Panama as well as individual Panamanians.

During the time I have been conversant with Canal affairs, I have tried to serve as a catalyst for new thinking and needed change in U.S. operations of the Panama Canal and Canal Zone. For example, I pushed for an end to the vestiges of discrimination which have been badges of colonialism for the U.S. in Panama. I supported the first necessary tolls increases. Finally, the knowledge that I gained convinced me of the need for serious negotiations between the U.S. and Panama respecting Canal matters.

As an indication of my support for serious negotiations, I point out my efforts in the House in 1975 and 1976 to defeat the so-called Snyder amendments to discontinue funding of the treaty negotiations. When I spoke in the House Chamber in those years in opposition to the Snyder Amendment, I colored my support for negotiations with a warning that a treaty negotiated strictly under the "8 Points" as signed by Secretary Kissinger in 1974 would not be acceptable to me or many other Members of Congress. I also stated that I was supportive of negotiations but should there be

negotiated a treaty arrangement with Panama that did not adequately protect legitimate U.S. interests, I would come before the Senate Foreign Relations Committee and so indicate.

In my judgment the proposed treaties do not adequately protect U.S. interests. They do not provide the United States with adequate power to restrain Panama's desire to use the Canal to promote its own economic ends. They do not contain in any depth provisions to protect U.S. security interests. They do not provide for a continuing U.S. role in the Canal's management, and they are especially irritating in that they really foreclose without necessity the opportunity for the U.S. to have a presence after the year 2000. These are some of the problems with the two treaties and their implementing documents.

So I appear here today as a self-styled representative of a number of persons in the U.S. who are qualified to speak on the subject of U.S.-Latin American relations and who believe we should have a new treaty with Panama but not these pacts that have been negotiated. As the public becomes more educated with respect to the Panama Canal, I expect the numbers in this group to expand.

The toll levels and structure of the Panama Canal are the financial mechanisms by which that waterway either lives or dies. The attractive rates under which the Canal has operated for more than 60 years have benefited the shipping industry, Canal employees, Panama's economy, and consumers worldwide. Consumers and producers in the United States have in the aggregate a larger interest and have especially benefited by the Canal's toll rates because one-third of all the ports of origin and destination in connection with Canal transits are U.S. ports, Japan and many Latin American countries also greatly benefit from moderate stable toll rates.

There is every indication that reasonable tolls essential to the Canal will end under the proposed Panama Canal Treaty. This appears certain as a result of several factors: the reprehensible indexing provision in Article XIII for royalties; the policy likely to emerge from repeated references made by many Panamanian officials to the need for increases in tolls in the hundreds of percents; the Panamanian Government's desperate need for cash flow; and the comparative uneconomical structure of the new Panama Canal Commission.

I will handle these four factors in reverse order.

Because the present Panama Canal operation involves hundreds of separate special operations, and because it produces for itself many of the items it uses, the Canal enterprise has certain similarities to the U.S. multinational corporation—that is, the pricing policies will allow it to value the products it produces at a cost lower than that of the outside competitive market. If the proposed treaties are ratified and the Panama Canal Commission loses many of those ancillary services the Canal Company now runs, you will find an increase in the cost of some of the individual items to be purchased for the Canal.

Additionally, you will have a net loss of funds because some of the profitable ancillary activities now run by the Canal Company will be transferred to Panama.

There also may be a slight increase in overhead costs for the Canal operation because some of the supervision interrelated with the Canal now done by the Canal Zone Government will have to continue under the new treaty arrangement.

Clearly, there will be financial difficulties associated with setting up the new Panama Canal Commission, especially during the thirty-month transition period. So you would think that the Panama Canal Treaty would seek to unburden the Canal Commission of more financial commitments.

Of course, this is not the case and the money out of Canal tolls to Panama will go from \$519,000 to almost \$60 to \$70 million immediately. One reason for this, I believe, is the fact that without immediate additional revenues, the Panamanian Government will have to roll-over more of our reschedule some of its debts.

The economic compensation package in the negotiated Panama Canal Treaty underscores the tendency of Panama to turn toward the Canal to solve its financial problems. With Panama's debt service now approaching 39 percent of its national budget, the Canal is seen as the lever for prosperity. Will Panama turn to the Canal again under the new proposed treaty to meet its debt obligations or finance politically popular projects? In my judgment it will, which is the reason we need more tolls protection.

There is a tendency with some sectors in Panama to blame the Canal for all of Panama's problems. There is a belief that there is some sort of infinite wealth there, which of course is incorrect. Unfortunately, some Administration officials now seem to be buying this same argument. Mr. Solomon, for example, in his prepared statement for this Committee, indicated that a "major cause of Panama's economic slowdown (in the 1970's) was the uncertainty over the future of the Canal." The thrust of this statement does not stand up against the facts. According

to a report of the U.S. Embassy in Panama in 1976, high cost output and lack of private investment opportunities are the chief reasons for Panama's economic troubles. "Uncertainty", per se, over the Canal is not even mentioned by the Embassy as a problem for the Panamanian economy.

The initial factor I mentioned with respect to tolls policy was the indexing factor. It is difficult for me to understand why the U.S. negotiators accepted in Article XIII this idea of indexed royalties for Panama on Canal tonnage rather making Panama subject to same kind of risk-taking to which the U.S. is subjected in operating this waterway. We face the unsettling prospect under the Panama Canal Treaty of the U.S. taxpayer being forced to subsidize the Canal in the event that tolls revenues are decreasing and our payment to Panama increasing at the same time. Furthermore, the inflationary index provision is a terrible international precedent for the U.S. if, as the Administration says, the whole world is watching the Canal Treaty fight.

In answer to the prospect of tolls increases, it has been said that the Panama Canal can withstand the initial tolls increase of 40 percent as well as subsequent increases that will be necessary under the proposed treaty. I do not agree with this. In the short run of a year or so you may not lose much traffic tonnage, but the long-range effect of the initial increase could be a loss of up to 50 million tons from the initial increase.

That kind of loss will mean sooner or later we will be subsidizing the Canal because we must have it in good working condition for our naval vessels in the future even if much of the commercial traffic has been diverted.

One of the aspects of the Panama Canal Treaty which bothers me is the structure of the Panama Canal Commission. The five United States and four Panamanian Commissioners who sit to oversee Commission operations will have an enormous amount of power and I wonder who will balance that power.

The Congress of the United States, the present legislature for the Canal Zone, will have to implement the Panama Canal Treaty if it is ratified and will continue to affect Canal affairs. But the existence of executive agreements to carry out the purposes of the Treaty will take a considerable amount of authority from the Congress with respect to Canal operations and U.S. Isthmian military operations. That authority will instead be with the Panama Canal Commission and the Combined Board for defense.

Under the terms of Article III of the Panama Canal Treaty, it is clear that the Government of Panama will determine those Panamanians who will sit on the Commission. Given the nature of the present Government in Panama, that is, a military dictatorship, there is no doubt the Commission Members from Panama will be completely responsive to the dictator. I wonder whether the U.S. representatives will be as responsive to the U.S. Government. If even one is not, could the position held by a majority of the U.S. Commissioners be consistently overridden.

Perhaps this question of Commission behavior can be partially handled through U.S. legislation. But I do not think that we can underestimate the control problems associated with the majority partner being a democracy with a capital about 2000 miles away and the other partner a dictatorship on the spot.

As legislators we are deeply aware of the division in this country over the Panama Canal issue. In addition to the obvious lack of consensus in the United States that makes a long-term agreement on the Canal very difficult, I want to suggest that the consensus in Panama may not be as monolithic as perceived or as cohesive as is necessary to make these new agreements work. There are reasons why the proposed treaties have not been greeted with overwhelming enthusiasm in Panama. Even if almost all Panamanians want some sort of new treaty relationship, they may not want these treaties.

The economic compensation package to the Panamanian Government will come at the expense of the users of the Canal and Canal employees. I know that Panamanian employees in the Canal Zone, who comprise about five percent of the Panamanian national work force, are extremely concerned about the proposed agreements because many of them will be dismissed and will cease to have reasonable employment or their terms of employment will deteriorate considerably under the new arrangements. I wonder whether these Canal employees, who have worked and many of whose forefathers have had careers in the Canal Zone, will not feel some bitterness at the United States for the deterioration of their personal position. Perhaps they will be persuaded to offer it all up for the good of the greater Panama, but I do not think so.

In addition to some of the Canal employees who may not like the agreements, there is a group in Panama that considers the absence of civil liberties and human rights to be pre-eminent issue at this time. For this group consummating a treaty

which expands Panama's national property is an endorsement by the U.S. of dictatorial rule in a country which has seen greater liberty in the past. Regardless of the motives of this group that opposes the dictator, whether the motives be ones of political opposition or genuine human rights concern, the U.S. would be remiss not to evaluate the presence of this group in Panama.

Also, a portion of the student community in Panama does not appear to be enthralled with the proposed treaties. I doubt that any agreements that preserve U.S. presence in any form will be endorsed by these students.

If, as has been suggested, the consent of Panama and the Panamanian people is the key to the continued safe operation of the Canal, then it seems to me we have to undertake a penetrating study of the possible effects of the proposed treaties on the attitudes of the Panamanian people as well as officials of the Government.

We should take a look at whether we are helping ourselves or whether we are in fact alienating some segments of the Panamanian populace by these treaties. I suspect that we will find that the answer is not that simple.

Irrespective of the other issues raised by the proposed Panama Canal treaties, there is one issue which must not be ignored in the deliberations on these agreements. This issue concerns the National Environmental Policy Act's requirement for an environmental impact statement for all "proposals for legislation and other major Federal action significantly affecting the quality of the human environment."

The very fact that the Administration and treaty proponents have cited the need for a new treaty relationship in order to improve the operating environment for the Canal is reason enough to reference the importance of a good impact statement. I see the environmental impact statement raising both a hazard and an opportunity in the context of the deliberations of the Committee.

As you know, the purpose of an environmental impact statement is to ensure that the effects of major Federal actions on the human environment are considered in the formulation of policy for such actions. Unfortunately, all evidence indicates that the effects of the treaties on the human environment were given no formal consideration under N.E.P.A. by the Administration in the negotiation of the proposed Canal treaties. Surely the negotiators for the U.S. and Panama must have been constantly aware of the political ramifications of their decision, but in no event were the environmental ramifications of the treaties formally considered at the appropriate time.

According to the governing laws and regulations, a draft environmental impact statement should have been prepared when negotiations were reinitiated with Panama in 1971 or 1973. A final environmental impact statement should have been prepared and filed with the Council on Environmental Quality 30 days before the signing of the treaties on September 7. Neither of these requirements were fulfilled. It is clear that the Executive Branch has been acting in violation of N.E.P.A. and N.E.P.A.-inspired regulations to this point in time. The Department of State's attention to these requirements may be improving, however. The deadline for comments on the draft impact statement issued a week before the treaty ceremonies has been extended. Hopefully a final adequate impact statement will be available in the future.

I stress the need for an adequate final environmental impact statement because it is possible that the courts, should they find the requirements for environmental consideration lacking, might enjoin implementation of the treaties or their effectuation upon ratification. It would be unfair to Panama and its people as well as the people of our own country to debate or pass upon a treaty which would possibly be laid aside by the courts. It would be insensitive and destructive of good relations to raise expectations and then have them dashed.

I urge the Committee to exhort the Department of State to prepare the best impact statement possible. I believe that the only adequate statement would be one that properly addresses all aspects of the treaties, including employment conditions, water quality and pollution considerations, sea-level Canal effects, the inspection of transiting vessels, and so on. If the Department of State knew the Senate would not consider the proposed treaties until a proper assessment has been completed, that would increase their attention to the task.

The environmental impact statement in connection with the treaties need not take on the hue of just an onerous obligation because the courts could be involved. It can be one of the most useful tools available to the Committee on Foreign Relations to assess the real impact of a new treaty on the Isthmus. Detractors of the treaties have said that the presentation of the agreements has been rife with hypocrisy and deceit. Since an adequate statement must be credible and take into account all relevant input, the impact statement requirement can stand as one test of the sincerity of the presentation. If those groups which are knowledgeable of the

situation on the Isthmus will contribute their most puissant observations and if the Department of State makes a good-faith effort to write a responsible impact statement, then the Committee and the Senate will have available to it a body of knowledge which only months of hearings could have otherwise accumulated.

In addition to its usefulness in Senate consideration of the treaties, an impact statement would have major relevance to any Congressional consideration of the transfer of U.S. property in accordance with Article IV, Section 3, Clause 2 of the Constitution.

For your consideration, I request that several documents relevant to the environmental impact statement requirement be inserted in the record of these hearings.

In conclusion, although I have highlighted only a few of my major areas of concern, there are many other areas of the treaties that require amendment. Given the outspoken opposition of Panama's Chief of Government to any amendment of the treaties, the most practical course may be for the U.S. and Panamanian negotiators to return to the negotiating table and attempt to fashion a new agreement, one that does not follow the "8 Points", one which may do less for some of Panama's objectives, but one which will have a much greater chance of acceptance in the United States.

In future years, as the perceptions of national interest change in the U.S. and Panama, perhaps terms similar to those embodied in these proposed treaties can be agreed upon. At the present time, however, to consent to agreements that will probably never be accepted by major sectors of the populations in the U.S. and in Panama is in my view dangerous.

PANAMA CANAL TREATY

Mr. THURMOND. Mr. President, on October 4, I inserted in the Record a State Department cable which corroborated my earlier testimony on the numerous differences in the Panamanian and U.S. interpretation of treaty provisions.

Today, I would like to call attention to an article appearing in the October 5, 1977, edition of The Washington Post entitled, "Canal Treaties Get a Jolt," reported by John M. Goshko, and also an article appearing in the October 5, 1977, edition of the New York Times entitled, "Dole Says U.S. Cable Shows Differences With Panama on Treaties," reported by Graham Hovey.

I ask unanimous consent that these articles be printed in the Record.

There being no objection, the articles were ordered to be printed in the Record, as follows:

[From the Washington Post, Oct. 5, 1977]

U.S., PANAMA DIFFERENCES CITED: CANAL TREATIES GET A JOLT

(By John M. Goshko)

The campaign to win Senate approval of the Panama Canal treaties was given a severe jolt yesterday by disclosure of a document indicating that Panama does not recognize U.S. claims to future military rights in the canal.

A confidential State Department cable made public by Sen. Bob Dole (R-Kan.) revealed what appear to be major differences in U.S. and Panamanian interpretations of the treaties' provisions for defending the canal.

These provisions refer to the period after the year 2000, when the treaties would transfer control of the canal to Panama. At issue are questions of whether the United States will have the right to intervene militarily against threats to the canal and a right of priority passage for U.S. warships in time of national emergency.

These questions have become crucial to the Carter administration's quest for the 67 votes—two-thirds of the Senate—necessary to get the pacts approved by that badly divided body. Several uncommitted senators have said their votes will depend on whether they are convinced that the treaties secure these rights for the United States.

In testimony last week before the Senate Foreign Relations Committee, Secretary of State Cyrus R. Vance and the two U.S. treaty negotiators, Ellsworth Bunker and

Sol M. Linowitz, said repeatedly that these rights are safeguarded by the language of the treaties.

Specifically they said that treaty language pledging the United States and Panama "to maintain the regime of neutrality" over the canal gives Washington a permanent right of intervention if it considers the canal threatened.

They also asserted that the provisions calling for "expeditious passage" for U.S. vessels in wartime mean that American ships would "go to the head of the line." The U.S. interpretation of these provisions was fully understood by the Panamanian government, they added.

However, their testimony seemed to be contradicted by the cable released by Dole. It was a message sent to the State Department last week by Ray Gonzalez, deputy chief of the U.S. embassy in Panama. It reported a conversation between the embassy's political counselor and Carlos Lopez Guevara, one of the Panamanian treaty negotiators.

The cable describes Lopez Guevara as being disturbed by Vance's testimony about U.S. intervention rights, and quotes him as saying: "Intervention is simply forbidden by international law. Panama cannot agree to the right of the United States to intervene."

Lopez Guevara also is quoted in the cable as taking exception to statements by Vance and other U.S. officials that Panama's military ruler, Gen. Omar Torrijos, tacitly recognized U.S. intervention rights when he said at the treaty-signing ceremonies that the agreements could place Panama under the defense umbrella of the Pentagon.

The cable quoted Lopez Guevara as saying that U.S. officials "had made too much of Gen. Torrijos' statement * * * 'The general was stating a fact not giving the United States any right to intervene.'"

On the question of what the "expeditious passage" clause means, the cable said Lopez Guevara disagreed that it allows U.S. ships to "go to the head of the line." He is quoted as saying that Panama tentatively had accepted the idea of preferential treatment for U.S. vessels early in the negotiations, but later had rejected it specifically in favor of the word "expeditious."

The cable concluded by warning Washington: "We are likely to be faced with increasing irritation over—and perhaps public disavowals of—our interpretations. Any assertion which seems to claim a right to intervene in Panama's domestic affairs is almost certain to be challenged here."

That referred to the fact that the treaties have extremely sensitive domestic political implications in Panama as well as in the United States. State Department officials say privately that the language of the neutrality clause and other touchy points was deliberately left vague by both sides to protect the Torrijos regime from charges within Panama that it had surrendered too much to the United States.

However, that has also enabled the treaties' foes in the United States to seize on these ambiguities.

In hammering at this theme, the American critics have been aided by statements of high Panamanian officials—of which Lopez Guevara's remarks are the latest example—that appear to contradict Vance's assurances directly.

That prompted several senators to warn Vance that the treaties' chances of getting past the Senate would be jeopardized unless the divergences in interpretation are clarified. Several said yesterday that the Lopez Guevara statements are further proof of the need to establish that Panama's understanding of the treaties conforms to that stated by the Carter administration.

That, some senators suggested, could be done by a public statement from the Torrijos government or by the Senate attaching legally binding amendments or reservations to the treaty.

Although they have promised to seek clarification, State Department officials privately express unhappiness about both ideas. Torrijos, they note, would find it very difficult from a domestic political standpoint to come out publicly in agreement with the U.S. interpretations; and any amending of the treaties by the Senate would require reopening the negotiations to obtain Panama's consent.

The State Department confirmed the existence of the cable, and issued a statement saying "We are assessing the effects of all these statements in the light of the treaty language and a statement of Gen. Omar Torrijos when the treaties were signed on Sept. 7, with the view to determining whether further clarification may be required."

[From the New York Times, Oct. 5, 1977]

DOLE SAYS U.S. CABLE SHOWS DIFFERENCES WITH PANAMA ON TREATIES

(By Graham Hovey)

WASHINGTON, Oct. 4.—Senator Robert Dole, Republican of Kansas, made public today a confidential State Department cablegram that he said demonstrated "vast differences of interpretation" between the United States and Panama on key points in the new canal treaties.

The cablegram, sent from the American Embassy in Panama last Thursday, reported that one of Panama's negotiators took sharp exception to the Carter Administration's interpretations of the right of the United States to help defend the canal after 1999 and of the "expeditious" passage through the waterway that would be guaranteed to American and Panamanian warships.

Secretary of State Cyrus R. Vance and other officials, including military leaders, have told the Senate Foreign Relations Committee that under the separate neutrality treaty the United States could do whatever might be necessary to insure access to the canal and its neutrality indefinitely.

They have testified that the "expeditious" passage guaranteed in that treaty meant that United States warships could when necessary "go to the head of the line" for transit of the waterway.

According to the cablegram made public by Senator Dole, an opponent of the treaties "in their present forms," Carlos Lopez Guevara, a veteran Panamanian negotiator, took issue with the head-of-the-line thesis, insisting that expeditious passage did not mean "preferential" transit, which he said the American side had originally demanded.

Mr. Lopez also said, according to the cablegram, that American officials should stop using the term "intervention" to describe this country's rights under the neutrality treaty. "Intervention is simply forbidden by international law," he was quoted as having said. "Panama cannot agree to the right of the U.S. to intervene."

When Brig. Gen. Omar Torrijos Herrera, Panama's Chief of Government, said at the signing of the treaties in Washington Sept. 7 that the neutrality pact left Panama "under the Pentagon's defense umbrella," he was "stating a fact, not giving the U.S. the right to intervene," said Mr. Lopez, according to the cablegram.

Administration witnesses at the Senate Foreign Relations Committee hearings have repeatedly quoted General Torrijos's statement as confirmation of their claim that under the treaty the United States could always act to protect the neutrality of the canal.

State Department specialists said today they believed Mr. Lopez had meant only to draw a distinction between the right to intervene in Panama's internal affairs, which Washington does not claim, and action to defend the canal's neutrality and accessibility.

"This is a negotiated treaty," an official said. "There is an obvious difference in approach to the same set of words. But I think this is natural and not fatal, and I believe the differences will promptly be narrowed."

But Senator Dole, who did not disclose how he obtained the secret cablegram, said Mr. Lopez's interpretations meant that the Senate "must clarify our defense rights by amendment, not by weak 'understandings' that have no legal and binding effect."

The Kansan, who was the Republican Vice Presidential candidate in 1976, will introduce six amendments and two reservations to the treaties when he testifies tomorrow at the sixth day of hearings by the Foreign Relations Committee.

Administration officials have warned that although "understandings" of treaty clauses, attached by the Senate to the instruments of ratification, might be acceptable, amendments or formal reservations would require reopening negotiations with Panama.

Mr. Dole's disclosure somewhat overshadowed the fifth day of hearings, which were marked by heated exchanges about the integrity of Gen. George S. Brown, Chairman of the Joint Chiefs of Staff.

Senator Strom Thurmond, Republican of South Carolina, leader of a coalition opposing the treaties, said General Brown and the other service chiefs, who have strongly endorsed the Panama treaties, were "under the gun," with their careers at stake, and would be inclined to go along with the President whatever their personal opinions of the pacts.

Senator Paul S. Sarbanes, Democrat of Maryland, a member of the Committee, said with some heat that this constituted a denigration of the Joint Chiefs and an

attack on the integrity of the opinion expressed by General Brown before the committee. It was "not a contribution to the debate," Mr. Sarbanes said.

THE PANAMA CANAL

MR. MCGOVERN. Mr. President, we have already read and heard a great deal of public comment on the proposed new Panama Canal Treaty. Certainly there will be more to come. The issue is both controversial and emotional. Regardless of the position we take, every Member of the Senate will be obliged to weigh his position carefully and to provide detailed answers to his constituents.

In that context, I think my colleagues might find useful a brief response written by Lawrence Brown, editor of the Nation's Center News, published in Buffalo, S. Dak., to a reader who wanted to enlist Mr. Brown and the News in the effort to prevent the give away of the Panama Canal.

This is not one of the best known newspapers in the country, and Mr. Brown, who is in the sheepherding as well as in the news business, makes no claim to being an authority on the subject. He does, however, make one argument that I have not seen explained so lucidly or sensibly in all of the other commentary and official documentation I have seen on the subject. He writes:

* * * neither Panama, Russia nor any other country have any plans to move the canal to any other part of the world. So it is quite apt to remain where it is, and we still have the option to negotiate or fight our way through it regardless of whether we keep title or not.

Mr. Brown then suggests that there just might be several more important issues on which South Dakotans could better spend our energies and talents.

Because I think it will be helpful to my colleagues both in reaching a judgment on the Panama Canal issue and in explaining their positions, I ask unanimous consent that this exchange—both the reader's letter and the Nation's Center News response—be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

[From the Nation's Center News, Sept. 16, 1977]

LETTERS TO THE EDITOR

Dear Lawrence,

I am writing concerning the proposed "give away" of the Panama Canal to which I am totally opposed. To ratify this treaty the administration is going to need a 2/3 majority vote in the U.S. Senate. Our two Senators must hear our voices regarding this insane abandonment of U.S. property. For this reason I am urging you to join me in the Citizen's Committee to Save OUR Canal.

Our initial objective is to obtain signatures opposing the ratification of this treaty. I am enclosing for your effort, a petition to our Senators which I hope you will circulate in your area immediately and return it to me as soon as possible. Also, you will find enclosed some facts that will explain my concern over the Canal's "give away". If you should want more information or need additional petitions please contact me immediately at the above number.

Lawrence, the message we have simply got to get to those people in Washington is that regarding our canal, "we bought it, we paid for it, we built it, and we damned well intend to keep it."

Let me hear from you soon!

Your friend in the cause of freedom, Dale Bell, Box 315 Tinton Rd., Spearfish, S.D. 57783.

P.S. Lawrence, any amount of financial assistance you or any of the petition signers could help us out with will be most appreciated.

Dear Dale,

For the past 3 or 4 months there has been an article on one side or the other of this Panama thing in nearly every paper you pick up. I have never been to Panama and have no particular hankering to go now, so I'm certainly not an authority on the subject.

But from what I have read, it appears to me that Panama is like an ole hound dog that used to catch rabbits but now, only wants to eat and bite at the fellow that owns it. If we give it away we haven't lost much, and if we keep it, we can expect more problems than dividends.

The big new cargo ships can't go through the canal and its foreign trade importance to us has declined to 1% of our gross national product. Our own East Coast-West Coast trade is about 7%, and it is not a big strategic thing to our 2-ocean navy.

Besides that neither Panama, Russia nor any other country have any plans to move the canal to any other part of the world. So it is quite apt to remain where it is, and we still have the option to negotiate or fight our way through it regardless of whether we keep title or not.

South Dakota and agriculture across the nation has an economic and strategic problem 10 times as big as Panama, and if we have time and desire to raise money and circulate petitions we should be working for our bread, butter and future.

The nation has an energy shortage. American agriculture has a grain surplus that could easily be converted to energy via grain alcohol. What better food bank could this country have than maximum ag production with the surpluses going to alleviate as much of world hunger as the world is willing to pay for, and the balance going to alleviate our independence on overseas oil?

Dale, in reply to your last paragraph I say, "To Hell with Panama. Let's do something for the industry that feeds this country the best and cheapest in the history of humanity and has the added ability to solve part of our energy problem and serve some of mankind in other parts of the world.

[From the Congressional Record—Senate, Oct. 7, 1977]

THE PANAMA CANAL TREATIES

Mr. HARRY F. BYRD, JR. Mr. President, the Senate has now begun hearings on the proposed Panama Canal Treaties, and, Members of the Senate are hard at work studying the texts of the treaties and familiarizing themselves fully with the issues involved.

Although the Senate will not vote on the treaties for several months, this kind of detailed and lengthy preparation is very important because the Panama Canal issue is closely tied to the economic and security interests of our Nation.

The primary focus of Senate attention should be on the actual terms of the treaties and whether they provide adequate protection for U.S. interests.

However, there is one issue outside of the terms of the treaties which should also be fully considered by the Senate—and that is the manner in which the treaties were negotiated.

The negotiations leading to those treaties actually began in January of 1965 after serious riots in Panama against the U.S. presence in the Canal Zone.

Ever since that time, negotiations have taken place under the cloud of renewed violence, and every administration since then has cited the prospect of violence as a reason for negotiating a new treaty which would give control of the canal to Panama.

The Carter administration has relied heavily on this argument in its efforts to achieve Senate ratification of the proposed canal treaties.

Just last week in testimony before the Senate Foreign Relations Committee on behalf of the treaties U.S. negotiator Sol M. Linowitz used phrases such as "smoldering dispute" and "troubling and festering presence" to describe the situation under the existing treaty.

Mr. Linowitz said:

The simple fact is that if we do not agree upon treaties which are mutually agreeable and acceptable, the time may come when we may find ourselves in the position of having to defend the Canal by force against a hostile population and in the face of widespread condemnation by the countries of Latin America and even the rest of the world.

These same kinds of arguments were made by earlier administrations.

President Johnson, in fact, used the argument of impending violence extensively in seeking congressional support for draft canal treaties which were negotiated in 1967.

Many Members of Congress were unimpressed with President Johnson's argument and felt, instead, that the President was submitting our Nation to Panamanian blackmail. Congressional opposition prevented those draft treaties from ever being submitted to the Senate for consideration.

Now, with the completion of new treaties this year, charges are again being made that the United States has negotiated under duress and that the United States is responding to "blackmail."

The Carter administration denies this stating that "the United States has not responded to pressure."

Recently, this denial was echoed by a Member of the Senate who said there was no connection between the Government of Panama and threats of violence."

In fact, he said that the specter of violence was "raised not by responsible Panamanians but by Americans." That Senator went so far as to say that President Omar Torrijos had "specifically rejected violence."

What are the facts?

General Torrijos, the Panamanian dictator, as recently as May 7 of this year, was quoted in the Panamanian newspaper *Matutino* as saying that if peaceful efforts to reach an agreement fail, Panama has other nonpeaceful alternatives.

On that same day the EFE wire service quoted General Torrijos as saying that if the negotiations do not succeed, North Americans in the Canal Zone will find themselves "without water, without light, and without a canal."

One year earlier, on March 7, 1976, General Torrijos in an interview on Colombian radio warned that the Panamanians "would have to resort to the violent stage" if the treaty negotiations fail.

The Panamanian dictator was quoted in May 30, 1976, *Los Angeles Times* as saying:

We are also prepared to follow the Ho Chi Minh route if necessary. That means terrorism, guerrilla operations and sabotage in a national liberation war to regain our territory.

Going a step further, Torrijos said in a November 1975 interview in the *Atlas World Press Review*:

I told them (the Panamanian students) that if there were an uprising, if there were terrorism, I as commander of the National Guard would have two options: to crush them or lead them, and I can't crush them.

Thus, by rejecting the alternatives of crushing an uprising, Mr. Torrijos was announcing his candidacy to lead one.

These kinds of threats were uttered during the course of recent negotiations by other Panamanian officials as well. The Panamanian Ambassador to the United States, Nicolas Gonzales-Revilla, in an interview in the April 1977 edition of the *American Legion* magazine stated that—

It is a fact that the U.S. presence makes sabotage and violence inevitable.

Even Panama's chief negotiator Romulo Escobar Bethancourt raised the specter of violence in a speech before the Panamanian Assembly just 1 month ago. He said that if the U.S. Congress does not ratify the treaties "this country will take another course. This country will take a course of violence."

The threat of violence now seems to be the major argument of treaty proponents in the attempt to achieve Senate ratification of the treaties.

These threats have come from Panamanian officials and they are being fervently repeated by treaty advocates in an effort to win Senate ratification.

The American people should be aware of this.

Without the specter of violence, is it likely that the United States would ever have to come to the point that its negotiators would be willing to accept a treaty which gives away so much?

Over the years, Panama has repeatedly pressured for changes in the 1903 treaty, but the United States maintained that it would not surrender its rights as conferred by the 1903 treaty.

In 1923, when faced with Panamanian agitation for renegotiation Secretary of State Charles Evans Hughes stated to Panamanian officials that—

It was an absolute futility * * * to expect any American administration, no matter what it was, any President or any Secretary of State ever to surrender any part of these rights which the United States had acquired under the Treaty of 1903.

Apparently Secretary Hughes did not foresee the give away philosophy now so prevalent in our Government.

In the 1950's, the United States started making significant concessions to Panamanian demands.

Now, just a few years later, we have come all the way to a draft treaty which relinquishes all of the United States rights acquired under the 1903 treaty and replaces them with very limited U.S. rights of a limited duration.

Mr. President, the Senate must make a decision with regard to the treaties which have been submitted by the President.

That decision should be based primarily on the content of the treaties and an assessment of how well they guard the interests of the United States.

However, the Senate should not ignore the circumstances which have surrounded the treaty negotiations and should not be swayed by treaty advocates raising the spector of violence as a reason for approving the treaties.

Furthermore, the emphasis on threatened violence shows the real weakness of other arguments being advanced in favor of the treaties.

I say that making concessions under threats of violence will only lead to more threats and more concessions—not just in Panama, but around the world.

Mr. President, how much time do I have remaining?

The ACTING PRESIDENT pro tempore. The Senator has 3 minutes remaining.

Mr. HARRY F. BYRD, JR. I yield back the remainder of my time.

The ACTING PRESIDENT pro tempore. The Senator from Virginia yields back his time.

Mr. ROBERT C. BYRD. Mr. President, Mr. Allen, I believe, has an order for 10 minutes.

The ACTING PRESIDENT pro tempore. That is correct.

Mr. ROBERT C. BYRD. I ask unanimous consent that I may be allotted that time.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE PANAMA CANAL TREATIES CABLE

Mr. McCLURE. Mr. President, 2 days ago the distinguished Senator from Kansas (Mr. Dole) released a State Department cable confirming that the State Department itself is aware that the Panamanian interpretation of the Neutrality Treaty is sharply different from ours.

To complement the information released by my colleague, I would like to bring to all Members' attention an Associated Press interview held with Panamanian negotiator Carlos Lopez Guevara last weekend. In the course of this interview he is quoted as saying,

It is sad to see that high officials of the United States government are affirming that these treaties give the United States the right to intervene . . . This Neutrality Treaty gives the United States the right to hope that Panama and all the countries in the world will respect the right of American ships to transit the canal, but that is the only right it has received.

I feel this interview is highly significant. Lopez Guevara's statements indicate the depth of conviction with which the Panamanians hold to their interpretation—and just how far that interpretation is from our own. It is obvious that a common understanding of the treaty language will have to be reached before Senate consideration of the documents can proceed any further.

At this time I ask unanimous consent to have inserted in the Record a translation of a story describing the AP interview with Lopez Guevara which appeared in the Monday, October 3, Spanish-language edition of the Miami Herald.

There being no objection, the translation was ordered to be printed in the Record, as follows:

(The following is a translation of a story which ran in the Miami Spanish language media Monday, October 3. It provides details of the Panamanian negotiators' reaction to the official U.S. interpretation of the neutrality agreement.)

This weekend the (Panamanian) negotiators refuted and contradicted the interpretations given the new Panama Canal treaties by Secretary of State Cyrus Vance and the American treaty negotiators Ellsworth Bunker and Sol Linowitz in their presentation before the Senate Foreign Relations Committee.

The denial was in reference to the statements made last week in the Senate by these officials on the controversial neutrality pact.

"It is sad to see that high officials of the United States government are affirming that these treaties give the United States the right to intervene," said treaty negotiator and attorney Carlos Lopez Guevara. "There is nothing in it that states this nor that could serve as a basis for American intervention."

In an interview with the Associated Press, Panamanian officials confirmed Saturday that the American officials not identified by Lopez Guevara were Vance, Bunker and Linowitz.

"This neutrality treaty gives the United States the right to hope that Panama and all the countries in the world will respect the right of American ships to transit the Canal," added the negotiator, "but that is the only right it has received."

This pact is separate from the Canal treaty which establishes the transfer of control over the sea lane to Panama at the end of the century, and has become the most sensitive issue of the public debate both here and in the United States.

THE PANAMA CANAL TREATY SHOULD BE AMENDED OR WITHDRAWN

Mr. DOLE. Mr. President, the morning papers carry a report that the State Department is seeking clarification of Panama Canal Treaty provisions from Panamanian officials. They are looking for public reassurances that the United States will have recognized defense rights under the treaty on permanent neutrality, and that we will have the right to priority passage during periods of crisis. It seems they finally woke up to the fact that the Senate is not prepared to ratify this treaty so long as these rights are ambiguous.

ASSURANCES NOT ENOUGH

But the Senate will not settle for verbal assurance on our defense rights under the treaty. We do not want pacifiers, we want protection. The treaty is a contract. And the only way to clarify a contract is to make its language as clear and precise as possible.

I have followed the established procedure for doing this, in introducing amendments and reservations to an ambiguous treaty. However, if the State Department is unwilling to accept the idea of congressional modification, maybe they should withdraw the treaty now, renegotiate with the Panamanians, and then resubmit the document to Congress.

It is specially troubling to me to think that if the State Department cable revealing serious disagreements between the United States and Panama over the meaning of the treaties had not been revealed, the Senate might have proceeded to ratify an agreement seriously damaging to U.S. security and economic interests. We would have done so, ignorant of vital information hidden under a State Department security blanket.

The State Department says it is maintaining a continuing dialog with Panama to seek clarification of differing interpretations of treaty provisions. While the department is looking for reassurances on U.S. rights to defend the canal and to gain priority passage through the canal, Panamanian statements to this effect will probably not be forthcoming until after the October 23 plebiscite in Panama.

I have no doubt that words of reassurance will flow fast and free after the Panamanian vote is over. But that will not explain away the understandings that top Panamanian officials attach to the treaties today. If they say one thing now, and another next month, how can we place confidence in their verbal assurances?

The proper course now is congressional modification. If the administration cannot accept this, then they should take the initiative and go back to the negotiating table now.

SWITCH IN PANAMA CANAL POSITION OF U.S. SHIPPING

Mr. THURMOND. Mr. President, almost unnoticed in the Panama Canal debate has been the switch from a position of "yes" to a position of "no" on the Panama Canal Treaty by the influential Liner Council of the American Institute of Merchant Shipping.

Mr. W. J. Amoss, Jr., a chairman of the council and president of Lykes Brothers Steamship Co., stated recently the proposed increased toll costs embodied by the treaty spell "sheer disaster for operators east of the canal." He is speaking of trade from Eastern seaboard States such as New England States, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North and South Carolina, Georgia, and Florida.

Mr. Amoss explained that the higher toll costs envisioned to support payments to Panama would result in diversion of some shipping with the ultimate costs being passed on to the American consumer.

He stated that shippers simply could not handle another 25 percent increase in canal tolls on top of the 45-percent increases added in the past 3 years.

Mr. President, this is an important statement and deserves attention by the Congress. I ask unanimous consent that an article entitled "Canal Toll Plan Sours Lykes Chief" which appeared in the September 20, 1977, issue of the Journal of Commerce be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

CANAL TOLL PLAN SOURS LYKES CHIEF—SUPPORT FOR PACT DROPPED BECAUSE OF TOLL INCREASE

(By Anita Schrodt)

NEW ORLEANS. A major U.S. steamship official has withdrawn his earlier endorsement of the new Panama Canal Treaty and is now opposing it after learning a 25 to 30 per cent toll increase is expected to be imposed immediately under the new treaty. W. J. Amoss, Jr., president of Lykes Bros. Steamship Co. here, expressed his opposition to the treaty at a meeting here recently with Deputy Undersecretary of Commerce Anne Wexler. "I told her she could expect massive commercial resistance to passing the cost of diplomacy to canal users," Mr. Amoss told The Journal of Commerce.

Mr. Amoss made it clear he spoke not only as Lykes president but also as chairman of the new Council of the American Institute of Merchant Shipping and as chairman of the new Council for American-Flag Shipping (CASO), which the AIMS Liner Council is forming independently.

Last Tuesday, based on an AIMS study which projected the treaty could be implemented without increasing canal tolls, Mr. Amoss publicly expressed his support of the treaty. However, upon receiving new communication from AIMS' Washington staff on Wednesday, Mr. Amoss reassessed his position.

COULD BE TOLERATED

"We have learned that negotiators, using as a basis a 1969 study by Stanford Research, informed the governor of the Panama Canal Co. that an immediate toll rate increase of 25 per cent could be tolerated and would be invoked as soon as the new Panama Canal Commission contemplated by the treaty was established, Mr. Amoss said. Further, the letter from AIMS President James Reynolds also informed Mr. Amoss of Sept. 8 testimony before the House International Relations Committee by Sol Linowitz, one of the treaty negotiators, that an increase of 25 to 30 per cent in tolls would probably be necessary to meet the costs of the new treaty.

"Commercial interests that use the canal, having already had a 45 percent increase in tolls in the last three years, topped off with rearrangements of methods of billing that resulted in further increases, simply cannot accept another increase in tolls," he said.

RECENT DEVELOPMENT

"The projection that another increase could be tolerated completely ignored recent developments brought by intermodalism and mini-landbridge," Mr. Amoss said, pointing out cargo now has an alternative route. "I told her it spelled sheer disaster for operators east of the canal and going westbound through the canal," he said, adding that "commercial interests would oppose adoption of the treaty if it would mean an increase in tolls to implement it."

The treaty requires 30 cents on the dollar per canal net ton (with the current rate at \$1.29 per canal net ton) be paid to Panama; that \$10 million annual for services go to Panama and another \$10 million annually go to the Canal Commission. Further, once those payments and the operating costs of the canal company are deducted, any excess yields in tolls up to \$10 million are to be paid to Panama annually.

TWO VITAL FACTORS

Mr. Amoss said the AIMS study upon which he based his original support of the treaty could only guess at two vital factors—the operating costs of the canal compa-

ny and the impact of Alaskan oil ships transitting the canal. "Apparently, the negotiators were more informed on these issues," he said. Lykes has already found it cheaper to divert three ships this year on their outbound New Orleans-Singapore voyage from the traditional canal transit to the Suez Canal and around Cape Horn.

According to Mr. Amoss, the New Orleans-Singapore run via Panama totals 11,933 miles; via Suez, 11,517 miles; and via the Cape of Good Hope, 12,921 miles, or about 2 and one-quarter days longer than through Panama.

"The only drawback to the Suez is the war risk insurance feature, which is an additional expense. But it still turned out to cheaper," Mr. Amoss said. "Such a diversion away from the canal is not yet economically feasible on Far East runs which include northern ports such as Hong Kong or Tokyo," he said.

114 TRANSITS

Last year, Lykes made 114 transits through the Panama Canal. Currently, it is costing Lykes about \$14,500 one-way through the canal with its Gulf Pacer class ships which serve the Far East trade. Mr. Amoss projected the cost for a one-way transit for a barge-carrying Seabee, comparable in size to a LASH barge ship or containership, would be about \$30,000.

Panama Canal tolls went up 19.5 per cent in 1974 and another 19.7 per cent in 1976. In addition, in 1974, additional ship space was judged to be susceptible to per-ton revenues. According to Mr. Amoss, that increase represented about a 5 per cent increase in tolls. "If you put it all together, the increase really comes to a total 52 per cent right now, compared to 1973," he said.

"The Panama Canal net ton is a space measurement approximately equal to about 100 cubic feet of enclosed ship space," he added.

Also at the meeting with Ms. Wexler Friday were Capt. J. W. Clark, president of Delta Steamship Co.; Edward S. Reed, director of the Port of New Orleans; C. M. Keeney, president of Equitable Shipyards (which moves its products through the canal); Charles Richardson, vice president of the Marine Engineers Beneficial Association in the Gulf; and C. Buck Hammond, president of Unit Rig Inc. of Tulsa, manufacturer of mining machinery.

COMMERCIAL ASPECTS

"We all expressed our concern about the commercial aspects of increasing tolls and said we hoped some arrangement could be made whereby there would not be a toll increase," Capt. Clark told The Journal of Commerce.

Although Delta does not presently transit the canal, it has in the past and is presently negotiating to purchase Prudential Lines U.S. West Coast-South American service which does use the canal. Mr. Reed, who said the board of commissioners of the port would formally consider the treaty at a meeting Thursday, said he was concerned that the treaty contained no indication of controls over rates and charges of the canal.

Noting that much of the U.S. grain is exported through the New Orleans area and much through the canal, with competitive pricing, he added: "Since grain exports are the U.S.'s best source of balance of payments loans, I think it is incumbent upon the Federal Government to closely scrutinize the possible effects of canal toll increases on the farm commodities exported from the U.S."

ANOTHER PANAMANIAN NEGOTIATOR DENIES U.S. INTERVENTION RIGHTS UNDER TREATY

Mr. DOLE. Mr. President, another Panamanian Treaty negotiator has spoken out to deny any U.S. rights of military intervention under the proposed Treaty on Permanent Neutrality for the Panama Canal.

According to the Foreign Broadcast Information Service, Panamanian negotiator Diogenes de la Rosa said in Venezuela on October 6 that the United States will not have the right to intervene militarily in Panama when control of the canal passes to the Panamanians after 1999. Whether or not his comments are directed at U.S. rights to intervene militarily on behalf of the canal's

neutrality is unclear from this report. However, the negotiator's remarks would certainly raise a question on that point.

As such, it is still another in a series of public statements by Panamanian officials that focuses doubt on just what our rights under section IV of the Permanent Neutrality Treaty are supposed to be, and just how they are to be correctly interpreted. It is still another reason why language in this provision must be clarified, in order to assure our right to protect the canal.

Mr. President, I ask unanimous consent that the full text of the television report, monitored in Panama City, be printed in the Record.

There being no objection, the television report was ordered to be printed in the Record, as follows:

PANAMANIAN NEGOTIATOR DENIES U.S. RIGHT TO INTERVENTION

The United States will not have the right to intervene militarily in Panama when control of the canal passes to the Panamanians in the year 2000, negotiator Diogenes de la Rosa said in Caracas today. He recognized that there is always the possibility, with or without the treaty, of unilateral action.

De la Rosa said in a news conference that there is nothing in the treaties that gives the United States the right to intervene in Panama. De la Rosa also said that a broad debate has opened in Panama to publicize the treaty so that the Panamanian people can vote in the 23 October plebiscite. Although de la Rosa believes there will be a majority vote in favor of the treaty, he would predict the numerical results of the plebiscite. He indicated that the new treaty has provoked criticism and opposition among some Panamanian sectors. He described this as healthy and necessary.

De la Rosa accused conservative U.S. groups of exploiting the U.S. people's ignorance of the Panama Canal in order to create opposition to the new treaty.

De la Rosa said that if the treaty is not ratified by the United States, Panama will have to seek new diplomatic alternatives for the solution of the problem. He explained that those new alternatives could be the unilateral denunciation of the 1903 treaty or to take the issue to the United Nations because the current treaty violates norms of international law and the UN charter. De la Rosa said that the other alternatives that we could implement will be determined by circumstances.

De la Rosa ruled out that the United States in the future will neglect the proper maintenance of the canal and that the equipment might have deteriorated when Panama takes over control of the waterway in the year 2000. He said that this would go against the U.S. national interest because even then its ships would be the ones that would use the waterway the most.

De la Rosa praised Venezuelan President Carlos Andres Perez, describing him as the Latin American ruler who has given greatest and fullest support to Panama's efforts to reach an acceptable treaty.

BRING ESCOBAR TO THE UNITED STATES; LET'S SEE WHO STANDS WHERE

Mr. HELMS. Mr. President, the Department of State has announced that Ambassadors Sol Linowitz and Ellsworth Bunker are reopening talks with Panamanian officials in an attempt to clarify the dangerously ambiguous sections of the Panama Canal treaties.

This procedure will be of little value. We will still end up with a document that will be open to different interpretations. The present interpretations are so diametrically opposed that one side or the other will have to make a compromise that would be fatal to its credibility, or they will have to agree upon another layer of ambiguity. As we have already seen in the past few days, such ambiguities lead to further misunderstandings, not to peace and comity.

Moreover, the procedure is of doubtful legality, because of the participation of Mr. Linowitz. On February 7, Mr. Linowitz took office as Special Representative of the President with the personal rank of Ambassador. He held this appointment on a 6-month basis under the provisions of 22 United States Code 901(c), which does not require Senate confirmation. The treaties were initiated on the very last day of Mr. Linowitz' appointment. It is noteworthy that the treaty drafts had not yet even been completed in all detail. So rushed was the initialing that the drafts could not even be made available to the Senate until the day before the signing ceremony on September 7.

The haste and confusion was imposed by the deadline of Mr. Linowitz' appointment. We are now seeing the bitter fruit of this haste and confusion: Not sufficient time was taken to clarify some of the key passages of the treaties. The documents are flawed both conceptually and in execution. And now it is clear that even the very meaning of the texts is at stake.

The fundamental cause of this current problem has been the desire of the State Department to bypass Congress as much as possible. If Mr. Linowitz had been appointed under a normal appointment, with unlimited duration, he would have come under the constitutional provisions of advise and consent. He would have come up before the Foreign Relations Committee for hearings. He would have come up before the full Senate for debate and confirmation.

But the State Department did not want this. As a result there was no examination of Mr. Linowitz' suitability for the job, and no scrutiny of the problem of apparent conflicts of interest.

Now it is apparent that he has negotiated a flawed treaty. But only a few weeks after he had gone on the job, it soon became apparent that he had problems with conflict of interest. After he had actually gone to Panama and begun negotiations, it developed that he was at the same time on the executive committee and the board of directors of the Marine Midland Bank of New York, which had multimillion dollar business interests in Panama. Mr. Linowitz finally bowed to public demand and resigned from Marine Midland. But he did not resign from the board of directors of Pan American Airlines, which also has substantial interests in Panama.

These circumstances cast doubt not only over his capability as a negotiator, but also about his objectivity. If the treaties had been clearly beneficial to the United States, these doubts could not be raised. But now such doubts are inevitable.

Mr. President, I understand that Mr. Linowitz' present status is that of "treaty adviser." But is he not really functioning as a negotiator, as a continuation of his more recent job? Is this not a flagrant flouting of the law? 22 United States Code 901(c) reads as follows:

(c) On and after the date of enactment of the Foreign Relations Authorization Act of 1972, no person shall be designated as ambassador or minister, unless that person is appointed as an ambassador or minister in accordance with subsection (a) of this section or clause 3, section 2 of Article II of the Constitution, relating to recess appointments, except that the personal rank of ambassador or minister may be conferred by the President in connection with special missions for the President of an essentially limited and temporary nature of not exceeding six months.

Mr. President, it may be argued that a treaty negotiation could not even be considered an "essentially limited" task. But at least the law is clear that such an appointment—that is an appointment without Senate hearings and confirmation—is strictly limited. This is an abuse of power to bring back the man who botched the job. He should not even be brought back as an adviser, since it casts doubt upon the legality of his previous appointment.

In any case, Mr. President, any "interpretation" or "understanding" that Mr. Linowitz brings back from these prolonged negotiations cannot carry the confidence of the Senate. Instead, the only way in which the Senate can be satisfied is to bring the Panamanian chief negotiator, Romulo Escobar Bethancourt, to the United States and have him appear before the requisite committees of Congress. Let the Members of both Houses question him to their satisfaction. Let these varying interpretations and diplomatic ambiguities be laid to rest once and for all. Unless we have treaty texts that can be presented to the people of both countries and understood clearly and in the same fashion, we do not have true agreement, and we do not have a secure relationship for the future.

Yesterday, I hand delivered a letter to the President in which I suggested that he urge Mr. Escobar to come before the Congress and to explain his interpretation of the treaties. I have had a fruitful dialog with the President on the treaty problems over the past several months. I disagree with the President on the treaties, but I commend him for his candor and his personal efforts to provide reassurance for those who are opposed. I am confident that he will consider this suggestion very carefully as he has considered such suggestions in the past.

Mr. President, I ask unanimous consent that the letter I sent to President Carter yesterday be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

WASHINGTON, D.C.,
October 6, 1977.

HON. JIMMY CARTER,
The White House,
Washington, D.C.

DEAR MR. PRESIDENT: I want to thank you, again, for what has been, for me, a meaningful dialogue on the subject of the Panama Canal treaties. I have appreciated your candor and your personal efforts to provide reassurance to those of us who are not persuaded that the proposed treaties are wise.

However, as a United States Senator, I feel obliged to convey to you my apprehension that a crisis of confidence has arisen in the Senate. This is the result of the widely divergent interpretations of ambiguous sections of the treaty documents by our negotiators and the negotiators of the Republic of Panama. Since these sections happen to be vital to our security and the security of the Canal, it is obvious that the Senate cannot even judge the value of the treaties until it knows the meaning of the treaties, as agreed to by both parties.

Our negotiators have testified at some length on the meaning of the treaties according to their understanding. But the much-publicized interpretations of the Panamanian Chief Negotiator, Romulo Escobar Bethancourt, appear to be at variance. The only way to resolve this vital matter is not through the U.S. State Department's interpretations of Mr. Escobar's interpretations, but through direct discourse with Mr. Escobar.

I, therefore, suggest that you invite and urge Mr. Escobar to appear before the appropriate committees of the U.S. Congress so that we will know firsthand and in an appropriate forum just exactly what the Republic of Panama understands to be the meaning of the treaties.

Again, I thank you for your personal courtesies in this and other matters.

Respectfully,

JESSE HELMS.

PANAMA CANAL TREATIES—NO. 14

Mr. ALLEN. Mr. President, over the past days and weeks, I have been discussing here on the floor of the Senate certain major defects in the proposed Panama Canal treaties which have been sent by the administration to the Senate for consent.

I say "consent," because there are many treaties by the administration without our having had an opportunity to advise with the administration or with the negotiators as to the content of the treaties.

In the course of these discussions, in the course of the studies we have each undertaken of these proposed new arrangements with Panama, and in the course of the various committee investigations, in my judgment the Senate has now reached a point at which the treaties are sufficiently well understood by us all to recommend to the President of the United States that the treaties be withdrawn.

Certainly, my own conclusion after careful deliberation is emphatically that the Senate should not give its consent to these treaties in their present form and, furthermore, that these treaties are so defective as to render inappropriate any attempt to correct them by amendment, reservation, or understanding or through any extrinsic exchange of notes or similar device.

Mr. President, it seems to me that if we do add many amendments to the treaties, if we add reservations to the treaties, if we add understandings to the treaties, we would end up with a patchwork document; and I do not believe we should have to go to other documents to determine what the treaty means. I think we should have a treaty that, within the four corners of the document itself, will consist of wording that explains exactly what the agreement is.

Law school freshmen learn in their early days, in their course on contracts, that a contract requires a meeting of the minds. There has been no meeting of the minds here, because the Panamanian negotiators say the treaties mean one thing and our negotiators say they mean something else.

I must say that the drafting of these treaties was done in a slipshod fashion, if we are not able to draft a document by which both sides understand exactly what the provisions of the treaty mean.

We should not have negotiators leaving the negotiating table and then, as soon as the treaties are signed by the heads of States of the two countries, have disagreements as to what the treaties mean.

Of course, I contend—and I feel that it is a correct assessment—that if we amend the treaties, the treaties are dead. They have to go back to be renegotiated. So if we do amend the treaties, as distinguished from adding reservations and understandings, a treaty as amended, whether it is voted by the Senate or voted down by the Senate, could serve as a guide for our negotiators, indicating how the people of the United States, acting through their duly elected Senators, feel about the treaty. They could use this treaty, as so amended, if it is allowed to stay before the Senate, as a guideline to redraft the treaty.

I believe we need to have the treaties withdrawn and renegotiated, because the points have been made to the Senate and to the administration that the provisions of the treaties have brought forth conflicting interpretations by the parties. I feel, therefore, that the best course would be to withdraw the treaties at this time, rather than to have the Senate working on trying to reshape the treaties, as it must do, as must be done.

If these treaties stay before the U.S. Senate, the only question will be whether these revisions will be made in the form of amendments, which would kill the treaties—require them to go back to the negotiating table—or whether the amendments will be by reservations, unilateral statements of our understanding, reservations which would be to the resolution of ratification.

If agreed to by the Panamanians, it would become effective, and then understandings, of course, do not have to be acquiesced in by the Panamanian Government.

But the only safe way to do it is, if the treaties are to remain before the Senate, to amend the treaties at the basic points that need revision, and not handle it by reservation or understanding. So that if we seek to correct these defects by amendment, reservation, or understanding or through any extrinsic exchange of notes or similar device, I believe we will have a document that does not tell the contract and will have to refer to other documents to find out what was meant by the wording of the treaties. As I say, we ought to have a treaty that in and of itself explains the understanding.

I believe my view of the matter is shared by a sufficient number of Senators to warrant an immediate and complete withdrawal of the treaties by the executive department and a reinitiation of negotiations with Panama by the Department of State along lines not inconsistent with opinion in the Senate and in the country. Accordingly I do strongly urge and advise the President of the United States forthwith to withdraw these unfortunate, ill-conceived, and poorly drafted documents.

We have reached this state of affairs, Mr. President, because of what I conceive to be a fundamental error in the manner in which the treaties were negotiated from the outset. I refer to the impenetrable veil of secrecy which surrounded the treaty negotiations right up to the moment of their signing 1 month ago on September 7, 1977. This veil of secrecy prevented Senators—and, indeed, the Congress—from having any role whatsoever in advising the President as to the best course of action to follow in striking a bargain with Panama. Perfunctory briefings containing little information and seeking no advice, to be sure, were conducted. But, indeed, how could sound advice be given the President in any circumstance so long as the real substance of the negotiations—the real substance of the treaties under negotiation—was wholly unknown to Senators and top secret even at the highest levels of the administration?

The authors of the Constitution wisely provided for a check on the unrestrained power of the executive department in foreign affairs by requiring the advice of the Senate and its consent by a two-thirds vote to any treaty arrangement with a foreign state. Certainly, at that early time in our history the authors of the Constitution sought and contemplated a system under which the

Congress and the Senate took the lead in directing the foreign policy of the country and a system under which the Executive carried out the desires of the people in foreign policy as expressed by the people's representatives in Congress assembled.

While I can acknowledge that in practice the executive department has more and more taken the lead in foreign policy matters, I cannot concede—and it would be improper for the Senate to concede—that we have reached a stage in our history at which the Senate is prepared simply to rubberstamp any foreign policy proposal put on the table by the President. Our country will suffer immeasurably and irreparably if the Senate ever acquiesces to the desires of the executive department to the extent that treaties presented to the Senate are simply rubberstamped—I am confident the Senate is not going to rubberstamp these treaties. Approval should come, Mr. President, only after probing investigation, full discussion, and, above all, substantial prior advice.

So, Mr. President, these proposed Panama Canal treaties were negotiated in secret without the involvement of the Congress and hence without the involvement of the American people. The price of that secrecy must now be paid. These treaties are not acceptable to the American people, not acceptable to the Congress, nor in my judgment are they acceptable to two-thirds of the Senate.

Had the advice of the Senate been seriously sought, I am certain that these documents would not have been presented to us in their present form. Had the advice of the Senate been seriously sought, I am certain any proposed arrangement with Panama would have provided for an adequate defense of the canal to insure the national security interests of the United States. Had the advice of the Senate been seriously sought, these treaties would have established a treaty regime under which the United States was guaranteed the right to take appropriate action to preserve vital national interests at this key strategic location. Had the advice of the Senate been seriously sought, no treaty would have been negotiated which denied the United States its sovereign right to enter into an agreement with a third state for the construction of a second canal—and we do not have that right for 23 years under the provisions of the treaty. We cannot even negotiate with any other nation in the Western Hemisphere about another canal for the entire life of the first treaty. Had the advice of the Senate been seriously sought, no agreement would have been negotiated which provided for the massive cash payments to Panama now contemplated. Finally, Mr. President, had the advice of the Senate been seriously sought, no treaty would have been concluded which violated basic American constitutional principles by denying to the House of Representatives a role in a proposed cession of U.S. territory. But, Mr. President, the advice of the Senate was not sought, and now that the lesson has been learned, I sincerely hope and trust that the President of the United States will recognize that an error has been made and will take the corrective action I suggest.

Few, of any of us would assert that no new treaty with Panama should be concluded under any circumstances, but, Mr. President, not these treaties—not these treaties.

The mistakes made in this instance are not novel. As many Senators in this Chamber today undoubtedly recall, perhaps from

their own experience, in the past the executive department made a practice of including Senators in negotiating delegations sent to foreign lands on missions undertaken for the purpose of discussing important treaty relations. Unhappily, that sound practice has fallen out of use. But never before in the history of our country has the Senate been so completely excluded from any participation in the negotiating process, nor has the Senate ever been so completely denied a role in giving its advice to the President on such an important and critical foreign policy matter of great national significance; never before has the Department of State so completely insulated the President from the Senate and from the people, as has been done in negotiating these proposed arrangements with Panama. The exclusion of the Senate and the Congress and the people has been total.

The only past situation which might be said to be even remotely comparable was President Woodrow Wilson's decision to ignore the advice of the Senate in negotiating and signing the Treaty of Versailles at the conclusion of World War I. The result of that mistake is well known. President Wilson, a leader whom I have always admired as a great statesman—I was born on his birthday, I will say—made the serious error of assuming he could present the Senate of the United States with the Treaty of Versailles to establish the League of Nations and, on the strength of his own popularity, insist upon its approval. Wilson is reported by some to have stated to Senators in a meeting at the White House during consideration of the Treaty of Versailles:

I do not wish to see an "i" dotted or a "t" crossed.

The result, of course, was that he saw the complete defeat of what he considered to be his greatest potential contribution to the history of man and nations.

One of the 14 points which President Wilson set forth as a basis for the negotiation of the Treaty of Versailles was that he would support only "open covenants openly arrived at." In that respect, at least, President Wilson demonstrated his great statesmanship by recognizing the impropriety of secret negotiation of secret agreements touching the vital interests of a democratic state. A gangster dictatorship—and the Government of Panama is thought by many, including myself, to be a gangster dictatorship—is able to operate behind closed doors and, indeed, could not operate in the glaring light of public disclosure. But, Mr. President, our country is a free nation composed of free citizens, and negotiations by our Government, regardless of subject matter, must be open to debate and full discussion in all forums. In a free country open and frank discussion does not impede foreign policy negotiation; in a free state, open discussion guarantees honesty in relations with foreign states and insures that the executive department does not take a position in foreign policy inconsistent with the will of the people and, therefore, not supportable in action.

The President has belatedly taken a half-step in the right direction by seeking the consultation of certain Senators in devising so-called clarifying language to clear up only two of the many grave flaws in these treaties. But, Mr. President, let us not participate in the charade of pretending that clarifying language can resurrect

these dead instruments. These documents are inherently flawed. No amount of understandings with the present dictator of Panama can correct the clear language of these treaties which deny to the United States basic rights vital to our security and commerce.

Even an understanding reached with a legitimate foreign government could not correct the clear unambiguous language of these treaties which denies to the United States the right to intervene to insure the neutrality of this strategic canal and which would put our warships in an emergency on the same footing with merchant vessels carrying bananas, because the Panamanians say our warships are just going to have to get in line with the other ships. We do not have any priority. So we cannot accept this, of course.

Even an understanding with a legitimate democratic government could not correct these flaws. How, then, can we expect a so-called understanding reached with a bankrupt government composed of political criminals and petty intriguers, of Communists and Communist dupes, of profiteers, racketeers, and smugglers—how can we expect an understanding reached with a government of that ilk to have any validity in the eyes of the people of a free republic governed by freely elected representatives? So, please, spare us the charade.

Let us have instead a frank decision that these documents must be withdrawn. Let us have instead an effort thereafter to negotiate openly with the advice of the Senate, with the participation of the Congress, and with the informed consent of the American people to the end that new proposals may be submitted to the Senate in a form to which the Senate can in good conscience give its consent. In that process let us reeducate our negotiators and let the people be.

If these treaties are not withdrawn, then certainly Senators would find it proper to continue a detailed analysis of each and every provision of the treaties, of the executive agreements, of the annexes to the executive agreements, of the notes, of the protocols, of the maps, of the appendices, and of all the other documents and evidence bearing on this subject. The major flaws have already surfaced; yet if need be, much work remains to be done; if need be, many questions must be answered; if need be, the full light of public knowledge must illuminate every nook and cranny of these complicated documents and of the complicated procedure by which they were negotiated. I hope that process will not be necessary. Certainly, we have learned enough already to warrant the step I recommend.

The ACTING PRESIDENT pro tempore. The time of the Senator has expired.

Mr. ALLEN. Mr. President, I thank the Chair.

PANAMA CANAL TREATY TESTIMONY

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations continued hearings on the Panama Canal treaties today receiving testimony from the following witnesses:

First. Adm. Thomas H. Moorer, retired.

Second. Adm. Elmo R. Zumwalt, Jr., retired.

Third. Gen. Maxwell Taylor, retired.

Fourth. Panelists (Canal Zone residents): Mrs. Patricia Fulton, president, Pacific Civil Council; Mrs. Charlotte Kennedy, president, Cristobal-Margarita-Brazos Heights Civic Council; Mr. Harold Green, president, Gamboa Civic Council; and Mr. Louis Sattorosi, vice president, Canal Zone Federation of Teachers.

I ask unanimous consent that the prepared texts of the statements of these witnesses be printed in the RECORD.

There being no objection, the material was ordered to be printed in the Record, as follows:

STATEMENT OF ADM. ELMO R. ZUMWALT, JR., U.S. NAVY (RETIRED) ON THE PROPOSED PANAMA CANAL TREATIES BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE, MONDAY, OCTOBER 10, 1977

Mr. Chairman and Members of the Committee: I am proud to be here to testify on the Panama Canal Treaties. As an American who is proud of what our Nation stands for, I am happy to give general support to two treaties which replace a colonialist relationship with a respectable long term partnership.

But I am also able to support these treaties from the national security perspective of one who had responsibility, for the four years ending July 1, 1974, as Chief of Naval Operations (CNO) and as a member of the Joint Chiefs of Staff (JCS).

My position on these treaties is a continuation of the views I held as CNO. These views were last officially expressed when I joined the other members of the JCS, in June 1974, in supporting renegotiation of the existing treaty with Panama. Admiral Moorer, then Chairman of the Joint Chiefs of Staff, was a very persuasive advocate of the need for a new treaty.

As a private citizen, on September 6, 1977, I stated my support of the two treaties you are now considering, in a letter to 96 Senators. The letter said:

"I think you will know that I am among those who have been concerned about the decline in our military capabilities, the impressive increase in Soviet strategic nuclear capability and conventional military power, and the way in which the Soviet Union is capitalizing on its burgeoning military superiority to the disadvantage of the U.S. and her allies.

"It may therefore be of interest to you to know that even in that light, in my judgment, the ratification of the Panama Canal Treaties by the Senate would enhance and non-ratification by the Senate would harm United States security interests."

Today, I will enlarge on that statement.

My support of the two treaties is based on the following national security rationale:

(1) The use by the U.S. of the Panama Canal is a vital requirement of national security:

(a) Based on calculations on which I have participated, both as a member of the JCS and subsequently as a private citizen, it is my judgment that the U.S. has surrendered strategic nuclear superiority to the U.S.S.R. in a process set in motion about 10 years ago and accelerated in the last five or six years. This strategic nuclear superiority makes it likelier that the Soviet Union would risk conventional war under the umbrella provided by her nuclear forces.

(b) Based on studies on which I was briefed as CNO and subsequently, it is my judgment that NATO has surrendered conventional military superiority in Europe to the Warsaw Pact. This means that the Soviet Union is likelier to risk conventional war in Europe or elsewhere.

(c) I testified as CNO that the odds of U.S. victory in a conventional global war at sea with the Soviet Union shifted from favorable to unfavorable in 1971 and became progressively worse. The present CNO testified last April that "in the event of conflict, U.S. forces could retain control of the North Atlantic sea lanes to Europe, but would suffer serious losses to both U.S. and allied shipping in the early stages. U.S. ability to operate in the Eastern Mediterranean would be uncertain *at best* (underlining added). U.S. fleets could hopefully keep open the sea lines to Hawaii and Alaska, but by reason of the shortages of sea control and mobile logistic support forces, *the U.S. would have difficulty in protecting the sea lines of communication into the Western Pacific*" (underlining added).

I think it is clear that Japan, the Philippines, Taiwan, South Korea and our allies in the Middle East could not be supported by U.S. naval forces, today, in a global

conflict with the Soviet Union. This makes it likelier that the Soviet Union would risk war at sea.

(d) The only chance to save Europe in a conventional war would be by the reinforcement that could only be done on the necessary scale with naval support. Such support could only be obtained by abandoning the Western Pacific and pouring ships from the Pacific into the Atlantic in the crisis buildup phase. There are plans to make such redeployments.

(e) Alternatively, if there developed a contingency in the Western Pacific requiring support of our allies there, as in the Korean War and as in several phases of the SEA War, the Canal would be needed to bring ships and logistics from the Atlantic into the Pacific.

(f) It is difficult to visualize any major contingency in either ocean that would not require support from the other ocean via the Canal.

(g) Admiral Moorer testified recently before the House International Relations Committee: "—we do not have a two-ocean Navy. In recent years, the Navy has been rapidly reduced from 900 ships to less than 500. All war plans and all contingency plans are infeasible unless one assumes that full use of the Canal will be available." I agree.

(h) In this era of U.S. military inferiority, the ability rapidly to redeploy from one ocean to another is the only feasible way quickly to bring the kind of naval power to bear which might be sufficient to deter Soviet actions. It is also the means by which the U.S. can select which part of the West's maritime alliance to try to save if conventional war comes. In a long war against lesser powers, such as occurred in the Korean and SEA Wars, the Canal is badly needed to permit on-scene forces to be sustained by deployments from the fleets of both oceans.

(2) The U.S. is the only nation in the Western Hemisphere with the capability to defend the Panama Canal from an external threat by the Soviet Union.

(3) But the cooperation of a favorably disposed government in Panama is needed to provide a reasonable prospect of defending the Canal from an internal threat.

(4) The U.S. is much likelier to have the Canal to use in a crisis if the U.S. and Panama have an arrangement which optimizes the ability to handle external and internal threats. These treaties are an important step in providing that optimization.

(5) The present arrangement is non-optimal. Our excessive zeal not to make treaty changes affecting our ability to deal with the external threat has increased the internal threat. The present relationship is a colonialist anachronism which is no longer feasible for a democratically constituted nation to maintain. Even if the U.S. has not surrendered its military primacy, it would not be feasible to defend the Canal if the Government of Panama did not cooperate.

(6) Soviet strategy obviously places high priority on decreasing the probability that the Canal would be available to the U.S. in crisis or in war. The Soviet strategy is likelier to succeed if the treaties are not ratified.

(7) The existence of a sea level canal, able to handle our aircraft carriers and supertanks would enhance national security. The achievement of a sea level canal with a regime suitable to U.S. security interests is likelier if the treaties are ratified.

(8) The near term treaty would clearly retain U.S. control and defense rights through this century. The long term treaty is less clear that the U.S. rights—(1) to ensure availability and (2) to ensure priority transit for U.S. naval ships—continue in the next century. The Administration has assured me that they do. Their national security witnesses, in whom I have confidence, have assured you that they do. I am confident that the U.S. Senate's ratification process will make these clarifications part of the official constitutional process. Under this assumption, I recommend ratification of the treaties from a national security point of view.

STATEMENT BY ADM. THOMAS H. MOORER, USN (RET.), BEFORE THE U.S. SENATE
FOREIGN RELATIONS COMMITTEE, OCTOBER 10, 1977

Mr. Chairman and Distinguished Members of the Foreign Relations Committee, I am honored to be here as a witness. I would like to emphasize at the outset that I am not here representing a particular group, an organization, or a political party. Rather, I am here as a concerned citizen who has had far more than average involvement in the Panama Canal as it relates to the vital security of the citizens of these United States. Accordingly, I will speak primarily in terms of global maritime strategy.

My military experience during the last twelve years of active duty, from 1962 to 1974, offered me some extraordinary and unique opportunities to assess the impor-

tance of the Panama Canal to the United States, as well as its value to our Allies and friends and, indeed, to all maritime nations.

My evaluation of this waterway as an invaluable possession of the United States was intensified in 1962. At that time I was Commander, Seventh Fleet, operating in the Western Pacific. Frequently my fleet's capabilities depended on the prompt arrival of supplies from the Atlantic seaboard, supplies loaded aboard ships which were utilizing the Panama Canal.

From the Seventh Fleet I went to Commander-in-Chief, Pacific; from there to Commander-in-Chief, Atlantic, and NATO's Supreme Allied Commander, Atlantic; from there to Chief of Naval Operations and from there to Chairman of the Joint Chiefs of Staff. Each of these commands provided unique opportunities, and sometimes urgent reasons, to evaluate the Panama Canal. I saw this strategic waterway from many vantage points and under stressful circumstances.

As Commander-in-Chief, Pacific, I recall in some detail the Tonkin Gulf era of 1964. During that period I saw the Panama Canal as a conduit for rapid reinforcement from the Atlantic Fleet should the naval forces of the Soviet Union or mainland China become involved in the Vietnamese War. The U.S. high command was never sure during those early phases of the war of the intentions of either the Soviet Union or mainland China. We knew they had the naval and air capabilities to make trouble and therefore we had to draw up contingency plans for such eventualities: In order to equalize the wartime exposure and hardship throughout the entire Navy, large numbers of Atlantic Fleet units were continuously rotated through the Canal to the combat theater in the Pacific. In addition, as the Pacific Fleet Commander I looked to the Atlantic side for rapid logistics support. The U.S. Army, the U.S. Air Force, the U.S. Marine Corps and the U.S. Navy all required a continuous and heavy flow of logistic support; such necessities as fuel, ammunition, spare parts and food. Our allies fighting with us in Vietnam also required considerable support from the United States. If the Panama Canal had not been open and available, the war in Vietnam would have been much more difficult and costly to conduct. This conclusion is also true for the war in Korea. Going back a few years, there is no question but the availability of the Panama Canal shortened World War II by many months.

To give you some idea of the magnitude of Panama Canal usage and its relationship to military operations, in 1963 there was a total of 300 U.S. Government transits through the Panama Canal. As the Vietnam war escalated, the number of Government ships transiting by 1966 had almost doubled. The records show for that year—1966—a total of 591 Government ships transited the Canal. Most of these ships were carrying critically needed logistics support to the forces operating under my command.

As Commander-in-Chief, Atlantic, and NATO's Supreme Allied Commander, I saw the situation at Panama in another perspective. That was for the period 1956 to 1967. The war in Vietnam was still expanding, but now I was looking at the Canal not only as a means of sending support to the Commander-in-Chief, Pacific, but also from the Atlantic perspective. I saw the possible need to reverse the flow of ships through the Canal, particularly if the situation deteriorated in the Middle East or in the Caribbean during those volatile months of tension and conflict in both these areas.

Both in our U.S. planning and in our NATO planning we envisioned contingencies calling for reinforcements from the Pacific area to the Atlantic. We clearly foresaw the need for transfer of combatant tonnage, Army and Marine divisions, and in particular we saw the need for transfer of amphibious lift.

As Chief of Naval Operations I had to look at the Panama Canal as an essential means of equalizing the strength and providing the balance between the Atlantic and Pacific fleets. The Canal made it possible to pre-position certain types and tonnages, but always with the knowledge that the balance could be shifted to meet unforeseen situations. The Panama Canal gives the naval planner much flexibility and versatility that he would be deprived of without it.

As Chairman of the Joint Chiefs of Staff I became even more sensitive to the strategic value of this U.S. Canal as a means of protecting the security of the United States. My job as Chairman involved all of the Armed Forces of the United States—their collective requirements—and I was primarily responsible to the President for their ability to carry out their roles and missions as assigned by the Congress. Any Naval Commander acting in that role in wartime will immediately perceive that it is vital to U.S. interests to retain complete ownership and control of the Panama Canal.

In view of the above I am very much concerned about the proposals to surrender the Panama Canal to a leftist oriented government allied with Cuba. There exists

the potential danger for giving this U.S. advantage to a man who might allow or might be persuaded that it was in his best interest to permit Soviet power and influence to prevail by proxy over the Canal, in much the same manner as happened in Cuba. I was convinced as Chairman of the JCS—and I remain convinced today—that if the Soviet Union ever gained even proxy sovereignty and control over the U.S. Canal Zone and Canal through Cuba, U.S. security as well as U.S. prosperity would be placed in serious jeopardy.

The United States would be placed in jeopardy because interocean mobility would be threatened. The mobility of allied commercial shipping and naval forces would face the same threat. The economic lifelines of the entire Western Hemisphere would be needlessly jeopardized, and the point is: there is *no point* in surrendering this vital interest. Also, by relinquishing control of the Canal Zone and the Canal, we would force all those nations who depend on our power and leadership to accommodate to the adverse implications of such action on our part. Recent history clearly indicates that the Canal Zone could quickly become the satellite base of an adversary. The advocates of this proposed treaty do not appear to take this factor into account.

The Panama Canal is one of the four maritime gateways of the world, together with the Malacca Straits, the Suez Canal, and the Gibraltar Straits. Anyone who reads Soviet literature concerning maritime affairs soon learns that the Soviets fully understand the strategic importance of the Panama Canal, even if some here in Washington do not. In my view, the prime reason for the burdensome support of Cuba by the Soviet Union is related directly to the interest in the Canal as they greatly expanded their maritime capabilities, both warships and merchant ships. We have in fact a Torrijos-Castro-Moscow axis. Castro has sent thousands of troops to Africa aboard Soviet ships. He has been to Moscow where he was greeted with open arms. Torrijos has been to Havana where he has been decorated by Castro while both extolled the success of their respective revolutions. He has also been to Libya to visit Qaddafi who, next to Castro, is the most active international revolutionary. When Torrijos overflew Havana on his return from Washington to Panama after the ceremonies last month, he sent the following message to Castro: "On my return trip to my country and flying above the sky of Cuba, I salute you with friendship always. I wish that the Cuban people under your skillful leadership continue its ascendant march toward progress. In Latin America your name is associated with feelings about dignity that have been channeled toward the ending of a shameful period of colonialism."

In addition, a large Russian commission has recently visited Panama seeking concessions and offering economic assistance.

Mr. Chairman and Members of the Committee, do not be surprised, if this treaty is ratified in its present form, to see a Soviet and/or Cuban presence quickly established in the country of Panama. Such a presence will seriously complicate the exercise of the claimed "right" of the United States to intervene. (I can find no such specific right contained in the treaty.) In any event, any confrontation then becomes one with the Soviets rather than with the Panamanian guerrillas or terrorists. With the Soviets already on the scene fighting our way in will not be simple. A permanent U.S. presence on the other hand is the only feasible posture.

In view of the above, Mr. Chairman, I have yet to hear any convincing justification advanced as to why the United States should willingly sacrifice the strategic and economic advantages afforded the United States and, for that matter, all the nations in the Western Hemisphere by our exercise of full control of the Panama Canal as provided for in the current treaty. In fact, stripped to the essence I have heard only three reasons put forward in support of the proposed treaty: (1) by signing the new treaty we will divest ourselves of the stigma of colonialism harped on by Mr. Torrijos and thereafter everyone will love us; (2) if we do not surrender the Canal some unknown individuals in the Isthmus of Panama will blow it up; (3) the Canal is not of much use anyway. Traffic between oceans is a convenience but is not vital. Further, the big ships of the Navy cannot use the Canal and only about 10 percent of the merchant ships passing through the Canal are U.S. flagships—so why the concern?

Let me briefly discuss each of these reasons in turn.

(1) The United States does not have to apologize to anyone for its generous outpourings of blood and treasure in an effort to assist the underprivileged and make life more peaceful and more livable for everyone. This Committee has participated in and masterminded our aid program for years. However, from observing the attacks on the United States in the United Nations and other places, it is apparent that a great nation such as ours cannot buy affection. One more move in this direction in my view will have little or no effect. What we should strive for is not

affection but respect. I am seriously concerned about the trends in recent years where in we have withdrawn from Vietnam, are planning to withdraw from South Korea, have lost considerable influence following the Angola affair, and overall are suffering a gradual change in the perception by the nations of the world of the will and determination of the most powerful democracy in the world.

(2) Even since the negotiations were initiated with Panama in 1964 the rationale has been advanced that if the United States did not divest itself of the Canal the Panamanians would sabotage it. To respond to this concept to me would be a retraction under threat. If this is to be our course of action in the future we might as well throw in the international towel. One should note from a practical point of view that the Panamanians enjoy the highest per capita income of any of the contemporary Latin American countries because of the presence of the Canal. The activities surrounding the presence of the Canal contribute about one third of the employment and one third of the gross national product to Panama. If they were to attempt to damage or sabotage the Canal they would be doing nothing more than cutting off their nose to spite their fiscal face. Furthermore, they would be the ones who would be committing violence, not the United States. To me a pulling back under threat will simply lay our country open to additional threats and we will lose the respect of which I spoke. Under such a condition one could expect many of the nations of the world to tilt toward those who they know are willing to take a firm stand in their national interest.

(3) So far as the question of a two-ocean navy and the passage of aircraft carriers through the Canal is concerned, let me say first that we do not have a two-ocean navy. In recent years the Navy has been rapidly reduced from over 900 ships to less than 500, while the Soviets are engaged in a rapid expansion of their fleets of warships as well as merchant ships. A large majority of our war plans and contingency plans are infeasible unless one assumes that full use of the Canal will be available. With respect to the large carriers, the Navy has only 13 of these ships. The vast majority—well in excess of 90 percent—of the ships of the Navy can transit the Canal and will be required to transit the Canal. I should note that the other alternative, namely going around Cape Horn, will add 8,000 miles, 25 to 30 days and a considerable increase in the cost of fuel to naval operations. In wartime the 30 days could well be vital.

As far as the big merchant ships are concerned, it is true that only about 10 percent of the ships flying the U.S. flag transit the Canal. But that is not the point. It is well known that the United States has a very small merchant marine and that the shipping interests in our country, for various legal and fiscal reasons, resort to what is known as a "flag of convenience." What really counts is the tonnage which transits the Canal enroute to and from ports in the United States. It so happens that out of about 14,000 ships that transit the Canal, 8,000 are either enroute from or bound for U.S. ports.

So much for these three reasons. Finally, Mr. Chairman, there are several questions somewhat outside my purview but troublesome nevertheless, and I will simply list them for you.

(1) Do the negotiators for Panama and the United States have the same perception as to the real meaning of the language in the treaty? Public statements by both sides subsequent to the negotiations seem to indicate otherwise. Certainly this matter should be cleared up without delay. Let me give you examples of conflicting statements which to me are matters of grave concern:

The proponents of the treaties state that Article 4 of the treaty concerning the permanent neutrality and operation of the Panama Canal guarantees our continuing freedom of action for unilateral action to maintain the Canal's neutrality. I can find nothing in Article 4 which guarantees to the United States the right to unilaterally intervene for any purpose.

Article 5 states that only Panamanian forces will be based in Panama. In a radio broadcast on 24 August Mr. Escobar Bethancourt said and I quote: "The Pact does not establish that the United States has the right to intervene in Panama. The word was discussed and eliminated * * * the Neutrality Pact does not provide who will say when neutrality has been violated."

Again, on September 15, General Omar Torrijos at the opening of the 10th Congress of the Panamanian Students Federation at the Augusto Samuel Boyd National Agriculture Institute in Divisa, Herrera Province, said: "I am not afraid, nor am I denying, that we signed a clause which if misinterpreted by future U.S. generations could give rise to intervention. But I am not afraid, I know the youth that we are producing. And in order for there to be intervention there must be a people willing to accept intervention, and these people have no intention of accepting it." This statement was followed by rousing applause.

Again, on the subject of guaranteeing U.S. flagships priority passage, Article 6 only guarantees U.S. ships "expeditious" not priority passage. Mr. Escobar Bethancourt also disagrees with this interpretation testified by our negotiators. Quoting him once more: "Expeditious passage does not mean privileged passage. As a matter of fact the concept of privileged passage was rejected . . . if after examining the provision the Gringos say 'I want to go through first,' then that is their problem with the other ships waiting there. We cannot go that far."

Mr. Chairman and Members of the Committee, in view of the above statements I do not think that anyone can contradict the fact that there is a wide divergence in the interpretation of the meaning of the treaty concerning neutrality between the two sides. This is cause for grave concern. If not cleared up in advance, this treaty does not eliminate problems—it makes them, and big ones at that.

I would note that representatives of the Defense Department who claim primary credit for the treaty concerning the permanent neutrality and operation of the Panama Canal, as well as members of this Committee frequently make the point that the important objective is passage and not ownership. Mr. Chairman, I submit that ownership and control on one hand and priority passage on the other are synonymous. In view of the statements by senior Panamanian officials, it is clear to me at least, that the only way for the United States to guarantee priority passage is to maintain control and ownership. Mr. Torrijos and Mr. Bethancourt have obviously taken a similar position.

(2) What will Panama do with a 2,000 percent increase over the 2.3 million dollars she received last year as income from the Canal? To me that appears to be a fantastic amount for a country with a population not much larger than Detroit. Where will the money really go?

(3) If the O.A.S. nations so strongly support the treaty, how do we account for the absence of the presidents of the two largest and most influential countries at the signing ceremonies in Washington a few weeks ago?

(4) In the event that the tolls are raised 30 percent resulting in serious impact on the economies of the other Latin American countries—particularly those on the west coast of South America—will these countries continue their strong support of the proposed treaty or will in the final analysis the U.S. taxpayer be asked to foot the bill in order to make certain that everyone loves us?

There are other questions which concern me, Mr. Chairman, but I think I will simply close by saying that regarding the question of control and ownership of the U.S. Canal Zone and the Canal I am satisfied with the Supreme Court's decision in the famous *Wilson vs. Shaw* case to the effect that the United States does in fact have legal control and ownership as if she has sovereignty for the purposes enumerated in the Treaty of 1903. This ruling was reaffirmed as recently as 1972. Also, our Constitution states in Article IV, Section 3, Clause 2, that only Congress has the authority to dispose of U.S. territory and other property of the United States. The language in the Supreme Court's decision of 1907 is quite precise. It is not ambiguous. So is the language in our Constitution. Since the Supreme Court's decision of 1907 still stands—it has never been overruled—and since the Constitution in my opinion is still the soundest governing document in existence, I can only conclude that we would be well advised to abide by such documents in our negotiations with other countries.

Thank you Mr. Chairman.

STATEMENT OF GEN. MAXWELL D. TAYLOR, USA (RET.) BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE ON THE PANAMA CANAL TREATIES, MONDAY, OCTOBER 10, 1977

Mr. Chairman and members of the committee: I am very glad to appear before this committee to express my support for the Panama Canal Treaties as they bear upon issues of national security. The latter is deeply involved since these documents contain much which affects the armed forces, the national economy and our dealings not merely with Panama but with all Latin America and many countries of the third world. Relations with the latter are involved in the canal issue because of the growing dependence of our economy upon imports of oil and essential minerals from third world markets, the continuity of which depends upon friendly relations with producer countries. Viewed in this light, the Panama Canal issue is seen to be an important aspect of our global foreign policy which impinges on international relationships far removed from the locale of the canal itself.

It is my opinion that both from a national and hemispheric point of view, the treaties under consideration contain provisions of definite advantage. To begin with, they will provide improved protection against the threats most dangerous to the

peaceful operation of the canal—those arising from sabotage, terrorism and popular disturbances occurring within Panama itself. We have had sufficient past experience with these forms of violence to recognize their potency and the probability of their increasing prevalence in the turbulent world ahead.

By its nature, the canal will always be highly vulnerable to acts of sabotage directed at its locks, operating machinery, power sources and the dams controlling the water level in the system. There are many forms of terrorism which may disrupt its operation—for example, the harassment, kidnaping or assassination of key personnel of the government or canal, explosives covertly placed aboard ships or attached externally by divers in port or in transit. Light commercial aircraft are capable of dropping mines into the channel where even an abortive attempt would frighten ships away and stalemate traffic. Intermittent sniper fire from the banks could produce similar effects.

Lesser dangers can also arise to interfere with canal operations—political demonstrations, labor strikes or slow-downs, mob violence against canal facilities and American or Government property. Finally there is always the possibility of an uprising against the regime in power and the installation of a new government, perhaps one under avowed communist or pro-Castro leadership.

Who might be the perpetrators of such actions? They might be local dissidents or revolutionaries, foreign agents, commando groups infiltrated from neighboring States or hired trouble makers controlled by Havana or Moscow.

Panama has often attracted such types in the past and will continue to do so because of the growing importance of the region to the U.S. The Soviet Union in intriguing for leadership in the have-not world has taken as a primary objective the undermining of our Latin American relations—particularly those with our trade partners. It will always assure to Panama a large allocation of troublemakers to complicate our problems. Turbulence there is always good news to Moscow—so also are American blunders. In this connection, let us hope that we do not give the Kremlin chiefs the occasion to rejoice which our rejection of these treaties would undoubtedly afford.

Why do I believe that the acceptance of these treaties will moderate these internal threats and forestall troublemaking in the Canal area? First, under the terms of these treaties, the U.S. and Panama would be bound in a partnership based on reciprocal self-interest, jointly committed to an efficient and unimpeded operation of the Canal. The local government would have an equal interest with us to restrain outbreaks of violence and lawlessness. A peaceful settlement of past differences should moderate the present anti-American bias which has often made the country a recruiting base for perpetrators of violence and a sympathetic environment in which they may find shelter. The economic gains which Panama derives from the treaties if properly used should tend to eliminate many of the causes of popular discontent and thereby contribute to greater political stability.

Also, the treaties facilitate the use of American military forces to reinforce the Panamanian constabulary in case the latter proves inadequate in a crisis involving the Canal. Whereas the operation of our forces are presently confined to the zone itself, after the effective date of the treaties and until the year 2000, we can move our forces anywhere in Panama as necessary to protect the Canal.

Even after 2000 and the departure of our forces from Panama, we shall have a parallel and independent responsibility with Panama to maintain a "regime of neutrality" which, to paraphrase the treaty, will assure a secure, peaceful and an expeditious transit for our vessels in peace and war, and an efficient operation of the canal under just, reasonable and equitable rules, regulations and tolls. As I understand these provisions, we shall have the right to make our own unilateral judgment on matters of compliance with these criteria of neutrality and may act independently if necessary to enforce them.

It is to be expected that members of the Organization of American States and other foreign nations will adhere to the objectives of the neutrality treaty and will agree to respect its provisions. Thereafter conflicts over the canal should cease to be a confrontation between an overbearing Uncle Sam, the Goliath of the affluent industrial world and tiny Panama, the David representing Latin America and the world have-not community. All of this is clearly in our national interest.

It may seem strange that in stressing the internal dangers to the canal, I have indicated no concern for a foreign attack as an overt act of war. Such an attack could hardly occur in isolation but rather as an episode in widespread hostilities. It would probably be made by bomber aircraft or by missiles launched from planes, ships or land bases. In such a case, the local defenses of the canal, whether as at present or as they might become under the treaties, would be of little value.

Effective protection could be obtained only from offensive action by our Armed Forces against the sources of the attack far from Panama itself.

In supporting these treaties, I am aware of certain risks which their adoption may entail, some of which I have mentioned and others have been raised by opponents. After weighing the pros and cons I am convinced that the advantages of approval definitely outweigh the disadvantages. In taking this position, I am unmoved by the argument that we owe anything to Panama by way of reparations in compensation for past injustices. These treaties should be measured purely by their present and future impact on the interests of the United States and Panama as best we can evaluate that impact today. Fortunately, it appears to me that they are favorable to the interests of both countries—and of the western hemisphere as well.

TESTIMONY OF CANAL ZONE CITIZEN REPRESENTATIVES TO THE SENATE FOREIGN
RELATIONS COMMITTEE, OCTOBER 10, 1977

We want to thank you for the opportunity to present testimony to your committee today in what we believe is a history-making process. Our panel consists of three people elected by the community to represent them on various townsite Civic Councils and of one officer of the Central Labor Union-Metal Trades Council of the Canal Zone. Mrs. Charlotte Kennedy is president of the Cristobal-Margarita-Brazos Heights Civic Council and Mrs. Patricia Fulton is president of the Pacific Civic Council. Mr. Harold Green is president of the Gamboa Civic Council, and Mr. Louis Fattorosi is vice president of the Canal Zone Federation of Teachers, American Federation of Teachers, Local 29, AFL-CIO, and is a delegate and trustee of the Central Labor Union-Metal Trades Council.

People in the Canal Zone and in the Republic of Panama have been listening to these hearings on Armed Forces Radio with a great deal of interest. Both groups of people have heard innumerable statements made about them by witnesses before this committee, some of whom have never been to the Canal Zone and some of whom have only spent one to three days in the Canal Zone. Ambassador Jorden made some assertions about how the people in the Canal Zone feel. We are convinced that the Honorable Ambassador has no expertise in representing accurately what we feel as a people in the Canal Zone because his contacts are confined to the highest level of Canal Zone officialdom. Therefore, in our testimony today we would like to set the record straight on a number of issues. Our preparation for this presentation has been extensive, involving reading daily newspapers in Spanish and English, watching panel discussions of the treaty on Panamanian television, keeping in constant contact with Panamanian friends on the political climate in Panama, and in some cases supplying some Congressional committees with information which they did not receive through official channels. We have had formal and informal discussions with visiting Senators and Representatives. But we must make one observation: Presidents Carter and Ford, Henry Kissinger, and Sol Linowitz have never been to the Canal Zone, at least to our knowledge. Senator Hollings, who spoke very vehemently about what we are like in the Canal Zone, was only here for a very brief visit. He was entertained in Mrs. Fulton's home for approximately one hour where he spoke with a number of Canal Zone residents, before continuing on a very busy schedule of appointments. This, to our knowledge, was the extent of his contact with the average citizen in the Canal Zone. Ambassador Ellsworth Bunker met twice, once in 1973 and once in 1975, with Canal Zone civic and labor representatives. On both occasions he was equally close-mouthed and uninformative. He did promise to keep our best interests in mind and to keep us informed. We believe that he fulfilled neither promise.

We live with the Panama Canal 365 days a year. Our people know more about its operation and more about the characteristics of Panama and the Canal Zone than do President Carter, Cyrus Vance and the Joint Chiefs of Staff just by virtue of our work and family residence. We welcome the suggestion made by the Honorable Senator Percy that your committee should visit the Canal Zone. But bear in mind that you will still not learn all you need to know in three days of frantic briefings, an airplane ride over the Canal, and a couple of official dinners. You will learn during your visit that the Canal Zone is not surrounded by a fence and that Panamanian citizens have free access into the Zone simply by crossing a street. You will also notice there are no checkpoints or customs guards to interfere with these crossings into the Canal Zone.

At this point we would like to respond to some statements made about the Panama Canal treaty issue in earlier testimony before this committee. It has been repeated many times that Panamanians as a people want this treaty, that they are unified behind General Torrijos, that they are exercising a desire for self-determina-

tion. That is a gross distortion of the actual situation in Panama. On October 4, 1977, at a public hearing which featured a debate between the Panamanian negotiators and a group of independent lawyers who oppose the treaty, the audience screamed down negotiator Carlos Lopez Guevara with cries of "The government has stolen our liberties," "We don't want this treaty," "The plebescite will be a fraud," and "You are a thief and a traitor."

On that same day the official car of Ambassador William Jorden was burned by a group of students when the car was parked on the university campus. One Panama City newspaper the next day published a photograph of the burning car with the caption "North American Provocation," saying in the cutline below that the students showed their rejection of the high official (Deputy Chief of Mission Raymond Gonzalez) present on the campus. Graffiti on walls all over the city of Panama City point to criticism of the present government's policies in phrases such as "Bases No," "Down With the Cost of Living," "Down with Law 95," (a law unfavorable to the laboring class); and "Bring Back the Exiles."

The opposition in Panama to the proposed treaty is also evidenced in numerous meetings being held by once-dormant political parties such as the Liberals, the Panamenistas (the party of the ousted President Arnulfo Arias), and the Christian Democrats. We say clearly that the Communists in Panama are NOT the only ones opposing this treaty. In fact there are some Communist groups actually supporting the government's efforts to achieve this new treaty. The people in the political groups and other groups not readily labelled know that their liberty to express themselves now is short-lived, that Carter must have put pressure on Torrijos to relax the restrictions on political activity. They are calling this short period of freedom of expression, "The spring of liberty of Jimmy Carter" because they know that it will end on October 24, the day after the plebescite.

Now what about the multitudes of Panamanians who live in the rest of the Republic, outside of the port cities of Panama and Colon? Many of them do not understand what the treaty means fully, particularly the 200,000 illiterates. The teachers, who are supposed to explain the treaty in their school classes, are not all in favor of the treaty. Panamanians are listening to these very hearings because they don't trust the superficial generalities they are hearing from their own government representatives. And would you believe that at the plebescite, each Panamanian must sign a form indicating that he has read and that he agrees with the treaty, the neutrality pact, the supporting agreements, the exchange of notes, and the maps. University students are on local television almost nightly, telling the population that 42 days from September 7th in which to prepare for the plebescite is a criminal amount of time.

The Panamanian newspapers have printed a number of references to the questioned legality of Torrijos' signing of the treaty, because the Panamanian Constitution states that the President of the Republic, who is Demetrio Basilio Lakas, is the one authorized to do so. The political parties are unanimous in agreeing that whatever government succeeds the failing Torrijos regime will repudiate the 1977 treaty, if it is ratified and put into force. Torrijos will one day become the Buneau-Varilla of 1977 because he is already being accused of selling his country.

In the light of all this, it is quite clear to us if it is not clear to our U.S. negotiators and to Secretary of State Cyrus Vance and to President Carter, that this treaty does NOT eliminate the sources of conflict between the U.S. and Panama. This treaty only multiplies and prolongs the causes. Students who are supporting the government position on the treaty have still pledged to keep fighting after ratification for the complete elimination of military bases and of U.S. military personnel in Panama.

To the thousands of Panamanians who are out of jobs, who cannot feed their families, pay the rent, buy shoes and school textbooks for the children, this treaty will be little more than a piece of paper. Unemployment will be further increased because it is estimated that from 3,000 to 8,000 Panamanian employees will be displaced from jobs with the Panama Canal Company/Canal Zone Government. (We might insert here that the Treaty of 1955 had a devastating effect on the City of Colon, which lingers today. The Panama Canal Company gave up certain commercial functions, which caused the layoff of many Panamanian employees who were not hired by local merchants and business people because these merchants preferred to import products rather than to hire people to make them locally.) The proposed treaty does say that the Government of Panama will attempt to find jobs for Panamanian citizens no longer employed in the Canal operation, but reality says that there are no jobs available.

Some of these Panamanians tell us that they know what will happen: they will receive temporary employment in Panama, in order to comply with the treaty

agreement, but they will be fired in three to six months. Many non-U.S. employees who live and work in the Canal Zone and who happen to have black skin know that they will be in a precarious position when the new treaty goes into force because discrimination against these people is widespread in Panamanian government and business jobs. These people, mostly of Antillean origin, whose grandparents came to help build the Canal, are a people without a country because the Panamanians have never really accepted them. They are sometimes referred to as "vendepatrias" or persons who sell their country. In short, they are regarded as traitors for allying themselves with the United States in their place of employment and place of residence.

Our friendships and daily conversations with Panamanians have also revealed some other surprising facts. The anti-American feeling in Panama is not always based on what you might think, on jealousy of our wealth, on resentment of our being present on the Isthmus. No, anti-American feeling is also based on the perception by many of the thinking people of Panama that the U.S. government is responsible for putting Omar Torrijos in power. They reason that the U.S. wanted an easy vehicle by which to finish negotiations for a treaty. It has been admitted by State Department officials that it is much easier and more efficient to deal with a dictator because our government only has to deal with one man, rather than with a body of elected representatives.

The Panamanian people know of the regular arms sales, of the supplies of guns and ammunitions which we provide to Panama both through gift and through military purchases, and they were outraged to learn about the armored personnel carriers and command cars that Torrijos bought from the U.S. earlier this year. Their only conclusion is that the U.S. helps Torrijos keep his people in line, and they wonder, they even ask us—why doesn't your government do something to get Torrijos out of power. If this treaty is ratified, they tell us, the U.S. will have conflict on two fronts: one, from the anti-U.S. students who will want the complete and immediate elimination of the military bases and the other from Panamanians who feel they were stabbed in the back by the U.S. Congress who confirmed Torrijos in power for who knows how many more years.

These same Panamanians also say that if some of their people die in reprisals by the government after the plebescite, as punishment for speaking out against the treaty and the Torrijos regime, then the United States will also be blamed for encouraging Torrijos. You may think all these perceptions are faulty, but they are very real, nevertheless, and we felt that we had to relay them to you because there was no one else to do it.

One of the frequent arguments put forth in favor of ratification is that Panama will react with extreme violence, perhaps guerrilla warfare, if this treaty is NOT ratified by the U.S. Congress. We KNOW what Panamanian violence is because we live in Panama. Let us explain what the typical pattern is: the participants are students because the working and professional classes have little interest in street violence or terrorism. The place is a broad, downtown street where newspaper photographers can make many pictures of banners, signs, and symbolic acts of protest. The time is a dry, sunny, weekday. The students do not riot on holidays or weekends. The stereotypical notion of the guerrilla crawling through the jungle on his belly, ready to throw a grenade at the Canal locks, would not appeal to these students because it is no fun to work unseen, unnoticed by newspaper reporters. And besides, the three sets of Canal locks are NOT surrounded by jungle that would permit a terrorist to approach, do his work and leave undetected. The State Department has perpetrated a giant hoax on the American people, and unfortunately, some people, having little direct knowledge of the Canal's physical appearance or of its operation, bought the story.

The Carter Administration, through multiple newscasts, a brilliant extravaganza of a signing ceremony, and public relations efforts, including paying the expenses of visiting Panamanian journalists who have lectured in the U.S., has put forth the idea that the proposed treaty is one on which the U.S. and Panama both agree. This is all at the taxpayers expense in an effort to "re-educate" them to the new, modern version of Canal history. Members of this Foreign Relations Committee have asked a number of questions regarding the Neutrality Pact, particularly as to whether the Panamanians interpreted the Pact in the same manner as we interpret it. We have evidence that such is not the case. Because the speeches of negotiator Romulo Escobar Bethancourt have been mentioned frequently, we will not quote them at this time. But on September 30, 23 days *after* the signing of the Torrijos-Carter Treaty as it is called in Panama, negotiator Carlos Louez Guevara made these statements about neutrality and about "expeditious transit."

"From the Second World War, 'intervention' has disappeared as a right, as a practice. Intervention sometimes happens but it is never authorized. It is a question of force, of deeds, but you will never find it anymore in this treaty, this matter of intervention. The charter of the United Nations obliges Panama and the United States and 152 nations of the world; it excludes and condemns intervention. Then how can a functionary of the United States or any other country invoke this intervention. We can't return to past time."

And at another point in his address to a group of Panamanian citizens, he said "Expeditious' does not mean 'priority' or 'preferential treatment' * * * I don't know where they got this interpretation, when the history of the negotiations reveals the idea was rejected. And why did Panama reject this idea of preferential treatment? Because it is a contradiction in terms. Article 4 and all this treaty is devoted to neutrality. Neutrality in all the definitions that I was able to find means 'equality,' 'balanced,' 'with no discrimination.' We can't talk about a regime of neutrality devoted to neutrality and at the same time talk about preferential treatment or discrimination."

The matter of "expeditious transit" only one of the ambiguous items in this treaty, which promises to give innumerable headaches to both governments after ratification. It seems to us, as ordinary voting citizens, that a treaty ought to represent what is agreed upon and what is clearly understood by both parties, not a matter for crossing one's fingers for good luck, hoping that things will turn out all right if a problem does occur at a later date. If more time is needed for further renegotiation, for further amendments or understanding, isn't the seriousness of this matter worth such an investment. We have only one Canal, and it is a very strategic Canal. A new Canal treaty should be the best that we can negotiate rather than just the only one our negotiators have been able to come up with. We do not buy the line that both the Panamanian and American people should accept this treaty because "it is the only one in town."

A repeated phrase in the testimony of the Joint Chiefs of Staff and in other statements before this Committee has been "Use, not ownership, is what is important." As people who know the Canal intimately, we are convinced that for the good of the Canal itself, it is important who owns the Canal. Any new owner should be competent to handle the heavy responsibility of servicing world shipping. As representatives of those who keep this Canal operating 365 days a year and whose fates are being decided in the Halls of Congress, we pose one key question to the Senate of the United States: Do you wish the Panama Canal to continue functioning as well in the future as it has in the past? If you buy the testimony that says the Canal is obsolete, unneeded, and not really essential to the American national interest, then it doesn't matter what you do about the Canal. But if you believe, as we do, that it is in the interest of the United States that the Canal continues to operate on an around-the-clock basis, then you need to take into account some other factors.

The Panama Canal as an international waterway does not function by means of warm, good feelings or a high sense of ethics. As admirable as the motives may be for the writing of this new treaty, in search of a new relationship with Panama, in an attempt to strengthen relations with Latin America, the question remains, how does the Canal mechanism work? It works because people who know how to pull the levers, open the locks gates, carefully maneuver the ships through the Canal and the locks of the Canal, keep the equipment maintained with regular overhauls and preventive maintenance, in some cases manufacturing replacement parts at the jobsite, and keeping the Canal channel dredged to the proper depth. We have only touched on a few of the jobs needed to put ships through from ocean to ocean on a daily basis. But those people are not robots. Here is how they regard the treaty matter: They believe that they are being served up, in an unconstitutional manner, to a dictator, an act that we can find justified nowhere in the lawbooks of the Constitution of the United States. If treaties cannot supercede the U.S. Constitution, can our Constitutionally-guaranteed civil rights be superceded by this new Canal treaty? No matter how glowing the terms in which the change of sovereignty is described as "an adjustment to modern realities," and "the elimination of the last vestige of colonialism in the Western Hemisphere," we still understand that we are losing protection we once had. Put very bluntly, people can talk freely in the Canal Zone, can criticize President Carter without fear of being arrested by Canal Zone Police.

Such is not the case in Panama. The 6,000 Americans who live in Panama so peacefully as Ambassador Jorden and others have told you, do so by keeping their mouths shut on Panamanian political matters. We are not talking about Americans running for office in Panama; we are talking about the simple right to criticize a government's actions if he believes the actions are worthy of criticism. The new

treaty muzzles Canal Commission employees by forbidding them to do anything against "the spirit of the treaty." We don't know what the spirit of the treaty is, nor who will interpret it for us, nor who will determine that the treaty spirit has been violated. We will be prohibited from any sort of political activity, such as the March of Mourning we held on the Night of the Treaty Signing, and from committing crimes against the security of the Republic of Panama.

That last offense has a very broad interpretation in Panama. Merely associating with the wrong people can result in a person being snatched up and detained, incommunicado, and with possible subjection to mental and/or physical harassment. Given these conditions of the new treaty, an overwhelming majority of American employees will NOT stay to train Panamanian replacements; instead these U.S. employees will leave for the United States, most likely during the six months between the exchange of instruments of ratification and the entering into force of the new treaty.

Americans who were born in the Canal Zone, often called dual nationals, are considered to be Panamanians by the Government of Panama. The U.S. passports of these people state that when the bearer is in the country of his dual nationality, he is to follow the laws of that country. So these dual nationals fear greatly that they will be trapped in Panama and not be permitted to leave. We know the treaty says that this group of people will be regarded by the United States as U.S. citizens. But that means nothing to a Panamanian government or police official who might wish to block that person's exit from the country. These people need more positive protection because as the treaty is now written, they are still in a precarious position.

In summary, as to the problem of employee exodus, we can only state that if the Congress firmly believes that this treaty in its present form is desirable and worthy of ratification, then the Congress should consider recruiting a workforce for the Canal until sufficient Panamanians can be trained to do all the highly skilled jobs in the Canal operation. Some Americans now employed in the Canal Zone may remain because they are so close to retirement, but the sentiment most often expressed to us by U.S. and non-U.S. residents in the Zone is a desire to leave the area as soon as possible after the treaty is ratified. You might ask Congressman Ralph Metcalfe of Illinois, chairman of the House Subcommittee on the Panama Canal, how many times that he has been asked by civic representatives of non-U.S. citizens in the Zone to help their people to obtain immigration rights to the United States.

The Senate may ratify this treaty and feel a warm, rosy glow of international good will, but the people who operate the Canal will find life intolerable under the new situation. Right now, even before ratification, the judicial process is suffering greatly in the Canal Zone. Until last spring, the Canal Zone always had a permanent judge to preside over our District Court. When Judge Guthrie Crowe retired, the Carter Administration blocked the search for a replacement because they anticipated the ratification of a treaty which would eliminate the Court. Therefore, our court system has gone for weeks at a time without a judge, and now we are making do with substitute judges for a week at a time. We believe that it is unfair to subject us to this before a new treaty goes into effect, because until the new treaty abrogates the old one, the Constitution still protects us. Perhaps you can help us in getting a judge appointed to take care of our civil and criminal court cases.

You may have noticed that the new proposed treaty refers to liberal retirement for employees. The phrase "priority transfer" has also been tossed about as a possible benefit for present Canal Company employees. But in actuality, the treaty indicates only that the Administration will seek implementing legislation to make these benefits possible. That legislation may never materialize or it may be far from helpful to our people. So in essence, our constituents feel that they will have human rights and civil rights taken away, with only a "maybe" promised to them for transfer to U.S. government service elsewhere. State Department officials giving testimony here have been proud of the treaty's provision for "procedural guarantees" for the U.S. citizen employees of the new Canal Commission.

If you are familiar with the whimsical, arbitrary manner of law enforcement in Panama, you know that an arresting Guardia is not at all worried about an agreement on paper. The person he is arresting is completely at his mercy, with no guarantee of good or bad treatment. The Guardia patrolman on the scene may extort a "fine" from his detainee, he may beat him up, he may ignore the request to contact a lawyer. In the National Guard Policy Headquarters, the phrase "procedural guarantees" will be nothing more than that for American citizens—a phrase in a treaty.

Ambassador Jorden has said that the Canal Zone people do not feel that they have been sold down the river. Let's examine that statement for a moment. When Americans were recruited by the Company/Government, there was a clear understanding that the employment was up to American standards just as in any of the 50 States. The employee would get rental housing which was adequate by U.S. standards. He was guaranteed levels of public services, health and hospital care, schools, fire protection, U.S. policemen who spoke his language, the right to trial before a judge appointed by his own government, and the benefits of the protections of the U.S. Constitution. The U.S. employee was guaranteed the right to peaceful protest, to free speech and press, to worship as he chose, to meet with his neighbors in free association for their mutual benefit and all of the other basic freedoms.

Even if it was never written down in those words, long usage and custom made these rights a Contract between Employer and Employee. Where are these rights guaranteed under this new treaty? In addition to violating the constitutional rights of both the U.S. and non-U.S. employees in the Canal Zone, this is a clear breach of contract and we believe the courts of the United States will see it in that way. Given this explanation, we find it difficult to understand the accuracy of Ambassador Jorden's statement.

Although we do not claim to be economic experts, we would like to make some simple observations on the financial aspects of the treaty. U.S. taxpayer money will be used, contrary to previous testimony, to finance the changeover of the Canal Zone schools personnel and the hospital personnel to the Department of Defense and for their salaries as well. The U.S. Government will also pay into the Panamanian Social Security System on behalf of non-U.S. employees of the Canal Commission. A \$10 million down payment will be made on behalf of the military sales loan to Panama, a loan which will not have to be paid back for a number of years.

The treaty permits the cancellation of a number of sizable loans made to Panama in the past, an act which gets Torrijos off the financial hook and which cheats the U.S. Treasury of money owed to it. We can foresee the possibility that the loans made under the new treaty could also be cancelled at some point in the future when Panama gets into another financial bind. Please explain to us the economic wisdom of turning over U.S.-financed and constructed housing in the Canal Zone, free of charge to the Panamanian Government who will in turn sell or rent it to Panamanians.

In the housing area of New Cristobal, now part of Colon, homes were sold to Panama for \$1 each and resold by the Panamanian Government at about \$10,000 each. Panamanians now living in these Canal Zone homes, having paid rent for a number of years, have made the reasonable request to be able to buy the houses before the treaty goes into effect, believing that the U.S. Government would ask a much fairer, more reasonable price.

This Committee has heard testimony to the effect that the expenses of the Commission and the payments to the Government of Panama will be made out of Canal revenues. If this is true, a tolls increase of anywhere up to 40% will be needed at the outset, with subsequent increases in later years as the payments to Panama also increase. One experienced shipping agent in the Canal Zone, a man not employed by the Company/Government, has stated that when the tolls increase by 40%, some shippers will stop using the Panama Canal. His own personal advice was that if the U.S. wants to insure that the Canal will always be open to all shipping, it is in the best interests of the U.S. to continue controlling the Canal.

Perceptive Panamanian Government begins receiving additional revenue from the Canal Commission as well as benefits from U.S. loans. As these Panamanians see it, the U.S. banks to whom Torrijos is so deeply in debt will get their money back and the Torrijos family will be further enriched, along with other high-ranking officers in the Guardia Nacional. Why do Panamanians believe this? Because they notice that Torrijos, once a poor boy from the Province of Veraguas, is now a very rich man with two villas in Spain and the money to travel all over the world. Meanwhile, the poor people he came to save are still just that, with little hope of any future change.

The new roads, schools, and clinics that impress visiting A.I.D. officials and Congressmen do little to provide weekly paychecks to campesinos that will allow them to feed their families adequately, buy clothing and school supplies. Panamanians grown cynical over Torrijos' enrichment have rephrased two of his slogans. "Todo Por La Patria" or "Everything for the Country" has been changed to "Todo Por La Plata", or "Everything for Money." and Torrijos' benevolent statement of "What I want for my sons I want for all of Panama," has been changed to "What I want for my sons I take from my people."

In listening to past sessions of these hearings, we have observed some difficulty on the part of Senators in trying to define the nature of Communism in Panama and whether such a phenomenon exists. Our source of information is Panamanian, not North American. Panamanians know who the Communists in their midst are, and these Communists will not be identified by a membership card in the wallet or a hammer and sickle badge on the sleeve. Four members of the Panamanian negotiating team: Gerardo Gonzalez, the Panamanian Vice President; Romulo Escobar Bethancourt, chief negotiator; Adolfo Ahumada, the minister of labor; and Aristides Royo, the minister of education, are all identified by Panamanians as having Communist affiliations, sympathies, or connections. Vice President Gonzalez has been a courier for the Communist Party and Chief Negotiator Escobar Bethancourt controls the national communications media as head of the Information Commission. The other key Communists in the government include Marcelino Jaen, Torrijos' brother-in-law and head of the Legislative Commission which writes all the laws in Panama; and Colonel Roberto Diaz Herrera, cousin of Torrijos and Secretary of the Estado Mayor of the Guardia Nacional. Col. Diaz Herrera helped set up a Communist-controlled Guardia training school at the Rio Hato air base. The Panamanian Government has set up an agency known by the acronym DIGEDECOCOM, short for Direccion General de Desarrollo Comunal. This agency holds indoctrination programs, with ample anti-American propaganda included, for teachers, government employees, students, labor groups, campesinos. The agency also aids in the celebration of Fidel Castro's July 26 anniversary, the May 1, Labor Day, and the October 11 Anniversary of the Revolution.

Some more obvious examples of ties and sympathies with Communist powers such as Cuba and Russia, include the following:

1. Russian planes, seen by U.S. and Panamanian eyewitnesses alike, on the ground at the Rio Hato airstrip. These planes do more than bring Torrijos his custom-made cigars from Fidel Castro. These planes come in low over the coastal water, so as to avoid radar detection.

2. Every 6 months a fresh group of Panamanian students leave Panama to go to study in Cuba. These students are given top priority in the Panamanian visa office. The cumulative effect on the young people of Panama, who will someday be the national leaders, is not hard to imagine.

3. Panamanian students go to Russia for study in five-year tours. A young person who returns after five solid years of the Communist Party line at a Russian university is bound to be affected in his beliefs about capitalism vs. communism.

4. Panama has requested Cuban advisers to come to Panama to teach the Government how to set up neighborhood committees to facilitate the government's control of the people on a local level.

5. Russians are making plans now to build structures in the Colon Free Zone for the sale of Russian-made products. In the works also are plans for sale of sugar by Panama to Russia, construction by Russia of a hydroelectric plant, the opening of a Russian bank in Panama, and the establishment of official diplomatic relations.

To those who say that Panama has the right to have relations with any country that it pleases, we agree. But we are contemplating the turnover of a very valuable Canal in a very strategic geographical location to a country that does not have the military power or will to defeat the possible invasion of a third power. The Russians or the Cubans would not have to invade, however; they would simply enter as friends of Panama. And after having witnessed several incidents recently in which our American flag was burned or torn down and desecrated, to which our U.S. Embassy only responded with diplomatic protests on paper, and little else, we are cynical about the possibility of the U.S. coming back to Panama after the year 2000 to take the Canal away from Russia or Cuba. We noticed with some chagrin that Ambassador Jorden seemed more incensed over the loss of his official limousine that was burned by Panamanian students recently than he was when the American flag was torn down last June 6 at Shaler Plaza. At that time, the State Department sent a thank-you note to the Guardia Nacional for returning the flag to the Canal Zone Police.

As we conclude this presentation, we note that a number of witnesses and members of the Committee itself have seemed to express confidence in Panama's good faith in abiding the terms of the new treaty as they have abided by the terms of the 1903 treaty and other agreements with the United States. To set the record straight, let us point out that Guardia kidnappings of U.S. military personnel, of civilian employees and dependents from the Canal Zone, that Guardia harassment of Canal Zone residents passing through Tocumen Airport, and the Guardia-led student incursions into the Canal Zone all come under the classification of treaty violations.

All that the U.S. Government has done is to protest; our Canal Zone Police are given no firm authority to stop such incursions. Instead, they are sometimes even consulted by the Guardia ahead of time with the idea of cooperating in the control of the crowd. What we know by experience of living in the Panama area is that the Panamanian Government is not made up of good Boy Scouts who always keep their words.

Once the Torrijos regime has the treaty they want, a treaty that surrenders the sovereignty which gives us the legal right to be there, then the Revolutionary Government of Panama has a wide range of possible alternatives. These range from continued harassment for a larger and larger slice of the cake all the way up to complete nationalization of the Canal. If 100,000 troops are needed to defend the Canal, with the implication that the present military force in the Zone is not adequate, then why do we have bases there at all? And if we can't defend the Canal from within the Zone, then can we really defend the Canal more adequately when our military is totally removed from Panama?

Witnesses before this Committee have glibly stated that the United States is not now sovereign in the Canal Zone. For the record, we would like to point to some documents which do not support that statement. The State Department only quotes half the sentence from the treaty about "rights as if sovereign." We would like to finish the sentence: "To the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority." A legal brief prepared in 1959 by the Office of the Canal Zone Governor on the subject of sovereignty over the Canal Zone states that the U.S. has the exclusive exercise of sovereign rights, power and authority in the Canal Zone and that the Republic of Panama has no right to the exercise of sovereignty, rights, power or authority in the Canal Zone. We point also to the 1904 Provisional Boundary Agreement which refers in four places to "territory ceded to the United States" by the Republic of Panama.

A 1914 treaty between Colombia and the United States recognizes the title to the Canal Zone as being "vested entirely and absolutely in the United States of America, without any encumbrances or indemnities whatever." To clarify the statement that no Panamanian ever signed the 1903 treaty, we point out that each member of the Panama Provisional Government Cabinet signed the treaty and ratified it.

The 1903 treaty has been revised on a number of occasions—only 8 of the 25 original clauses remain—all others have been eliminated. After each revision, the U.S. was assured that the just aspirations of the Panamanians had been met.

As a note on more modern history, we would like to comment on the 1964 riots which have become a cliché in themselves in the discussion of need for a new treaty. The State Department Bulletin of February 24, 1964, carried this statement by a government official, referring to the 1964 riots:

"If an investigation is made, it will show that violent mobs, infiltrated and led by extremists, including persons trained in Communist countries for political action of the kind that took place, assaulted the zone on a wide perimeter, setting fire to buildings inside the Zone and attacking with incendiary bombs . . . it will show that the government of Panama, instead of attempting to restore order, was, through a controlled press, television and radio, inciting the people to attack and to violence."

The writer was the U.S. Representative to the Organization of American States, the Honorable Ellsworth Bunker. May we add that a sizable number of the Panamanian martyrs who perished so valiantly for their country were actually looters shot by night watchmen at stores being looted or who burned in the Pan American Building in a stalled elevator, holding the loot in their arms.

For the record, we must clarify a statement coming out of the AFL-CIO National Headquarters that Canal Zone labor groups support the treaty. The truth is that the Central Labor Union-Metal Trades Council, representing 11 unions, has been on record and is on record in opposition to any relinquishment of U.S. control of the Panama Canal. Labor and civic groups alike are deeply concerned about the content and the implications of this present treaty negotiated with Omar Torrijos. We are smelling the odors of Watergate when an investigation into possible electronic surveillance of Panamanian negotiators is politely hushed up at the request of Attorney General Griffin Bell, who felt the investigation was "too broad." We know where Mr. Brustmeyer is and we think that he should be heard.

In our testimony we have tried to be frank and open, giving facts and details that have been quietly hushed up or ignored by the State Department. We want you to be as well informed as possible when you decide to ratify or not to ratify the proposed treaty. But we are also conscious that we may pay a price for our bluntness. We are not allowed use of the military airport in the Canal Zone because we are not employed by the military, so we must return to the Canal Zone through Panama's Tocumen Airport. If Panamanian officials, having heard of our testimony,

decide to detain us, as they have done to others, you will at least have been informed of the possibility. The reign of fear and terror in Panama has gone far enough. We had to speak out on behalf of the many silent Panamanians who will never have the opportunity to speak this openly.

We are submitting with our statement a collection of material documenting human rights violations in Panama and highlighting some other information on Panama that we believe might be helpful in your investigation into the treaty issue. At this time we will be glad to respond to any questions you might have.

Mrs. PATRICIA FULTON,
President, Pacific Civic Council.

Mrs. CHARLOTTE KENNEDY,
*President, Cristobal, Margarita-Brazos
Heights Civic Council.*

Mr. HAROLD GREEN,
President, Gamboa Civic Council.

Mr. LOUIS FATTEROSI,
Vice President, Canal Zone Federation of Teachers.

[From the Congressional Record—Senate, Oct. 11, 1977]

THE PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations continued hearings on the Panama Canal treaties today receiving testimony from the following witnesses: Prof. Jorge Dominguez, Center for International Affairs, Harvard University; Dr. Abraham F. Lowenthal, the Woodrow Wilson Center; Prof. Donald Dozer, University of California; Prof. Lewis Tambs, Arizona State University; Robert M. Bartell, Liberty Lobby; Franklin Delano Lopez, chairman, Puerto Rico Democratic Party; Phillip Harman, Canal Zone Non-Profit Public Information Corp.

I ask unanimous consent that the prepared text of the statements of these witnesses be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

TESTIMONY BY JORGE I. DOMINGUEZ

I want to thank the Committee for inviting me to come to present this testimony. I appear before you as an individual citizen, and not as a representative of Harvard University or any other organization. I would like to address my remarks to the issue of the Panama Canal treaties in the context of relations between the United States and Latin America.

I urge you to support the Panama Canal treaties as they have been submitted to you, and to reject amendments which would in fact cripple the treaties and prevent their acceptance by Panama. There are many reasons to urge ratification of these treaties; I simply want to call some of them to your attention.

1. The treaties have become a test of the steadiness of U.S. foreign policy toward Latin America, and indeed toward other countries. The treaties are the culmination of work by four Presidents of the United States of both major political parties and their Secretaries of State, in consultation with members of Congress and other interested parties. One issue that has arisen is whether the U.S. government is reliable enough as a partner in international relations, so that a bipartisan agreement on a central question for U.S. foreign policy, can in fact be implemented with broad Congressional support. The defeat of the treaties, therefore, would represent not only a substantive setback for U.S. foreign policy, but it would also make it more difficult to conduct that foreign policy in the months ahead.

2. The treaties protect U.S. national security interests in the canal better than any other alternative. The treaties guarantee that the United States will retain control of both operation and defense of the canal for the remainder of this century. More importantly, the treaty provides for the long term security of the canal by engaging the government of Panama seriously in the canal's defense. What are the real threats to the continued operation of the canal? One kind of threat might be an attack by some other power on the canal; the United States has the capability to retaliate against any such attack. That defense of the canal, of course, does not depend on the presence of any U.S. forces in the area of the canal, but on the general defense capabilities of the United States. The right of the United States to defend the canal against those who might destroy it is guaranteed by Article IV of the Neutrality Treaty; this right and obligation will continue indefinitely.

Another kind of threat might be an attack that Panamanians in their frustration might have launched against the canal. By engaging Panamanians and the government of Panama gradually in the operation and defense of the canal, and by eventually turning over to them these responsibilities, the continued operation of the canal is more likely to be assured. As their own political and military responsibilities increase, and as their own economic benefits increase, Panamanians will find it ever more in their interest to defend the canal with U.S. support. Failure to ratify the treaties, failure to increase Panama's stake in the canal, would make the canal more vulnerable and its defense more difficult.

The continued operation of the Panama Canal is in the national interest of the United States. These treaties make it likely that Panama will increasingly see its national interest in keeping the canal open, too. Both countries, therefore, can gain from these treaties because their national securities will be enhanced; both countries will lose if the treaties are not ratified.

3. The treaties are necessary for the effective conduct of U.S. foreign policy toward Latin America. There is broad support in Latin America, and among Latin American governments, for these treaties. That support was symbolized recently when so many heads of state from the hemisphere came to Washington to express their support. The present relationship between the United States and Panama is often seen in Latin America as the residue of an era long past, when the United States might impose its will on weaker countries. The continuation of this situation, in the absence of a treaty, is a symbol that the United States does not yet take Latin America seriously enough in the conduct of its foreign policy. A protracted debate in the U.S. Congress over treaty ratification would also probably paralyze other initiatives in U.S. foreign policy toward Latin America. There are important issues of nuclear proliferation, human rights, private foreign investment, trade, and many others, which can only be negotiated successfully between the United States and Latin America, if Latin American governments have continuing assurances that they are treated seriously by the United States. There is no better assurance than to put an end to the present arrangement over the canal, and to ratify these treaties.

4. The treaties demonstrate the possibilities for creative United States initiatives in the hemisphere. The treaties show that the U.S. government can move forcefully on issues of common concern to countries in the Americas. The treaties show that the United States, Panama and other countries in Latin America, can identify common interests, and agree on ways to advance their common interests. The successful ratification of the Panama canal treaties may thus open the way for the negotiation of other issues of common concern to Latin America and the United States, such as I mentioned in the previous paragraph. The treaties also demonstrate that the United States can take the initiative and not merely react to real or alleged actions of other countries. The United States has demonstrated by this treaty its continued importance to Latin America. This is something the Soviet Union cannot do; this is something Cuba cannot do. And this is also something no other U.S. ally can do. The point may bear an example. I have done a fair amount of work on Cuban foreign policy. In its competition with the United States over influence in Latin America, the Cuban revolutionary government has often called attention to the U.S. failure to agree with Panama on a new canal treaty. These new treaties, therefore, have taken away this argument with one stroke, and have demonstrated to many Latin American governments—including the government of Panama—that it may be more useful for them to work closely with the United States than with any other country, including Cuba.

5. The treaties strike a subtle balance between the preservation of U.S. military rights and U.S. declared policies of non-intervention. The United States has two different political interests in these treaties, which are difficult to reconcile. One interest is to retain the right to be able to assist Panama in the future to guarantee the neutrality of the canal, using military force if necessary. Another interest is to persuade Latin American countries, and other less developed country governments in the so-called Third World, that the era of U.S. intervention in their internal affairs has passed, and that the United States is interested in responsible relations with them. This commitment to non-intervention is essential if credible relations are to be maintained with the majority of the countries of the world. To balance these two interests, delicate language is required. That delicate language appears in Article IV of the Neutrality Treaty, and I urge you to reject amendments which might modify that article. That article strikes this difficult balance of assuring that the United States and Panama will defend the canal, and at the same time indicating to the rest of the world, and to Panama, that the United States no longer contemplates intervention in the internal affairs of other countries as a matter of routine national policy.

These treaties, in conclusion, serve the national interest of the United States by identifying those elements where constructive cooperation with Panama is possible. In doing so, the treaties signal to other countries that the United States is willing and able to conduct a responsible foreign policy toward them—one that meets the essential test of being faithful to U.S. interests while being realistic and feasible in its implementation. The defeat of the treaties would signal, on the contrary, that the United States is unable to perceive its large stakes in a common security arrangement, that it is unable to treat the people of a small country with the respect due them, that it is unwilling to put aside practices and agreements of a bygone era, that it pays little attention to the coalesced voices of Latin American governments, and that it cannot conduct a foreign policy which would relate its national interests to their realistic implementation. In order to gain as much as we

can, and to lose as little as possible, I urge the speedy ratification of the Panama canal treaties.

STATEMENT BY ABRAHAM F. LOWENTHAL

Mr. Chairman: It is an honor for me to be among those asked to testify on the question of the Panama Canal treaties now before your Committee. Surely the Senate's role in considering these proposed treaties makes these hearings among the most important the Committee has held in recent years, and all concerned will want to be as helpful as possible to you.

I speak, of course, not as a "representative" of the Wilson Center or as head of its new Latin American Program, but in my capacity as a professional student of Latin America and of United States-Latin American relations. For me, as I think for practically all concerned with inter-American relations, Panama is a key issue, a test of United States policy toward the nations of this hemisphere. Proponents and opponents of the new treaties, as well as those—including some of the distinguished members of this Committee—who have not yet made up their minds: all of us agree that the Panama issue is significant, and that its time has finally come. I believe we also agree that the issue is important beyond what is immediately at stake: how best to preserve secure access for the United States to a convenient waterway. It is important, as well, for its symbolic significance, both in the Western Hemisphere and beyond. How the United States deals with the question of Panama will tell us, and the world, whether the United States is outgrowing its "hegemonic presumption" (about which I wrote in *Foreign Affairs* a year ago) and whether it is ready to deal on the basis of mutual respect even with the small and weak countries of the world. The outcome of the Panama debate will also tell a good deal about the strength of our democratic institutions, and about the capacity of our constitutional system to deal wisely with complex issues on which passions sometimes outrun understanding.

I tried in a recent article (which I am told was put into the record during the first day of your hearings) to show why I think it is in the best interests of the United States to work together with Panama to replace the 1903 Treaty with one grounded in today's realities and built on the principle of mutual respect and on the pursuit of shared aims. Rather than repeat my whole argument here, let me just summarize briefly why I hope the Senate will help the United States and Panama to reach agreement, on a new treaty relationship. After doing so, I would like to take a few moments to emphasize one particular point: why the Panama issue is an essential part of improving United States relations with Latin America. Finally, I would like to make some brief comments on one of the issues which has come up already in this Committee's deliberations, the "right of intervention."

THE CENTRAL QUESTION

The central question posed in Panama is whether United States interests in the Canal require us to continue to treat Panama as less than a juridical equal, as we have done from the beginning.

Those who urge the United States to cling at all cost to the anachronistic terms of the 1903 Hay-Bunau-Varilla Treaty in the face of rising opposition from Panama, on the international scene, and even from within the United States are not, for the most part, unreasonable people, although some of them do approach this issue with an emotional zeal which is hard to analyze or deal with. They take their stance basically because they see no better way to protect this country's interests, even though they know that continuing and deepening conflict over Panama will result.

Those of us who favor replacing the 1903 Treaty with a new set of agreements—negotiated carefully over many months and years—believe that the United States and Panama share the basic aims of keeping the Canal open, secure, efficient and neutral. We believe, therefore, that United States interests and Panama's dignity can be reconciled through an accord—like the one before your Committee—which recognizes Panama's sovereignty and builds on the basis of the interests the two countries share.

Sticking with the 1903 Treaty would assure an era of bitter and continuing confrontation between the United States and Panama, magnified and deepened by the effects of this struggle on United States relations with other countries of Latin America and the Caribbean.

Adopting a new set of mutually agreeable obligations promises closer cooperation between Panama and the United States and offers the chance to turn the Panama issue from an example of American intransigence into a sign that this country knows how to protect its lasting interests in a rapidly changing world.

When all is said and done, the essential choice posed by the proposed new treaties is that simple. There is no real doubt, I think, that the United States has significant (if no longer critical) economic and military interests in Panama. Few would argue, I think, that the United States has a positive legal obligation to modify its treaty relationships with Panama in order to protect those interests. The real question is whether it is wise for the United States to base its continuing access to the Panama Canal on words alone, on the terms of a discredited treaty drafted under dubious circumstances in the bygone era of imperial expansion. It seems to me that previous testimony before your Committee has established well the case for constructing a new and more viable basis for protecting U.S. access to the Canal, a basis founded not on mere words, but on shared responsibilities and benefits. In brief, the proposed new treaties should engage Panama's energies more positively in maintaining and defending the Canal as that country's chief resource, it should decrease the threats to the Canal from Panamanian bitterness, it should diminish the prospect that the United States could eventually be drawn again into a bloody military confrontation with a nationalist movement on its own territory, and it would remove an irritant in U.S. relations with all the countries of the Hemisphere, an irritant which Senator Church of the Committee has aptly called a "bone in the throat" for Latin American nations.

PANAMA AND THE FUTURE OF INTER-AMERICAN RELATIONS

Because my own research and writing has not concentrated mainly on Panama, but rather on broader issues of United States relations with Latin America, let me emphasize this last point: the larger significance of the Panama issue in hemispheric relations.

As the United States enters its third century of independence, the nature of our relations with our neighbors in Latin America and the Caribbean is changing importantly. For many years, and especially in the immediate post-war period, the United States understandably treated Latin America and the Caribbean as its "sphere of influence": the United States wielded virtually unchallenged power, economic and military, and our political leadership was unquestioned. We came to feel we could take for granted the loyalty and cooperation of our neighbors to the South; they would support U.S. initiatives, import U.S. goods, utilize U.S. weapons, welcome U.S. investment, and so on and so forth, pretty much in the nature of things.

During the last ten years, however, the bases for this country's hegemonic presumption have eroded. No longer can the United States assume that the nations of Latin America and the Caribbean will share U.S. interests and perceptions.

Objective and subjective trends of several types coalesce to produce a fact, that the countries of Latin America and the Caribbean need to be taken seriously by the United States as independent countries, each able and eager to deal with the United States on a broad agenda of issues, regional and global. And as the issues are faced, each Latin American country begins with a special sensitivity about U.S. paternalism and interventionism, about the legacy of the past.

It is in this context that the Panama issue becomes so important in U.S.-Latin American relations. U.S. relations with Panama—and especially the status of the Canal Zone—have long symbolized for Latin America all that was regrettable about its "special relationship" with the United States. All our government's attempts to convince Latin Americans that we respect their rights and understand their interests would ring hollow if we could not bring ourselves to abandon the habits of thought and practice epitomized in the Panama Canal Zone.

Sensitivity and respect are the key points here, I think. And they are points which take on even more importance as the issues before this Committee become better defined.

I am no authority on artful terms like "expeditious passage" or on the likely course of world shipping patterns and how they will affect the economics of Canal use. But one thing I—or any student of U.S.-Latin American relations—can and should say is that the Senate should not consider asserting an explicit "right" of "intervention", in Panama, or anywhere else.

The "Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal" establishes a joint commitment by Panama and the United States to maintain the Canal's permanent neutrality, notwithstanding the termination of the Panama Canal Treaty or of any other treaties entered into by Panama and the United States. No clear statements are made about how the United States may exercise its obligation to maintain the regime of neutrality, and it is understandable and proper that this Committee should want to make U.S. rights in the matter somewhat more explicit. But to be surprised or upset that Panama's government

officials deny that the United States will have a right to "intervene" in Panama seems to me to illustrate the problem of Panama, not to contribute toward resolving it.

Thank you for inviting my testimony. I would be glad to try to answer any questions of course.

STATEMENT OF DONALD MARQUAND DOZER

My name is Donald Marquand Dozer, and I am Professor Emeritus of Latin American History and Inter-American Relations at the University of California, Santa Barbara. My professional career in brief outline includes a Ph.D. from Harvard University, intelligence work in the Office of Strategic Services in the Latin American area from 1941 to 1943, service in the Department of State in the fields of policy, intelligence, research, and history of Latin America from 1944 to 1956 including representation of the Department at Inter-American conferences and work on strategic surveys of Latin America for the Joint Chiefs of Staff. I have also been associated as consultant with the Brookings Institution and with the Center for Strategic Studies at Georgetown University, and I served in 1971 as Fulbright lecturer to Argentina. I am author of several books on Latin American history and inter-American relations, including *Are We Good Neighbors?* (University of Florida Press), *The Monroe Doctrine: Its Modern Significance* (Knopf), and *Latin America: An Interpretive History* (McGraw-Hill). I have visited all the Latin American countries, most of them many times, with the exception of two or three of the smallest and have friends and other excellent sources of information in all of them. In 1972 I was presented with the Alberdi-Sarmiento award by *La Prensa* of Buenos Aires for outstanding contributions to inter-American friendship. I was the second United States recipient of this award since it was established in 1954.

On my recent trip to Latin American countries earlier this year government executives, business leaders, journalists, and other leaders expressed their apprehension about the adverse effects on their national economies of the increased tolls authorized in this new canal treaty for the unjust enrichment of Panama. The Carter-Torrijos Canal Treaty will require a substantial increase in tolls to provide the Torrijos government with an average of \$80 million per year to service Panama's debts to a consortium of foreign lending institutions. In the new Canal treaty Panama assumes no binding obligation, like that which rests upon the United States, to keep the Canal free and open at reasonable charges.

Latin American leaders also expressed indignation over the cavalier treatment of Colombia. The Thomson-Urrutia Treaty of 1914 granted Colombia free use of the Canal for certain products of its soil and agriculture and also free use of the Panama Railroad under certain conditions. There is no protection of Colombia's treaty rights in either the new Canal Treaty or the new Neutrality Treaty. When Colombia protested this violation of its treaty rights the State Department summarily dismissed the complaint with the statement that Colombia must negotiate with Panama.

The diplomatic ineptitude of the negotiators of the new draft treaties in agreeing to pay Panama \$10 million annually for discharging police and sanitation responsibility in the Canal area ignores the sad experience of the United States abrogating its police power in the cities of Panama and Colon in accordance with terms of the 1936 treaty and abdicating its responsibility for sanitation in the same two cities in accordance with terms of the 1955 treaty. Recent rioting in both Panama and Colon underscore the folly of the former concessions and the failure of Panama to collect the garbage with the attendant problems of disease-bearing rats emphasizes the folly of the latter concession.

The Hay-Pauncefote Treaty of 1901 binds the United States to defend the freedom of transit of the Panama Canal and keep it open to the vessels of all nations at charges which are just and equitable. The United States has made an unblemished record at honoring this commitment ever since opening the Canal to world traffic in 1914. During the 63 years while the United States has operated the Canal as an international public utility the citizens of all nations who have used the Canal have acquired a vested right to free and uninterrupted transit under the flag and protection of the United States.

The Isthmian Canal Convention of 1903 is the only treaty which binds Panama to Articles III and IV of the Hay-Pauncefote Treaty which makes the isthmian canal an international waterway. There is no time limit on this commitment. The national honor and integrity of the U.S. demand that we retain all the sovereign rights, power, and authority granted by Panama in perpetuity in 1903.

Contrary to false statements made by the executive branch the neutrality treaty does not give the United States the right to intervene in Panama to honor our international commitments to keep the Canal free and open to user nations. In fact the word intervention appears nowhere in either treaty and was deleted in capitulation to Panama's demands. Chairman Romulo Escobar of the Panamanian People's Party and Panama's principal treaty negotiator, has made it clear to his Assembly of Community Representatives that the United States cannot intervene to defend the neutrality of the Canal without committing an act of aggression.

The publicly stated aims of the Marxist Torrijos dictatorship of Panama are: (1) to nationalize the Canal Zone, (2) to order the United States defense forces to leave the Isthmus, and (3) to confiscate the Canal. If the Senate consents to ratification of the Carter-Torrijos Canal Treaty the Canal Zone will cease to exist. Torrijos can then order United States troops off the Isthmus just as General Charles DeGaulle ordered United States forces off our defense bases in France.

The Isthmian Canal Convention of 1903, specifically provides for the stationing of United States forces in the Canal Zone for the defense of freedom of the interoceanic canal. Under the new treaties and President Carter's contingency plan for keeping on the alert United States troops at Fort Bragg, a parachute drop on what will be again Panamanian soil will be an act of aggression. As long as we retain our present treaty rights in the Canal Zone we can keep the peace and regain the respect of our Latin American neighbors by maintaining a strong defense in the Canal Zone. On the other hand if the Senate consents to the new Canal treaties it will be necessary for the United States to commit an act of aggression in order to maintain the neutrality of the Canal.

What is best for the nations of the free world is also best for Panama. The wisest advice was given by nine members of the Senate Committee on Armed Services in February 1973 as follows: "In a long range, we must work with Panama to help her understand that the best guaranty of her sovereignty, security, prosperity, and nationhood lies in maintaining the historic grant of sovereignty to the United States in the Canal Zone."

The United States did not transgress in any way against the Panamanian people by guaranteeing their independence in 1903. The President of the Provisional Government of Panama, José Agustín Arango, and his associates had worked for twenty years for freedom from the tyranny of the unitary government imposed upon them by Bogotá. Whenever they undertook to reassert their independence the United States had intervened to protect the freedom of transit across the Isthmus and had supported the sovereignty of Colombia. The impudent rejection of the Hay-Herrán Treaty by Colombia was for Panama a stroke of fortune. Unwilling to see the Nicaragua canal completed in accordance with the Spooner Compromise of 1902 the Panamanian patriots resumed their independence and offered the United States a canal treaty conforming in every respect to the requirements of the Hay-Pauncefote Treaty of 1901 and the Spooner Act of 1902.

When in 1911 Theodore Roosevelt boasted "I took the Isthmus" he should have added "because Panama offered herself." We have the word of Dr. Manuel Amador, "It was our own act." (Manuel Amador, "The New Republic of Panama," *The Independent*, November 26, 1903). President Roosevelt considered it "fitting that the United States should . . . be the first to stretch out the hand of fellowship . . . to the new-born state."

In response to Colombian protests against Roosevelt's braggadocio the United States paid Colombia the \$25 million which their congress had demanded in 1903. Under terms of the Thomson-Urrutia Treaty of 1914 the United States purchased a quit claim by which Colombia recognized the independence of Panama and acknowledged that "title to the Panama Canal and the Panama Railroad now vests entirely and absolutely in the United States without any encumbrances or indemnity whatever."

Neither in the treaty of 1903 nor in any subsequent treaty concluded between the United States and Panama are the words rental or lease or any form of these words used to define the status of the United States in the Canal Zone. The continuing argument for a leasehold status of the Zone rests entirely upon the spurious interpretation of Article XIV in that treaty in which the United States agreed to pay Panama an annuity of \$250,000 in gold coin starting nine years after the signing of the treaty. A study of the history of the negotiations of 1903 shows that Bunau Varilla, in an effort to resolve a deadlock, persuaded Secretary Hay to assume the annual franchise payment of \$250,000 which the Panama Railroad formerly paid to Colombia. This annual payment to Panama did not impose any limitation upon the sovereign status of the United States in the Canal Zone nor upon the ownership by the United States of the land of the Canal Zone. The Canal Zone has never been

leased to the United States. It was granted in perpetuity, and in this relationship no justification can be found for a partnership arrangement with Panama for the administration of the Canal.

Contrary to false statements by the executive branch Article III, paragraph 6, of the 1936 treaty revision does not say that the Canal Zone is "territory of the Republic of Panama under the jurisdiction of the United States of America." This refers to territory of Panama in the city of Colon formerly known as New Cristóbal. United States jurisdiction over this parcel of territory was later abrogated under the terms of the 1955 treaty revision.

The ruling by the United States Supreme Court in *Wilson v. Shaw* (204 U.S. 24, 1907) that Panama ceded the Canal Zone to the United States is not a unilateral interpretation of the 1903 treaty as falsely alleged by our State Department. It merely affirmed decisions made by all three branches of the government of Panama in 1904. In his well known letter of October 1904 to Panama's minister, Jose de Obaldia, Secretary of State John Hay cited the Davis-Arias boundary agreement of June 1904, by which the executive conceded that Panama ceded the Canal Zone to the United States by terms of the 1903 treaty. Hay cited Law No. 88 enacted by the Panamanian National Assembly in July 1904 which used the words "the Zone ceded to the United States." Hay also cited numerous court cases by which the judicial branch of Panama acknowledged the territorial cession of the Canal Zone to the United States.

The theory of titular sovereignty has no standing at law. Originally promulgated in connection with the Taft agreement of 1904 it was dismissed out of hand by Secretary of State Hay as a "barren scepter." Later while Taft was serving as Chief Justice of the United States in 1930 he had an opportunity in delivering the decision of the Supreme Court in *Luckenbach Steamship Company v. United States* (280 U.S. 173), to give legal standing to his theory of titular sovereignty. He did not do so. Instead he sustained the ruling decision of *Wilson v. Shaw*, and this ruling was again sustained in 1972 when the Supreme Court denied certiorari in the case of *United States v. Husband* (R). (406 U.S. 935)

A pretext advanced by the State Department for renegotiating the treaties with Panama is the international law doctrine of *rebus sic stantibus* which permits the renegotiation of treaties when the conditions of the original negotiation have changed. Conditions in international relations are constantly changing, and to seek to renegotiate treaties of territorial cession on this pretext can lead only to international chaos. For example, during the early years of the Eisenhower Administration the Soviet government questioned the validity of our Alaska Purchase Treaty of 1867. This question was answered by admission of Alaska to the Union as a new state.

The Canal Zone purchase of 1903 accords with the historic foreign policy of the United States. This policy is so firmly established in international law and in the United States Code that there is now no alternative but to incorporate the Canal Zone in the Union as a new state by joint resolution of Congress. This will mandate the President to defend the territory of the new state against invasion and will fulfill the statesman-like vision of Secretary of State John Quincy Adams in the Monroe Doctrine, of Secretary of State Henry Clay, who established the principle that an interoceanic canal must be open and free to the vessels of all nations upon payment of reasonable tolls, and of President Rutherford B. Hayes who stated to Congress: "The policy of this country is a canal under American control * * * and virtually a part of the coastline of the United States."

Persistent efforts to renegotiate treaties to surrender control over national territory and to let it pass into the hands of foreign powers only promote international instability and serve the interests of these foreign powers. Claims of the State Department that a new treaty relationship with Panama will protect the vital interest of the United States are only a vain Utopian dream. To restore good relations with Panama and the other nations of Latin America the United States must return to a Good Neighbor Policy based upon self-respect. This demands that we retain all our treaty rights in the Canal Zone. We must defend them as indispensable economic, geopolitical, and military assets. Then Congress can appropriate public funds to complete the larger third locks, authorized by law in 1939 in accordance with the approved Terminal Lake Plan.

There is no substitute for an American canal, on American soil, under American control.

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"STRATEGY, SEA POWER AND SURVIVAL: THE CASE FOR RETAINING THE ISTHMIAN CANAL"

(By Lewi A. Tambs)

On Monday, June 6, 1977 a hand carried letter arrived at the White House. Addressed to President Jimmy Carter the message cautioned him against the new Panama Canal agreements and warned that loss of the Canal, which would be a serious setback in war, would contribute to encirclement of the United States by hostile naval forces and threaten our ability to survive. The communique closed with the signatures of four former Chiefs of Naval Operations—Admirals Thomas Moorer, Arleigh Burke, Robert Carney and George Anderson.

Presidents and admirals pass, but strategic imperatives and national interests remain. The bulk of the World's seaborne commerce flows through twelve major maritime choke points; four inland seas—South China Sea, Mediterranean, North Sea and Caribbean; two interoceanic canals—Suez and Panama; and six critical passage points—Singapore, Ceylon, Horn of Africa, Gibraltar, Cape of Good Hope and Straits of Magellan. These twelve choke points have been the scene of strife ever since the sixteenth century when Western Europe launched its maritime expansion. All the major sea powers—Spain, the Netherlands, France and Great Britain—struggled for domination of these passages. But by 1945 the older commercial empires were ebbing. A new bipolar world emerged. The United States stood triumphant. Control and responsibility for the global sea lanes rested with the Americans. But, the other super power, the Union of Soviet Socialist Republics, also had national and ideological aspirations.

The US sought to restrain Soviet ambitions with the Containment Doctrine of George Kennan. Containment was essentially an updating of Sir Halford Mackinder's Eurasian Heartland thesis which envisioned land power (Russia) and sea power (Anglo-Americans) juxtaposed. Secure in their air, atomic, economic and technological superiority the North Americans erected a series of defensive encir-

cling alliances in the Rimland or Inner Crescent of the Eurasian World Island. Simultaneously behind the NATO, Northern Tier and SEATO shield they sought to promote political progress by encouraging decolonization and liberal democracy while generating economic stability by fostering free trade and private capitalism in the Outer or Insular Crescent. Containment was, however, basically defensive. The initiative passed to the Soviets. Seeping through the encircling alliance system the Russians began fueling wars of national liberation and sowing subversion. Meanwhile, ignoring the cries of their consumers, the Communists concentrated the vast resources of the Eurasian pivot area on the production of nuclear weapons, the development of heavy industry and the advancement of space technology. Within a decade and a half they had achieved near parity. Atomic warfare became almost unthinkable; nuclear devices and intercontinental ballistic missiles unoperational. The world returned, if only temporarily, to the classical concepts of strategy and political geography where space, place, population, endowment and development are paramount. The Russians, notably Field Marshal V. P. Sokolovsky and Admiral Sergi G. Gorshkov, having studied and digested the geopolitical theories of Mackinder, Karl Haushofer and Thayer Mahan opted for imperial adventure.¹

The holders of the Eurasian Heartland would challenge the Oceanic peoples of the Inner and Outer Crescents—the Americans and their allies. Construction of a high seas fleet and control of the world's sea lanes emerged as a prime objective of Soviet policy. By 1959 the Russians, having made the North Sea a virtual *mare nostrum*, accelerated their intrusion into the three other inland seas—South China Sea, (Viet Nam) mediterranean (United Arab Republic) and Caribbean (Cuba). Of the two isthmian canals, Suez—since it provided the USSR with shorter seaborne link between its Atlantic and Pacific coasts just as Panama served the United States—was targeted first. In true nineteenth century colonial fashion further efforts were directed at the six critical passage points—Singapore, Ceylon, Horn of Africa, Cape of Good Hope, Gibraltar and Straits of Magellan.

Between 1959 and 1975 the world was awash with diplomatic and military maneuvers. The People's Republic of China broke with the USSR. United States' efforts to salvage South Viet Nam and the South China Sea failed. Indonesia was, however, retrieved. The Soviet Fleet entered the Indian Ocean in force. Conflict wracked the Middle East. The Suez Canal was opened and closed. From Cuba Fidel Castro struck around the rim of the Caribbean, only to be frustrated by local nationalism and U.S. counter insurgency. Salvador Allende came and went in Chile and with him a potential threat to the Straits of Magellan.

Of greater import the bipolar world of the post World War II era faded and the day of the super tanker dawned. Four nations emerged as centers of economic and political stability in their respective regions; Japan in the Western Pacific, Iran in the Mid East, the Federal Republic of Germany in Western Europe and Brazil in South America. Recognizing the new reality the United States sought to shore up the shattered Mackinder-Kennan system along the Eurasian rimland while Brazil was given special recognition in South America. But the world had also altered in another way. The repeated closings of the Suez Canal, the economy of petroleum transport and the mounting dependency of the industrialized nations on imported oil heralded not only the advent of the super tanker, but also the evolution of a new strategic map. The oil sea lines of communication (SLOC) which had previously passed from the Middle East to Western Europe and the United States by way of the Mediterranean now ran southward through the Indian Ocean, around the Cape of Good Hope and up the South Atlantic. The world was turned upside down; the globe inverted. And the Soviets were astride the sea lanes on both coasts of Africa.²

In April 1974 the dominoes had begun to totter. Portugal, targeted along with Spain and Morocco by the Soviets in their Plan Oran, trembled. Mozambique and Angola swayed with Soviet-supported insurgency. Saigon fell in March 1975 and with South Viet Nam went Cambodia and Laos. Mozambique and Angola were pushed into the Socialist orbit by Russian trained and supplied Cuban regulars. The United States apparently paralyzed by its inability to implant Wilsonian democracy in Indo-China, stunned by the failure of its machines to impose its will on the minds of the North Vietnamese and torn internally by the defection of the intelligentsia, stood by helplessly. The United States which had stood triumphant in 1945 was within thirty years in retreat everywhere. America's major allies—Japan, Iran, West Germany and Brazil sensing the metaphysical crisis, scrambled to save themselves.

¹ V. D. Sokolovsky, *Military Strategy: Soviet Doctrine and Concepts* (New York, Praeger, 1963); and Sergi G. Gorshkov, *Red Star Rising at Sea*, T. A. Neeley, Jr., trans (Naval Institute Press, 1974).

² Geoffrey Kemp, "The New Strategic Map," *Survival* 19:2 (March-April, 1977), pp. 56-59.

The proposed new agreements with Panama are but another example of the decay of America's instinct for survival, sense of strategy and commitment to freedom. Even John F. Kennedy's declaration that the mission of the United States was to make the world safe for diversity seems to be forgotten as totalitarian Marxist-Leninist regimes supported by Soviet subversion and sea power spread over the globe.

The cruise of the *USS Oregon* from the Pacific to the Atlantic during the Spanish-American War of 1898 dramatized the need for an American isthmian canal. The voyage around Cape Horn added 8,000 miles and almost two months travel time to the voyage. Assuming that Cape Horn and the Falkland Islands are in friendly hands, a modern war vessel steaming at 20 knots still needs an additional 17 days to complete the cruise around South America when compared with the 8 to 10 hours required for the Panama passage. Possession of the Panama canal, moreover, has allowed the United States the economic advantage of maintaining one fleet by shifting units back and forth rather than supporting the cost of a two ocean navy. The continuing value of this concept was proven during the Viet Nam War. In 1968 at the height of the conflict 1504 US Government vessels utilized the canal. Even in the relatively sombulent years of 1974 and 1975 the number totaled 248 and 170. Of the 176 combat surface ships and 75 attack submarines currently on active duty with the United States Navy, only 13 large aircraft carriers cannot transit the canal. However the vast majority of warships can. The need for the US Navy to retain the ability to shift units is further accentuated by the increasing presence of Soviet task forces in the Gulf of Mexico and the Western Atlantic. This is especially critical given the numerical superiority of the Soviet Fleet which lists 214 major combat ships and 231 attack and cruise missile submarines. All of which, curiously enough, can pass through the Panama Canal.³

In modern naval warfare subsmeribles hunt subsmeribles. The USSR enjoys an advantage over the US attack submarines. They also have a geographical advantage. While the US is essentially a large land mass surrounded by water, the USSR is an even larger land mass essentially surrounded by land and frozen seas. Thus Soviet submarines carrying relatively short range missiles can stand off North American coasts and cover the continent, while US Polaris subsmeribles stationed in the North Atlantic, Indian Ocean and Western Pacific must be equipped with the expensive Trident missile system with a range of 4,000 miles. Detection, location and tracking of submarines depends on underwater sound and satellite systems; the kill by aircraft or attack submarines. Control of the Canal Zone adds to US aerial surveillance and permits the immediate transfer of attack submarines to regions frequented by Soviet subsmeribles, and thus aids the defense of the continental United States.⁴

US foreign and coastal commerce also depends on the Canal. In 1975 over 16 percent of all US seaborne trade used the waterway. Moreover, statistics reveal that down through the years a constant average of about 70 percent of all cargo through the Canal is bound either from or to a US port. The economics of water transport for bulk products such as grain or petroleum are well known. Midwestern grain growers who ship their cereals by way of the inland waterways and the Missouri and Mississippi on to US and foreign Pacific ports by way to the Canal depend on inexpensive tolls for their small margin of profit. If the Canal were closed many would be ruined for the Cape Horn route would result in an estimated 31 day increase in shipping time. Under US administration, rates remained relatively stable from the opening of the Canal to 1974. Current transit cost averages around 8,000 dollars per vessel.

Tolls set merely to cover operational expenses cannot be guaranteed under the new isthmian treaty. Brigadier Omar Torrijos, Panamanian Chief of State, has repeatedly stated that the Canal is a natural resource and will be exploited as such. Torrijos' need for funds is certainly understandable. Panama's external debt which amounted to 167 million dollars when the civilian government was ousted in 1968 now totals 1.5 billion. Most of these debts are owed to US banks. Torrijos and his creditors need money and the Canal is the milch cow. Even Sol Linowitz formerly of Marine-Midland Bank and currently the State Department's co-negotiator has admitted that tolls will increase immediately 25 to 30 percent upon ratification of the treaty.

This initial increase in rates will also include petroleum shipments. Oil from Alaska's North Slope has already passed through the Canal. A super tanker from

³ *The Military Balance, 1976-1977* (London: Institute of Strategic Studies, 1977), pp. 6, 9; Panama Canal Company, *Annual Report, 1973* Balboa Heights, C. Z.: 1973), p. 38; *Ibid.*, 1975, p. 5, and Adm. William Read, Atlanta, in *Phoenix Gazette*, October 7, 1977, p. B-13.

⁴ Richard L. Barkley, "The N-Boat Standoff," *National Review* (June 10, 1977), pp. 660-662.

Valdez transhipped its cargo at Balboa into three regular tankers which carried the oil to US ports. Since Gulf ports are unable to accommodate super tankers anyway, off-loading at Balboa is currently the most feasible. Nevertheless utilization of the four existing 10 and 20 inch diameter US Navy pipelines running through the Canal Zone might prove more economical in the long run for supplying the energy starved East Coast. Thus the argument of proponents of the new treaty that the Canal is obsolete because it cannot take super tankers is redundant. Particularly so since vessels such as the *San Juan Prospector*, at 108,770 DWT and with a length of 972' have already transited the isthmus. Erroneous also is the contention that the Canal has already reached its limit. The Canal presently handles 30 to 40 ships a day. Maximum capacity is estimated at 70 vessels per day: a figure projected for 1990. Moreover, the Terminal Lake—Third Lock Plan initiated by President Franklin D. Roosevelt but halted in 1942 would almost double the numbers of ships that could be handled if it were completed.

The charge that the Canal is vulnerable to atomic attack and sabotage is partially correct. Nothing is completely impervious to nuclear warheads. But given the prevailing balance of terror this possibility is more potential than immediate. Especially now, since the Soviets through the application of sea power and subversion are gaining their objectives anyway. Sabotage can be minimized by proper security measures. Moreover, if the existing US garrison of 9,000 cannot assure the internal security of the Zone, how can the Panamanian National Guard of 6,000, tied down as it is with running the republic protect the Canal? Especially when it must confront 1,700,000 citizens who have been deprived of their civil rights since the military coup of 1968. The question of building up the Panamanian Armed Forces has a direct relationship to human rights and military dictatorship. If the National Guard, supported by US subsidies and increased Canal tolls, is expanded to a level to provide even only adequate police protection, not military defense, will not the US be responsible for strengthening the hold upon the Panamanian people of an already repressive military regime that has banned all political parties but has permitted the Communist Party to operate openly and whose Chief Negotiator Romulo Escobar Bethancourt is "an extreme leftist and friend of 'Che' Guevara."⁵

Given Soviet interest in Panama, the political coloration of Escobar, and Torrijos' open admiration for Fidel Castro, other Latin American nations are beginning to wonder about the wisdom of turning over the Canal to Panama. Brazil has a burgeoning trade with the Far East. Some 8 percent of Brazil's foreign commerce is with Japan and rising. If the Canal falls into hands hostile to Brazil there are only two other sea routes to the Pacific. One around the Cape of Good Hope is monitored by the Soviets. A second around Cape Horn is "precarious."⁶ Given the hazards of the Cape of Good Hope and Cape Horn, Brazil will probably have to seek a peephole on the Pacific. The most feasible is a transcontinental route from Santos to Arica, passing by way of Bolivia and Chile or Peru. For the Brazilians like the Russians are avid students of geopolitics. They believe that since 70 percent of the world's population and 70 percent of the globe's unexploited natural resources lie along the rim in the Pacific basin which includes the Indian Ocean, that the Pacific is the ocean of the future. And Brazil is an emerging power—a land of the future.

The Pacific coast states of Latin America are also wary about the Canal, for they are even more dependent than Brazil. Thirty-four percent of Chile's maritime trade passes through Panama; 41 percent of Peru's; 51 percent of Ecuador's; 66 percent of El Salvador's; and 76 percent of Nicaragua.⁷ Higher tolls are going to hurt. Conversely, Mexican commerce will be the least effected. The Mexicans, however, should realize that as the Canal slips out of US hands Yankee interest is going to increase in the Gulf of California and the Isthmus of Tehuantepec. Argentina finds itself in a similar situation. Like many of the other Latin American nations they have vociferously supported a Panamanian take over. As the date draws near they are not so certain. For the Argentines want the British-held Falkland Islands and fear that as US sovereignty over the Canal slips away an enlarged North American presence will be felt in the Falklands and Cape Horn as well. Neither of these prospects are welcome in Argentina. Victims of their own rhetoric, Latin American politicians are beginning to look to the US Senate to save them from Panamanian economical extortion and mounting American pressure. Many would prefer to leave the situation as is for they are aware of the similarity with Suez. They could then

⁵ Raymond Estep, *A Decade of Political Change in Latin America, 1963-1973* (Maxwell Air Force Base, Ala.: Air University, 1974), p. 237.

⁶ Interview with high Brazilian General Staff Officer, August 1977.

⁷ Interviews Brazil, Uruguay, Argentina, Paraguay and Bolivia, August-September 1977.

continue to berate the US and at the same time have their national interests preserved.^a

But who speaks for America? In general the backers of the new treaty are the same ones who decried the reputed errors of Presidents Eisenhower, Kennedy, Johnson and Nixon for involving the US in Southeast Asia. Simultaneously these supporters salute these same chief executives for their statecraft in Panama. The concessions of 1959, 1963, 1964, 1967, 1970, 1973 and 1974 have, however, only provoked an escalation in Panamanian demand. Could it be that these presidents who supposedly followed a bankrupt policy in Viet Nam also erred in Panama? Our negotiators Ellsworth Bunker and Linowitz have assured us that the US retains the right to intervention and that US warships will receive immediate dispatch through the Canal. This appears to be a private revelation since both Torrijos and Escobar deny this interpretation. Moreover, our diplomats have protested that the only way to protect the Canal was to deed it to Panama. The Panamanians, the argument went, would never destroy their prime natural resource. Torrijos has a different view. On October 7, 1977 he proclaimed that "Senate rejection of the treaty could lead to the closing of the Canal."^b Who are we to believe? Bunker and Linowitz or Torrijos and Escobar?

Who speaks for America? Once sovereignty is lost, the Panamanian Government will have every legal right under eminent domain to expropriate the Canal, treaty or no. Moreover, the U.S. has no assurance that Torrijos will not ally himself with his idol Fidel Castro. Nor do we have any guarantee that succeeding Panamanian governments will honor the agreement. This is a chancy business.

The Panama Canal is one of the world's major maritime choke points. Since 1959 the Soviet Union has emerged as a great maritime power. Challenging the United States and its allies—the Sea Peoples of the Mackinder thesis and the Kennan Containment Doctrine—on all the oceans of the world, the Russians have intruded into every inland sea, canal and passage point on the globe. Now as the United States withdraws into the shell of Fortress America even maritime communication between our own Atlantic and Pacific coasts is endangered. As the four former Chiefs of Naval Operations warned the President; "under the control of a potential adversary the Panama Canal would become an immediate crucial problem and prove a serious weakness in overall United State defense."

Gentlemen, I urge you to reject the proposed Panama Canal Treaty.

STATEMENT BY PHILLIP HARMAN

Mr. Chairman and distinguished members of the Senate Foreign Relations Committee:

I am honored to be here today. I have been waiting for nine years to be a witness ever since the Oct. 11, 1968, overthrow of Panama's constitutional and pro-U.S. government of President Arnulfo Arias, to give testimony as to how the current Panamanian government came to power and what their objectives are that are detrimental to the best interests of the United States and of the gagged people of Panama who have lived in a police state for the past nine repressive years.

As I have been involved directly and indirectly with Panama since 1941, many people believe that I am a Panamanian. I am not. I am an American. At one time I was appointed by President Roberto Chiari as an Honorary Consul General of Panama in California. Concerning Panama, a country that was founded by my grandfather-in-law, José Agustín Arango, and a country that I have lived in and know well, especially the judicial and political background, I would be derelict in my moral obligations to my country and to myself if I did not devote all of my time and efforts in exposing the illegal and pro-Cuban-Russian military dictatorship in Panama that is dedicated to bring Panama under Cuban-Soviet domination. When I started my campaign in November of 1968 to expose the military regime in Panama, I was the only one doing so. After the Kissinger-Tack agreement on Feb. 7, 1974, numerous organizations emerged to protest this agreement and today this issue has engulfed most of the United States.

Today, I would like to outline three factors that I believe are pertinent as to whether or not the U.S. should ratify a treaty with the current de facto Government of Panama.

My first factor concerns the illegality of Panama today to sign a treaty with the United States. On Oct. 13, 1968, the Executive Board of the Panamanian Bar

^a Council of the Americas, *United States, Panama and the Panama Canal* (New York: 1977), pp. 15-16.

^b A P. dispatch, Stockholm in *Phoenix Gazette* October 8, 1977, p. 1.

Association in a declaration addressed to the people of Panama and all professional, labor and student organizations stated:

"These events (the seizure of the Government of President Arnulfo Arias on Oct. 11, just two days ago) must be evaluated in the light of Article 2 of the nation's Constitution which clearly provides that the public power emanates solely and exclusively from the people and that it is exercised through legislative, executive and judicial agencies. Consequently, any act by an organization, institution or group other than those authorized under the national Constitution to exercise the public power is illegal and a flagrant violation of the basic principles underlying the democratic system."

I am enclosing with my statement the complete report of the Panamanian Bar Association. It should be noted that on Oct. 11, 1968, the Government of Panama ceased to be a constitutional organ and therefore any amendments to the legal 1946 Constitution would be non-constitutional and invalid as stipulated by Article 252:

"This Constitution may be amended only by a legislative act enacted by the National Assembly in regular sessions, which must be published and transmitted by the Executive to the Assembly in the first regular sessions following new elections for Deputies, so that it may again be debated and approved by an absolute majority of its members."

According to the 1972 spurious amendments of the 1946 Constitution enacted by the current Panamanian government, any new treaty must be submitted to plebiscite. However, as the Panamanian government today is nonconstitutional as outlined in Article 2 and with all political parties banned and their National Assembly dissolved in 1968, even a plebiscite would not have the force of law as outlined by Articles 2 and 252 of the 1946 legal Constitution of Panama. As the United States acknowledges legitimacy of the present Panamanian government based on de facto control, it should take into consideration the possibility that any treaty ratified with Panama could be disregarded by future generations and by the constitutional governments that no doubt will come in the future. We should be reminded as to how the 1903 treaty with Panama has been so severely criticized throughout the years.

My second factor concerns the violation of human rights in Panama and in particular to the murder of a Catholic priest, Father Héctor Gallego, on June 9, 1971. On August 21, 1972, the French Press Agency from Barranquilla, Colombia, reported the statement made by Father Pedro Hernández Rabadal. I will quote a part of his official statement and will include the total news release with my statement:

"Father Gallego perished. This was the information given to me by one of the guards who seized him by order of the government. He was captured at midnight. Father Gallego was reluctant to leave the house, but, since he was a guest in the home of friends whom he did not wish to compromise, he agreed to leave.

"The guards forced him into an official car. Father Gallego, thereupon, cried out for help. But the guards struck him with a revolver until he fainted. Since he did not recover from the beating, he was taken to a military hospital, where the doctor diagnosed the case as a skull fracture. While still under observation in the hospital and without recovering consciousness, Father Gallego suffered an embolism which paralyzed him."

Faced with this emergency, the authorities in Veraguas saw themselves obliged to consult the central government and the news reached General Torrijos.

"He lamented the situation and emphasized that it was not because of his orders that this had happened, but that 'now there was no remedy.' He added that it was better that the priest perish and not all those charged with government. He also expressed fears that, if the news became known, he and his associates 'would be ousted'. It was better, under the circumstances, for the invalid priest to disappear, to be 'taken up in a plane and to be tossed into the sea.'"

Furthermore, the Government of Panama prevented the Catholic Church from hiring a special investigating team from Mexico to investigate the disappearance of the priest. On July 20, 1971, the government sent an official note to the Church stating:

"Your petition cannot be accepted, since this might be interpreted almost as an attempt to lessen the legal and moral value of our demands to the United States Government concerning our right to jurisdiction in the Canal Zone. It would appear as if one were doubting the capabilities of our authorities to investigate crimes and find the responsible ones at a time when we are demanding this right in the Canal Zone."

An essentially and profoundly Christian nation, the people of Panama can forgive but they will never forget the sadistic death of Father Gallego that was ordered by Omar Torrijos. Bishop Legarra of Panama has described the priest as "an authentic

witness of the Gospel" and that Father Gallego had been persecuted for defending the cause of the poor, the peasants of Santa Fe."

I also would like to quote a statement made by Ruben D. Carles, Jr., a former cabinet member of a previous Panamanian administration. Mr. Carles, an officer of the Chase Manhattan Bank in Panama, was arrested by the Secret Police (G2) of the National Guard on January 20, 1976. He is now in exile in Honduras. In a report that he made last year about his arrest and deportation, he wrote:

"The case of the Panamanian exiles of January 20, 1976 testifies to the repressive and oppressive attitude of the military dictatorship. In contrast to the statements made by the military government there has never been a conspiracy or any kind of subversive action. In spite of the fact that people in Panama officially talk about ideological pluralism and the existence of freedom in the country, there is no freedom. In spite of the fact that the Constitution permits the existence of political parties, there are no parties except the Communist Party (Partido del Pueblo—The People's Party). While the government of Panama speaks for the freedom of the people at international meetings and organizations, it treads upon the freedom of the Panamanian citizens: Panama is a country occupied by the National Guard."

Mr. Carles further wrote about his arrest prior to his deportation:

"Our guards were more humane and obliging than the officers who frequently visited us. Gradually the tension subsided and soon a sympathetic and cordial relationship was established between the guards and the prisoners that contrasted with the arrogance and rudeness displayed by the officers.

After we had spent some time in that room under the previously described conditions two officers told us that we had to file individually into the adjoining building. They did not say why. We complied. There they searched us and took away our personal documents and identification cards. When we went to the next room, they snapped pictures of each individual and subsequently ordered us to step inside a hall where we faced six guards commanded by two officers. We were told to remove our clothes and hand them over to them. When we asked whether we had to strip completely they used obscenities and ordered us to even remove our socks. They put our clothes to one side and while standing next to each other we watched the guards searching our billfolds and examining the papers they found. I did not understand why there was a need to search them.

Maybe this was some sort of a psychological scheme designed to offend and morally debase prisoners. They very rudely examined and registered the contents of my billfold and allowed me to keep only my identification card. The guards kept the credit cards and other documents. Finally they removed my wife's picture. The officer very rudely told me that I won't need it where I am going.

They also took away our belts and neckties. Luckily they gave me back my buckle and my cash. Although I told the officers that I could not stand naked in a drafty place they mockingly replied that nakedness meant just what it said. Still I did not know whether they were satisfied; they wanted to see us in the nude. I just cannot understand what the chiefs in the National Guard have been teaching their subordinates."

Although racial discrimination is a form of violating human rights, I would like to bring to the attention of this Committee, a list of ten races that the current Government of Panama bans from immigrating to their country. The ten races are:

"Restricted immigration. (a) The following listed categories of persons are considered to be persons of restricted immigration to the Republic of Panama:

- (1) Arabs.
- (2) Armenians.
- (3) Gypsies.
- (4) Hindostanians.
- (5) Lebanese.
- (6) Negroes (whose language is other than Spanish).
- (7) North Africans (of Turkish race).
- (8) Palestinians.
- (9) Syrians.
- (10) Turks.

(b) The prohibitions against the immigration of persons of the above-listed categories is directed at the race of such persons rather than their nationality at the time of arrival."

I will include a copy of this list with my statement.

The third and last factor that I want to elaborate on pertains to communism in Panama and it is a subject that I am closer to, I believe, more than any other American. Back in the fifties and sixties, I headed what was known as the "anti-Communist world" in the Republic of Panama. Let me explain this. Within the

Secret Police (comparable to the FBI in our country) of any Latin American country, there is a small group of men who do nothing but try to eliminate and counteract as well as exposing communism in their country. This is a very secretive type of operation because one is not only dealing with the Communists in their country but the power of the Soviet Union behind them who supports and advises the Communist parties in all of the Latin American countries. It is a never ending battle.

Regarding Panama, the Communist Party was organized in 1930 with two basic objectives.

a. To gain control over the Government of Panama from within. This would be accomplished by gaining control over the armed forces of the nation.

(b) After the first objective was finalized, they would then attempt to gain control over the sovereignty of the Canal Zone through a massive propaganda campaign. Once the sovereignty is surrendered through treaties, the Canal would then be nationalized.

In 1943, during the war years, a directive was sent from the Kremlin to the Party in Panama to change their name from the Communist Party of Panama to the Peoples' Party. In Spanish it is called "Partido del Pueblo." The psychology behind this was to give the impression to the Panamanian people that their Party was for the people. However, in referring to the Party, the Panamanian people still call it the Communist Party.

The basic policy of the Kremlin concerning the Communist parties in the countries throughout the world is for these parties to be self-sufficient. However, because of the Kremlin's maritime strategy to control all the main waterways of the world, and they have classified the Panama Canal as the most important, the Panamanian Communist Party was placed in a special category with top priority which allowed the Party to receive outside aid in the form of money, propaganda material and experts in subversive and propaganda fields. This outside assistance came primarily from the Russian embassies in Cuba, Colombia and Mexico.

The Communists in Panama first showed their strength in 1941 when hiding behind other people they maneuvered the first of three overthrows of President Arnulfo Arias' governments. There were three reasons why the Communists had to remove President Arias in 1941:

a. In 1939 during his campaign for the 1940 presidency, Mr. Arias publicly said "the Soviet Union wants my country as a stepping stone to gain control over the Panama Canal."

b. During his presidency in 1941, he enacted into law Panama's Social Security System.

c. He passed a law for the right for women to vote.

These three points were negative ones to the Communists. They finally decided that President Arias was the Panamanian that should be targeted in on and be kept out of office.

On November 24, 1949, Dr. Arias again became the President. On April 1 of 1951, sensing the Communist threat to the country, President Arias signed a bill banning all Communists from holding public office. His bill was rejected in the National Assembly on April 11. A few weeks later on May 10, the agents of the Kremlin who hide behind other people in Panama, were able to topple his government and influence the Assembly to take away his civil rights for 10 years.

On the afternoon of July 22, 1956, I met with Secretary of State John Foster Dulles, in Panama at the request of President Fulgencio Batista of Cuba. I explained to the Secretary the objectives of the Communist Party of Panama and the danger to the security of the Panama Canal if and when the Communist Party gained control over the Panamanian government. I told him that when the Communists felt they had control of the National Guard, they would then seize the nation.

I further explained to the Secretary what had to be done to counteract the initiatives of the Communists in their strategy of indoctrinating the officers of the National Guard. Mr. Dulles was very receptive to what I had to say but, unfortunately, for me and Panama, Nasser grabbed the Suez Canal four days after our meeting and the Communist problem in Panama was set aside for the time being.

During the years that I exposed communism in Panama, I had profiles on over 2800 Communists whom I had identified as being associated with 22 Communist fronts, outright members of the Communist Party or who were guilty by close association with well known Communists.

In November of 1956, I gave the CIA station chief in Panama the names of Captain Omar Torrijos and his brother, Moises, also known as "Monchi" as being identified with various Communist fronts. Moises Torrijos was a very well known columnist in Panama who always slanted his columns in favor of Russia. Concern-

ing his younger brother, Omar, he was a member of a Marxist organization in Veraguas Province called "Young Veraguas." Drew Pearson later identified him in his column on Nov. 19, 1968, as a member of the Communist Party.

Also, I gave the CIA the names of two of Omar Torrijos' sisters, Toya and Berta. In October of 1966, Toya Torrijos de Jaén who signed the economic pact with Russia (last July) was arrested at Tocumen Airport in Panama for attempting to bring in two suitcases of Marxist literature. Today, she controls all scholarships at the Institute for the Formation and Exploitation of Human Resources.

Berta Torrijos is now President of the Panamanian Institute of Special Education and is prominent in women's movements. Whenever Mrs. Hortensia Allende, the widow of Salvador Allende of Chile comes to Panama, Berta Torrijos is her host.

It should be brought out at this time that 39 relatives of Omar Torrijos hold key government positions. I am enclosing a list of the relatives with my statement.

Regarding the 1964 riots in Panama from January 9-11, we documented the names of the Panamanian Communists who played a major role that caused the lives of 21 Panamanians and 4 Americans. For example, Adolfo Ahumada, now one of the treaty negotiators and currently the Minister of Labor, was one of the engineers of the riots. Ellsworth Bunker, then the Ambassador to the OAS, stated that it was Communist inspired. With my statement today I would like to enclose an article from the Washington Daily News on Jan. 31, 1964, in which they list several names among the Communists who were responsible for the riots. Of the names listed are Eligio Salas, now the head of the University of Panama, Ruben Dario Souza, currently the Secretary General of the Communist Party of Panama and Carlos Nuñez, a well known Communist who is the editorial page columnist for the government controlled newspaper, "Critica." He is also a past President of CONADESOPAZ, a Communist front organization.

The riots had nothing to do with the Panamanian people protesting the presence of the United States in the Canal Zone although this is the propaganda that the Communists wanted the world to believe and, unfortunately for us, they were successful.

The real motive behind the riots concerned Fidel Castro. In October of 1963, the Kremlin told Castro that further aid would be contingent upon his ability to produce another victory in Latin America for the Soviet master plan. As Castro's plans for Venezuela that year had failed and President Bethancourt had filed aggression charges against him with the OAS, Castro decided to foment an explosion in Panama that could serve to blacken the image of the U.S. and possibly compel the OAS to give priority to the newer case and defer action on the Venezuelan charges against himself.

All the elements for a successful diversionary operation were available in Panama. Waiting to fall on the prey was an efficient and well organized Communist Party, with allied "fellow-travelling" organizations, whose activists had been skillfully trained in Cuba, Prague, Moscow and Peking for that purpose. The explosion occurred on the night of January 9. The Venezulean charges against Castro were given a lower priority for Panama filed accusations against the U.S. before the United Nations and the OAS. Within a few days Castro flew to Moscow and was warmly embraced by Khrushchev. On January 17, accompanied by Castro, Khrushchev in a public speech at Kalinin, Russia, referred to the Panama crisis "These events in Panama were not organized by Comrade Castro. These events are the result of the predatory policy of the U.S. imperialists. He further said "They want to free themselves from the oppression of the U.S. imperialists. This is a legitimate desire and we are on the side of the people of Panama." No one expected Khrushchev to confess publicly that Castro's red hand had dipped deeply into the banks of the Canal to produce a crisis.

The start of the power of the Communist control in the National Guard finally surfaced on March 24, 1968, when the National Assembly, the Congress of Panama, impeached President Marco Robles for using government funds, to back ex-Finance Minister David Samudio, his National Liberal's choice for president, in the scheduled May 12 election.

The Assembly voted 29-0 to oust Robles. It then installed First Vice President Max Delvalle as President. As the Deputies voted, the National Guard surrounded the Assembly building and issued a statement saying that the force "cannot support the decision of the National Assembly" and would wait for a verdict from the Panamanian Supreme Court. The nine member Supreme Court ruled on April 5 that Robles' impeachment and conviction had been unconstitutional. Actually, the ruling of the Supreme Court was not valid inasmuch as the Constitution of Panama clearly states that only the National Assembly can impeach the president of the country.

By the National Guard forcing the Supreme Court to make an illegal ruling showed the strength of the Communist indoctrinated officers led by Major Boris Martínez and Lt. Col. Omar Torrijos and it was a handwriting on the wall of things to come. Vice President Max Delvalle, who was in line to assume the presidency after the impeachment of President Robles, is a member of the Jewish faith and a very prominent businessman. For reasons only known to Martínez and Torrijos, they did not want a Jewish president in the Western hemisphere even though it was for only a period of six months.

Regarding the overthrow for the third time of President Arnulfo Arias' government on Oct. 11, 1968, it would take too long in this statement to go into all of the mechanism as to how the coup was done and the names of the numerous Communists who were involved. What is not known is that there were two attempts to overthrow President Robles on September 26 and 29 of that year in order to prevent President Arias from taking office on October 1. Unfortunately for the Communists, President Arias was able to take office on October 1. Actually, he still is the constitutional president as by Panama's legal Constitution he has never served his term of office.

The people of Panama were very touched by President Arias' inaugural speech especially when he talked about the rural development of the country. He was aware that only 28 percent of the farmers in his country have legal title to the land they till and he had plans for them to obtain titles that would not be costly. He knew that the farmers would be more willing to better utilize and improve their land if they had the security of ownership. A World Bank report of April, 1976, still confirm that 28 percent of the Panamanian farmers do not have title to their land. I am enclosing a copy of President Arias' inaugural speech in which he refers to "Rural Development" as a part of my statement.

One of the many fallacies that the military regime in Panama have exploited is that Omar Torrijos was the one that did the revolution against President Arias. This is not so. The coup was led by Major Boris Martínez, a former Communist leader of students at the University of Panama. Torrijos was kept innocent of the coup because of his excessive drinking problem.

After the overthrow of President Arias' government, I called Drew Pearson in the latter part of October of 1968 and asked him to do a column on the situation in Panama. I gave him the names of Boris Martínez, Federico Boyd, Omar Torrijos and others and told him that the CIA had profiles on these people. On November 19, 1968, he devoted his whole column to the coup entitled "Paint Panama Junta Pink" and identified Omar Torrijos as being a member of the Communist Party. I am enclosing a copy of his column with my statement.

On October 27 of 1968, I notified the Department of State that President Johnson and Secretary of State Dean Rusk should take into consideration that a precedent had already been set in Latin America that would allow the President not to recognize the military coup in Panama. This precedent involved the 1933 illegal government of Dr. Ramón Grau San Martín of Cuba. The U.S. withheld recognition of Dr. Grau San Martín's government because it did not represent the Cuban people. His government quickly fell. For whatever reason, President Johnson decided not to abide by this precedent and recognized the Military Junta in Panama on Nov. 13, 1968.

One of the four requisites for reopening diplomatic relations with the Military Junta was their promise to hold free elections. Actually, Panama had free elections just six months before. However, the regime in Panama did hold elections on August 6, 1972, but they were not "free." These elections were to elect 505 Community Representatives who were already chosen by the Communist controlled military.

These 505 representatives then installed the already provisional president, Demetrio Lakas, as the president and Omar Torrijos has the Chief of Government.

I would like to explain how Omar Torrijos became the Chief of Government and what happened to Boris Martínez who actually did the coup. As I was cognizant of the Communists' post-seizure strategy in Panama which was not to alarm Congress, it had to be one of "low profile." Although Martínez brought in Torrijos immediately after the coup and allowed him to share power with him, Martínez wanted to move too fast and this frightened the top members of the Communist Party such as Rómulo Escobar Bethancourt, Marcelino Jaén and Juan Materno Vásquez. Incidentally, after the coup, Escobar Bethancourt made himself the head of the University of Panama, Jaén assumed the presidency of the National Legislative Commission that makes all the laws and Vásquez appointed himself as the president of Panama's Supreme Court. The country was theirs.

Five months later on March 6, 1969, the Communists "purged" Martínez and brought in Omar Torrijos, who is a brother-in-law of Jaén, to be in complete control of the National Guard and the strongman of the country. On March 14, they made him a Brig. General.

Concerning the current president of Panama, Demetrio Lakas, I would like to explain how he assumed this high position. First of all, Mr. Lakas owns all of the houses of prostitution in Panama (I am enclosing the Congressional Record of July 22, 1971 regarding Mr. Lakas with my statement). As prostitution is illegal in Panama it meant that the officers of the National Guard had to be paid off in order to stay in business. Of the many officers that Mr. Lakas made friends of in the National Guard was Omar Torrijos. On Dec. 15, 1969 Torrijos and Lakas were in Mexico City supposedly attending a horse race when the Assistant National Guard Commander Ramiro Silvera and Chief of Staff Amado Sanjur issued a communique over the signatures of the two provisional junta members, Cols. Jose Maria Pinilla and Bolivar Urrutia, proclaiming the overthrow of Omar Torrijos.

Hearing of the attempted overthrow, Lakas and Torrijos flew by chartered plane to David, a western Panamanian city 210 miles from Panama City, where he was greeted by local National Guard officers. In the meantime, Silvera and Sanjur had failed to consult in advance with most of the staff officers and commanders of the 10 National Guard districts in the interior of the country. When word of Torrijos' planned return spread, these officers rose to support him. The National Guard then arrested Silvera and Sanjur and provisional President Pinilla and Vice President Urrutia were placed under house arrest in the Presidential Palace.

A two-man civilian junta was sworn into office on Dec. 19 to replace Pinilla and Urrutia. Lakas was appointed provisional president and has been there ever since. Albert Sucre, the National Lottery director, was named Lakas' deputy.

At this time I would like to mention a few facts about the intelligence gathering forces in Panama. Prior to the coup in 1968, Panama had two intelligence sources in their country; namely, the CIA and the DENI which is the intelligence branch of the Panamanian government. They both worked together closely and in harmony. Today, there are now four intelligence agencies working against the CIA and the suppressed people of Panama:

- a. The DENI of the Panamanian government.
- b. The G2 of the National Guard.
- c. The DGI of Cuba that operates out of the Cuban Embassy.
- d. The KGB who are in Panama with the Novosti Press Agency.

Prior to the coup, the CIA had several Panamanian informants working for them. Today, the story is different as these informants are reluctant to work for the CIA due to the close surveillance of the four anti-CIA agencies who are constantly trying to find out who are the Panamanians working for the CIA. Because of this lack of Panamanian informants, the intelligence gathering of the CIA in Panama has been diminished.

To sum up the Communist picture in Panama, several factors should be noted:

a. On April 8, 1974, Omar Torrijos brought a planeload of "Montoneros" from Argentina to Panama on a Panamanian plane. The "Montoneros", if you recall, is the Marxist group in Argentina that have been doing and still are, all of the kidnappings, assassinations and riots in Argentina. How many trips they have made to Panama, we do not know. They were brought specifically to Panama to train Panamanians in subversive activities. I am enclosing with my statement a picture and article concerning their trip to Panama.

b. In 1975, Escobar Bethancourt, the chief treaty negotiator, and Aristides Royo, the deputy negotiator and Minister of Education, formed an "Anti-Fascist" Committee which included 38 Communist organizations including the "Peoples' Youth Party" which is the youth organization of the Communist Party. On July 26 of that year, their Committee celebrated Castro's 22nd anniversary of his attack on the Moncada Barracks. I am enclosing with my statement an article about this Committee formed by Bethancourt and Royo.

c. From June 28 to July 5, a Russian mission of three visited Panama to discuss the possible opening of diplomatic relations. I am enclosing an article about their visit as a part of my statement.

d. On July 11-19, another Russian mission came to Panama where they signed an economic agreement with Marcelino Jaén, Torrijos' brother-in-law. After the signing, Jaén said "with the signing of this document that constitutes the final draft of an agreement in which the Governments of the USSR and Panama have participated, is an event of deep historic significance, not only for our country but for the American continent as well, who are always facing strong forces that represent a

philosophy that is contrary to the destiny of Latin America." I am enclosing a copy of Mr. Jaén's remark with my statement and the agreement that was signed.

e. Also, during this visit, the Soviets visited the fishing port of Vacamonte on the Pacific side of Panama near the Howard Air Force Base concerning a possible Russian naval base for the future.

f. On August 6, 1977, at a farewell press conference in Bogotá, Colombia, a question was asked of Torrijos by Jaime Arango of Super Radio "General Torrijos, are you a Communist?" Torrijos refused to answer but Bethancourt did by saying "Each individual has the right to choose the political ideology he likes." I am enclosing Bethancourt's complete answer with my statement.

g. On Sept. 9, 1977, after signing the treaty with President Carter, Torrijos sent a telegram to Fidel Castro when he was flying over Cuba on his way home saying "I salute you with my everlasting friendship." I am enclosing a copy of his telegram with my statement.

In conclusion, I would like to show the Committee how the current government in Panama permits our American flag to be sold in the stores to be used as rags to clean your shoes or wash your car. I cannot think of any other country in the world today that desecrates our American flag.

Thank you Mr. Chairman.

TESTIMONY OF MR. FRANKLIN DELANO LOPEZ

Mr. Chairperson, Distinguished Senators: I appear before you on behalf of the New Democratic Party-Puerto Rico, an organization of thousands of Puerto Ricans and residents of the island. Mr. Juan M. Garcia Passalacqua our counsel is here with me today.

Early on January, 1976 we decided to endorse the candidacy of Jimmy Carter on the basis of a message sent to us through his then field operation director, Mr. Tim Kraft. That message included his vision for a new policy towards Latin America.

The President has kept his promise to us. This has been excellently stated by Graham Hovey in a recent issue of the New York Times, as follows:

"President Carter has launched a Latin American policy shorn of the traditional rhetoric and prodigal promises, with strong emphasis on human rights but enough flexibility to conclude new canal treaties with Panama and to reopen relations with Cuba.

"It is a policy that relies heavily on personal contact but shuns both the visions of lavish economic aid that ushered in the alliance for progress in 1961 and the oratory of Pan Americanism—Simon Bolivar's dream of a united continent—that clothed most earlier Washington approaches to the Western hemisphere."

In fact it is not a single policy, as Carter himself emphasized in a Pan American Day speech in April, but a series of approaches to individual problems, many of which cannot be solved in the hemispheric context or through the machinery of the Inter-American system.

The President contributed the most dramatic chapter, not only with the signing ceremony for the Panama treaties, attended by officials of 28 hemisphere governments on September 7, but with 16 individual meetings at that time with visiting heads of State. This demonstrates the interest of Latin America in the new Panama Canal treaties. Other contacts made by administration representatives over eight months include the following:

Rosalyn Carter's official visits to seven Latin American and Caribbean nations last spring.

Secretary of State Cyrus Vance's trip to Grenada in June to attend the General Assembly of the Organization of American States and to hold individual meetings with 18 foreign ministers.

Four trips by Terence A. Todman, Assistant Secretary of State for Inter-American Affairs, including the first visit by an American official to Havana since 1961.

The 10-nation Central American and Caribbean tour in August by Andrew Young, the Chief United States delegate to the United Nations.

Two trips, covering five countries, by Patricia M. Derian, the State Department, Human Rights Coordinator and one trip to five countries by another Human Rights Specialist, Allard K. Lowenstein, an alternate United Nations delegate.

President Carter will further the process by visiting Venezuela and attempting to repair relations with Brazil at the start of his eight trips to four continents later this year.

We agree that by communicating new policies and attitudes, and by listening to the problems and suggestions of Latin leaders, the United States has regained a

position of trust, confidence and leadership in the hemisphere, that indeed had badly eroded during the Johnson, Nixon and Ford presidencies.

This erosion of trust, confidence and leadership is the result of the lack of interest of previous administrations in Latin America. Our past policies with our neighbors have been characterized by improvisation. We only react to Latin America when there is a threat to our national security. Example of this are the cases of Cuba, the 1965 Dominican Republic revolution, and Chile.

For that reason, for the reason that President Jimmy Carter has kept his promise to us regarding a foremost place to Latin peoples in his foreign policy, we have come to endorse his action regarding a new Panama Canal treaty. The reasons for that endorsement have been well expounded by Ambassador Sol M. Linowitz, as follows:

First, the Panama Canal issue involves far more than the relationship between the United States and Panama. It is an issue which affects all U.S. Latin American relations, for all the countries of Latin America have joined with Panama in urging a new treaty with the United States. In their eyes, the canal runs not just through the center of Panama, but through the center of the Western Hemisphere. Indeed, the problem significantly affects the relationship between this country and the entire third world, since the nations of the third world have made common cause on this issue, looking upon our position in the canal as one last vestige of a colonial past which evokes bitter memories and deep animosities. So in going forward with a mutually satisfactory basis for a new treaty with Panama, the United States will find itself in a position to improve relations with virtually all the countries of this hemisphere and, indeed, the people of the entire developing world whose attitude toward us as a nation will be importantly influenced by how we conduct ourselves on this Panama Canal issue. Second, our primary interest in the canal is to assure its free, open and neutral operation on a nondiscriminatory basis. I am convinced that the greater threat to the operation of the canal would be to try to insist upon retention of the present outmoded treaty and its anachronistic provisions which have in the past and can so easily again trigger hostility and violence. If we do not approve a mutually agreeable basis for a new treaty, we may find ourselves in the position of having to defend the canal by force against a hostile population and in the face of widespread, if not universal, condemnation. Third, in the light of these facts, I believe that the best way to preserve the canal's operation and to maintain its permanent neutrality is to substitute for the 1903 Panama Canal Treaty a new arrangement which will be mutually fair, which will properly provide for Panama's just aspirations, and which will take into full account our own national needs. Putting it another way, a new treaty is the most practical means for protecting the interest we are trying to preserve in the canal.

We live in a country inhabited by 3 million American citizens. However, we live in an American colony, just like the Canal Zone. Puerto Rico is still a colony because we do not enjoy social, economic, and political equality with our fellow citizens living in the States, because we don't have voting representation in Congress, because we don't vote for President or Vice President; in summary, because we have been kept—even after a pro-statehood party won there in 1976—in a position of inferiority. Living in a colony, you can understand why we fully endorse the President's statement upon signing the treaty that "the time for colonialism is over." We hope it will be over for us too, very soon. It will be our task—the people of Puerto Rico—to solve in the very near future our political status on the basis of equality with mainland citizens.

It is difficult for us to understand the objections to the treaty, particularly in view of a basic fact:

The United States has never had sovereignty over the canal. The 1903 treaty specifically gave the United States certain rights and authority which it would have "if it were the sovereign." Obviously, these words would not have been necessary if the United States were in fact intended to be sovereign.

For the aforesaid reasons, we can also understand that pride and happiness of the Panamanian people upon signing of the treaty, as well as its endorsement by the leaders of our sisters republics. The end of colonialism is always a happy day for those that have suffered it.

As stated by Ambassador Ellsworth Bunker, we also favor the treaty because its terms:

- Assure the efficient operation of the canal.
- Enable the United States to protect the canal.
- Guarantee the canal's neutrality indefinitely.
- Provide an economic settlement that is fair and reasonable.
- Let me elaborate briefly on that position taken by our negotiators:

The United States will retain control of both operation and defense of the canal for the remainder of this century—that is until December 31, 1999. During that period Panama will take part in both operational and defense activities. This arrangement will insure that the United States can guarantee the uninterrupted, efficient operation and security of the canal after the new treaty goes into effect. At the same time it will provide Panama both the time and the opportunity to develop the experience and capability needed to assume responsibility for canal operation and defense beginning in the year 2000.

The new canal agreement will provide the basis for assuring to the United States continued access to a canal which is open and secure. As Ambassador Bunker has stated, under the new treaty U.S. forces will have the primary responsibility for maintaining canal defense until year 2000. But the United States will have important rights extending beyond that date.

A separate neutrality treaty, which will take effect simultaneously with the new Panama Canal treaty, will commit the United States and Panama to maintain a regime of permanent neutrality of the canal. Under the rules of neutrality to be set forth in the treaty, the canal is to be open to merchant and naval vessels of all nations at all times without discrimination as to conditions or charges of transit. A special provision authorizes U.S. and Panamanian warships to transit the canal expeditiously in both peace and war without being subject to any restriction as regards means of propulsion, armament, or cargo.

The treaty gives the United States defined rights to assure that the canal's permanent neutrality is maintained and places no limitations on our ability to take such action as may be necessary in the event that the canal's neutrality is violated.

It is most important to point out and reemphasize that unlike the treaty governing canal operation, the neutrality is of indefinite duration. In short, the neutrality treaty will provide a firm foundation for assuring that our long term interest in the maintenance of an open, accessible, secure, efficient canal is preserved.

For the first time since the presidency of the late John F. Kennedy, there is a serious and sincere effort to establish a new relation with Latin America. President Carter as well as our Latin American neighbors are aware that the Panama Canal treaty symbolizes the aspirations and dreams for a new hemispheric relation.

Each one of you have a grave and serious responsibility with our Nation. We should not tolerate that the Panama Canal treaty becomes the prey of political cannibals, who are more interested in their political future than the future of our Nation.

The President is actively seeking new ways to establish a strong and sound relation with Latin America and Third World countries. If you don't ratify the Panama Canal Treaty you will be undermining his leadership and weakening the role of our nation in the hemisphere and in the world. You will be ratifying in 1977, the 1903 cowboy diplomacy of Theodore Roosevelt, which stirred up a vast amount of criticism in our Nation in 1903. The press then called the terms of the Hay-Bunau Varilla treaty "piracy," "scandal," "cooked up republic," "disgrace and dishonor."

You have before you not only the Panama Canal Treaty and the future relationship of the United States with the Republic of Panama, but a potential and dangerous situation that might be detrimental to the security of our Nation. We cannot afford another Vietnam, this time in Latin America. We learned the hard way that the arrogance of power did to our Nation in Southeast Asia.

The days of confrontation are over. Our Nation has to be conscious of those prophets of doomsday who use fear as a means of intimidating our people. Let's look back at our history. Let's rediscover those deeds that makes us proud of what we are. As President Franklin Roosevelt said in March, 1933, "This great nation will endure as it has endured, will revive and will prosper . . . the only thing we have to fear is fear itself."

We believe the treaty clauses we have summarized represent an equitable agreement to liquidate a colonial situation. We are proud and happy that our President has achieved this historic breakthrough together with the Panamanian people. We do hope that very soon, under Jimmy Carter's leadership in his effort to eliminate all points of friction in the Americas, colonialism will also end in Puerto Rico.

Thank you.

POLITICAL FACTS ABOUT MR. FRANKLIN DELANO LOPEZ, CHAIRPERSON, NEW
DEMOCRATIC PARTY OF PUERTO RICO

1966, Founder of the University of Puerto Rico Young Democratic Clubs.

1967, Founder and President of the University Youth for Statehood.

1967, Vice-president of the United Statehooders Youth.
 1967, Founder of the New Progressive Party.
 1968, Press Secretary to the Mayor of San Juan.
 1975, Chairperson, Puerto Rico Charter Americans for Democratic Action.
 1976, State Campaign Director for Jimmy Carter, February 22, 1976, Democratic
 Caucuses.
 April, 1976, Hispanic Campaign Director for the Pennsylvania Primary for Jimmy
 Carter.
 June, 1976, Hispanic Campaign Director for the Ohio Primary for Jimmy Carter.
 July, 1976, Vice-chairperson, Puerto Rico Delegation to the National Democratic
 Convention.
 August, 1976, National Hispanic Field Coordinator for the Jimmy Carter-Walter
 Mondale Campaign.
 November, 1976-January, 1977, Member of the Transition and Planning Staff of
 the Carter-Mondale Administration.
 January 1977, Elected Chairperson, the New Democratic Party of Puerto Rico.
 May 1977, Appointed by President Carter as Members of the First Circuit Adviso-
 ry Commission on Judgeships.
 Mr. Lopez is 31 years old.

STATEMENT OF ROBERT M. BARTELL

Mr. Chairman and Members of the Committee:

I am Robert M. Bartell, public relations director of Liberty Lobby. I appreciate this opportunity to appear today and present the views of Liberty Lobby's 25,000-member Board of Policy, as well as the quarter of a million readers of our weekly newspaper, *The Spotlight*.

Mr. Chairman, Liberty Lobby opposes the ratification of new treaties with Panama, which will, in effect, pay Panama to take the Canal Zone and all the property in it, off our hands. I know this committee has had a considerable number of witnesses covering a wide range of subjects directly bearing on ratification. However, we would like to approach the subject from a slightly different point of view from those that may have been presented in the past: the importance of ratification of the treaties to the international banking community.

I should like then to avail myself of the kind indulgence of this committee to take a look at the proposed Panama affair as future observers—say historians of the year 2000 and beyond—might view it.

To such dispassionate analysts of the future, the Canal giveaway—to give this utterly one-sided transaction its proper name—will surely appear as the most baffling mystery of the decade, perhaps of our generation. Why deed over our sovereign waterway—and a good chunk of our public funds with it—to an alien regime with unsavory antecedents and an unstable political prognosis? The American people do not want to do it; there is growing evidence that the voters of this country are overwhelmingly against the planned giveaway, and I surmise no one knows this better than the distinguished legislators of this Congress. The American military do not want it. Except for the serving Chiefs, obligated not to dissent in public from the incumbent Administration, there has been near-unanimous testimony from some of our most distinguished generals and admirals expressing concern over the delivery of this vital strategic asset of ours into the hands of what Admiral Thomas H. Moorer, a brilliant former Chairman of the Joint Chiefs of Staff, aptly identified as the "Torrijos-Castro-Moscow Axis."

American diplomacy does not really want it. In private conversation many of our leading foreign policy experts give voice to deep reservations with regard to the regime of Gen. Omar Torrijos, which is, as you know, a usurper cabal without real constitutional legitimacy in its own country. The last legally elected and inaugurated chief executive of Panama is now an exile in this country, and were he to return to office in the near future—a turn of events many of his American supporters devoutly hope for—then any treaty signed by General Torrijos would be exposed and denounced for what it really is: a worthless piece of paper.

The American security and intelligence agencies, the so-called "intelligence community" does not want it. Their Latin American experts view General Torrijos as the most unsavory, unstable and unpredictable of all serving Latin chief executives. There are reports that our narcotic enforcement agents have acquired evidence linking General Torrijos and his brothers with the illicit drug trade aimed at the U.S. The CIA is reported to have accumulated a fat dossier on the contacts between Torrijos and Fidel Castro; another dossier containing reports of contacts between Torrijos, his brother-in-law and other Panamanian negotiators on the one hand and

Soviet agents on the other is said to be growing rapidly at CIA headquarters in Langley.

When Torrijos came to Washington last month to sign the Panama treaty, his principal press aide—travelling on a Panamanian diplomatic passport—was the well-known Cuban propagandist and secret agent, the Colombian-born novelist, Gabriel Garcia Marquez. And on his return to Panama from the triumphant visit to our seat of government, the first person to receive greetings from Torrijos, via aircraft radio, was none other than Fidel Castro.

Thus the most baffling question confronting future historians trying to explain the Canal giveaway will be: Who did want it? We know the Torrojis clique will reap a windfall of benefits, but keeping our eye for the moment on our side, the real question is: Cui bono? Who shall profit?

That there is a real mystery here, a set of unanswered questions lurking beneath the surface, was already adumbrated by Admiral Thomas H. Moorer, who, in the course of his testimony, demanded to know what will happen to the "Two thousand per cent increase over the \$2.3 million she (Panama) received last year as income from the Canal? To me that appears to be a fantastic amount for a country with a population not much larger than Detroit. Where will the money go?"

A substantial share of the money is earmarked, of course, to the U.S. and international banks who have loaned Panama disproportionately large sums in recent years and now, in order to recover their outlay and profits, cheer on the Canal giveaway. But beyond this adroit arrangement to lure U.S. taxpayers into indemnifying the mortgage-holders of the profligate Panamanian regime, I expect that future observers desirous of solving the Panama puzzle will begin by looking deeply into the hidden connections between the world of international banking and certain small countries such as Panama.

They will find that in the mid-1970's multinational mega-banking went through some extraordinary changes which the American public barely noticed. International banking grew from a trickle into a great subterranean river. In 1960, only eight U.S. banks had overseas branches, with assets of \$3.5 billion. By June 1976 more than 100 U.S. banks had offices abroad, with assets totaling an incredible \$181 billion—over 26 per cent of total American bank assets! In fact, for the dozen or so largest American banks, overseas operations became more important and profitable than domestic activities. In 1975, foreign financial ventures accounted for 56 per cent of the Chase Manhattan's total earnings. At Citicorp, the foreign share was even larger: a full 70 per cent of total earnings. (International Debt, the Banks, and U.S. Foreign Policy, a Staff Report prepared for the Senate Foreign Relations Subcommittee on Foreign Economic Policy, August, 1977.)

The boom in offshore banking has been little short of miraculous. From 1970 through 1975 the overseas earnings of the 13 largest U.S. multinational banks shot up precipitously, from \$177 million to \$836 million. To appreciate this spectacular growth figure, we need only recall that during the same period the domestic earnings of the same financial group rose by less than \$50 million.

And how was this stupendous upsurge in volume and banking profits attained by the giant U.S. banks? By expanding operations in the traditional centers in world finance—Zurich, Paris or London? No, not at all; so-called "offshore money centers" account for most of the boom—remote, tropical enclaves such as the Cayman Island and the Bahamas * * * and Panama.

What are offshore money centers? They are tolerant, insouciant sovereignties which are nice to banks. They ignore such common corollaries to banking as audits, supervision, taxation or oversight. What is known among financiers as the "regulatory climate" is always sunny for big banks in these nations. There are no reserve requirements and no demand for banks to disclose anything about their daily activities; in fact, some such countries have inaugurated very strict secrecy laws making it a crime for anyone to disclose what goes on in the banking world. There is no obligatory record-keeping, no prying by central bankers; in fact, once a bank sets up shop in such a protected environment, it is pretty much free to do as it pleases.

The major U.S. banks have been quick to perceive the extraordinary advantages of this sort of setup. By January 1975 there were 124 U.S. branch banks in the Bahamas and on the Cayman Islands—a remarkable number, if we recall that there are only 112 such branches in all of Europe! More than 300 U.S. and European banks have been chartered in the Caymans alone since 1970. And Panama is a close third, moving up fast: more than 110 banks chartered since 1973, more than 90 U.S. branch banks of recent establishment.

Why do the giant banks of New York, London and Paris require such far-flung branches? Most of them are only brass-plate" operations, with a nameplate on the

door and a single receptionist holding the fort behind it. But on paper—when it comes to bookkeeping—these one-room branch banks are mighty finance centers. For the intricacies of international mega-finance allow the giant multinational banks to make deals in the tens of millions of dollars—deals which take place between the head offices of banks in, say New York and Paris—and then to book off these deals via their offshore branches, thereby effectively exempting them from regulation, audits and oversight.

It is said that General Torrijos, who is given to immoderate anti-American demagoguery in public, speaks the language of the new international banking system quite ingratiatingly in private. While out of favor with most segments of our government, Torrijos has contrived to establish close relations with a number of multinational finance conglomerates, from whom he has received loans out of all proportion to his regime's known assets. Moreover, Torrijos has converted Panama into a specially protected banking enclave, where dubious deals—especially dicey currency speculation—have found a haven from prying regulators and examiners.

Is General Torrijos about to become the beneficiary of the most senseless and ruinous giveaway in our modern history because certain high supporters in the multinational banking world have secretly promoted and advanced his cause? Unless we want to leave the solution of the Panama riddle to the historians of the 21st century, it might be well to take a close look at this question before the Carter Administration's canal transaction becomes the law of the land.

In the light of the many unanswered questions surrounding the Panama Canal question, it is evident that more information is needed. Gentlemen, the American taxpayers deserve and require answers to these questions even if the answers might step on the toes of the special interest groups which have so much at stake in the proposed giveaway, and you must supply these answers.

I therefore recommend and urge that this committee seek the answers to the following questions before any determination is made on the ratification:

1. Have the principal negotiators and official promoters of this deal—Sol Linowitz, Ellsworth Bunker, Cyrus Vance—embroiled themselves in felonious conflicts of interest? Particularly Mr. Linowitz, who is reported to have served as a paid agent for the Torrijos government in late 1973 and early 1974?

2. Who sponsored and paid for the original research and development that went into the draft canal treaty? Is it true that most of this preliminary work was done by a special adviser to Mr. Linowitz, Dr. Robert Pastor, on funds provided by the Rockefeller family holdings?

3. What was the role of the Council on Foreign Relations in drafting and developing the early position papers which led to the canal treaty draft?

4. What is the full truth about the debts owed by Panama to various U.S. and European multinational banks?

5. What is the truth of persistent reports that General Torrijos and his brothers have accumulated a large fortune in their private dealings with multinational banks and in the dope trade? How large is this fortune? Where is it banked?

6. Does the U.S. government possess true data on the volume of transactions by U.S. banks in Panama? If not, is it not true that the real purpose of Panama banking is to frustrate and in effect to nullify the entire U.S. bank regulatory process? In effect, does this not amount to a criminal conspiracy by U.S. banks against the U.S. government, the taxpayers and voters who must, in the final analysis, pay for it?

7. Is it not true that under cover of the concealment afforded by Panama, multinational banks venture into highly hazardous speculative deals, in the safe knowledge that if they incur serious losses, the U.S. taxpayer must foot the bills?

8. Why is the U.S. public not told of the highly incriminating data held in the files of U.S. intelligence and enforcement agencies, particularly the CIA and the DEA, describing the scandalous and criminal narcotics dealings of the Torrijos family? Who has sponsored the coverup of this explosive data, indicating General Torrijos and his brothers have made millions of dollars to corrupt our youth, provide safe haven and diplomatic transport for major international drug smugglers, among them the notorious Rene "Lips" Fluellen?

9. To what extent is the Soviet Bank Narodny involved in Panama, and with which American capitalists? Our newspaper, The Spotlight, has reported this involvement of the Kremlin with U.S. banks and bankers, including Robert Anderson, former Secretary of the Treasury. This matter needs a full airing and the American people should be told the truth about these questionable deals and what threat they may hold for our national security.

10. Obviously, Mr. Chairman, there is a great need for expanded supervision and oversight of the international banking community. We feel the impetus for such an expansion could well originate within this committee and so recommend.

In summary, Mr. Chairman, we applaud the intention of the committee to investigate fully all aspects of the proposed treaties, feeling that such an investigation will lead to an emphatic denial of demands that America willingly sacrifice her national treasure on the altar of Third World opinion.

Mr. Chairman, we know what Panama will gain in profit from the canal. We urge you to ask yourselves what your constituents will profit from giving the canal to Panama . . . along with a sizable chunk of their tax dollars.

Thank you again for this opportunity to appear today and present our views.

THE PANAMA CANAL AND THE SUEZ CANAL—SOME SIMILARITIES

Mr. HARRY F. BYRD, JR. Mr. President, an editorial in the October 9 Moline, Ill., Daily Dispatch drew an interesting parallel between the United States relinquishing control over the Panama Canal and the withdrawal of British military forces from the Suez Canal Zone in Egypt in 1956.

Clearly there are differences between the two cases, but there are enough similarities to give pause for thought.

I ask unanimous consent that the text of this editorial be printed in the Record.

There being no objection, the editorial was ordered to be printed in the Record, as follows:

PANAMA CANAL TREATY

There has been expression by some politicians that the United States Senate would, and probably should, act forthwith and without delay in ratifying the Panama Canal treaty. There are some columnists and commentators who are overburdened with dire implications of what will happen if the treaty issue gets involved in the 1978 elections.

We do not share this view that there is need for quick action on the canal issue. Instead, it would be good to take the time to examine all the implications, possible alternatives and options and to review the recent history of another canal.

For some years prior to 1956 there had been agitation in Egypt (just as there has been in Panama) for the withdrawal of British military forces from the Suez Canal Zone in Egypt. The Suez was owned by an international company, primarily owned by the British and French, with the British in actual charge of canal operation and security.

Convinced it was doing the "right thing" as it shed its colonial empire, the British evacuated its military forces from the Suez and Egyptian territory on June 18, 1956. But if there was a tear in the British eye there was also a secure feeling that the canal would continue to be operated as an international waterway and Britain's great contribution to international commerce would continue. Even though the Egyptian flag now flew on the staff where the Union Jack had been, the canal was secure, wasn't it?

It wasn't. On July 26, 1958 Egyptian President Gamal Abdel Nasser shocked the British and French, and most of the rest of the world, by nationalizing the Suez Canal.

No longer was it an international waterway, owned by an international company: It was Nasser's ditch and he would say which nation's ships could use the canal and what the terms would be. It was international blackmail under the guise of "national destiny." (Nasser was a dictator who led his country into close ties with the Soviet Union. Gen. Omar Torrijos, the Panamanian chief of state, has been described by William F. Buckley Jr., who supports treaty ratification, as a "left-leaning, demagogic tyrant.")

After several months of fruitless negotiations Britain and France determined to reoccupy the Suez, and on Oct. 31, 1956, they launched air attacks against the Egyptian forces opposing their return. (Sen. Dole has released a classified document which reveals there is no provision for U.S. reoccupation of a crisis situation.)

Under pressure from the United States, which supported a UN measure which condemned the British and French action, the invasion and attempt to reoccupy were aborted. But by that time the Suez Canal was blocked by sunken and scuttled ships. It remained that way for 19 years. Governments came and went in the nations involved, Nasser passed from the scene and Egypt eventually broke its ties with the Russians. Early in this decade negotiations for reopening the canal were resumed with the United States playing a helpful role and finally, on June 5, 1975, the Suez was reopened to the world's commerce. But for 19 years any arguments about who owned or controlled the Suez were academic, it was unusable anyway.

Is there a parallel between what happened in the Suez and what could happen with the Panama Canal? Is there a lesson to be learned? We think there is.

Let us not enter into this agreement with some vague faith that all will be well or with some conscious-salving feeling that we are righting a sin of our colonial past.

If the Senate ratifies the treaty let it do so with its eyes open to all the implications and possibilities and alert to the best interests of the United States.

PANAMA CANAL TREATIES—NO. 15

Mr. ALLEN. Mr. President, this is the 15th speech I have made on the Senate floor in opposition to the Panama Canal Treaties. I do not believe that in the course of my remarks I have been redundant, because there are so many defects in the treaties that I have been able to point out something new in each of the speeches I have made.

Mr. President, during my testimony in opposition to the Panama Canal Treaties before the Senate Committee on Foreign Relations, one of the distinguished members of the committee, Senator Sarbanes, raised an issue to which I have since given considerable study. The distinguished Senator inquired whether Panama could now grant to a third country the right to construct a canal between the Caribbean and the Pacific through the territory of Panama, excluding obviously the United States territory comprising the Canal Zone. I did not then know the answer to the distinguished Senator's inquiry, although I did indicate that to the best of my knowledge, the treaty of 1903 did contain some provision affecting the ability of Panama to grant a canal concession to a government other than the United States. Having since looked into the matter, I can now report that under article V of the treaty of 1903, the United States has already in perpetuity a monopoly on any interoceanic canal construction across Panama, either inside or outside the Canal Zone.

Mr. President, the Department of State has repeatedly touted the brilliance of our negotiators in securing from the Panamanians an alleged agreement not to construct any new canal in the territory of Panama without the consent of the United States, at least not until after the year 1999. This so-called major diplomatic coup is embodied in article XII, paragraph 2 of the canal treaty wherein appears the following:

The United States of America and the Republic of Panama agree on the following:
(a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree;

That is in the proposed new treaty. I find this provision ambiguous, but the Department of State asserts that our negotiators obtained this so-called concession from the Panamanians in return for our incredible agreement not even to negotiate with a third state for the construction of a new interoceanic canal anywhere in the Western Hemisphere without express Panamanian consent. In other words, Mr. President, the Department of State asserts that the quid pro quo for our agreement not to construct any new canal except in Panama without the consent of the Panamanian dictator—the quid pro quo for that incredible concession is, or purports to be, this clause I have just quoted, which allegedly would prevent the Panamanians from constructing a canal with Soviet assistance or the assistance of some other unfriendly government.

But, Mr. President, the United States already, in perpetuity, can prevent any third nation from constructing a new canal in the territory of Panama. So we have gained absolutely nothing from

this supposed Panamanian concession. They are not conceding anything. It is already provided in the 1903 treaty.

Mr. President, the plain fact is that the Department of State has set up a sham argument to justify its folly in allowing the Panamanians to tie our hands throughout the term of this proposed canal treaty and to excuse the—and I am going to be blunt about this, Mr. President—to excuse the stupidity of requiring the consent of a petty dictator before the United States of America can even negotiate with another nation for an interoceanic canal in the Western Hemisphere. This purported justification, this quid pro quo, is a sham because it is not a concession made to the United States by Panama, simply because the United States already has full authority to insist that no other nation construct in Panamanian territory a canal between the oceans.

Article V of the Isthmian Canal Convention of 1903, the Hay/Bunau-Varilla Treaty reads as follows:

The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean.

Mr. President, there is no ambiguity there. When treaties were drafted in those days, the documents spoke for themselves. The executive department in those days apparently did not have much tolerance for sloppy draftsmanship, but we here in the Senate today feel somewhat like Wendy and John wandering around in never-never land, trying to figure out just what these proposed new treaties actually do mean.

Mr. President, the Senate did not have that problem in 1903, and there is no doubt that under the treaty of 1903, the United States can already insist that no third nation construct a new canal in Panama. In addition, Mr. President, there can be no doubt that the right given to the United States, the monopoly given to the United States, is in perpetuity.

I might add parenthetically, Mr. President, that although the treaty of 1955 did in some respects modify article V of the treaty of 1903, the modifications in the treaty of 1955 only affect the monopoly given to the United States over railroads constructed between the two seas and do not in any way affect our existing monopoly with respect to any new strategic interoceanic canal which might be contemplated. Incidentally, too, Mr. President the treaty of 1955 itself, in extinguishing the provisions of article V with respect to railroads, still provides as follows:

In view of the vital interest of both countries in the effective protection of the Canal, the High Contracting Parties further agree that such abrogation is subject to the understanding that no system of interoceanic communication within the territory under the jurisdiction of the Republic of Panama by means of railroad or highway may be financed, constructed, maintained, or operated directly or indirectly by a third country or nationals thereof, unless in the opinion of both High Contracting Parties such financing, construction, maintenance, or operation would not affect the security of the Canal.

Therefore, even after allowing the abrogation of article V of the treaty of 1903 insofar as it affected railroads, our negotiators in 1955 nevertheless insisted that the United States be given a veto over any proposed construction of any railroads or, for that matter, highways, which connected the two oceans and which might in the

judgment of the United States adversely affect the security of the canal.

Mr. President, Senators ought to review these past treaties—and I am sure many, if not all, have already done so—because a review of these past treaties shows the great care that negotiators for the United States have taken—at least up until now—in protecting the security of this vital international waterway. Our negotiators in the past have not taken lightly their responsibility to secure to the United States the control and defense of the Panama Canal, because our past negotiators have fully recognized the dire adverse strategic impact of permitting the effective control of the Panama Canal to fall into the hands of another nation or for that matter even permitting the effective control of any means of transit through the Isthmus of Panama to fall under the control of any power unfriendly to the United States.

But we have a new breed of negotiators working for us now, Mr. President, and they have seen fit to negotiate away our right to construct a sea level canal or a second canal in Nicaragua or in any other country, for example, in Mexico, at the Isthmus of Tehuantepec, all in return—and I use that term advisedly—all in return for the sham concession of the Panamanians in agreeing not to permit another country to build a canal in Panama for the 23-year term of the proposed Canal Treaty. Quite a concession, Mr. President. We extinguish a monopoly in perpetuity and they agree, in a rather loosely drafted provision, that no new canal will be constructed in Panama except in accordance with the terms of the proposed Canal Treaty—terms which do not in themselves forbid Panama to grant to the Soviet Union or some other country a right to construct a canal in Panama even within what is now the Canal Zone.

Then, too, Mr. President, Senators should note that the proposed Canal Treaty would abrogate entirely the treaty of 1955 which grants the United States de facto control over the construction in Panama of interoceanic strategic highways or railroads which might in some way tend to damage the security of the canal or harm the security interests of the United States. Should this proposed Canal Treaty receive Senate consent, nothing whatsoever, even during the 23-year term of the treaty, would prohibit the Marxist dictatorship in Panama from entering into an agreement with Cuba, or with the Soviet Union, or with Red China, or with East Germany, or with North Korea, or with any other regime now opposed to the interests of our country—nothing—nothing would prevent Panama from agreeing to the construction of a major strategic highway or rail system with corresponding port facilities at either terminus for the purpose of threatening whatever defense forces of the United States might remain in Panama during this proposed 23-year term of surrender.

The good work of the conscientious negotiators for the United States who have represented us in the past in dealings with Panama would pretty much go down the drain if these treaties are implemented. The careful drafting of so many past treaties, protocols, and conventions designed to protect our strategic position in Panama would be, with the stroke of a pen and a two-thirds vote in the Senate, destroyed for all time.

The provisions of these proposed treaties which would destroy this past good work have not received to date sufficient attention. In our rush to examine the provisions of the treaty purporting to give us rights to defend the canal and rights to maintain the neutrality of the canal, many of us have overlooked the grave damage done to the existing fabric of our relations with Panama by the wholesale abrogation of virtually all important agreements reached with Panama over the past 74 years. Using more or less a meat-ax technique, our negotiators have wiped the slate clean, eliminating presumably both the good and the bad by specifically abrogating the treaty of 1903, the treaty of 1936, the treaty of 1955 and:

All other treaties, conventions, agreements, and exchanges of notes between the United States of America and the Republic of Panama, concerning the Panama Canal which were in force prior to the entry into force of this Treaty; and . . .

In other words, anything good in the past treaties will be wiped away, any concessions made are going to be wiped out, and we are going to start anew.

Listen to this, Mr. President, just to make sure there are no scraps or pieces around that might protect the interests of the United States:

Provisions concerning the Panama Canal which appear in other treaties—

not just these particular treaties with direct reference to Panama but in other treaties, conventions, agreements, and exchanges.

conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama which were in force prior to the entry into force of this Treaty.

So that ought to pretty much do the job, Mr. President. Whatever has been done on behalf of the United States during this 74-year period is going down the tubes. Part of the package is the provision giving to the United States a monopoly over canal construction in Panama. Also slated for elimination are the provisions allowing us a right of refusal over any strategic interoceanic communications system which might damage the national security interests of our country or pose a threat to the canal.

Finally, Mr. President, Senators might rightly insist that we must have gained something in return for abrogating or nullifying three-quarters of a century of diplomacy. In my judgment, we have gained only ambiguous provisions which can be interpreted as either party chooses—either to commit the Panamanians not to construct a new canal with Soviet aid only during the 23-year term of the proposed canal treaty or to permit construction of a new interoceanic canal in Panama not inconsistent with the terms of the new proposed treaty, which terms do not in and of themselves prohibit such construction and which terms, with complete clarity, only commit the United States and Panama to study jointly the feasibility of a new sea level canal project.

Thus, Mr. President, we receive again only ambiguities to replace ironclad protections. Perhaps this proposed provision is interpreted by the present Panamanian Government in the same manner it is interpreted by our own Department of State. But what of it? The Panamanians have thus far shown little inclination to accept the interpretations given to these documents by the Department of

State, and even assuming there has been a meeting of minds on this particular provision, its lack of clarity would no doubt be a seed of dispute planted in fertile soil.

I thank the Chair, and I suggest the absence of a quorum.

THE PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations continued hearings on the Panama Canal treaties today receiving testimony from the following witnesses: Dr. William P. Thompson, National Council of Churches; John Cardinal Krol, archbishop of Philadelphia; Morris Levinson, Synagogue Council of America; Prof. Donald E. Miller, Church of the Brethren; Kenneth Boehm, Young Americans for Freedom; Mrs. Rose Marie Aragon, Richard Eisenmann, Panamanian Committee for Human Rights; and Dennis Small, U.S. Labor Party.

I ask unanimous consent that the prepared text of the statements of these witnesses be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

STATEMENT BY DR. WILLIAM P. THOMPSON

Mr. Chairman and members of the Senate Foreign Relations Committee, I am William P. Thompson, President of the National Council of the Churches of Christ in the U.S.A., with headquarters at 475 Riverside Drive, New York City.

The National Council of Churches brings together in cooperative relationships 30 constituent Protestant and Orthodox denominations that are extensively involved in our nation and throughout the world in a variety of ecumenical ministries of mission and service. This Council, through its Governing Board, does not claim to speak for all its member churches, but it does express the considered judgment of the representatives of those churches officially delegated to sit on the Council's Governing Board.

I testify today in hearty support of early ratification of the Panama Canal Treaties entered on September 7, 1977 by President Jimmy Carter on behalf of the government of the United States and by General Omar Torrijos on behalf of the government of the Republic of Panama.

The National Council of Churches has had a longstanding interest in improved relationships between the United States and Panama. Several of the member churches of the Council have supported Christian missionary work in Panama for decades and continue today to enjoy cordial relationships and frequent communication with the autonomous Panamanian churches that have emerged from such missionary activity.

On October 11, 1975, just two years ago, the Governing Board of the Council adopted a resolution stating that "It is in the interests of peace and justice that both nations (the U.S. and Panama) agree to a new relationship which truly reflects the sovereignty of Panama over its own territory." The resolution further urged "the U.S. government immediately to recognize the sovereign rights of the Republic of Panama over all Panamanian territory including the present Canal Zone, and accordingly calls on the U.S. administration and Congress to support a serious negotiation of new relationships between our two countries based on this principle." The resolution also instructed the General Secretary of the Council to constitute a delegation to go to Panama on behalf of the Council to discuss the issues involved with appropriate groups in Panama.

Such a delegation did go to Panama in early April, 1976, and met with a wide variety of groups in the Republic of Panama and in the Canal Zone, church leaders and secular groups, all from a broad spectrum of political and ideological positions. On April 7, 1976, the delegation issued a declaration which, in essence, called for a new treaty to replace the 1903 Treaty because:

A. The 1903 Treaty "represents a serious injustice to the Republic of Panama and its people."

B. The 1903 Treaty "is a hindrance to the improvement of United States relations with Latin America and other nations of the world."

C. A new treaty "will clearly affirm the effective sovereignty of the Republic of Panama over its entire territory and its right to derive greatly increased benefits from the operation of the Canal."

Two days after President Carter and General Torrijos signed the new Treaties, on September 9, 1977, the Executive Committee of the National Council of Churches approved another resolution which "commends the governments of the United States and the Republic of Panama for negotiating and signing the new Panama Canal Treaties, urges the United States Senate to ratify them at an early date."

Thus the National Council of Churches is clearly on record in support of ratification of the Panama Canal Treaties now before the Senate. In the remainder of my testimony I wish to focus on a few key reasons why the Council comes to this position. We recognize that there are many issues at stake in these new Treaties of which you have already received substantial testimony and on which the National Council of Churches has no special expertise, e.g., questions of political sovereignty, the defensibility of the Canal, toll charges and compensation, etc. I shall focus rather on a few broad, and I believe important, matters that entail fundamental moral and ethical considerations.

1. First, it is our view that the Treaties under consideration are the result of good faith negotiations by representatives of both countries in which a large nation has dealt openly and fairly with a small nation. The September 9, 1977 resolution of the National Council of Churches Executive Committee, referred to above, contained this paragraph:

"The Panama Canal Treaties are important in and of themselves, but they assume a particular significance because they represent an important direction in U.S. foreign policy which deserves the support of U.S. churches. The framework and spirit of the negotiation of the Treaties makes clear that our nation recognizes that all nations, however small or new, are to be treated with respect as they assume an important role in world affairs. The Treaties symbolize the understanding that true security for our nation rests on the power of respect for justice rather than on the power of armed might."

2. Second, we believe the new Treaties introduce into U.S.-Panama relationships a measure of justice that was not present in our relationships under the 1903 Treaty. As is well known, the 1903 Treaty was signed by a French citizen with an unseemly haste just hours before the official Panama negotiating team arrived in Washington from Panama. The circumstances surrounding the drafting and signing of the 1903 Treaty were such that, as Secretary of State John Hay recognized, citizens of Panama would understandably feel them to be unfair and unjust. For seventy four years that sense of injustice has continued and grown, poisoning our relationships. The head of the Catholic Archdiocese of Panama, Archbishop Marcos McGrath, has said, "This (1903) treaty is, in itself, of dubious moral validity, since it was drafted without the participation of a single Panamanian, and was accepted in Panama under duress . . ." The leader of the Methodist Church of Panama, Bishop Carlos Smith, states: ". . . for the sake of justice, Panama has the inalienable right to fully develop itself, for which it is necessary that it exercise sovereignty over the greatest natural resource of its people, that is, the so-called Canal Zone, which is an inseparable part of our national patrimony." Though undoubtedly there can be many conflicting views regarding the early history of the 1903 Treaty, it is indisputable that the Panamanian people have long felt that that Treaty obligated their nation to accept an unjust situation and a loss of control over a key strip of Panama's geography, a loss no financial compensation could ever adequately repay. The new Treaties now before the Senate offer both nations an opportunity to establish a new standard of justice in their relationships, achieved as the result of prolonged but fair negotiations.

3. Third, we believe that ratification of the new Treaties will significantly reduce the threat of violence in the area of the Canal. Apart from the rights retained by the United States to defend the Canal, which in themselves are significant, it would appear that the greatest threat of sabotage or violence in the Canal area could originate with Panamanians who are so dissatisfied with current arrangements that they will almost certainly resort to violence. It has often been remarked that in a very real sense the Canal is "indefensible" in the sense that unimpeded use can easily be obstructed. It is remarkable that since its construction the Canal has not been sabotaged or obstructed by Panamanian citizens, in spite of rising frustration occasioned by the unjust relationship that resulted from the 1903 Treaty. Can one suppose that such restraint will long continue if the present opportunity for a new relationship is thwarted? One cannot predict the future, but it is reasonable to

suppose that there will be far less temptation to violence in the future if the present unjust relationships are changed for the better, as provided for in the new Treaties, than if this new opportunity is rejected with the resultant anger and frustration which undoubtedly would follow such rejection. Our interest as a nation in the maintenance of peaceful and just relations between nations and in the lowering of tensions that lead to violence, argue for a prompt ratification of the new Treaties.

4. Fourth, we believe that the new Treaties are conducive not only to improved intergovernmental relationships, but will help the peoples of our two nations. There has been considerable debate as to the importance of the Canal to the United States, but there can be no debate that the Canal is of enormous importance to the people of Panama and to their development. We believe that the commitment of the United States government, often expressed, to assist developing nations of the world towards full and responsible development can be forwarded greatly, as to Panama, by the ratification of the Treaties currently before the Senate. It will be for the Panamanian people themselves, and their government, to determine just how this development should take place, but the new arrangements that the new Treaties would set in motion would offer the peoples of Panama a new hope for the control and orderly exploitation of the resources of all their territory in a way which is not possible under current circumstances.

5. Fifth, we believe that ratification of the new Treaties will indicate to the world and to our own people in the United States that we are growing toward a new and more appropriate understanding of our role as a powerful nation in the world. From a moral viewpoint, this is of high importance. Other powerful nations of the world have, in recent decades, come to terms with new concepts of world order in which colonialism was no longer acceptable, imperialism was curbed, and in which new and small nations achieved a new role of dignity and respect in the world community. It seems to us that one issue at stake in the new Treaties is an affirmation of a new national self-concept on the part of the United States. If the Treaties are ratified it will be clear to the world community of nations that the United States is willing to seek out new relationships that are in keeping with the nature of the modern world where power does not guarantee right, and where a powerful nation such as the United States can achieve the respect of the world community by the exercise of restraint and the reordering of relationships which, however appropriate to another day, are no longer so. As the meaning of the new Panama Canal Treaties is thus understood by our people we can hope that our self-understanding as a nation will develop in keeping with the highest ideals of our national heritage.

6. Finally, we believe that if the new Treaties are approved, without reservations of proposed amendments that would imply rejection, our nation would be taking a forward step in its international relations. The world community of nations, especially the Latin American nations, would welcome such a step warmly. Rejection of the Treaties would be a severe blow to our relations with Latin American countries that overwhelmingly desire the Treaties to be ratified. The image of the U.S. would be strengthened throughout the world if ratification takes place; rejection would almost unavoidably encourage strong anti-U.S. sentiment worldwide. Ratification will nurture friendly attitudes on the part of Panamanian citizens; rejection can be expected to tempt many Panamanians to hostility. Ratification will strengthen the moral stance of our nation as we try to uphold in world affairs a standard of fairness and international understanding. Rejection will raise serious questions about our willingness to live by the moral standards we say are ours.

Mr. Chairman, I thank you for the opportunity to present this testimony and in conclusion I repeat my hope, speaking for the National Council of the Churches of Christ in the U.S.A., that the Panama Canal Treaties now before the Senate will be ratified at an early date.

TESTIMONY OF JOHN CARDINAL KROL

Mr. Chairman and Members of the Committee: I am John Cardinal Krol, Archbishop of Philadelphia. My testimony before this distinguished Committee is given in the name of the United States Catholic Conference, the civil action agency of the more than 330 Catholic Bishops of our country. At the outset, Mr. Chairman, I wish to express my personal appreciation and that of the U.S. Catholic Conference for the opportunity to present testimony in support of the proposed Panama Canal Treaties. The Catholic Bishops took an early interest in the need for a new treaty; in February 1975 the Administrative Board of the U.S. Catholic Conference adopted a policy position supporting the Kissinger-Tack agreements of 1974 and calling for a new treaty to govern relationships between the U.S. and Panama. In November

1976 the General Meeting of the Bishops adopted a second statement endorsing the need for a new treaty.

We regard this question as one of great symbolic and substantive significance for the peoples and nations of the Western Hemisphere. We also recognize that the treaties are a subject on which American citizens hold strong and differing views. In 1976 the debate in the Bishops Conference on our second policy statement illustrated that there were some differences of views among the bishops on specific aspects of our position, even though the position was adopted by a vote of 170-61.

My testimony today is based on the major themes of the two policy positions taken by the Catholic Bishops in support of a new treaty with Panama. In presenting this testimony the bishops wish to fulfill a role of responsible citizenship as well as religious leadership. We come here not to express a doctrine of faith, but to draw upon Catholic social teaching to highlight the moral dimensions of this very significant public debate taking place in our nation.

In our 1976 Statement the Bishops asserted that a moral imperative existed "to fashion a new treaty which respects the territorial integrity and sovereignty of Panama, and dissolves the vestiges of a relationship which more closely resembles the colonial politics of the nineteenth century, than the realities of an interdependent world of sovereign and equal states." (Statement on U.S.-Panama Relations, 1976)

I came here today, Mr. Chairman, to express our conviction that the treaties now before this Committee achieve the objectives called for in our 1976 Statement. It was our view in 1975 and 1976, and it is our view today, that a new treaty which acknowledges in principle and in fact Panamanian sovereignty over its own territory is a requirement of justice and peace between our two nations. A requirement of justice because the 1903 Treaty no longer can be reconciled with the concept of social justice which governs relations between sovereign nations in our interdependent world. A requirement of peace because we believe failure to reach a reasonable and just accommodation of interests between our nations needlessly threatens the peace in this hemisphere. In support of these propositions, I respectfully submit a series of considerations which specify the issues of justice and peace at stake in this case of the Panama Canal. We hope these will be of assistance to this Committee, to the Senate in its deliberations, and to American citizens as they consider this question.

Our perspective on the treaty negotiations and now on the treaties themselves has been set by a text from Pope John XXIII's encyclical on international relations, *Peace on Earth*, (1963). In his discussion of relations between states, Pope John said:

"Each of them accordingly, is vested with the right to existence, to self-development and the means fitting to its attainment, and to be the one primarily responsible for this self-development." (para. 86)

The terms of the 1903 Treaty acknowledge the principle of Panamanian sovereignty, but prevent its exercise in any form in the Canal Zone. Such a restriction on sovereignty, imposed from outside, makes it impossible for Panama either to realize its rights to self-development or to be the principal agent of its destiny in the world community. This is the key moral issue at stake in these treaties.

It is important to note, at this point, Mr. Chairman, that Catholic teaching on international relations does not give political sovereignty an absolute moral value. At a deeper level than political or legal sovereignty is the reality of human community, which happens to be shaped at this stage of history by a world of states. There are basic human responsibilities among people and nations which we think take precedence over the legal claims of states. At the same time, it is in our view necessary to acknowledge a real, if relative, value to the concept of sovereignty in a world of * * *

The legitimate claims of sovereignty make it possible for a state in a still disorganized world to protect the fundamental rights of its people against outside interference and to marshal the resources and energies of its national heritage for the good of its people. These are objectives which touch the very identity and dignity as well as the socio-economic welfare of a country. They are objectives which we take for granted as the right of our own nation in the world. Yet, under the provisions of the 1903 Treaty, these minimal objectives of a state are severely restricted by us in the case of Panama.

It is this prevailing situation which cries out for redress. The great opportunity of the moment, Mr. Chairman, an opportunity of both justice and peace, is that we can redress the situation by the democratic procedure of a vote in this legislative body of the United States. It is our hope and prayer, Mr. Chairman, that the significance of this moment will not be lost in the intensity of debate presently surrounding this issue.

The substantive significance is the issue of political and legal justice I have just specified. But the symbolic significance of the moment is no less important: one of the largest and one of the smallest nations in the world have been dangerously close to conflict for over a decade; it is now possible to lay this conflict to rest and in doing so to provide an example in world affairs of how states of very different political, economic and military power can deal with each other in terms of equality, dignity, and mutual respect. There are too few examples of this kind in the world today. It would be a political and moral tragedy of the first order if we were to squander this opportunity.

Complementing this dimension of political-legal justice there is a second moral question at stake in a new treaty. Sovereignty is a political concept, but in world politics today the implications of sovereignty have significant socio-economic consequences. In both our 1975 and 1976 Statements on U.S.-Panama relations, we stressed how present restrictions on Panamanian sovereignty substantially retard the possibilities for economic development in that nation. We say this even while we readily acknowledge that the existence of the Canal, built and operated under U.S. auspices, has brought substantial economic benefit to Panama in this century. The acknowledgement of this fact should not, however, overshadow the equally relevant truth that the existing inability of Panama to integrate the Canal and territory comprising the Canal Zone into its national planning has serious long-term economic consequences ranging from urban congestion in Panama City to the level of revenue which Panama can gain from operating the Canal.

The political issue of restrictions on Panamanian sovereignty strikes at national pride and dignity; the economic issue resulting from restrictions on Panamanian sovereignty strikes at the human dignity and economic welfare of the people of Panama. It is a stated policy goal of our nation to foster the political and economic development of the nations of the Third World; in the treaties now before this Committee the potential exists to make a significant contribution to one of those nations by opening the possibility for more rational and comprehensive economic planning through restoring to Panamanian control the precious 500 square miles of territory which now bisects that country.

These remarks, Mr. Chairman, bring me to two concluding considerations: one bears upon our relations with others, a second upon our perception of ourselves as a nation. I have already commented upon the symbolic significance of these treaties, but the idea is worthy of a final reflection. In the increasingly interdependent world of which we are a part, our relations with the nations of the developing world will be both complex and of considerable importance. The way those relations are shaped will have a decisive impact on what Pope John called the international common good. The Panama Canal Treaties constitute a prismatic case of how decisions among individual nations can contribute to the international common good. All the political and economic dynamics involved between the industrialized and developing nations are reflected in this issue. We are being watched closely for signs of how we respond to these dynamics in a concrete case. There is a significant opportunity here for the U.S. and Panama to signal a new kind of relationship more vividly than the resolution of this emotionally laden problem by the stroke of the pen rather than strife between our nations.

The opportunity, however, is not confined to contributing to the international common good. It is our considered judgement, Mr. Chairman, that these treaties also achieve for the United States the basic national interest we have in a canal which is open and efficiently operated. Other witnesses will testify in detail about the political, strategic and economic dimensions of the treaties. As Bishops we bring no special technical competence to these discussions, and therefore have not stressed technical issues in this testimony. In preparing this statement, however, we have considered these elements, including the specific point we made in our 1976 Statement, that the welfare of the people living and working in the Canal Zone be given just consideration. We are of the opinion that this question and other legitimate national interests the United States has in a new treaty have been provided for in the texts now before this Committee.

We are aware that some who oppose the ratification of the treaties use an argument that in accepting a new treaty relationship the U.S. will appear weak or in retreat in the eyes of others. This assertion deserves comment, because it touches directly on how we think of ourselves as a nation, on how we conceive the values which structure our identity, and on how we wish to project ourselves in the world community. It is our view, Mr. Chairman, that the treaties provide us with an opportunity to project an image of strength which derives from the strongest dimension of our national heritage, not our military might, but the values and principles which are the foundation of our identity as a people. We are a nation born of the

desire to be free from foreign domination; the concepts of liberty and self-determination are woven through the fabric of our history. It is these values which are synonymous with our political philosophy. When we affirm the values of liberty and self-determination for ourselves and for others we speak from the most significant strain of our heritage.

Our commitment to those values is perceived by others not only in terms of whether we are determined to preserve them for ourselves but also whether we are willing to affirm them in our relations with other states, especially those smaller and less powerful than we are. In the past we have been willing to take up arms in defense of liberty and self-determination; today, in this case of the Panama Canal Treaties, we can affirm the values by a peaceful act of national will in ratifying what our President has signed. In the past we have stood for the principle of nonintervention by others in the Western Hemisphere; today we are asked to manifest our commitment to the principle of nonintervention by an act of self-restraint and forbearance included in these treaties.

It is of the essence of national strength to be confident about the values which are at the heart of a nation's life and to be guided by those values in moments of great importance. We have such a moment before us and we can prove our strength by affirming for others what we most prize in our own national life.

STATEMENT BY MORRIS LEVINSON

Mr. Chairman: I am Morris Levinson, Vice President of the Synagogue Council of America and Chairman of its Committee on International Affairs. With me is Rabbi Daniel Polish, Associate Director of the Synagogue Council. The Synagogue Council is the national representative body of the three branches of American Judaism—Conservative, Orthodox and Reform. Its constituent organizations, both rabbinical and congregational are: Central Conference of American Rabbis, Rabbinical Assembly, Rabbinical Council of America, Union of American Hebrew Congregations, Union of Orthodox-Jewish Congregations of America, and United Synagogue of America. These organizations represent more than 4 million American Jews.

I would like to begin my testimony by presenting the official policy statement of the Synagogue Council about the proposed treaty:

The Panama Canal Treaty, which President Carter just signed, is in the best interest of the United States and far-sighted in terms of our relations with other nations.

The treaty assures the continued safety of the canal itself. As hostility to the arrangements provided by the 1903 treaty grows, the canal becomes increasingly vulnerable to terrorist attack and sabotage. The Joint Chiefs of Staff agree that the canal is impossible to defend. The new treaty diffuses this problem, thus assuring its continued operation. This is in the best strategic and economic interests of the United States.

Equally important, the treaty demonstrates our understanding of the political aspirations and economic objectives of smaller nations. The importance placed on this treaty by so many of the nations of Latin America is signified by the participation of over 20 heads of state in the recent signing ceremonies. The new treaty is conducive to more productive and cooperative relations with the nations of Latin America.

The treaty also signifies the commitment of the United States to end forever the vestiges of colonialism. At a time when colonial empires have been dismantled, in no small measure in response to pressure from the United States, this country is called on to examine its continued possessions of what some have regarded as a flagrant example of 19th century colonialism. Treaty negotiator Sol Linowitz has stated:

"To a large part of humanity, whether we like it or not, the Panama Canal is a colonial enclave carried over from the early part of the century . . . [that] has caused bitter resentment . . . [ratification of the treaty will] assure that we're going to set an example for the way a large nation deals with a small nation."

When the canal was opened 63 years ago it was the source of great pride for the United States. It demonstrated to the world the technical and managerial genius which this country possessed. Today this country's response to the new treaty can also be a source of pride. It can demonstrate the United States' generosity and self-confidence, and its flexibility in facing new realities. Ratification of this treaty offers the United States a chance to demonstrate its vision of a cooperative world, and a chance, once again, to be of benefit to our neighbors.

As I elaborate upon this statement, let me first acknowledge at the outset that we cannot talk with authority about the economic or security aspects of the treaty. We

will have to leave that to the military and business spokesmen who will be appearing before this committee. We can speak about the moral issues which we feel the treaty addresses.

The first question which this treaty calls to mind is that of parity—of equality between nations. The Jewish tradition has always valued the ideals of equality and fairness. At the heart of its teaching is the "golden rule" of Rabbi Hillel: "What is hateful to you, do not do to your neighbor." In our own land, in the midst of great passion, these same values were at the heart of Lincoln's axiom, "Even as I would not be a slave, so I would not be a master." Equity between nations demands that what one country would not wish for itself, it ought not inflict upon another country. Our nation, which so cherishes its territorial integrity and its political independence, has for all these years found itself in the anomalous position of perpetuating a physical incursion into the sovereign soil of another nation, and thereby diminishing its political autonomy.

The ideal of fairness would require that as we would not want another nation to control a strip of land down the center of our land, so we cannot preserve our hold on such a strip of land through the territory of another.

The second question which calls itself to our attention is that of the ideal of cooperation and interdependence. The world in which the canal was built was one of autonomous nations, each asserting its influence and exercising its power to whatever extent it was able, constrained only by the limits of its own resources. The world of our day is a far different one. The truest picture of the world in which we live was the one transmitted back from the spaceship Apollo 14: a tiny lifeboat afloat in the vast sea of creation. We are truly, in the words of Archibald MacLeish, "riders on the earth, together."

The lives and resources of all human beings now are bound up in a common thread of mutual needs and common interests. What Benjamin Franklin once said of the American colonies now holds true for all the nations of the world: "We must all hang together, or we will hang separately." Whatever the lot of earlier ages may have been, the time we live in is one in which our various countries have need of one another's goodwill and friendship. We have, all of us pray, moved out of the age of aggression and confrontation and into an age of mutuality. The model of colonialism and paternalism has been replaced by one of collegiality and fraternal cooperation.

The Jewish tradition has always valued the ideal of cooperation among individuals and nations. It has fostered the teachings by which people may live together in contentment and concord. So does it look to the time when the people of the earth can find their way to sharing their resources and being attentive to one another's needs. By our actions we can bring that time closer.

This treaty allows the United States the opportunity to demonstrate that it is endowed with breadth of vision and reservoirs of goodwill. Ours is a land blessed with resources of material and of skill. Yet it is not a selfish land. We can reach out our hand to our neighbors and share with them. We can give them of what is ours so that we may better their lot and add to their happiness. Our ethical teachings do call on us to share.

Some may deride this value as "soft-heartedness" or denounce it as perpetrating "handouts." We have been taught to view it as a virtue, making the world more habitable by benefitting one another. Even as we would practice this ideal within our own land, so do we believe it can be practiced among nations. Because the welfare of each nation now rests on the happiness and contentment of its neighbors, we ensure our own welfare by contributing to the welfare of the people of Panama.

Finally, Mr. Chairman, I believe that this treaty addresses a practical question: the ability of the United States to respond to the new realities of this age. We do not have the luxury of responding to today's questions with yesterday's answers. Many are still mesmerized by the vision of the world in which the canal was built. They would apply the rough and ready values of that time to this decision. But those answers will not work. The people of Panama will not be docile and submissive. With or without our cooperation, it has been reported, they will come into possession of the canal. How much better it would be, for them, for us, and for the peace and stability of our part of the world, if the transition of ownership could be done amicably and in the best interests of both peoples.

The reality of this moment is one that will acknowledge that all power does not inhere in our nation, nor all right.

The reality of this moment is one that recognizes that we cannot go it alone, that we have real need of the assistance and goodwill of our neighbor states.

And so we may respond to the realities of this moment or seek to flee from them. The counsel that we "tough it out" and hold to the understandings of an earlier

time is beguiling but false. Such devotion to outworn visions is not the mark of a creative and powerful people but of an enfeebled and declining one. The ability to adapt to new demands and respond creatively to new realities is not the mark of a diminished nation, but of a vital and energetic one.

Our neighbors and the circle of nations beyond them may well regard our decision on this question as a test for the United States. To hold to old ways here might be seen as an indication of strength than of decline. The ability to acknowledge our new world and respond to it in its own terms will be seen as a sign of our readiness to be a part of that new world. It will be token of our commitment to the ideals of the equality and cooperation among nations. It will be token of our readiness to live with them in fraternity and interdependence. It will be token of a magnanimity of spirit which we hope will mark all the dealings between the nations of the earth.

Mr. Chairman, I thank you for hearing my testimony and inviting us to present it today.

TESTIMONY OF DONALD E. MILLER

Distinguished Members of Committee on Foreign Relations: My name is Donald E. Miller, and reside at 18 W 659 22nd St., Lombard, Illinois. I am Professor of Christian Education and Ethics at Bethany Theological Seminary in Oak Brook, Illinois, the only seminary of the Church of the Brethren. My testimony has been approved by the officers of the General Board of the Church of the Brethren and it is in behalf of the General Board that I testify. The Church of the Brethren is a Protestant denomination of over 1,000 congregations across the United States.

My special qualifications to appear before you regarding the pending Panama Canal Treaties are perhaps two-fold. I have been a member of the special committee appointed by the General Board of the Church of the Brethren to draft a statement on Biblical justice for use in the church. I have also been a part of an educational program, "In support of a New Relationship with Panama", requested by the 1976 Annual Conference of the Church of the Brethren. My specific assignment during August of this year was to lead a study tour on the topic of "Biblical Justice" to the Panama Canal Zone and to Ecuador. During our stay in Panama we spoke to the Senior Political Advisor in Panama for the United States Department of State, engineers and other employees of the Panama Canal Company, the Public Information Officer of the company; American church members inside and outside the Zone, students at the University of Panama, and Panamanian citizens on the street. An engineer employed by the Canal Zone Company served as our host during the two days of our visit.

The Church of the Brethren from early colonial days has been concerned about international peace and justice. At times criticisms of its peace stance have quieted its voice before the Government. However, more recently Brethren concerned about conscientious objection to military service, criminal justice, aid and service programs to foreign countries and other concerns, have frequently brought testimony before Congressional Committees.

While not all members of the Church of the Brethren agree about United States policy regarding Panama, and while various views were stated at the July 1976 Brethren Annual Conference discussion of the issue, that Conference did adopt an official statement about the Panama question, prefacing its recommendations with these words:

"Out of our interest in just international relationships, our concern for social/economic justice for the people of Panama and our desire to reduce international irritants that threaten peace, Brethren should encourage the negotiation of the new treaty, the eventual turnover of the Canal and return of the Canal Zone to Panama, the ratification of the treaty by the United States Senate, and the authorization and appropriation of financial resources of its implementation by the United States Congress."

The Church of the Brethren, speaking through the 1976 Annual Conference statement just quoted, is clear in its support of a newly negotiated treaty that follows the principles laid down by the Kissinger-Tack Agreement of 1974. To quote again from the Conference report, Brethren agreed to:

"1. Urge the U.S. Government to recognize the sovereign rights of the Republic of Panama over all Panamanian territory including the present Canal Zone, and accordingly call on the U.S. Administration and Congress to support a serious negotiation of new relationships between the two countries based on this principle;
"2. Support the efforts of the U.S. and Panamanian Governments to proceed toward the negotiation of a new Isthmian Canal Treaty based on the Kissinger-Tack Agree-

ment on Principles,' plus the principles of neutrality and arbitration, ensuring that the Canal be open, efficient, secure, and serving without discrimination."

The Church of the Brethren takes its stance regarding the proposed treaties with Panama from an understanding of the Biblical teaching about justice. Such a stance is at times at variance with the common point of view. However, the United States was founded and is nourished by a profound vision of justice that is not always commonly understood. We believe that the strength of this nation, or for that matter of any nation, rests in its commitment to a wider vision of human justice. When the vision of justice is diminished then the strength of the nation itself is jeopardized. We therefore, challenge a commonly held view that "might makes right."

Biblical justice is concerned about the well-being of the whole community of nations. Long range self-interest includes concern about the benefits to the other nations. It goes beyond the common view that immediate self-interest is decisive.

Biblical justice is willing to be fair to the weak and the poor. King David had a right to take to himself Bathsheba, his subject's wife, simply because he possessed that right. However, the prophet Nathan rebuked him for using his power to take unfair advantage of the weak. Genuine justice goes beyond the common view that the powerful may take what they can get.

Biblical justice is concerned for the new order that is come into being. When the old covenant becomes too narrowly understood and inadequate to the time, the Prophets begin to speak of a new covenant. The common mind is often more concerned about the personal advantages of the old agreement rather than the reality of the new order that has come into being.

Biblical justice discerns rightly what will strengthen relationships between persons and community. Justice originally referred to the decision made by the elders at the town gate wherein relationships within the community were strengthened. The common mind is frequently more concerned about the balancing of competing claims than of the wider well-being.

Biblical justice demonstrates a fundamental good will toward other groups. Such justice is concerned about the freedom, respect, and self-determination of other groups. The common mind is frequently more concerned about using other groups for one's own advantage.

We do not pretend to believe that any one treaty will fully embody justice in a Biblical sense. Yet we do believe that the proposed treaties are much closer to such a view of justice than is the treaty currently in effect.

Consider the well-being of the whole community of nations. It is to the well-being of both Panama and the United States for the two nations to have a greater degree of mutual respect. When Secretary of State George Marshall initiated the Marshall Plan after World War II, he declared, "Our policy is not directed against any country or doctrine but against hunger, poverty, deprivation and chaos."

That policy was in my judgement one of the most effective that the United States has ever taken. A similar policy today means acting so as to heighten respect between nations. Simple justice requires respecting the sovereignty of Panama.

The very weakness of Panama and its people calls for a policy that enables the country to gain greater strength. The Panamanians we spoke to pointed to the right of Panama to their own natural resource. The narrowness of the Isthmus is such a resource. This is not a time to reassert a colonialism that aims to keep a dependent nation weak.

A concern for the new order that is coming to be will consider that Panama has the support of the majority of American States as well as a majority of the members of the United Nations. An act that signals the economic and political strengthening of nations of the "Third World" cannot be well received among those nations. Clearly the coming new order must include a strengthening of Third World nations. "The challenge now is to determine whether the (Panama issue) becomes a monument to US shortsightedness and insensitivity to global community—or a monument to the larger human spirit that seeks the common good." (Quoted from a Brethren General Board staff member.)

A discernment about genuine relationships will see the inequity of the Treaty of 1903. Its conditions would have been considerably different had it been negotiated with Colombia, as was originally attempted. The real issue is not the matter of who controls the Canal, but of acting so as to assure widest international use of it. The present situation is an increasing irritant to the Panamanians, as my experience in Panama fully persuaded me.

A fundamental good will toward Panama will be concerned about the economy of that country as well as the economy of the United States. The Canal is important for the United States, but it is vital to Panama. Panama has been meagerly paid for

use of the Canal, and its economy sagged badly. That is obvious to anyone who steps across the Zonal boundary line.

A concern about the well-being of the whole of the United States means that judgements about these issues will not be over shadowed by military considerations. For years Panamanian soil has been used to train military personnel from other Latin America countries, a use that goes considerably beyond the Treaty of 1903. It is important that the Congress act from a sense of justice that is appropriate to the vision upon which the United States is based, for a lesser vision weakens not only this country, but its relationship to all other countries.

In summary, a concern about peace with justice leads the General Board of the Church of the Brethren to advocate ratifying the proposed Treaties with Panama. Consideration of Panama's sovereignty, economic well-being, and the relationship of the United States to the emerging world order all point to the ratification of the proposed treaties.

STATEMENT BY KENNETH F. BOEHM

Mr. Chairman, Members of the Committee on Foreign Relations: It is a distinct pleasure for me to appear before you today representing Young Americans for Freedom, the nation's largest conservative youth group.

For two months now our group has been actively involved in the public debate over the Panama Canal issue. It was at the National Convention of Young Americans for Freedom that Ronald Reagan formally announced his opposition to the two treaties. Since then, many of our 55,000 members joined the effort by circulating petitions, distributing literature, and sponsoring debates.

My reason for appearing before you today is two-fold: first, to represent the concerns of young people who may have to live with the results of the proposed treaties. Secondly, I'd like to give you the reasons why young people, liberal and conservative alike, are alienated by the Carter Administration's campaign to give away the Canal.

Young Americans have a lot to lose if the proposed treaties are ratified. Many of the worst features of the treaties will not become true problems until the turn of the century or until a war or national emergency.

Each generation has a duty to future generations. The generation of Americans who built the canal fulfilled their duty. They made Panama independent, built the world's greatest canal, and conquered yellow fever, malaria, and other tropical diseases. A disease-ridden, swampy jungle was made into a liveable place. Succeeding generations of Americans ran the Canal fairly and efficiently. In peace, it was open to ships of all nations. In war, it was closed to, and adequately defended from, enemy forces. Today that legacy continues. Panama has the highest per capita income in Central America, yellow fever is eradicated, and the canal remains vital to the economy and security of the U.S.

What type of legacy will the two proposed treaties be? What do future generations of Americans have to lose or gain from them?

The position of Young Americans for Freedom is shared by most Americans: we lose a lot and gain nothing.

We lose a 7 billion dollar investment, the canal zone with its military bases, railroads, highway system, dry docks, and the canal itself.

We lose approximately \$350 million in economic and military aid.

We lose at least \$50 million a year in payments to Panama which is a 2000% increase over the current payments.

We lose the right to build another canal without Panama's approval.

We lose the right to bar Soviet naval vessels from the canal in time of war or national emergency.

We, as consumers, lose untold millions through higher canal tolls.

What do we get in return? Proponents of the treaty have tried to sell the treaties to the American public by assurances that the treaties guaranteed U.S. intervention rights, preferential passage rights in time of war, exclusive U.S. rights to build any new canal and guarantees that the canal would remain open.

The problem is that all four of these assurances have been contradicted by Panamanian chief negotiator Romulo Escobar Bethancourt.

Even assuming that the obvious problems with the treaties language are resolved, what are we really getting from the other side for our billion dollar giveaway? We're getting nothing but promises. And the history of treaties which trade real estate for promises speaks for itself.

The assumption that General Torrijos will keep the few promises he does make is dubious at best. He's broken the current treaties 11 times in the last 2 years.

Dictators who overthrow democratically elected governments and who sign joint communiques with terrorists such as Libya's Colonel Qaddafi are not known for their integrity in keeping treaties.

Even if the Torrijos government were trustworthy, there's no assurance that the next government of Panama would live up to the commitments made by the current ruler. Because of Panama's history of political turmoil, the average President's tenure being just two years and four months, this is a very real risk. One of the best reasons of the U.S. owning the canal is to keep it safe from the snakepits of Central American politics.

Now I'd like to give you the reasons why I feel that the average American young person, regardless of political philosophy, has been alienated by the campaign to ratify the treaties.

The first reason is the lack of credibility in the President's words and actions in regard to this issue. Candidate Carter assured the American public "I would never give up complete or practical control of the Panama Canal Zone." President Carter, in office less than a month, appoints a new ambassador to the treaty talks. His assignment: to negotiate a treaty giving Panama complete and practical control over the Panama Canal Zone.

The second reason for the disenchantment is the "politics as usual" style of the effort to promote the treaties. This, too, became apparent from the very beginning when President Carter gave Ambassador Linowitz a special six month appointment as negotiator. He, thus, circumvented the normal Senate confirmation proceedings. If these proceedings had been held they could have probed such possible conflicts of interest as the fact that Mr. Linowitz sat on the board of directors of a major bank which had made large loans to the Panamanian government.

The wiretapping incident and related allegations that the U.S. was blackmailed into treaty concessions only served to further discredit the resulting treaties.

A third reason why American young people, regardless of political philosophy, are turned off by the campaign to promote the treaties is the obvious hypocrisy over the issue of human rights.

President Carter, in theory, has made human rights the theme of his foreign policy. He has threatened to withhold aid from countries which violate human rights. His address to the U.N. last March left no doubt as to his opposition, in theory, to those nations suppressing human rights.

In practice, President Carter has rewarded the two worst violators of human rights in the western hemisphere, Cuba and Panama, with a bonanza of proposed concessions.

Freedom House, a national organization which conducts country-by-country comparative surveys of the status of freedom, places Panama on the same level as Cuba and the Soviet Union. No country in Latin America scored lower.

Since coming to power 9 years ago by ousting the duly-elected President of Panama, Torrijos has run a Marxist police state. There's no free press, no freedom of speech, no elections, and no right to habeus corpus. There are numerous documented cases of torture. The victims included Americans as well as Panamanians.

Finally, the Panama Canal talks offered a perfect opportunity for President Carter to turn his human rights rhetoric into positive action. Instead, he went out of his way to praise General Torrijos, calling him an "enlightened dictator" who had "concern" for his people. Such blatant hypocrisy is yet another reason why you'll find few young people in favor of the treaties.

TESTIMONY OF ROSE MARIE ARAGON

Mr. Chairman: I deeply appreciate the opportunity of appearing before this Committee. I am Rose Marie Aragon, born in Argentina, a naturalized U.S. citizen and the widow of Leopoldo Aragon who immolated himself last month before the American Embassy in Stockholm protesting the violations of human rights in Panama and the signing of a treaty with the Torrijos dictatorship.

Gentlemen, I sometimes think that the blessings of freedom and democracy are more appreciated and more precious to a naturalized citizen. Some of you in this prestigious chamber may well remember those feelings expressed by your own parents.

With deep personal pain, I will describe the jailing without trial, the torture and imprisonment of my late husband, Leopoldo Aragon, in the infamous penal colony of Coiba, the Devils Island of Panama.

I will tell of, and offer documentation of the systematic and continuing pattern of gross violations of internationally recognized human rights by Panama's dictator, Omar Torrijos.

Until now, Panama's flagrant violations of human rights has been one of Washington's best kept secrets. This September 9, the Washington Post editorial page article raised questions: first, the reasons for State Department's cover-up of the true nature of the Torrijos regime; second, the reasons the State Department devised elaborate falsehoods to deny my husband a visitor's visa to accompany his American wife and American daughters to the U.S. this past August. I look to the Members of Congress to explore these implications.

THE WASHINGTON YEARS

I met and married Leopoldo Aragon, a Panamanian international journalist when he was assigned to Washington. He had received his law degree in the United States and completed graduate studies in International Law and Journalism in Spain and France. Our twin daughters now attending college in the United States, were also born here. Leopoldo covered the White House, State Department and the Organization of American States for several Latin American and European newspapers. His first book, in Spanish, "The Kennedy Era—Inside Washington" was published then. At that time I worked for State Department with a top secret clearance. Later I worked with the Organization of American States. I have long been deeply involved with civil liberties and civil rights as my husband was devoted to the cause of human rights.

In 1967 my husband was assigned to Czechoslovakia by Interpress Service. We went with him. After nine months he was summarily given 48 hours to leave the country. He had written too many truths about communism.

THE PANAMA EXPERIENCE

In 1971 Leopoldo was assigned to Panama. For the first time since our marriage we went to make our home in his native land.

He was to set up Interpress Service. He also wrote articles for the local press and later developed a daily news analysis program on Radio Impacto. At first he viewed the political scene with a hopeful and open mind. As his views developed he began to express them privately and then publicly.

As a working journalist, he was shown a Corps of Engineers Draft Position Paper dated February 16, 1968. That paper, according to notes my husband gave me to carry to the United States, noted that popular opposition had rejected the 1967 proposed canal treaties that the Panamanian democratic government had negotiated with the United States. The paper concluded that a new treaty could not be passed in Panama except under a strong military dictatorship. This U.S. paper recommended Torrijos as the likeliest man to do the job. At that time, my husband told me about this in Panama, but suggested it was better that I not know further details.

At the end of July 1972 Leopoldo, on his return trip from a short assignment in Mexico, stopped in Costa Rica at the invitation of Gonzalo Faszio, Minister of Foreign Affairs. At the dinner that evening there was also President Figueres. They held a frank conversation about the situation in Panama. These were the subjects on which Leopoldo was later interrogated.

The next day, on his arrival at the Panama International airport, Leopoldo was arrested by the G-2, the Security Arm of the National Guard.

His arrest was witnessed by a friend who informed the family. But the Guard Headquarters told me they knew nothing about my husband. After 4 days G-2 admitted to a lawyer friend that they were holding Leopoldo, but warned him not to take the case. That lawyer suggested another who had worked for other political prisoners. This Mr. Faundes agreed to present a Writ of Habeas Corpus though he accurately predicted no result. Through his contacts he learned that my husband was charged with possession of marijuana.

He advised me to see the Attorney General. After many long days of waiting, I was told they were questioning my husband on drug charges.

I protested it was absurd and that no civilized country held a person on vague charges, denied counsel and ignored a Writ of Habeas Corpus. He replied, "In other countries, not in Panama."

I began to contact journalists throughout the world and Amnesty International, the International Committee on Human Rights and International Organizations.

My lawyer advised me to see the Minister of Justice, Materno Vasquez. For 10 days, day after day, from morning till night, I sat and I waited. When finally the Minister admitted me, it was only to say that Leopoldo was held for Subversion of Public Order.

Repeatedly I begged to see my husband. The Minister relented. I went to the jail only to be told they had received no orders. This continued for days. At last the

doors of the prison opened for me and I talked with my husband after more than four weeks. He had been kept incommunicado for four weeks while tortures were inflicted on him, which as he later told us were: Blows with a rubber hose; first blows to stomach and chest; long questioning under strong lights without sleep; electric shocks to the vital parts of the body, the ears, genital organs and the anus" that made him feel his insides were bursting; and hanging by the wrists and acted out executions with blank cartridges so that each time he did not know whether he was alive or dead.

My daughters and I, having had the mental torture of not knowing whether he was dead or alive and imagining what they might be doing to him, were to start on a new stage in our anguish. I extract from the journal of my daughter, Yarmila; which she writes now for one of her classes:

"Reading other people's journals of high school romances, marijuana smoking, spaced out, partying * * * I feel rather young and inexperienced. Though other experiences, I suppose will make up for the lack of those. Like waiting in line in the torrential tropical rains or scorching sun for an hour or more outside the "Model Prison" * * * most infamous place * * * where men whose ideas are too liberal and criticism too outspoken are thrown in among common criminals and tortured, most often to death * * * only waiting to catch a fleeting glimpse of a father's ravaged but beloved face."

My lawyer and I kept demanding that my husband be brought to trial. Instead, in December 1972 he was condemned, by simple writ, to five years in prison, and one day while standing in line to bring food and bedding to him we were told he was no longer there.

He had been sent to the Penal Colony on the Island of Coiba.

The following are excerpts of Leopoldo's document:

"The prisoners are driven to Pier 18 in the Canal Zone port of Balboa under American jurisdiction, because Panama has no deep water port, and are loaded into the boat. If the trip to Coiba is hellish, it is worse if one tries to escape as I did at Pier 18 by jumping into water. It had been my hope that by doing so, I would be taken by American police who might be persuaded to take me to the hospital for injuries resulting from my torture. The shooting at me by the guards attracted a large number of American police. The shooting stopped and I shouted of my condition. The Americans agreed to take me to the hospital and so I surrendered. Then there, in front of the passive Americans I was given a severe beating with clubs, fists, rifle butts and kicks by the Panamanian guards. They handcuffed my hands behind my back. They heaved me toward the boat, but they missed. I fell into the water. I dove under the ship and made it to the underside of another pier. But I was turned over to the Panamanian guards who again beat me.

"Half drowned, I was hanged from the handcuffs to a mast for several hours. When darkness came I was chained to a ring on the deck * * * Luckily the cramped conditions prevented the guards from kicking me as hard as they might have wished.

"It was dusk of the next afternoon when the boat tied up to the jetty at the southern tip of Coiba. There were some 20 guards waiting with clubs and whips * * * someone gave me a kick that sent me reeling over the jetty into the water * * * my delay in reaching the beach saved me from one of the most bestial practices on Coiba: the running of the gauntlet of the prisoners from the jetty to the central yard. The other prisoners were running like cattle under the whips and savage cries of the guards. These were swinging their clubs, rushing the prisoners to gallop, prodding them to run faster. The guards would run ahead of them, among them, and from behind, hitting and whipping in a happy demoniacal frenzy. If someone fell, several guards would converge on him, kick him, whip him, beat him and screaming louder, drag him to his feet, forcing him to sprint like crazy, the remainder of the 300 yard distance. * * *

"Slumped on the ground, I watched from a distance. At first, the whole spectacle was incomprehensible because I did not grasp what was going on. It was a strange state of mind. The black night in the background and the lights illuminating the goings on, sort of transported me to the environment of a theater. The play would soon be over and one would walk out with friends, have dinner or a drink and discuss the play I felt no part of it * * *

"Then suddenly I realized with terror that the thing was real. I was in it, at the receiving end like the others. The Captain's welcoming speech was short and to the point, "You just got the Coiba shock treatment. You'll get it any time you're lazy or don't figure out what we want. In Coiba's there's no God, no law, no nothing, only what is for our pleasure."

The horrors continue. At Coiba Leopoldo was told how Floyd Britton another of the political prisoners had died there. The government had announced he suffered a heart attack. The truth as Leopoldo recounted it was: "With his hands handcuffed behind his back, he was placed on a stool. Guards surrounded him and clubbed him until his brains flew out."

My husband stayed in Coiba for six months. Our appeals to the international human rights organizations and to important friends of Leopoldo in other countries bore fruit. Leopoldo was brought back to the city prison hospitals. Although there are about 1,500 prisoners in Coiba, there is no medical facility. He was urinating blood and had Meniere's disease from beatings. His physical condition was terrible. Though I was told Leopoldo would be exiled, he was sent back to Coiba. Again we almost went mad. Finally in December 1973 I was ordered to buy him a one way ticket to Sweden and he was placed on a plane to Stockholm . . . where he spent two months in Karolinska hospital, recuperating from the physical and psychological tortures.

He gave several press interviews until G-2 gave me a message: "Tell Leopoldo to keep quiet. While you are still in Panama there are ways of making him come back." I had to stay to complete the teaching jobs I had taken to support us. I, too, had a severe weight loss and was emotionally drained. When we finally left Panama they made trouble at the airport, even delaying the plane, but we had many witnesses with us.

While my husband was in prison he asked me to notify the American consul of at least two Americans detained for no apparent reason. One was a graduate student, writing his thesis on Panama, who had come to watch the so-called election of "Corregidores" (Justices of the Peace). He was picked up and denied access to the Consul. Another American almost died of a beating in the cellars of the jail. U.S. Consul Dodson's letter of resignation substantiates the U.S. passivity and the 1977 case of American citizen David Mendelson (with no political involvement) beaten and exiled, brings these cases into the present (State Department and Senator Sparkman have documentation.)

LEOPOLDO ARAGON

"Let my people decide freely" was Leopoldo Aragon's dying plea. His act of sacrifice, he said, was to "call attention to the enormity of the deprivation of human rights and political freedoms under the Torrijos dictatorship."

The exile or release of those who have been cruelly imprisoned and tortured is not the end of the story. The person changes. Psychological changes have now been recognized and a commission has been formed in Norway to study the effects of imprisonment and torture. I saw change take place in my husband. He immersed himself completely in the movement to restore human rights and democracy in Panama. Despite his dedication he did not isolate himself and had a multitude of friends. He corresponded with his colleagues who speak and write of his warm human qualities. One, at the NY Times in a personal note to me, spoke of him as "a man of great character passionately devoted to a cause of extreme importance". He was a loving husband and a devoted companion to his daughters. Others remark that he was a consistent and rational man. This consistency and rationality was demonstrated in his methodical planning for his final sacrifice for his high ideals.

Twelve years ago he wrote of another "To immolate oneself is to sacrifice oneself for others—for an ideal—for a conviction. It is an individual decision which doesn't involve nor harm another." In a letter I received on September 2nd he had sent from Stockholm. "I know what I have to do to be faithful to my destiny I feel it with all the depth of conviction that a man can have * * * And I am going to do something that can be instinctively understood and appreciated." On September 1st, in front of the American Embassy in Stockholm he immolated himself. In his last personal message he asked me to continue the struggle, "your battle post is there."

I am here to carry on. I am here as one who has also suffered the tortures of Torrijos, tortures that continue. But mine is only one story, the only one you will hear in detail today. It started in 1972. * * * The many cases of others each year since then are documented in the volumes of The Panamanian Committee for Human Rights.

Yet Ambassador Bunker has repeated in the Congress and elsewhere what I quote from his national interview on "Meet the Press" of August 14th. The transcript reads: "What is your impression of the record of the Torrijos Government in the area of human rights?" Ambassador Bunker answered, "Well, there have been some violations of human rights by the Torrijos Government. Most of those occurred prior to 1970 when he was consolidating his position."

Amnesty International in 1973, I think, did report that most of those violations had occurred in the early years of the regime. A year ago, they did exile some thirteen people of the right and the left who had been accused of subversion. Those, I think, have all since returned to Panama. Recently has received back nearly 100 exiles. In our report which the Administration made this Spring to the Congress, as required by law, the report stated that there was no evidence of any systematic abuse of human rights. Whenever there have been, we have called it to the attention of the Panamanian Government and have expressed our views about it."

The President of the International League for Human Rights, Attorney Jerome J. Shesteck gave the Panama Human Rights Report as an example of State Department's inaccuracies and lack of candor.

What actually happened in 1976 or that which is known. * * *

January 20: Thirteen professionals, businessmen and farmers, at least in the United States does not place them either on the right or the left. In addition an Argentinian born British subject, who had served the U.S. as a parachutist medic in Vietnam, was arrested, held incommunicado, tortured and then deported.

February: A Panamanian professor, a self-described Trotskyite was picked up at the airport on his return to Panama and planned to Ecuador to join the 13 exiles.

May: Marlene Mendizabal, a high school student of humble country family, and her fiance, Jorge E. Falconet, an engineering student disappeared. Her body was found and autopsy prevented by the National Guard. Falconet was never found.

September: Attorney Eusebio Marchosky was arrested, tortured and exiled to Miami. Blanca de Marchosky, Alma Robles de Samos, Fulvia Morales are imprisoned and maltreated, but later released. Querube de Carles was exiled. Three men, one an American, employed in the Canal Zone were arbitrarily arrested on trumped up charges of fomenting riots for the C.I.A. A formal protest was lodged with the U.S. Embassy, but later withdrawn. Carlos Gonzalez de la Lastra, an executive, and Humberto Lopez, a student, escape arrest and are exiled to Venezuela. More than 150 students are arrested and tortured, according to a letter written by Reverend Fernando Guardia Jaen, S. J. in the Panama Archdiocese monthly publication.

BOMBINGS AND TERRORISM

Following the January exiles there were a series of five mysterious bombings at the places of business or homes of the exiles or their associates. The bombs were all of the same type. At the end of October and on November 1st a series of similar bombs exploded in the Canal Zone, damaging government property and automobiles owned by American critics of the dictatorship and treaty negotiations. On November 29th a similar bomb was exploded in the Volkswagon of Jorge Rodriguez, seriously wounding his wife, Gilma, but leaving untouched in the rear seat Dolores Montoto. On December 23rd, 1976, an official press release of the Panama Embassy in Washington makes public a letter from Torrijos protesting that the U.S. Ambassador in Panama had told Torrijos that "Certain members of the National Guard are involved in terrorist activities which have taken place in the Panama Canal Zone in connection with explosions which last October destroyed six automobiles and damaged certain buildings * * * that the United States authorities had proof of their assertions.

Let us sum up the 1976 human rights violations listed here, which are only a small part of the known violations by Torrijos in 1976:

Exiled, 18; Arbitrarily arrested, 3; Arbitrarily arrested and maltreated, 3; Arrested and tortured, 151; Bombings, 12 (1 person seriously injured); Imprisoned without trial, 3; Murdered, 1; and Disappeared, 2.

Returning to Mr. Bunkers assertions. Of the 13 January exiles 4 only have returned. Ambassador Bunker says also that Torrijos has recently received back nearly 100 exiles. This is simply untrue.

Let us look at the numbers. In 1 year 181 persons are known to have had their human rights violated in Panamas tiny population of 1.7 million (as opposed to heavily populated Chile, Brazil, or Argentina). Translating that number of the U.S. population is the equivalent of human rights violations of more than 21,000 citizens.

Gentlemen: I think it is abundantly clear that Panama shows a consistent pattern of gross violations of internationally recognized human rights.

TESTIMONY OF RICHARD EISENMANN

Today, my testimony is confined to two points: There is, for the first time, in the Republic of Panama an absolute dictatorship. Second, I raise the question whether the plebiscite in Panama required by their Constitution, will reflect anything other than the will of the dictator.

THE MILITARY RULE

In 1968, through a military coup, for the first time in their history, Panamanians found themselves under the brutal rule of one of the most corrupt and arbitrary dictatorships of Latin America.

Since then, prison, torture, expatriation and murder have become the common procedure used by the government to deal with dissident opinion.

Following the coup, the University of Panama was closed for a year. All political parties were banned. Newspapers and radio stations were seized and all the independent media controlled. Many Panamanians were tortured, incarcerated, murdered, or simply disappeared, many were forcibly expatriated.

Today Panamanians live in constant fear. Telephones are tapped, mail intercepted, houses searched in the dark of night, people arbitrarily arrested, and the population intimidated by an organization of paid informers.

Arrests are made on the grounds of "insults to the General" or "disrespect of the authorities" because of private conversations in which there was criticism of the government or its officers.

From time to time the government-controlled press publishes special government telephone numbers to which "citizens should call to denounce counter-revolutionary practices."

The government, using every imaginable resources—intimidation, blackmail, bribery (to name a few)—maintains strict control over labor unions, professional associations, farmers organizations, and other organized groups.

The very few organizations that at one time or another have expressed criticism of government policies or practices have been subjected to harassment, threats and reprisals. The instinct for self preservation forces conformity.

The government, its officers and its friends are involved in all kinds of legal and illegal businesses. The involvement of high ranking officers in drug traffic is well known.

Before the coup, Panama maintained for many years the highest sustained rate of economic growth in Latin America and one of the highest in the world. Today, the military are the social, political and economic aristocracy of a country in bankruptcy. There was a negative, —1 percent, growth in 1976, and unemployment was the highest in the history of the country.

THE CONSTITUTION

All governments that come to power by force try to give legitimacy to their origins and legality to their malpractices. In 1972 Torrijos dictatorship called elections for a "Constitutional Assembly". With all political parties and activities proscribed, except the government party "Movimiento Nuevo Panama" and the "Partido Del Pueblo" (Moscow oriented communist party), and absolute control of newspapers, television and radio stations, it was not surprising that the government won 504 of the 505 carefully screened "representatives".

This selected, rather than elected, assembly held its first meeting October 1, 1972. A week later the "new constitution" was approved without discussion and the "constitutional assembly," even to the surprise of its members, found itself transformed into a "Legislative Assembly"—but one without power to legislate.

The new constitution subordinates the legislative, executive and judicial power to the National Guard. It eliminates the separation of powers and places the legislative power in a "Legislative Council" composed of the Cabinet Ministers and any number of members appointed by Torrijos. It also states that Torrijos is the "Maximum Leader". His constitutional powers are illustrated by a literal translation of Article 277:

Article 277: "General Omar Torrijos Herrera, Commander-in-Chief of the National Guard is hereby recognized as the Maximum Leader of the Panamanian Revolution. As a consequence and to guarantee the fulfillment of the objectives of the revolutionary process, General Torrijos is hereby granted, for a term of 6 years, the following powers: To coordinate all the work of the Public Administration; appoint and remove freely all Cabinet Ministers, member of the Legislative Commission, the Comptroller General, and the Sub-Comptroller General of the Republic, the general Directors of all Autonomous and Semi-Autonomous Institutions and the Magistrates of the Electoral Court to be named by the Executive Branch according to this Constitution and the law; to appoint the Commanders and officers of the Armed Forces, according to this Constitution, the law, and the military hierarchy; to appoint, with the approval of the Cabinet, all the Justices of Supreme Court, the Attorney General, Attorney of the Administration and their respective alternates; to approve government contracts, negotiation of government loans and conduct the foreign relations.

"General Omar Torrijos will have, in addition, power to participate with the right to be heard and to vote in all the meetings of the Cabinet, the Legislative Commission, the National Assembly of Representatives, the Provincial Councils of Coordination, and the Communal Committees."

The new constitution subordinates everything to Torrijos as the "Maximum Leader", and subjecting all powers to him except for those exercised by people he may, at will, appoint and remove.

Despite the dictatorial nature of the constitution, it grants the individual greater human and civil rights than even the United Nations Human Rights Declaration and The American Convention on Human Rights. However, the unlimited powers of the dictator effectively denies these rights in practice.

This concentration of dictatorial powers, without parallel in the constitutions of any other Latin American country, do not give, however, a complete idea of the real power that the dictator and the National Guard exercise.

Despite the dictatorial nature of the 1972 Constitution, the individual and civil rights are broader than even the United Nations Human Rights Declaration and the "American Convention on Human Rights." However, the Constitution does not limit the powers of the dictatorship and the freedoms and rights recognized in theory, are constantly denied in daily practices.

Thus the Constitution exists only for "cosmetic" reasons and does not impose in practice any limits to the use and abuse of the governmental powers. For example, the Article 29 of the Constitution prohibits expatriation, but several hundred Panamanians live in exile and are not allowed to return to their country.

THE DECREES ABOVE THE CONSTITUTION

In 1969 the government promulgated the Cabinet Decrees 341, 342, and 343. Under these decrees, the exercise of the right of peaceful assembly is a crime against the state, dissident opinions are subversive, and all political activities are counterrevolutionary.

Decree 341, "guarantees the right of peaceful assembly, but prohibits public meetings in the cities of Panama and Colon, where more than half of the Panamanians live.

Decree 342 authorizes administrative authorities to impose up to 15 years of prison terms without the right to a hearing, without due process of law, without defense, without appeal, and without intervention of the courts. The decree is so vaguely written that it could be and has been applied to punish all kinds of activities "against the security of the state", including such "criminal" acts as written or verbal criticism against the government.

A recent case illustrates the procedures under Decree 342: On November 1976 a bomb exploded in a car driven by Judge Rodriguez, a well known opponent of the government. Rodriguez was slightly injured and his wife was badly hurt. The third passenger, Dolores Montoto, was unharmed. The G-2 men arrested the three persons, but due to the delicate condition of Gilma Rodriguez, she was hospitalized. Four weeks later the controlled press published an administrative Resolution condemning to prison Rodriguez, his wife (at that time still in critical condition in the hospital), and Dolores Montoto to 15, 7, and 5 years respectively. None of them had legal counsel and they never had an opportunity to answer the charges against them. Since then, nobody knows where Mr. Rodriguez is imprisoned. On January 1977, the Panamanian Committee for Human Rights sent a letter to Amnesty International requesting their intervention in this case.

Decree 343 is used to control newspapers, radio, and television, by imposing a rigid self-censorship-seldom violated.

On January 1974 the government prohibited the publication of the newspaper "Quibo" (What's Happening) even before the first edition came out, confiscating the equipment and arresting the editors. The same thing happened in March 1975 when the government prohibited the publication of "La Opinion Publica" (The Public Opinion).

The decree was used in 1976 to close "Radio Impacto", a radio station that expressed independent opinions. The equipment of the station was confiscated and its owner, forcibly expatriated.

According to the decree, all radio and television stations are forced to tape their programs and deliver them to the Ministry of Government and Justice.

Obviously the decrees contradict the Constitution and violate the United Nations Declaration on Human Rights but, nevertheless, they are systematically enforced by the dictatorship.

As far as we know, no other Latin American dictatorships have a legislation more repressive and which violates all internationally recognized standards on human

rights. Human rights violations are documented in Volume I and II published by the Panamanian Committee for Human Rights, and in the testimony presented March 30 this year before the Foreign Operations and Related Agencies Sub-Committee of the Committee on Appropriations of the House of Representatives.

Since 1968 Panama is listed by the Interamerican Press Association as a country in which "freedom of the press does not exist." Amnesty International has made reports on human right violations during the early years of the regime. Freedom House lists Panama in 1976 as a "not free country". By contrast, Brazil is listed as a "partially free" country.

Yet, the U.S. State Department, with an unbelievable lack of information or selective standards of ethics that give little honor to the moral commitments of President Carter's Administration, has denied that human rights in Panama are an area of concern, and the International League for Human Rights has criticized the State Department Reports.

THE MILITARY ABOVE THE RULE OF LAW

In Panama the rule of law does not exist. Since the inception of the dictatorship, judiciary members can be removed freely and no Justice or Judge has dared to resolve a case against the military wishes. The dictatorship often violates its own laws. On several occasions the then Minister of Government and Justice, Materno Vasquez, declared to the Press that "the interest of the state is above the law". This man is now Chief Justice of Panama's Supreme Court and recently signed on behalf of Panama "The American Convention of Human Rights."

Frequently the courts' decisions as well as the orders of civil authorities are ignored by the military.

The writ of "habeas corpus" is useless in political cases and severely limited in cases of common arbitrary detentions, because the courts do not have the authority to enforce their decisions. In all cases, a National Guard officer exercises an overriding decision on the decisions of the courts.

On the other hand, the members of the National Guard are personally above the rule of law and the citizens do not dare to initiate criminal or civil procedures against them.

Since 1968 hundreds of Panamanians have been murdered and not even one single case of political assassination has been successfully solved. In many cases the National Guard refuses to deliver the body to the family or to allow the identification of the victims.

National Guard members have earned the reputation of "shoot first and ask questions later".

The security of the person does not exist. People are arrested without formalities of any kind. Often people are detained and the National Guard refuses to acknowledge their detention.

Under these conditions the courts cannot offer effective remedy against the frequent abuses of the authorities.

THE POLITICAL FREEDOM

Political freedom can be defined as the right to participate in, modify, or change a government.

None of those possibilities are within the reach of the Panamanian people. The only elected representatives are the members of the Assembly of District Representatives, a powerless body without any significant role in the government.

Although the right to organize political parties is recognized in the Constitution, the political parties were extinguished by decree in 1968 and, since then, the dictatorship systematically has denied the right to carry on political activities of any kind.

The only exception to this rule is the "Partido del Pueblo" (People's Party), a communist Moscow oriented party, which has complete freedom since 1969, when the party decided to support the dictatorship.

In 1970 the government tried to organize a one party political system the "Movimiento Nuevo Panama". After two years of great effort and propaganda, using all the resources of the government, public opinion would not accept it. The whole idea was abandoned after one use. Thus, today the only officially allowed party is that of the Moscow/Castro Communists.

The most prominent Panamanian politician, Dr. Arnulfo Arias, who was overthrown 11 (eleven) days after his inauguration as President, elected by the overwhelming majority of votes, lives in exile and is not allowed to return to Panama. Hundreds of other Panamanians also live in exile because of their political beliefs.

THE PLEBISCITE

Your committee has called these hearings to study the Panama Canal treaties—it is appropriate to explore the parallel process of the other signatory.

The Panama Constitution provides that any Canal Treaty must be "submitted" to a national plebiscite.

However there is a confusion. The plebiscite does not have any binding effect because the power to approve a treaty belongs to the Assembly of District Representatives—(Article 141 of the Constitution).

The plebiscite is an expedient to give the treaty the appearance of a popular approval. However what kind of a plebiscite can be held without a free press, without freedom of assembly, and without freedom of thought and expression? What is the value of a plebiscite under the constant manipulation of information by the government-controlled press, radio, and television?

In 1975, one hundred Panamanians signed a document stating that without freedom of speech and assembly to discuss the Canal Treaty, a plebiscite on the pact "will be neither legitimate nor authentic". Since then, 15 of the persons who signed the statement have been expatriated, others incarcerated, and all of them slandered by the press and harassed by the government.

The lack of freedom has been so criticized that, after the signing of the treaty, the dictatorship has deemed it necessary to allow a carefully controlled degree of freedom to discuss the new treaty. However, the government is rushing the plebiscite in order to limit discussion. The plebiscite will be held on October 23, despite the protest of many groups that demand more time to study and discuss the Canal pacts.

The farce of the plebiscite is so evident, that today, less than 2 weeks from the plebiscite, the government has still not approved the law that is supposed to establish the voting procedures. The negotiators of both countries have contradictory views of major points of the treaties.

With some precedent, many Panamanians define the plebiscite as a procedure that gives the people the freedom to choose between voting "yes" or being expatriated.

Even under the assumption that a plebiscite would be held with all the necessary rights and freedoms guaranteed, it is impossible to think seriously that a dictator who obtained and maintained his power by sheer force, against the will of the people, is going to respect their vote in an essential matter for the survival of the dictatorship. The plebiscite is a simple problem for the Panamanian government. It does not matter how many vote aye or nay. What matters is who is going to count the votes.

The State Department knows very well that the plebiscite is a farce.

Mr. John L. Jackley prepared "A Study of the Impact of a New Canal Treaty" for the United States Embassy in Panama and, among other things he wrote "A lot of good press would be essential for success: in this situation we could make good use of the controlled press situation of the isthmus. If it doesn't work, no propaganda would sell it. But it can be given at least an initial breath of promise through skillful manipulation of the available media."

UNITED STATES RESPONSIBILITIES

Many Americans express concern about a military dictatorship in Panama that consistently violates the most elemental human and political rights of its citizens, but—they argue—that is a fact and the United States must deal with reality.

The argument neglects the most important side of the problem: the dictatorship remains in power because it is continually armed, generously financed, politically supported, and morally approved by the United States.

The officers of the National Guard (including Torrijos) were trained by the United States under the Military Assistance Program.

Since the inception of the dictatorship, Panama "has been no. 1 in terms per capita aid" and has received more economical aid than all previous governments of Panama together. In fact this very month A.I.D. transmitted a notice to the Congress of an increase in the funding level of the proposed FY 77 program in Panama.

Recently Ambassador Bunker told a congressional committee that Panama does not have a dictatorship, but an "authoritarian regime". However, the negotiators of the Canal Treaty do not seem to be so sure of the Panamanian government's respect for human rights, because the treaty contains elaborate provisions to protect American citizens rights when those citizens are arrested by Panamanian authorities. Ironically, the Panamanians in their own land are going to have less rights than Americans.

A few days ago President Carter acknowledged that Torrijos is a dictator, but praises him as an "enlightened" man who works for the good of his people.

Constantly the State Department denies that human rights are violated in Panama despite the fact that the Department's intervention is often requested by American citizens that have been beaten, tortured, and arbitrarily jailed by Panamanian authorities.

The United States is alienating Panamanians who cannot understand why the champions of democracy in their own land advocate, defend, and justify a dictatorship in Panama.

To the Panamanian it is clear that the dictatorship, without United States support, would have fallen many years ago by the weight of its errors and the democratic efforts of the people.

Thus, the argument that the United States has to deal with reality is not a valid one, when that reality is a direct consequence of a foreign policy oriented to support a dictatorship under the short-sighted premise that a strong military rule is easier to deal with, and, for that reason, more convenient for United States interests.

Latin American intellectuals observe that United States support of dictatorships strengthen anti-American sentiment in the area. History shows the result of that support. For example, Dominican Republic, the United States found it necessary to intervene militarily. In Cuba the opening was made for Fidel Castro's revolution.

Panamanians are not radical. But the United States policy of unconditional support to the dictatorship is pushing them in that direction.

Panamanians do not want United States intervention in their country. Panamanians want their freedom first then to choose fulfillment of their national aspirations, without any foreign power—not the United States, nor Cuba, nor Russia imposing a corrupt, dishonest, and brutal dictatorship, which is a tragedy for their country and shames any civilized political standard.

Since 1903 all Panamanians have wanted a new treaty to replace the one that was signed by a foreigner on behalf of Panama and imposed under the threat of losing the independence of the new born republic.

But Panamanians do not want to replace a bad treaty with one that is going to be imposed with Torrijos playing the same role that Buneau-Varilla played in 1903.

The new treaty, does not solve "the causes of conflict" between the two countries. On the contrary, it adds a few new ones, as, I am sure, many members of Congress are aware. Among other things, it is going to condemn future generations of Panamanians to live under a dictatorship as permanent as the interventionist role that the U.S. negotiators state the new treaties give the U.S.

However in this ever changing world, permanent does not mean eternal. Sooner or later the dictator will fall. Then the treaty is going to be rejected by Panamanians and their governments and all the resentment against the dictatorship will be reflected in the future relations between Panama and the United States.

U.S. LABOR PARTY TESTIMONY BEFORE THE SENATE FOREIGN RELATIONS COMMITTEE ON THE NEW PANAMA CANAL TREATIES

In the name of the U.S. Labor Party, I would like to present as our party's testimony on the issue of the new Panama Canal treaties a statement issued on September 22 by Lyndon H. LaRouche, Jr., National Chairman of the U.S. Labor Party.

In that statement, Mr. LaRouche returns to the "American system" tradition of foreign policy established by John Quincy Adams, of fostering the conditions necessary for the emergence and growth of sovereign, industrially-developing republics. From that standpoint, LaRouche takes note of two significant shortcomings in the existing treaties that must be addressed and resolved by the U.S. government.

First, as the Mexican and other governments have correctly protested, the existing treaties might be interpreted to establish a dangerous precedent of "limited sovereignty" for Latin American nations. Secondly, Ronald Reagan and other national political leaders have justifiably charged that the treaties do not adequately consider Panama's need for a climate of technological progress and industrial development, in which stability and political security for the Canal and surrounding region can be guaranteed.

To correct these defects, Mr. LaRouche has proposed two addenda to the existing treaties. First, it is in the national interest that the United States issue a new policy doctrine statement which elaborates on the positive kernel contained in the later-drafted Monroe Doctrine of 1823, and which proclaims categorical American rejection of the monetarist doctrine of "limited sovereignty." We must avow that the

practical features of the current draft treaties with Panama are in no sense a precedent for a doctrine of limited sovereignty.

Secondly, legitimate U.S. interests in maintaining the security and neutrality of the Panama Canal are best served by fostering the kind of climate for intensive capital formation in Panama to which Mr. Reagan has referred. It is under these circumstances that monetarist-controlled terrorist and ultraleftist provocateurs, who might otherwise destabilize the region, can best be isolated and contained.

It is the U.S. Labor Party's hope that these proposed addenda will cut through much of the confusion and disorientation now surrounding the national debate on the Canal issue—a debate which thus far has shed far more heat than light on the matter—and permit the national political debate to focus on the more pressing and productive issues of nuclear energy development, the export of high technology to the developing sector, and the reform of the international monetary system necessary to accomplish these national goals.

LAROCHE'S PROPOSED AMENDMENTS TO PANAMA TREATY

Sept. 22.—In anticipation of the forthcoming testimony of Governor Ronald Reagan to the U.S. Senate on the subject of the Panama Canal treaty, I propose that the principal substantial and otherwise apparent defects in the signed draft of the treaty be remedied by means of issuance of a new policy doctrine statement, updating the Monroe Doctrine.

The following draft includes, it should be noted, a policy element recently publicly voiced by Governor Reagan, a point on which I and many other leading U.S. citizens are in essential agreement.

U.S.A. Panama doctrine

In 1823, at a time of grave peril to our nation, President James Monroe promulgated what has been known as the "Monroe Doctrine." This was done in the context of consultation with two former U.S. Presidents, Jefferson and Madison, and with key participation by then-Secretary of State John Quincy Adams. If the circumstances and intent of that doctrine are properly understood, it has an appropriate continuation in the United States Western Hemisphere policy at the present time, a continuation which ought to be clearly identified in connection with discussions of the signed draft treaty between the governments of the United States and Panama.

The circumstances were principally these:

Through various agents affiliated with the banking interests of London, Amsterdam and Geneva, banking interests allied with the British monarchy and with circles around Lord Shelburne and William Pitt the Younger, the United States' friends in France had been variously guillotined, otherwise dead, exiled or otherwise reduced from former positions of influence. Those British agents included Danton, Marat, Mirabeau, Necker, Talleyrand and others. With the defeat of France, the imposition of the British agent Duke of Orleans on the restored French throne, and the British establishment of its Holy Alliance order upon continental Europe, the elements of the "League of Armed Neutrality" so essential to U.S. victory in the American Revolution had been eliminated. The British had thus dared to launch war against us, provoking the War of 1812, and after the Treaty of Vienna used their global hegemony in efforts to provoke us and to subvert and crush us.

It is notable, in this connection, that London-based financial interests and their allies in the British government were responsible for development of the plantation slave system in the United States during the 1815-1860 period, and were directly responsible for promoting and indeed almost creating the U.S. Civil War. Although Great Britain formally acknowledged U.S. independence at the Treaty of Paris in 1783, the United Kingdom did not in fact recognize U.S. sovereignty in practice until negotiations between Her Majesty's government and the administration of Abraham Lincoln in 1863.

It was under the dangerous circumstances of the 1815-1863 period, the period in which British power was predominantly committed to subverting and crushing our nation, that the administration of President Monroe steered through perilous political and military waters to the adoption of the so-called Monroe Doctrine.

Although the popular account of the Monroe Doctrine is that it was a *de facto* compact with Great Britain's naval power against Latin American intrusions by the Holy Alliance powers, those responsible for the Doctrine understood that the Holy Alliance powers were principally subjects of a British-controlled "concert of powers" on the European continent.

British Foreign Minister Canning had proposed to make *de facto* U.S.-British hegemony over the Western Hemisphere a treaty-agreement between His Majesty's government and the government of the United States. This would have been, in effect, U.S. granting to Great Britain official looting rights throughout Latin Amer-

ica. Thus, on the advice of Secretary of State John Quincy Adams, the United States declined the treaty offered by Canning.

However, the United States was in no position to make a direct confrontation with Great Britain. Hence, the Monroe Administration adopted the Monroe Doctrine, which had the double purpose of placating London while maintaining the principles of United States foreign policy doctrine for the time that the United States grew strong enough to enforce such a doctrine.

The principal distinction between the proposed treaty with Great Britain and the Monroe Doctrine was identified at that time by John Quincy Adams. The United States maintained the principle of unconditional sovereignty of new republics in the Western Hemisphere, whereas the British had a doctrine of "limited sovereignty," meaning British creation and destabilization of Latin American governments at its pleasure through British influence over such clients as Simon Bolivar.

This principal difference between Britain and the United States was most clearly expressed in the Maximilian affair, in which the combined naval forces of Great Britain, France, and Spain overthrew the legitimate Benito Juarez republican government of Mexico as part of a looting effort of debt collection against the subjugated people of Mexico.

There were two elements in the influential thinking of John Quincy Adams behind the Monroe Doctrine. First, there were extensive precedents in United States foreign policy, as notably expressed in preceding treaties for the policy of absolute sovereignty of new American republics. More fundamentally, from the political movement associated with Benjamin Franklin and his collaborators leading into the American Revolution and in the establishment of the United States as a federal republic, the principal issue between the United States and His Majesty's government was American commitment to the realization of technological progress in industrial and agricultural development, in opposition to the British policy, as set forth in Adam Smith's colonialist policy in the *Wealth of Nations*, of keeping England's colonies and competitors in a condition of ruralized labor-intensive relative technological backwardness.

The foreign and domestic policy of the founders of the United States, from the roots of the American Revolution through the election of 1828, was the constitutional principle that the proper basis for government and law of a republic was the development of the wealth and culture of the people through promoting an environment of technological progress in discovery, in the expansion of industry and agriculture, and in the educational and free-press policies of the nation. The establishment of sovereign republics committed to those principles and enjoying the benefits of such principles is the purpose and essence of the establishment of the United States and its order of constitutional law.

Over the intervening decades, and most notably during the present century, a growing bulk of fraudulent reinterpretation of United States history has been popularized both inside the United States and abroad. The false report has been circulated that the English Plantations and republic of eighteenth century North Americans was principally an aggregation of rough, semiliterate frontiersmen. In fact, despite the efforts of the British government and allied financial interests to prevent the people of this nation from acquiring the capital needed for industrial development, our people were the most literate in the world, with a much higher level of popular culture than existed either in England or in France. It was that literacy and other factors of the superior popular culture of the English-speaking people of North America which made the American Revolution and establishment of the constitutional Federal republic possible, where efforts to the same effect failed in both England and France. Although the early United States lacked the capital resources of Great Britain, wherever our people's passion for science and technological progress were given outlets, our technical accomplishments, such as those of Robert Fulton, were conspicuously in advance of what was generally possible in the poorer level of popular culture then available in England.

Although our forefathers were largely of British origins, they represented in kernel the most advanced impulses from among the British people, who had founded societies on these shores to the purpose of establishing political and cultural forms not generally possible in the oppressive and politically backward England. This nation drew skilled persons from England, from France and other European nations, seeking here the possibility for the freer and more fruitful expression of their productive powers.

It was on the basis of those impulses and principles that the United States was founded and the foundations established for this nation's growth to great economic power.

In the early successes of the American republic and in the comparable failures of the French Revolution, a fundamental principle was demonstrated.

In the struggle between Federalist Thomas Paine and other friends of Benjamin Franklin, on the one side of the French Revolution, and in the associates of Robespierre on the other side, the allies of Paine sought to establish France as a republic committed to scientific and technological progress under constitutional principles modeled on the lessons of the United States experience. The followers of Robespierre's faction, including British agents Danton and Marat, offered an opposite conception, mob democracy. It was the success of the latter faction which produced the hideous Red Terror in France, and led to the Napoleonic period through which British hegemony over Europe was established for most of the 19th century.

This demonstrated that the "American System" works, while the British system, and political forms derived from Rousseau and Bentham's "philosophical radicalism," led to chaos and dictatorship.

The principle underlying the success of the American System is that in a climate of freedom and cultural development of the individual focused upon objectives of technological progress, the individual member of society is encouraged to value himself or herself for his or her creative mental powers, his or her ability to discover, transmit, enrich, and practice new scientific and related conceptions through which man's dominion over nature is advanced. By so placing the valuation of the individual upon that creative mental power which fundamentally distinguishes man from such lower beasts to baboons, the individual member of a republic committed to technological progress develops respect for his or her own mind, and for the mental potentials of his fellow citizens.

This policy and cultural circumstance has two consequences essential for a republic. First, a climate of technologically progressive popular culture and education is the indispensable means for raising the productive powers of labor, which is in turn the fundamental human basis for enhancing the prosperity of the nation and its individual members. Second, the practical emphasis such a republic places on the individual human mind's creative potentials provides the basis for the prevalence of moral values consistent with the needs of humanity, and consistent with the quality of general electorate a republic requires.

The antitechnological progress prejudices associated with both the doctrines of Rousseau and those of Jeremy Bentham are intrinsically what we call today Malthusian or neomalthusian. In these latter anti-American conceptions the human individual is degraded politically and morally to likeness with a lower beast. He is degraded to the status of a mere biological individual, with more or less fixed potentialities and impulses attributed to him, just as the needs and behavior of lower beasts is apparently determined from generation to generation by a fixed generic heritage. Just as the judge who sent the great Lavoisier to the Red Terror's guillotine said, "The revolution has no need of men of science," so the Malthusians and their cothinkers degrade man generally to a lower beast-likeness fit only to find his miserable peace with existing natural conditions, and to propose political utopias in which man returns to baboon-likeness in harmony with some more primitive condition of the ecology.

It was America as the symbol and reality of the principle of technological progress which made America the cynosure of oppressed Europeans fleeing from relative zero growth to the land of opportunity here. Although we have often deviated from that principle in our foreign and domestic policies, it is the perpetuation of the American System despite those deviations which has given our nation its greatness and power, a power which depends for its perpetuation upon a repudiation of both what our forefathers regarded as the British system and of the antitechnological doctrines of philosophical radicalism traced in part to Rousseau and Jeremy Bentham.

It is therefore the historical and still imperative fundamental policy of the United States to base its domestic and foreign policy upon the principles of the American System. That is the viable continuing principle embedded in the Monroe Doctrine, and the proper basis for our policy toward Panama and other Latin American nations today.

The guiding principle at the basis of United States foreign policy is to foster sovereign republics committed to the fulfillment of the humanist principles of technological progress and the cultural development of their populations. We do not arrogate to ourselves as a nation the right to determine the internal political processes of those nations, but we do assume responsibility for the effects of our foreign policy in determining the climate in which nations pursue their internal development.

Thus, in the United States' treaty relations with Panama, it would be an abomination if such treaties promoted the circumstances under which the internal life of Panama favored atrocities of the sort symbolized by the Red Terror of Danton and Marat in 1792-1794 France. It is the vital self interest of the United States that its neighboring countries be viable republics, which those nations cannot accomplish without the circumstances favorable to technological progress in the expansion of their industry and agriculture. It is our vital interest, insofar as our means and other relevant circumstances allow, to afford to the struggling weaker republics of this hemisphere the kinds of friend in ourselves our own new republic desired during the late 18th and early 19th century.

In this connection, some critics of the treaty signed between the governments of the United States and Panama have raised the most relevant criticism that this treaty does not adequately consider Panama's need for a climate of technological progress, of fruitful capital formation in the progress of its industry and agriculture and in the corresponding advancement of the employment and cultural opportunities of its people. This criticism is a valuable one.

If we do indeed condone in Panama and other Latin American nations the conditions of raging sansculottism and the political philosophy of the culturally backward, desperate sansculottist mob, we are thus permitting the kids of internal developments out of which the ongoing succession of social-political chaos and dictatorship must tend to prevail. In the course of later events, we might lament and denounce such political transformations of these nations, although our errors in foreign policy might have been a major contributing cause behind such unfortunate developments.

A proper United States foreign policy does not mean an unending flow of charitable donations. The entirety of modern history, in particular, demonstrates that the proper combinations of productive capital and increasing of the productive powers of labor generally means a growth in both gross and net produced wealth in industry and agriculture in excess of the growth of debt service incurred by capital formation. We cannot arrogate to ourselves the prerogative of imposing such technological development policies upon sovereign nations, but we can shape our foreign policies toward nations to the effect of fostering the choice of a humanist, technological progress policy by those nations. In point of fact, most of the nations of the world would readily cooperate with such a United States policy.

We cannot, of course, take total responsibility for affording nations the external capital they require, but we are a powerful force in world affairs to the purpose of creating a general climate favorable to a humanist policy.

Other critics of the signed draft treaty between the governments of Panama and the United States, including governments friendly to the United States in this hemisphere, have expressed emphatic concern respecting elements of the treaty which appear, in their estimation, to undermine the principle of sovereignty.

There are two things to be done in response to that criticism.

We must, firstly, emphasize the included principle of the Monroe Doctrine, that the sovereignty of the republics of this hemisphere may be breached only by act of war. We must especially emphasize that point because the British Empire and its political cothinkers down to the present day have never accepted the principle of sovereignty for nations, especially not toward the nations of the southern portion of the globe. We must also emphasize that principle of the Monroe Doctrine because some influential voices within the United States itself have lately proposed that the United States participate in adoption of a doctrine of limited sovereignty.

We must, secondly, emphasize the nature of the problem giving rise to those features of the draft treaty which are the focal point of the complaints made.

The Panama Canal Zone was established as an integral part of the procedures by which the nation of Panama was established, through United States' interests directly responsible for encouraging and generally making possible the separation of Panama from the nation of Colombia. At the outset, the nation of Panama was essentially a client state of the United States, and the Panama Canal Zone an integral arrangement for the very existence of that nation. To quote one influential United States figure, "We stole the Panama Canal fair and square."

However, history moves on. The nation of Panama, originally virtually a mere puppet state of the United States, has evolved into a nation, and with the special circumstance that the ostensible prosperity of the Canal Zone abuts directly the Central American poverty of the majority of Panamanians. With the aid of certain busy bodies from outside Panama, that contrast between the modern standards of the Canal Zone and the poverty of most Panamanians has been for over a decade the specific obsession of a political ferment centered around "New Left"-type, university and other students of Panama.

In this circumstance, two interests collide.

The Panama Canal remains a vital strategic economic and military interest of the United States. It is an important element of United States internal commerce, and without it the United States would be obliged to augment its naval and related forces most considerably.

At the same time, despite the efforts of the Panamanian government of Gen. Torrijos to maintain rational and friendly relations with the United States, he came into power in the sequel to student riots which destabilized and ended the lawful former government of that nation, and presides over a much enlarged student-led ferment of the same impulses. This unstable feature of the present internal situation in Panama, combined with a general destabilization among the countries of Central America, prompts the United States government and leading forces of the United States population to be concerned with the possibility and consequences of an overthrow of Gen. Torrijos's government by forces associated with the student "New Left."

Although we do not propose to intervene in the internal affairs of Panama, we have the right and obligation to take into account what effect internal forces such as those of the student-led ferment might have on the policies and practices of a future Panamanian government. It is our right and indeed our obligation to speak plainly on the subject of that student-centered ferment. It is essentially a sansculottist demagogues' movement in the tradition of the movements of Danton and Marat, a violent "New Left" formation of the philosophical-radical variety, of that variety which at one moment represents itself as "ultraleft" and at another proves to be a new variety of the fascist movements associated formerly with Adolf Hitler and Benito Mussolini, a movement essentially characterized by irrationalism.

If those forces were to succeed in coming into power, the identified vital strategic interests of the United States would be indeed threatened. Moreover, whereas with the case of governments with whom we have differences, but which are committed to a rational perception of vital national interests, satisfactory negotiations will usually solve problems, with a government of forces which are essentially irrational, no such avenues of negotiations exist as efficient remedies.

Consequently, the majority of United States citizens, to the extent their spokesmen inform them of such facts, will not accept a simple relinquishment of the United States' rights in the Panama Canal Zone.

As long as that problem persists, the United States has no practical alternative but to establish treaty rights which establish protection of vital United States' interests in the operation of the Canal.

For related reasons, some political currents in the United States may miss the valid kernel in the objections put forth by the government of Mexico.

It could rightly be observed that the proposed treaty increases the effective sovereignty of the government of Panama in respect to the Canal Zone, as against no treaty at all. The point is nonetheless made that the treaty implicitly sets forth a doctrine of limited sovereignty, reaffirms that as an acceptable principle at this present time. Worse, that feature of the treaty is asserted at the same time that a significant number of influential voices are proposing the promulgation of a doctrine of limited sovereignty, and that the International Monetary Fund and World Bank, among others, have gone to new extremes in arrogating a principle of external limitations on the sovereignty of debtor nations. It is not that the draft treaty lessens the sovereignty of Panama; it accomplishes the exact opposite. It is that the inclusion of specifications with the effect of limited sovereignty in a current treaty is deemed an offensive act of policy at this present time.

This is also an important point among Latin Americans because of current efforts in some influential quarters to foment what is sometimes termed a "Second War of the Pacific" among Chile, Peru, Bolivia, Ecuador and other nations, and related matters in Central America, including the threatened outbreak of a Guatemalan-based adventure against Belize. The proposal of a Bolivian outlet to the Pacific and Ecuadorian access to the headwaters of the Amazon River are connected to the cited features of the Panama treaty in not only the minds of some leading Latin Americans.

How do we, then, resolve this matter?

First, at the moment, relinquishing the vital interests of the United States in the Canal is, at best, a difficult proposition. Furthermore, as long as the threat of student-led overturns of the present government of Panama persist, going further in concessions than the treaty proposes is probably unacceptable to the relevant institutions of the United States.

However, we can significantly mitigate the difficulties involved in two ways. First, we can avow, as a ruling doctrine of United States policy, that the practical features

of the current draft treaty with Panama are in no sense a precedent for a doctrine of limited sovereignty, and specifically disavow any United States support for forcible adjustment of the borders of Ecuador and Bolivia.

Second, we can respond to the viable criticisms of the treaty concerning the internal economic development of Panama. Those critics rightly point toward the fact that the present draft treaty will not work. U.S. Senate ratification of the treaty will not avoid a threatened destabilization of the present government of Panama; a general destabilization of Panama and adjoining nations of Central America is already underfoot and will continue whether or not the treaty is ratified. We must therefore supplement the treaty with measures within our proper means to aid the government of Panama in isolating and otherwise neutralizing the anti-humanist, student-led irrationalist forces in Panama. We must aid Panama in neutralizing and isolating the irrationalist forces of destabilization by arranging economic development programs of the sort which inspire and sustain that quality of humanist outlook for which the American Revolution was fought and the establishment of federal republic and constitution was effected.

The approach to the reassertion of the essential content of the Monroe Doctrine identified here is the appropriate road toward proper relations within the Americas, including further steps toward full solution of the problems interlinked with the Panama Canal.

[From the Congressional Record—Senate, Oct. 13, 1977]

AMERICAN JEWISH CONGRESS SUPPORTS PANAMA CANAL TREATIES

Mr. CRANSTON. Mr. President, the American Jewish Congress recently called for "speedy ratification" of the Panama Canal Treaties, noting that the treaties "securely protect the interests of the United States and guarantee continued efficient operation of the canal."

The American Jewish Congress is a national human rights organization founded in 1916 by the revered Louis Brandeis, Rabbi Stephen Wise, and other American Jews to strengthen Jewish life in America and help Israel's people live in dignity and peace. The good work of this organization is well known in my State of California.

Rabbi Arthur Hertzberg, president of the Congress, made a fine statement concerning the treaties, and I ask unanimous consent for his statement to be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

POSITION OF THE AMERICAN JEWISH CONGRESS ON RATIFICATION OF THE PANAMA CANAL TREATIES

The American Jewish Congress welcomes the recent signing of the proposed treaties between the United States and Panama. This occasion can serve as an admirable example and precedent demonstrating that even in difficult and complicated situations, direct negotiations between conflicting parties with a sincere desire to avoid confrontation can result in compromise and resolution.

The proffered treaties acknowledge and take account of the sovereignty of the Republic of Panama over the Canal Zone. At the same time they securely protect the interests of the United States and guarantee continued efficient operation of the Canal. Most important, they carefully assure the long-term neutrality of the Canal and its continued, unobstructed availability for use by the United States and all other nations.

The American Jewish Congress supports the proposed treaties as correctly reflecting the legitimate aspirations, goals and obligations of both our own country and the Republic of Panama. We urge the speedy ratification of the pacts by the Senate, confident that such action will underscore our nation's long-held commitment to the preservation of peace and the protection of the rights of sovereignty of all states.

THE PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations continued hearings on the Panama Canal treaties today receiving testimony from the following witnesses: Lane Kirkland, AFL-CIO, appearing on behalf of George Meany; Martin Gerber, United Auto Workers; Panelists from the Canal Zone: Alfred J. Graham, AFL-CIO, Canal Zone Central Labor Union & Metal Trades Council; Capt. J. R. Williams, Panama Canal Pilots' Association; Rene C. Lioejanje, Central & South America National Maritime Union; John Fred Schlafly, American Council for World Freedom; Gary L. Jarmin, The American Conservative Union; Dr. Herminio Portell-Vila, American Security Council; Hon. Hamilton Fish, former Congressman from New York.

I ask unanimous consent that the prepared text of the statements of these witnesses be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

STATEMENT OF GEORGE MEANY

Mr. Chairman, I appreciate this opportunity to appear before you to urge approval by the Senate of the Panama Canal treaties.

We of the AFL-CIO have a vital interest in these treaties both as citizens, concerned with the security and welfare of our country, and as trade unionists, representing thousands of workers employed in the Canal Zone.

At its last meeting, on August 29 and 30, the AFL-CIO Executive Council discussed the Panama Canal treaties at some length. Following this discussion and analysis of the summary terms of the treaties, the Council unanimously adopted the following statement:

"After thirteen years of on-again, off-again negotiations between the governments of the United States and Panama, two treaties have been agreed to which radically alter the Panama Canal Treaty of 1903.

"According to the Joint Chiefs of Staff, the treaties of 1977 provide for continuing freedom of action of the United States to maintain neutrality of the Canal and further guarantee U.S. access and rights to use all land and water areas and installations necessary for the defense of the Canal through the year 2000.

"Job security and rights of workers in the Canal Zone, both U.S. and Panamanian, will be assured. Since 1949, the AFL has called for justice in the Canal Zone in arguing for equal pay for equal work, so that Panamanian citizens would not be exploited through a double standard of remuneration. Through the years, particularly during the long and arduous periods of negotiations groping toward a new treaty, the AFL-CIO has maintained a vigilant stance concerning workers' rights in the Canal Zone and the safekeeping of the elements of U.S. defense inherent in the Panama Canal Agreement.

"We are satisfied that the new treaties cover both considerations adequately. U.S. citizens now employed in the Canal Zone will be protected and remunerated as U.S. government employees and will be offered new benefits tailored to fit the new treaty characteristics, such as early retirement.

"After reviewing the summary of the new treaties, and based on the assumption that it is an accurate reflection of the final treaty language, which is not yet available, the AFL-CIO Executive Council views the two Panama Canal Treaties guaranteeing the permanent neutrality of the Canal and the operation and defense of the Canal through the year 2000, as instruments worthy of support by U.S. citizens and their elected representatives. These new instruments constitute a just and enduring basis for harmony in the Western Hemisphere, and we support their ratification by the Senate."

Mr. Chairman, our position is based on practical grounds, in the light of the circumstances of the modern world, and the conviction that we have more to gain today, in terms of the broad interests and ideals of the United States, then we have to lose, by approval of these treaties.

In the public debate of recent weeks over the wisdom of these treaties, some arguments have drawn attention to the dubious circumstances surrounding the original treaty of 1903. I do not propose to rehash that question, for it has no bearing on our position.

While historically interesting, revisionist aspersions on the role of this country in a by-gone era are scarcely relevant to the issues actually before you. Adverse judgments by this generation on the actions of another generation in another world, three-quarters of a century ago, may excite the moralism of some but they have little persuasive appeal to our members today. Nor are latter-day efforts to portray Theodore Roosevelt as some sort of an international brigand likely to rally broad public support behind these treaties.

In fact, the Panama Canal treaty was renegotiated twice, in 1936 and in 1955, with duly constituted Panamanian governments, with significant modifications in its terms and increases in annual compensation to Panama.

In no way should the treaties now before you be painted or regarded as acts of atonement for American "guilt", for we are guilty of nothing. On the contrary, the construction and operation of the Panama Canal by the United States was and is an extraordinary service to humanity and to all the maritime nations of the world. The American people have every right and reason to continue to regard this as a proud chapter in our history, as has been taught to school children for generations. And I, for one, deeply deplore and resent the campaign by Latin American demagogues,

and by our own guilt-mongers, to condemn it as a locus of American "imperialism" or "racism", as was put forward at the ILO last June.

But the time has now come to bring to the fore another aspect of American pride; our pride in the fact that we are not and do not want to become an old-time colonial power, clutching a sort of cloudy, semi-sovereignty over this strip of territory, for its own sake, like some faded banner of past glory.

Our real interest in this canal is simple and concrete and derives from its only real purpose and function. The function of the Panama Canal is to offer transit to the vessels of all nations (which can fit into its locks) from the Atlantic Ocean to the Pacific Ocean. That is all.

Mr. Chairman, I accept as valid the assurances by the President of the United States, supported by the Secretaries of Defense and State and by the Joint Chiefs of Staff, that the terms of the treaties afford adequate guarantees that this function will continue to be performed without let or hindrance and that there is no serious risk, as a consequence of these treaties, that American vessels, commercial or military, will ever be deprived of full access to this vital passageway between the oceans. I have no reason, in the face of those solemn and expert assurances, to interpose any less-informed judgment to the contrary.

Beyond that, I believe that the continued assertion of sovereignty, for no definable further reason, over a narrow strip of land, inside and dividing the territory of another country, would not, in the modern world, be an asset, but could on the other hand, be a liability.

Mr. Chairman, speaking for the AFL-CIO, we therefore support and strongly urge the approval of the Panama Canal treaties.

STATEMENT OF MARTIN GERBER

INTRODUCTION

My name is Martin Gerber. I am a Vice President of the United States Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and I office at 800 East Jefferson Ave., Detroit, Michigan 48214. I am accompanied by Stephen I. Schlossberg, UAW Director of Government and Public Affairs.

The UAW is the largest industrial union in the world. We represent approximately a million and a half workers and their families. Our members are concentrated mainly in the automobile, aerospace, and agricultural implement industries. Taken together with their wives and children, UAW represents more than 4½ million persons throughout the United States and Canada. These workers are organized into some 1400 Local, self-governing unions.

The UAW does much more than bargain for its members. It is active in world, national and civil affairs and citizenship and legislative activities, conducts schools and camps for active members, and drop-in centers for retired members. We are, by mandate of our constitution and tradition, deeply involved in the larger issues of the quality of life of war and peace and morality in foreign policy.

UAW'S PARTICULAR INTEREST IN THE CANAL ISSUE

The UAW takes its position in favor of the Canal Treaties as a group of United States citizens interested in furthering and protecting United States interests in the Canal and in the Western Hemisphere. As you probably are aware, we do not have members of our union working on a regular basis in the Canal Zone. Therefore, we do not come to you as a special interest group. Rather, our concern is on a much larger scale. We are deeply concerned that the United States project an image abroad which truly reflects the nature of our country and the fundamental principles for which this nation has stood for the past two centuries. We are also concerned with maintaining efficient international transportation routes to speed international trade, and with our defense posture. Our examination indicates that the Treaties now before you protect our interests in all of these areas.

They represent a giant step forward in the relationships which the United States maintains not only with the Republic of Panama but with all of Latin America and indeed with the entire Third World. They show that the United States does not wish to deport itself as the world's larger nations did earlier in this century. Rather it is the intention of the United States to establish relationships with other countries based on fairness and mutual respect. It is not our intention to force our views on other countries nor to make them supine before us. We seek equality and justice, not superiority in our relations with others. These Treaties show that we both believe in and practice the fundamental principles on which our country was founded and under which we have lived since our own revolution.

The UAW International Executive Board acted in 1975 on the issue on the Panama Canal, urging then that the United States control over the Canal be phased out over a period of years. A similar resolution was passed by our more than 3,000 delegates at the 25th Constitutional Convention in May of this year. These resolutions were not adopted in a vacuum. They were based on our considered judgment as to what was morally right and in the best interests of the United States and on our findings growing out of constant and ongoing relationship with free trade unionists in Latin America, many of whom have suffered persecution, and free trade unionists all over the world.

August 30th of this year, our International Executive Board unanimously passed the following resolution:

"After 13 difficult years of negotiation, the United States and Panama have reached agreement on a treaty that would, over an agreed upon phase-out period, cede to Panama, between now and the year 2000, full sovereignty over the Panama Canal.

"The UAW supports this long overdue diplomatic effort and finds it consistent with the position we adopted in September, 1975, that U.S. control over the Canal should be phased out over an appropriate period. We urge the Senate to ratify this treaty promptly.

"It is clear that the draft agreement provides fully for the defense and safety of the United States, as well as the Canal itself and for labor and commercial interests connected with the operation of the Canal.

"We are assured by no less an authority than the Joint Chiefs of Staff that the proposed treaty gives the United States the necessary rights and powers to defend the Canal, guarantees our complete access to it and preserves its vital neutrality. We have even been assured of a role in the building of any new sea level canals in Panama. United States Navy and supply ships will have priority, when necessary, in the use of the Canal. We will, under these understandings, maintain naval bases there until the year 2000 and, moreover, the power, after the year 2000 to protect the integrity of the Canal.

"It is appropriate that the United States, a nation which was founded in a revolt against colonialism, takes this cooperative initiative to end the Canal Zone's status as an American colony.

"The Isthmian Treaty of 1903, which created the colonial enclave known as the Canal Zone, was signed between the United States and a Frenchman, Philippe Bunau-Varilla, without participation by Panama.

"The negotiations just completed should, when the treaty is ratified, not only improve relations with Panama significantly, but with Latin America generally. Many countries there have regarded the U.S. conduct in Panama as an obsolete relic of the past.

"This treaty could lead to a new era of cooperation and stability. It proves that United States initiatives in such vital areas of life as human rights are not mere rhetoric.

"The Panama Canal Company, under the treaty, will be operated by a board of directors consisting of five Americans and four Panamanians and administered by an American with a Panamanian deputy until 1990, when the positions would be reversed. Thus, for the immediate future and beyond, the American presence will be constructive and continuing.

"Those employed by the Panama Canal Company and/or the American government, both American and Panamanian, would continue to work in the Canal Zone and would have complete protection, including benefits tailored to the special circumstances presented by the treaty. They would have the same rights and privileges as U.S. government employees overseas, although three years from ratification they would be subject to some Panamanian laws.

"The U.S. Senate should reject the unfounded propaganda barrage from the far right and those who have been misinformed and misled by the reactionaries.

"The Senate should overwhelmingly approve the proposed treaty because it adequately provides for U.S. interests as well as those of Panama and the rest of the world."

We do not agree with those who say that ending what we see as colonialism in Panama is a sign of weakness. On the contrary, we view the United States phasing out of control over the Canal Zone and the Canal—the tearing down of the fences and the ceding of full sovereignty over its land to a small nation—as a signal of strength, maturity, and enlightened self-interest. Only a major, secure power could make such a gesture. It is evidence of the internal and external national will to practice what we preach and to walk honorably in the world. It is those who are independently strong and powerful who can afford to do what is right. Doing what

is right in this case happens also to be in our own self interest. If we are to continue to lead the free world, we must do so by commanding the respect and admiration of the world's nations and peoples—not by flaunting our size, wealth and power. International politics is not a game of virility and manhood testing. It is the pursuit of national self-interest, in the broadest sense, by means of reason and common sense.

A recent article in the UAW publication, *Solidarity*, contains two significant interviews with UAW members. The article reports:

"Manuel Felix, 50, a member of Local 1183 in Newark, Del., recalled that 'the original treaty was signed by a government that only lasted two weeks. Most major governments of the world have given up direct colonialism, and we shouldn't hang on to it. The Panamanians must have the Canal to feel they are no longer a colony.

"Being from Mexico, I realize how they feel. From what I've read, our rights are fully protected by the treaty. If we don't ratify the treaty, world opinion will severely castigate us as a colonial power * * * and if you light a fuse, you get an explosion."

"His views were echoed by Dave Nicholson, 26, a committeeman for UAW Local 1975, Ypsilanti, Mich. "That land belonged to the people of what is now Panama before we took it, and it must be returned. The Panamanians have got the short end of the stick. Strategically, the canal is almost indefensible. Economically, it's rapidly being outmoded. The big new supertankers just can't get through it. Older shipping can continue to use the canal under the terms of the treaty. Our rights would be the same as any other country's. That's fine.

"A good friend of mine was raised in the Canal Zone. He says most Panamanians look at our presence there as U.S. manipulation of their political system.'"

NATIONAL DEFENSE OF THE U.S.

As an organization, we are concerned with the defense of our country. We believe that the United States must be militarily strong if it is to maintain a credible profile abroad. The treaties fully protect the United States defense interests in the Panama Canal. Our naval vessels will continue to be able to transit the Canal both during the time that we are responsible for its operation and the period thereafter.

This interest is, we believe better protected by the United States making certain changes with respect to the Canal's administration to take into account Panama's increasing aspirations. Indeed, we believe that failure to do this will present a threat to our defense posture. Increasing hostility to our operation of the Canal will make our job more difficult and could, if that hostility should rise to greater levels, pose a threat to the efficient functioning of the Canal.

There is no doubt that it is easier to protect the Canal against sabotage in a country with a friendly population than one in which a hostile people views our presence as an intrusion.

THE PERMANENT PROTECTION OF THE CANAL'S NEUTRALITY

We have heard much in the recent press of secret cables and of dispute as to the right of the United States, in perpetuity, to protect the neutrality of the Canal. I want now to present the UAW's view on that issue.

First of all, we respect and believe the President of the United States, the Secretary of State and the word of our military chiefs. We also believe the words of our trusted negotiators. Second, we believe in the inherent power of the United States, and the public statements our leaders have made absolutely commit us and, indeed, empower us to guarantee, permanently, that neutrality. Third, General Torrijos' own words lay this contention to rest. He has said that the Canal will be permanently "under the protective umbrella of the Pentagon." But we cannot expect too much of the other side. They have their treaty haters and difficult constituencies with which to deal. They have face-saving needs which a mature political democracy should be able to understand.

Fourth, defending the Canal against international attack is a defense task neither the Panama nor U.S. forces specifically stationed in Panama could by themselves undertake successfully. In World War II we were prepared to defend the Canal in areas far removed from the Zone itself, keeping enemy craft away from its approaches. In the nuclear age, we must depend even more on our overall hemispheric and global military posture to deter a specific strategic attack.

Fifth, in terms of U.S. defense interests, perhaps the most important aspect of these treaties is what they don't do—they do not limit in any way our ability to draw upon our whole range of military options to act in defense of the canal in any way we find necessary, not only during the duration of the Panama Canal Treaty,

but thereafter into the 21st century. As a practical matter, we can, will and must defend the neutrality of the Canal.

Finally, I am a negotiator and know something about negotiation. In the final analysis, the real agreement rests on the strength and integrity of the parties and on what is promised and not promised—not on the unilateral claim or disclaim of one person on the negotiating team of one side. No one familiar with labor negotiations takes seriously an effort by a member of a management or union team to undermine public opinion by trying to draw doubts around a sphere of understandings. Sometimes it is in the best interests of both parties and the common good not to dot every "i" and cross every "t". Some things depend on reality and the facts of life.

While I am not an international lawyer, I am a negotiator. My reading of the public discussion of the Neutrality Treaty fails to show that substantial differences exist. The Panamanians, we must understand, have a political problem with anything which smacks of the right of the United States to take any action within their territory after the expiration of the Panama Canal Treaty. The Neutrality Treaty I would point out does not speak of intervention. It speaks only of maintaining the regime of neutrality. Comments by the Panamanian negotiators which have been published in the press indicate that Panama understands that the United States intends to assure the continued neutrality of the Canal after the year 2000. Panama's only reservation concerns the possibility of United States intervention in Panamanian internal affairs. Given the history of our relations with Panama and with Latin America, that concern is understandable. Moreover, as a trade unionist, I know that in many Latin American countries the word "intervention" has a sinister meaning. When a totalitarian government intervenes in the unions, it takes them over.

We should not be alarmed by statements from the Panamanian side on this subject. Indeed the absence of comments would be remarkable. We can have no right to intervene in any country. That is clear from both the UN Charter and from the OAS Charter. But under the Neutrality Treaty we do have the right to maintain the regime of neutrality of the Panama Canal. Our commercial and defense interest in the Canal is protected by this provision. Panama does not dispute our right to maintain the regime of neutrality. Therefore, the controversy is much ado about nothing.

Similarly there has been much discussion about the concept of expeditious passage contained in Article 6 of the Neutrality Treaty. Panama's negotiators have made clear that this means the speediest possible transit. I submit that a more rapid trip through the Canal than that would be difficult to arrange. I will leave it to the lawyers to debate these questions on a more sophisticated level. I merely wish to point out that in practical terms the Neutrality Treaty meets the test of being both sufficiently broad to cover various possible situations while at the same time being sufficiently precise so as to leave no doubts about the intention of the drafters.

PROTECTION OF THE GOVERNMENT AND PANAMA CANAL COMPANY EMPLOYEES

We are assured that the treaties adequately protect the economic security of those who are United States Citizens and Panamanians who have given long years of service to our Government and the Corporation. Our conclusions on this score do not rely entirely on government assurances but on conversations of UAW officials with Zone union officials.

The treaty provides job security for employees whose jobs are transferred to Panama. The same terms and conditions of employment will apply, and special provisions have been made concerning health and retirement benefits.

Of course, employees who are displaced are also of great importance. They should not be victimized by treaty provisions. For these employees—and the numbers should be relatively small—various options are provided: placement in other U.S. Government jobs, assistance in finding private sector positions, relocation allowances. Also, in view of the unique circumstances, the U.S. will provide a special optional early retirement program to all employees of the Panama Canal Company and Canal Zone Government with liberalized entitlement and annuity provisions. This language is imprecise but I would hope that the implementing legislation will provide for retirement after 20 years of service with no reduction in annuity. I believe this is fair treatment to these employees who have worked hard to keep the Canal running efficiently and safely over the years. So from a labor point of view, we find the Treaty provides well for current employees who will remain with the Canal enterprise and who will be displaced.

COMMUNISM IN PANAMA

There has been much scare talk of the potential danger of Communist takeover of the Canal once the treaty is ratified. I am constrained to comment on that talk. I note, at the outset, that my information is that there are not many Communists in Panama.

I recently returned from Canada where I met and talked with one of the Separatist leaders in Quebec. Many dispassionate observers feel that the secession of the Province of Quebec would be tragic for Canada and also for Quebec itself. There is, however, some disagreement on the issue. But there is little disagreement that the treatment of the French speaking majority by the English speaking minority over the years bred this kind of response. There is similar breeding ground for dissension and internecine struggle in the history of Northern Ireland.

It has been said that those who don't learn by history are doomed to repeat it. If we remain as a foreign and chronic irritant, in short as a colonial, imperial power on the soil of Panama, continuing to fence off the country from the enclave, denying national dignity to the country, treating the Canal not as a resource we operate by treaty but as a personal possession, do we not by these attitudes and actions create a breeding ground for Communist and other totalitarian movements in Panama? We in the UAW have struggled with Communists over the years. We know that they generally oppose genuine reforms because the worse conditions are, the better their chances to grow and prosper.

Of course, no one can say with certainty what the future will bring, but reasonable people would have to agree that Communism in Panama would be deprived of a root issue upon which to build if the treaties are ratified. Conversely, a turn down would give the Communists a ready made and controlling issue to run with—not only in Panama, but all over Latin America.

The Senate should never forget that the Communists oppose the treaty. It is their people who are agitating in the streets of Panama against the treaty. Simply put, it is the Communists who are placing their bets on the emotionalism and the frenzy of the far right in this country. Doesn't that tell us something?

The most sensible course to set back the present Communism drive and to cut off the Communist future in Panama is to take away their main rallying cry by ratifying the treaties. In doing so, this country not only "sends a message" to Panama and to South America, it sends one to the Communists too.

NATIONALISM IN LATIN AMERICA

The single most powerful political sentiment in Latin America is not Communism, however, but the far more conservative passion of national pride . . . old-fashioned nationalism, just as it is in the U.S.A. Virtually all Latin Americans, irrespective of their political coloration, view the canal issue primarily in terms of "Yankee" respect for a small Central American republic.

Every Senator here—and in the Senate—understands deeply the meaning of American patriotism. Why then not extend in generosity and magnitude that same understanding to one of the smallest and militarily weak countries in the world—Panama?

Why not, in short, legitimize their own fierce devotion to country, to history, to culture and, finally, to belief in national pride?

BIPARTISANSHIP

The UAW headquarters is in Michigan. That state is our heartland. For that reason we take particular pride in the fact that spirit of Senator Vandenberg lives on.

It is true that the Republican National Committee and some of its leaders have joined the chorus of emotionalism and voted to oppose the treaties. But the spirit of bipartisanship in crucial foreign affairs decisions by this country is alive and well. Former President Ford and former Secretary of State Kissinger have shown the way to good sense bipartisanship in this delicate matter. They, along with other prominent Republicans such as the junior Senator from California have urged the ratification of these treaties. We are pleased too that such very conservative forces as those represented by the National Review and its editor, William Buckley have endorsed the treaties. Indeed, Mr. James Burnham writing in National Review has said:

"Judging by the probable consequences for our national security and interest, it is time for us to leave. In fact, the weakest feature of the new treaty is its failure to get us out soon enough."

Burnham predicts that, if the treaty fails, "the aftermath would probably be bad, and might be very bad both for the country and for those responsible for the rejection."

Garry Wills, the Journalist, has reminded us of the words of Samuel Johnson, a great conservative which are appropriate in considering the Canal issue today. Mr. Wills wrote:

"The pride of power has destroyed armies to gain or to keep unprofitable possessions. Those are the words of Dr. Johnson in 1771. He was attacking the foolish zeal of Englishmen who wanted to wage war with Spain in order to assert not only the possession of the Falkland Islands but sovereignty as well.

"The case is uncannily similar to our Panama Canal controversy. Johnson, the great conservative, was merciless against those who confused 'shame of deserting a project' with real loss, and who would risk the lives of men on the terms of a legal phrase. The question was not one of pride and sovereignty, he argued, but of use and cooperative gain. He mocked the men who 'profess to be disturbed by incredibilities.'"

And Wills also says:

"Those who say we would be capitulating to blackmail by accepting the treaty are like men who say they will not be 'blackmailed' by rain clouds into carrying an umbrella. They are not brave; just dumb."

THE ECONOMICS OF PANAMA

The United States is clearly on record against exploitation of small countries and in favor of the development and economic independence of the "have not" nations. How else do we square our foreign aid programs and our participation in multinational projects?

In the light of the above given, the new treaties become a national imperative not only for Panama, but also for the United States.

Perhaps it has been laid on the record before, in any event, I will do so now. Panama's major natural resource is the Canal, which, in the final analysis, is there because of Panama's geography. In 1970 118.9 millions of tons of cargo passed through the Canal. That year Canal profits were 175 million dollars, of which Panama received a pitiful one per cent—less than \$2,000,000. In that same year the Empire State Building's net profits were more than \$13 million. In 1976 the U.S. rented three military bases in Spain for \$20 million a year. But how cheap is the rent on the Canal? Most of Panama's million and a half citizens live in abject poverty, while the world's richest and most powerful nation controls her major resource. By ratifying the treaties, the Senate will enable this small nation to help itself rather than to raise the income of the world's richest nation.

So, we should ratify these treaties not because of any abstract theory of morality but because in simple bread and butter decency terms. It is right, fair and long overdue.

CONCLUSION

The Treaties are of course negotiable documents. In negotiation, neither party gets all that it asks for. General Torrijos has been quoted as saying that Panama did not get as much in the Treaties as he expected. Treaty critics in both countries have concentrated their opposition on areas where compromises were required. But the measure of any agreement is whether it protects the vital interests of the parties. The answer in this instance is clearly yes as far as the United States is concerned.

Because United States defense and commercial interests are adequately protected and because it is in the enlightened self-interest of the United States and the people of the world, particularly those of Panama, we urge ratification of these treaties.

We see this a felicitous moment in history when moral values coincide with security interests. We must take full advantage of this opportunity.

STATEMENT OF CANAL ZONE LABOR UNION AND METAL TRADES COUNCIL

Mr. Chairman, members of the Committee, my name is Alfred J. Graham, President of the Canal Zone Central Labor Union and Metal Trades Council, AFL-CIO.

The CLU-MTC represents 14 local unions in the Canal Zone, affiliated with nine national AFL-CIO unions. We represent the largest organized group of U.S. citizen employees of the Panama Canal Co./Canal Zone Government. We also represent a significant number of non-U.S. citizen employees of the Company/Government.

Our presentation will be in two parts. The first part will cover Employee Privileges and Immunities along with labor provisions written into the Treaty. The first part has been submitted for the record. The second part will be an oral presentation

to the Committee, on the Canal Zone, the Government employees working there, and the present and future interests of the United States in the Canal. We are U.S. Government Employee labor representatives. As such, our self-interests cannot overshadow the best interest of the United States in this matter. Our silence and acquiescence to the terms of this Treaty would surely put us in the position of parasites; "trading off" the best interests of the United States for "assurances" that our labor interests will be taken care of. The CLU-MTC refuses to take that position. Although, individually, we may differ in our approach to the problems of this Treaty, no CLU-MTC representative has, or will "trade off" the best interests of the United States in this matter.

EMPLOYEE PRIVILEGES AND IMMUNITIES

As written into the new Panama-U.S. Treaty, Employee Privileges and Immunities are for the most part satisfactory provided, of course, that one accepts in good faith these assurances of privileges and immunities given to us by our own government.

We are not satisfied with the lack of Treaty provisions that would solve the dual citizenship problem once and for all.

The Republic of Panama has a Citizenship Law that in our opinion was enacted for the sole purpose of harassing U.S. citizens born to American parents on the Isthmus of Panama. The law states that these Americans are Panamanian Citizens. The high officials of Panama have all indicated that these U.S. Employees will be treated as Panamanian Citizens. We requested that the Treaty stipulate that Panama will surrender all claim of Panamanian Citizenship, in the past and for the duration of the Treaty, on all U.S. Citizens born on the Isthmus of Panama, if the U.S. Citizen makes his or her intention known to the U.S. State Department. This request was denied. If Panama becomes sovereign over the Canal Zone these employees fear that they will be subject to further harassment from the Government of Panama. This apprehension is not without substance, citizens of Panama have no civil rights. At this time, with the Chairman's permission, I would like to present, for the record, the official position of our State Department in respect to these U.S. Citizens, dated March 4, 1975. Their position can be defined in one sentence extracted from this letter.

"Such persons continue to be Citizens of Panama although they may also be United States Citizens and are subject to the laws and regulations of that Country while residing there."

We are not satisfied with the lack of Treaty provisions that would provide for the transfer of employees who do not wish to live or work under the joint administration of the Panama Government. For U.S. Citizens, this benefit is at the option of the new agency, "The Canal Commission", which is composed of that Government. For non-U.S. Citizens this benefit is not provided for at all. Without these provisions, guaranteed before ratification, the Canal Zone will not be efficient, and it will not be secure.

LABOR PROVISIONS IN NEW PANAMA-U.S. TREATY

As a result of the July meeting of the AFL-CIO Panama Canal Committee, I was elected by the Committee and appointed by AFL-CIO President George Meany to be the AFL-CIO Labor Advisor to the U.S. Treaty Negotiating Team. I worked with the U.S. Treaty Team on Treaty labor provisions until August 26, 1977. Most of the labor provisions we required are included in the new Treaty.

One of the most important labor provisions, Optional Open-Ended Early Retirement, will require legislation. However, we are grateful for the attention President Carter and his staff gave this matter by stipulating that the U.S. Government would sponsor this legislation in the Treaty.

We face other labor problems with DOD. Canal Zone Government operations that will become DOD functions, if the Treaty is ratified, are in danger of losing the Washington, D.C. pay base and Canal Zone leave benefits. Canal Zone teachers, in particular, are left in limbo as to what their entire future employment status will be.

The loss of repatriation rights and leave benefits are other factors now under consideration by the present Company/Government, that may affect as much as 50 percent of the present U.S. work force, prior to the possible ratification of this Treaty. Were the worst of these proposals implemented at least half of the present U.S. work force would be economically forced to remain in the Canal awaiting possible transfer rights that will be administered at the option of the new Canal administrators, "The Canal Commission". The new Canal Treaty addresses itself to this problem. The Canal Zone Governor, the Department of the Army, the Depart-

ment of State and other agencies affected by this Treaty, have all indicated, and have all gone on record in this hearing or others, that they are opposed to affording transfer of the present employees "at the option of these employees".

There is no mention in this Treaty as to whether or not, the employee who remains working in the Canal, will retain his present benefits cited above. The Treaty uses the phrase, "Conditions will be generally no less favorable."

This leads the Canal employee to believe that he or she will lose something. The question of course is what. This Treaty makes absolutely no mention of protections for employees who, in good faith, trains someone to take his or her job and then is pressured out of the system by "The Commission" who no longer needs their presence. It makes no mention of protections for employees scattered throughout the work force who cannot or will not live and work under the conditions of this dictatorship.

An employee who is guaranteed an early retirement or job transfer, at his or her own option, throughout the duration of this Treaty, not just those displaced immediately, but all employees, would not be as apprehensive about staying.

Only through these guarantees will the new agency be able to maintain the necessary and willing personnel required to make this "transition" efficient and effective. By a simple Executive Order, these transfer guarantees, can be effected.

LABOR LEGISLATION

We will be seeking labor legislation for the following:

1. Optional open-ended early retirement (15 years, 50 percent, no loss of annuity). A benefit that would greatly support the new agency in the retention of qualified employees through the transition period.
2. Unemployment compensation for non-U.S. employees.

CONCLUSION

Although, it would appear, except for those important issues cited above, that the Treaty provides sufficient labor protections we wish to go on record at this time opposing the new Panama-U.S. Treaty. President Meany does not speak for the affiliated local unions of the CLU-MTC when he supports this treaty.

President Meany's office is not aware, as we are, that the present provisions of this Treaty, by excluding all of the above, will not provide for the protection and efficiency of the Canal. The protection and efficiency of the Canal will directly depend upon whether or not the employees believe that they are being treated reasonably, and in good faith. They do not, generally, believe that they are.

This concludes the labor section of our testimony.

Legislative Representative Of The Canal Zone Central Labor Union and Metal Trades Council Statement Before The Senate Committee on Foreign Relations.

Contrary to the statements of our negotiators, and others, we believe it an accurate statement when we say that our Executive Branch has decided that it is in the best interest of this Nation to sacrifice the Canal in favor of the continued presence of the multi-billion dollar private foreign investment in Latin America. This action appears to be based on the theory that the turnover of the Canal will somehow appease and stabilize Panama and the rest of Latin America, that a new and more modern relationship will exist once this Treaty has been ratified.

In order to promote this action, it has been necessary for our Executive Branch to reinterpret history and the Constitution of the United States; economically, materially, and militarily support an oppressive, racist dictatorship in the subjugation of the Panamanian people; apart from the Canal assets, expend even further billions in tax funds, and sacrifice the economic base and political freedom of the very non-U.S. and U.S. employees who maintain this Canal. By so doing, this action will destroy the very efficiency and security that this Canal is dependent upon.

We finally believe that the reasons given, by our negotiators for ratifying this Treaty are neither valid nor sound.

PAST HISTORY OF CANAL

There has been much commentary made that the 1903 Treaty was made, not with a Panamanian, but with a Frenchman, Philippe Bunau-Varilla, whose only interest was in recovering 40 million dollars promised to the bankrupt French Canal Company.

Little is mentioned of the fact that prior to entering into this 1903 Treaty, known as the Hay-Bunau-Varilla Treaty, the United States had entered into negotiations, and in good faith on our part did ratify the Hay-Herran Treaty with the then dictatorship Government of Colombia. Herran, the dictator's agent, agreed to the terms of this Treaty. But, this dictator was not dealing in good faith with the

United States. After his personal agent had made an agreement for 10 million dollars, he decided to call an extraordinary meeting of the Colombian Senate for the sole purpose of rejecting the Hay-Herran Treaty, January 23, 1903, and to set the stage for further monetary negotiations on the matter.

It is interesting to note that the dictatorship of Colombia, in its very deposing of the lawfully elected President of that Country, used this very action as the reason for disbanding the Colombia legislature and thereby establishing himself as the supreme ruler of Colombia.

While this thinly masked shakedown was in progress, another of several previous Panamanian breakaway revolutions was set into play.

It was because of this Frenchman that the Panama Junta Government was able to secure 100,000 dollars to support and effect their revolution, and it was because of this help and this man's unique knowledge of the Congress and Executive Branch of the United States that he was appointed their Treaty negotiator. Without his help there could have been no revolution. By offering and effecting a new Treaty with the U.S., this Frenchman secured the independence of Panama. Contrary to statements otherwise on November 2, 1903 the U.S. Warship Nashville did not prevent Colombian troops from landing in Panama. In fact, they disembarked in full view of this Warship in Colon, Panama. The commanders of these Colombian troops crossed the Isthmus by train, were bribed with 10,000 dollars by the Panama Junta Government, returned to Colon and departed with their troops.

There has been much said of the unfortunate 1964 Panama riots in which 21 Panamanians were killed. These riots are presented, by our own negotiators as an act of nationalism when in fact, for the majority of these rioters, it was a chance to loot, steal and destroy property. They became unmanageable because the Panama Government refused to allow the Panama Guardia Nacional Police to enforce order in the streets of Panama. Little is said of the fact that the majority of the 21 Panamanians killed in these riots died of suffocation in a building in Panama that they themselves, or men like them, set on fire. They were found with their pockets stuffed with stolen monies.

It was not the Canal that was being threatened in 1964 and it is not the Canal that our negotiators are primarily trying to protect with this new Treaty today. It was, and is private foreign investment, and the expulsion of that investment in Panama and the rest of Latin America.

GOODWILL WITH THE PEOPLE OF LATIN AMERICA

Even apart from the allegations that there exists a Corps of Engineer Study, dated February, 1968 recommending that Panama should be ruled by a dictator, there is no doubt, at least in respect to Chile and Panama, that our Government relied upon and supported dictatorships in order to protect private foreign investment in these countries.

It is difficult not to notice that 90 percent of Latin America is composed of dictatorship governments. This Committee was given testimony that "Panama is not a full-blown democracy." It is, however, a full-blown racist dictatorship with a proven record of inefficiency and corruption.

It is the opinion of the CLU-MTC that President Carter's Treaty Signing Ceremony in Washington, D.C. set democracy in Latin America back 100 years. It amazes us to witness a U.S. President, with a Human Rights Platform gather together the largest group of anti-human rights dictators in Central and South America and honor them by signing a Treaty with another dictator. These dictators do not represent the people of their country, they impose their will by force of arms supplied in many cases by our own Government.

To the people of these countries, the President of the United States is the Champion of human rights and yet, by this one single act, he has repudiated their right to gain back these human rights. In Panama, this Treaty represents the last hope of the people of Panama for a return to a Democratic system of Government. These people will not soon forget that it was the United States that perpetuated this dictatorship.

GOOD FAITH FROM THE EXECUTIVE BRANCH

Ambassador Bunker and Mr. Linowitz have testified over and over again that the Canal Zone will be turned over to the *People* of Panama. This is what they label as "Educating" the American voter.

You can be assured that, even apart from the assets of the Canal, multi-billions of U.S. tax monies will not be turned over to the Panamanian "People". As usual with military dictators, the "People" will benefit little or nothing from this Treaty.

The American "People" will not benefit from this Treaty. Even the multi-national and banking interests will not gain the protections that they are seeking by this Treaty.

The Canal employees are being used as pawns in this Treaty according to a report submitted to our State Department in 1976. Mr. Chairman, you haven't read this report. I would like to submit it into the record of these hearings at this time. The State Department denies that this document represents their position, but yet every recommendation made in this report has been implemented. The recommendations given, range from influencing Canal labor and civil groups, with or without their knowledge, reeducating these employees through "manipulation" of the controlled news media, eliminating interference from the Canal Zone Company/Government, and the assistance of the Panama Government in all of the above. This report even has its own enemies list, of which of course I am a member. The object of this report is to use Canal Labor and civil groups to help sell this Treaty or to, at least, neutralize these groups.

At this time, Mr. Chairman, I would like to submit into the record, a protest letter dated September 21, 1977, to Congressman Zablocki, Chairman of the House International Relations Committee in which I describe the actors, and actions taken by our own State Department in which to comply with these objectives. Ambassador Jordan, and Mr. Linowitz are knowing principals to these actions at least.

If you still are not convinced that our Executive Branch has misrepresented the true objectives and benefits accrued from this Treaty, let me present several more issues that cannot be disputed.

Our Executive Branch has strongly emphasized that without this Treaty with this particular dictatorship, there will be sabotage in the Canal. They have not told this Committee that it was this dictatorship Government that bombed Canal Zone cars and buildings and that in a written protest letter from our State Department, delivered by Ambassador Jordan, our Government had "positive proof" that Guardia Nacional Officers participated in these bombings. This letter further specifically cautioned against the public disclosure of its contents.

They have not told this Committee that it was this dictatorship Government, substantiated by our own intelligence documentation, that have on a number of occasions planned and participated in riots against the Canal Zone and the U.S. Government.

They have not told this Committee that it is this dictatorship government, through its controlled mass news media, that is pouring out hate against the Canal and the U.S. Government.

They have not told this Committee these substantiated facts because they are engaged in a "siege attitude". They are protected by a presidency that is generally regarded as open and honest. They are not confronted with a hostile U.S. news media, and finally the full damage of their actions cannot be assessed until after this Treaty has been implemented.

CONCLUSION

In conclusion Mr. Chairman I wish to state as a labor representative that all I seek, if this Treaty is ratified, is that the Canal Employee retain his or her civil rights, as you and I know them, without being economically destroyed. If this position makes me dangerous to our State Department, and they have indicated that they consider me as such, then I strongly insist that there is something fatally wrong with our State Department's position in this matter. If they are allowed to continue in these repressive actions described above, then surely there must be a weakness in our system of Government. Civil Rights is not a conservative issue, nor is our rights in the Canal.

This issue is a non-partisan issue and should be labeled as such. I am dismayed that it is not.

I would be more than happy to answer any questions that this committee wishes to ask.

Thank you.

STATEMENT OF CAPT. J. R. WILLIAMS

Mr. Chairman and Members of the Committee, I welcome this opportunity to provide certain employee related impressions on the new Panama Canal Treaty.

In order to further introduce myself to you, I have been a Panama Canal pilot for 11 years and possess a United States Coast Guard license as Master of Ocean Vessels, Unlimited Tonnage. I hold the rank of Commander in the United States Naval Reserve.

BACKGROUND

Although only recently of primary interest in the United States, the Panama Canal Treaty issue has been the dominant concern of employees for several years. Early in 1977, when a general outline of the Treaty began to emerge, the Panama Canal Pilots Association developed on active interest in what future situation pilots, and other employees, would be placed in a post-treaty environment characterized by two major changes to the current situation:

- (1) The elimination of United States political jurisdiction over the community.
- (2) An employee transition period that would be in progress for the entire life of the Treaty, which implies a reduced scope of employment and promotional opportunities for U.S. citizen workers. More importantly, however, the duration of the Treaty clearly stipulates a shorter career period that will profoundly influence the retention of newer employees in key positions.

A primary Treaty objective of the United States, and as expressed by our negotiators, is to keep the Canal open and efficiently operated for the benefit of all nations; certainly a worthy goal. An absolutely essential ingredient to its fulfillment will be the retention of a skilled work force that is dedicated to the Canal, competent, and highly motivated. Governor Parfitt's statement in this regard have already alerted you to this necessity.

The Pilots Association, therefore, in cooperation with other Canal Zone unions, sought to achieve Treaty language that recognized the unique situation created by the Treaty as it impacts upon the employees. This has been generally accomplished in two broad aspects; one being an early retirement concept, and second, a general provision for collective bargaining—as yet absent from the isthmian labor scene.

A very important characteristic that has typified employee union efforts during this period has been a mutual realization that our futures are as closely intertwined as our present interdependence. In this regard, Panama Canal pilots are only one of several essential categories of employees crucial to the operation of this international public utility. Further, these employees, and their families, constitute a community that is very dependent upon the continuation of good schools, medical care, and related services.

In short, gentlemen, we are all in the same boat.

SOME PROBLEMS THAT WE HAVE ENCOUNTERED

It has been, and continues to be, to some extent, extremely difficult to convince top management that the canal work force is career oriented; not the usual overseas employment that is rotational in nature, and that attracts a less committed type of individual.

For many employees on the waterway, particularly at the locks, where specialized skills are absolutely vital to the canal operation, the attitude has traditionally been demonstrated to be a highly motivated and professional one. The continuation of the Canal's efficiency is absolutely dependent upon this extraordinary degree of skilled dedication.

Pursuant to the retention of these, and other skilled employees, there will be required legislation consistent with the spirit of commitments made to employees, both in the Treaty and in Department of the Army Assurances.

Specifically important will be the development of a genuinely liberalized early retirement statute in keeping with Department of the Army intent to retain essential skills.

One personnel policy viewpoint of management pertinent to the period of a new Treaty, is to entice people to remain on the job with unspecified forms of premium pay. We are not opposed to this, of course, but our attitude becomes wary when it is clearly indicated that "at some point in time possibly these incentives would no longer be required, or would be adjusted for recruitment purposes as local skilled labor becomes available."

Being informed in advance that this viewpoint has a certain acceptance is helpful, but also causes an apprehension about management's intent once our skills become readily replaceable from the local labor pool.

Concluding this portion of my statement, I recommend that the gentlemen of this Committee obtain a report to the Chairman of the Board of Directors of the Panama Canal Company from the Personnel Committee of the Board, which was submitted last January. This report, we are informed, contains specific recommendations relating to employee matters, based upon board member perceptions of how Canal employees should be dealt with in a new Treaty.

IMPRESSIONS ON CHANGE IN JURISDICTION OVER THE CANAL ZONE

For most Canal Zone residents, the elimination of United States political jurisdiction over their communities is truly a profound change that will require individual and thoughtful adjustment by many, if not most, employees.

For second and third generation employees, this represents a complete alteration of their actual self-identity. This "crisis", such as it is, includes many Panamanians of West Indian origin, who have identified solely with a Canal Zone existence for their entire lives and English is that primary language.

However, most employees appear to be quietly developing an individual attitude that will cope with such an impending change. It is a very personal reaction that makes it nearly impossible to provide any sort of institutional or otherwise organized opinion.

These aspects, coupled with the fact that the jurisdictional change is not in keeping with the career expectations of most employees residing in the Canal Zone, is a very important fact that cannot be over-emphasized.

Recognizing this, however, it should be borne in mind that what was previously blind resistance to change has moderated considerably, to the point that a more open-minded tolerance to "wait and see" is now prevalent.

How many key employees, such as pilots, will terminate their employment if this Treaty enters into force? Preliminarily, our estimate is that perhaps fewer than five, possibly as many as ten, pilots would take steps to resign. This number could go much higher with the ranks of newer men, if legislative and related responses fall significantly short of expectations.

My conversations with other Canal Zone union officials provide a similar picture for other categories of employees.

This rather conditionally optimistic outlook on attrition of key employees should be received, however, by keeping in mind one very critically important element that will, to a great extent, determine the success of this Treaty. By this, I am referring to the necessity of a hospitable and cordial attitude towards former Zone residents by the Panamanian Government that translates into a spirit of active and harmonious cooperation in administering the affairs of the Canal.

That there is a realistically tolerant expectation of this development is probably a significant factor—among others—that has contributed to a marked reduction in the resignation rate of U.S. citizen employees.

The immediate post-Treaty transition era will obviously be a delicate period requiring the disciplined restraint and good judgment of all concerned.

A related aspect of this situation that should be recognized, however, is that in those categories of employment where loss of jobs is most likely to occur, the very generous application of severance benefits and priority transfer policies should govern in all cases. It is obvious that the extreme dislocation, coincident with loss of employment in this situation would justify such measures.

PANAMA CANAL PILOT REQUIREMENTS FOR THE FUTURE

The Panama Canal, compared with other major pilotage waters, presents a combination of navigational conditions that make for a very demanding shiphandling task; possibly the most difficult in the world.

Due to several reasons, including the prolonged and continuing uncertainty posed by this Treaty issue, there is a genuine concern, both by this Association and the Panama Canal Company, about the maintenance of a proficient pilot force with high professional standards that will assure the confidence of shipowners throughout the world.

Therefore, it is essential, in order to continue operating an efficient canal, that these high standards be maintained.

At present, Panama has very few pilot candidates ready to be trained. The Panamanian Government is aware of this, and is taking steps to train merchant marine officers at the recently established Escuela Nautica in Panama. The United States could assist in this situation by increasing the quota of Panamanian cadets eligible to attend the United States Merchant Marine Academy at Kings Point, New York.

There is one final observation on this subject that we would like to make, and stress its importance very heavily. That is the essential requirement for the United States to take every reasonable step to fulfill its Treaty obligations to the employees in order that no substantial exodus of pilots ensues. If, in reaction to a high resignation situation, short cuts or some form of "crisis management" were to be adopted to fill a sudden need for pilots, the resultant deterioration of professional standards—triggering even more resignations—could very well inhibit the ability of the Panama Canal to maintain its traditional high standards of performance.

CONCLUSION

Gentlemen, in these few pages, I have attempted to explain, with as much candor and precision as possible, the likelihood of a sufficiency of pilots, and other critically important workers, remaining employed in order to keep the Canal operating efficiently. If questions arise from my observations, I will attempt to answer them.

Concluding then, and conditioned by the viewpoints contained in this statement; the Treaty language, with its general recognition for the unique circumstances that it creates for employees, shows promise of providing a workable employee transition period.

STATEMENT OF RENE LIOEANJIE

I am Rene Lioeanjie, Regional Director for the National Maritime Union in Latin America and the Caribbean. I am appearing on behalf of the National Maritime Union, which represents approximately 7,000 workers of which approximately 98 percent are non-U.S. citizens, in all phases of the operation in the Canal Zone. These members are spread throughout the Panama Canal Company, Canal Zone Government, Department of the Army, Navy, Air Force and the Armed Forces Non-Appropriated Fund activities. These workers are employed in practically every bureau.

President George Meany of the AFL-CIO has expressed the views of organized labor with respect to the Panama Canal Treaty revisions.

The National Maritime Union's position has continually been since the beginning of the negotiations some 13 years ago, to do what we can as a labor union to look out for our members and leave the treaty negotiations to those experts in that field. Therefore, my brief comment is intended to reflect only on the labor guarantees and protections that are in the treaty for all Canal Zone employees.

Rather than enumerate and comment on every labor provision in the treaty, which we have been reviewing for some weeks, I shall summarize my comments by saying that it is our opinion that all of the employees employed in the Canal Zone will be adequately protected by the labor provisions in the treaty if unemployment benefits are extended to all employees in the Canal Zone that may be affected by the treaty and if the implementing legislation includes adequate open ended early optional retirement provisions for all employees.

Thank you Mr. Chairman. I shall attempt to answer any questions that you and the committee may have pertaining to these labor guarantees.

TESTIMONY OF FRED SCHLAFLY

My name is Fred Schlafly. I am a graduate of Georgetown University and Harvard Law School. I live in Alton, Illinois and practice law in the states of Illinois and Missouri. I am Chairman of the Emergency Task Force on the Panama Canal.

Here follows some of the many reasons why the United States Senate and House of Representatives should not ratify the treaty signed by President Carter and dictator Torrijos on September 7, 1977 calling for the surrender of our Canal and Canal Zone:

1. Starting in 1872 Presidential Commissions had repeatedly reported in favor of an American Canal through Nicaragua. In 1889 Congress chartered the Maritime Canal Company of Nicaragua. On November 16, 1901 the Walker Commission, appointed by President Theodore Roosevelt, reported in favor of the Nicaragua route. This route took advantage of the large deep lake in Nicaragua and of the San Juan River. However, in 1902 the French offered to sell all the canal work they had done and the equipment they had in Panama for \$40 million dollars. This persuaded President Roosevelt that Panama might be the most practicable route. The residents of Panama were rightly concerned that the proposed canal might be built in Nicaragua because of the much shorter distances involved for American shipping.

As soon as they seceded from Colombia they energetically started negotiations with the United States and drafted the November 18, 1903 Treaty which Congress approved on February 26, 1904. The words "in perpetuity" in this Treaty, which occur seven (7) times, were taken from the recommendation of the United States Isthmian Canal Commission made on January 18, 1902 to Congress that the "grant" for a Canal Zone should not be for a term of years but "in perpetuity." See Senate Document No. 123, 57th Cong., 1st Sess., p. 9. As a consequence, the "in perpetuity" words were embodied in the 1902 Spooner Act authorizing the purchase of the Canal Zone, and also in the November 18, 1903 Treaty with Panama.

2. After the United States started work on the Canal, a law suit was filed to enjoin Leslie M. Shaw, Secretary of the Treasury, from paying money for the construction of the Canal on the theory that the Canal Zone is not part of the territory of the United States. In 1907 in this case of *Wilson v. Shaw*, 204 U.S. 24 at 32, 33, our Supreme Court unanimously decided that:

"The title to what may be called the Isthmian or canal zone, which, at the date of the act, was in the Republic of Colombia, passed by an act of secession to the newly formed Republic of Panama. . . . A treaty with it, ceding the canal zone, was duly ratified. 33 Stat. at L. 2234. Congress has passed several acts based upon the title of the United States. . . .

"Article 2 of the treaty, heretofore referred to, 'grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection of said Canal.' By Article 3, Panama 'grants to the United States all the rights, power, and authority within the zone mentioned and described in Article 2 of this agreement * * * which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located, to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.'

"* * * It is hypercritical to contend that the title of the United States is imperfect, and that the territory described does not belong to this nation, because of the omission of some of the technical terms used in ordinary conveyances of real estate."

In *U.S. v. Husband Roach*, 453 F.2d 1054, 1057 (1971) cert. denied 406 U.S. 935, the United States Court of Appeals held:

"The Canal Zone is a unincorporated territory of the United States."

Our State Department ignores these cases and tried to claim that "The United States does not own the Panama Canal Zone * * * under law we do not have sovereignty in Panama."

These assertions are contrary to the unanimous Supreme Court decision in *Wilson v. Shaw* and to the clear language of our 1903 Treaty with Panama which excluded Panama "in perpetuity" from "any such sovereign rights, power or authority."

3. In the case of *Sioux Tribe of Indians v. United States*, 316 U.S. 317, 324, 326 (1942) our Supreme Court held:

"Section 3 of Article IV of the Constitution confers upon Congress exclusively 'the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States.'

"Since the Constitution places the authority to dispose of public lands exclusively in Congress, the executive's power to convey any interest in these lands must be traced to Congressional delegation of its authority."

Congress has not delegated to the Presidency its exclusive power to dispose of the public lands in Panama. Therefore, President Carter has no power to negotiate the Treaties he signed on September 7, 1977, before receiving such a delegation from Congress.

4. Besides the false argument that Panama has some kind of sovereignty over our Canal, the Carter administration also claims that, if we don't surrender the Canal, the Panamanians might destroy it by guerrilla warfare. The first answer is that our very powerful enemies in World War II were unable to destroy or injure the Canal, although they knew how vital it was to move our troops and ships. Second, Panamanians who plotted to destroy the Canal would probably be reported in advance because the Canal is Panama's chief source of income. Destruction of the Canal would bring poverty to Panama which now has the highest standard of living in Central America.

However, if the United States Congress approves the Carter-Torrijos Treaties then there will be opportunities for sabotage because the Canal Zone will disappear and the United States will lose ownership and share control of the forts and bases guarding our Canal and Canal Zone.

5. Paragraph 5 of Article IV of the Treaty obliges the United States: "to maintain its armed forces in the Republic of Panama in normal times at a level not in excess of that of the armed forces of the United States of America in the territory of the former Canal Zone immediately prior to the entry into force of this Treaty."

Annex A to article IV of the Treaty requires the United States to permit Panama to jointly control a long list of our defense sites and bases as soon as the Treaty is ratified. Three years later another list of United States facilities will come under joint control with Panama. Paragraph (3)(a) of Annex B of the Treaty provides that:

"Only the Flag of the Republic of Panama shall be flown in Military Areas of Coordination."

Supporters of the Treaty allege that the United States could recapture the Canal Zone if the Treaty is violated. To do so, the United States would itself have to violate the Treaty. Paragraph 5 of article IV limits the armed forces to a level "immediately prior to entry of force of this Treaty." To recapture the Canal Zone and the many bases which the treaty requires us to surrender to Panama would require forces much superior to our present forces and much loss of life in attempting to recapture our bases. Why expose our military men to these most unnecessary dangers? Furthermore, nothing in the Treaties prevents Torrijos from inviting Communist troops from Cuba or Russia to come to Panama to defend the Canal and its forts.

6. The chief contention of witnesses for the Treaty seems to be either that the United States took advantage of Panama in 1903 or that the 1903 Treaty is out of date. The United States generously paid in full every claimant. We paid \$10 million dollars to the Republic of Panama, \$40 million dollars to the French Canal Company for what it had done and for its equipment, millions to the property owners in the Canal Zone for the purchase of all their land and other property, and \$25 million dollars to the Republic of Colombia. The historians say that the United States paid a total of \$80 million for title to our Canal Zone. All these claimants acknowledged fair and full payment. However, in November 1946 Alger Hiss, then head of the Political Affairs Office of our State Department, who later served time for denying that he turned secret documents over to the Communists, sent a report to the United Nations in which he described the Canal Zone as one of America's "occupied territories." In the 1960's and 1970's our State Department has been repeating Alger Hiss' argument that the Panama Canal is not "the sovereign property of the United States," and also that the "Panama Canal is a colonial enclave." In terms of both price per acre and total price, the United States was far more generous to Panama than to all other sellers of land the United States bought, including the Louisiana Purchase, the Florida Purchase, the Alaska Purchase, and the Gadsden Purchase of New Mexico and Arizona, added together (House Doc. No. 474, 89th Congress p. 361.)

The Panama Canal Spillway reported on July 16, 1976 (Volume 14, No. 49) that the Canal benefits for fiscal year 1975 to Panama were \$253,130,000. This gives Panama, with its 1.6 million population the highest per capita income in Central America, when it was the poorest country before the Canal was started.

It is a mistake to say that the United States pays "rental" for the Canal Zone. In 1903 the United States assumed the obligation of the Panama Railway Company for payment of its annuity, first made to Colombia and then to Panama, of \$250,000 per year. Because of inflation the United States increased this annuity to \$2,328,000.

7. The surrender of our Canal and Zone in Panama, proposed by President Carter and Ambassadors Bunker and Linowitz will cost the American taxpayers dearly. First, we will be giving up an asset for which our taxpayers paid approximately \$7 billion dollars and which, with inflation, is now worth about \$12 billion dollars. Second, Lieutenant General V. H. Krulak USMC (Ret.) in an article in the Strategic Review, 1976 Winter Issue, has described what surrender of the Panama Canal would mean to America in terms of our military security and financial costs:

"By closing down the canal at their own whim, [the Panamanians] could double the cost of maritime fuel for a voyage from the west to east coasts of the United States and more than double the average transit time from coast to coast. When it is realized that fully 8,000 ships a year carry cargo through the Canal, destined for U.S. ports, the resultant increase in retail costs of the commodities is evident.

"A common argument is that the Canal has largely lost its strategic value to the United States because our principal combatant ships are too large to get through the locks. Actually, a total of only 13 ships in the U.S. Navy have beams too great to permit passage through the waterway. The remainder of the fleet, some 470 ships—not to speak of an equal number in reserve—can use the Canal, and do so beautifully.

"Without absolute control of the Canal and the essential contiguous land, the United States could not accept the hazard of a one-ocean navy. It would be essential at once to initiate construction of fleets independently able to meet a crisis in either the Atlantic or Pacific—a massive expenditure which we are now spared only because of our control of the Canal."

8. Not only does the proposed Treaty give control of the Canal and Zone to Panama, but it requires us to pay Panama to take the Canal. From 1978 to the year 2000, Panama will receive \$10 million per year in guaranteed cash, plus \$10 million per year for police and other utilities, plus 30 cents for each ton going through the Canal, estimated at \$50 million per year, plus an additional \$10 million per year if Canal revenues permit.

In addition, Panama will receive Export-Import Bank credits of up to \$200 million, up to \$75 million in credits from the Agency for International Development, \$20 million in credits from the Overseas Private Investment Corporation, and \$50 million in military sales credits. This totals \$345 million in loans guaranteed by the U.S. taxpayers.

In short the shippers, most of whom are Americans, will be paying Panama about \$80 million per year, and American taxpayers will be putting up \$345 million, in order to give Panama the privilege of taking our great American Canal away from us.

9. The question must be asked, cui bono? For whose good is this surrender of America's greatest single investment? Of course it is for the benefit of Marxist Torrijos who allows only one political party, which is the Communist Party, to operate in Panama.

The next biggest beneficiaries are the ten giant American banks who have loaned over \$2 billion to the bankrupt Torrijos government.

The evidence not only indicates that these big banks are willing to let our Canal be transferred to Torrijos so that he gets funds to repay their loans, but that they furnished the agent to negotiate this surrender of our Canal.

President Carter appointed Mr. Sol Linowitz to negotiate the surrender of our Canal.

When Congressman Robert Dornan exposed Mr. Linowitz's conflict of interest as a director and member of the Executive Committee of the Marine Midland Bank of New York, which had loaned large sums to Panama after Torrijos became its dictator, Mr. Linowitz resigned, but instead of resigning as U.S. negotiator, he resigned his bank directorship.

10. On July 19, 1977, the Soviet Union and Panama signed an Economic Pact which gave the Communists:

1. The right to build, open and operate a bank in Panama;
2. The right to take advantage of the Colon Free Zone, which includes Old France Field in the Canal Zone, for the selling of Soviet merchandise; and
3. The right to construct a hydro-electric plant in Panama.

Former Commander-in-Chief, Pacific, Admiral John S. McCain testified on July 29, 1977 that the United States should reclaim Old France Field in our Canal Zone and use it as an air base to protect our Canal. Instead Torrijos has made it available to the Russians, seven weeks before he came to the White House to sign the Treaty giving him title to our Canal and Canal Zone.

11. We sympathize with the ten giant American banks who made large, uncollectible loans to the Torrijos dictatorship. Most of them have branches in Panama and should have been able to discover that the interest alone on Panama's debts take 38 percent of its income. Perhaps these banks relied on the unauthorized and never ratified Kissinger-Tack Agreement signed February 7, 1974 which talked of ceding all the U.S. territory in the Canal Zone to Panama.

The directors of these giant banks are a Who's Who of American business and finance. Could that explain why two of our country's best known public relations men, F. Clifton White, who worked for Senator Goldwater in his 1964 campaign for the Presidency, and Joseph Neopolitan, who worked for Vice President Humphrey's campaign for the Presidency in 1968, were hired for \$200,000 to sell the surrender of our Panama Canal?

12. Some of these same giant banks were criticized for very large loans to Bert Lance and for selling to unwary buyers their New York City bonds of questionable value. It is certainly hoped that these ten leading American banks are not directly or indirectly involved in the high powered campaign, extending from the White House to a movie star in California, to persuade American taxpayers to approve the surrender of the greatest single construction and investment our country ever made, our Canal and American Zone in Panama. Another surrender, after the abandonment of our friends in Cuba, Southeast Asia, Angola, Mozambique, and our Monroe Doctrine, might be construed as the twilight of the great American Republic, which built the Canal for less than all the time and cost predictions.

STATEMENT BY GARY L. JARMIN

Mr. Chairman, the American Conservative Union appreciates the opportunity afforded by the committee to present our views with regard to the proposed Panama Canal Treaties. The ACU is the nation's largest conservative organization with over 100,000 members and 40 state affiliate chapters. The ACU is one of the leading organizations opposed to these treaties and has, as a part of this effort, established a "Task Force to Save the Panama Canal" headed by the distinguished senior Senator from South Carolina, Strom Thurmond.

We believe there are many valid reasons why these treaties should be rejected by the Senate, but chief among them is the problem of the contradictory interpretations by Panamanian and U.S. officials with regard to key provisions guaranteeing: (a) the United States the right to intervene to defend the canal; (b) preferential passage for U.S. warships in time of major conflict or war; (c) the neutrality of the canal; and (d) keeping it open under all circumstances (except in the case of natural disasters).

The major source for this conflict over interpretations is primarily based on the statement made by Panama's chief treaty negotiator, Dr. Romulo Escobar Bethancourt, before the Panamanian National Assembly on August 19th and the remarks by another of Panama's treaty negotiators, Carlos Lopez Guevara, as disclosed in a confidential State Department cable made public by Senator Robert Dole. The ACU, we feel is particularly justified in addressing this issue since it was the ACU which first obtained a copy of Dr. Escobar's speech as printed in the August 20th issue of *Matutino*, a Panamanian newspaper, translated these remarks and made them public on September 2nd by issuing numerous copies to many Senators, including some members of this committee, Congressmen, the media and others.

If there is no objection Mr. Chairman, I would like to submit for the record a full translation of Dr. Escobar's remarks made before the Panamanian National Assembly on August 19th:

TRANSLATION

"The original (American) position was that to reach an agreement with Panama there would have to be a neutrality treaty and a military treaty. The military treaty would be made before the end of this century to be operative after the year 2000. This kept the negotiations stalled for a long time, because Panama opposed the enactment of a military treaty. Such a treaty would have implied two things: First, the continued U.S. military presence in Panama after the end of the present treaty (2000); and second, the United States, as a great power, is a country frequently involved in wars in other parts of the world, and we did not want that, because of the existence of a military treaty, the future youth of our country to have to go fight in the American battlefields with the pretext that this related to the defense of the Panama Canal. This was a position that Panama maintained until the United States withdrew the idea of a military treaty. We were then able to negotiate a neutrality treaty alone.

With regard to the neutrality pact, the following situation arose: The United States asked if Panama would disagree with the idea of the Canal being neutral. We told them we didn't, that on the contrary, a long-standing aspiration of Panama had been that the Panama Canal would be neutral. They said that they wanted the Panama Canal to be neutral and we said we entirely agreed with them. Differences then arose only in what they understood by neutrality and what we understood by neutrality. They proposed that Panama and the United States declare that the Canal was neutral and that the United States would guarantee that neutrality. Panama was opposed to this concept, explaining that we did not want the United States to maintain a guarantee over the State of Panama, using the neutrality issue as an excuse. This was another source of debate that kept the negotiations stalled until the United States gave up the idea of its guaranteeing the Canal's neutrality.

Another of the positions they presented was that Panama must agree to maintain the Canal permanently neutral and permanently open. We told them that Panama could commit herself to maintain the Canal permanently neutral because that was her wish. Panama has no interest in having anything other than a neutral Canal, the Panama Canal, because otherwise the Isthmus of Panama could become a battlefield. But we said Panama could not promise to maintain the Canal permanently open because of three circumstances that might arise. One, because of natural causes; we explained that an earthquake could take place, for instance, which would close the Canal, and, in such a situation, Panama could not be under an obligation to keep it open. Another possibility was temporary disruptions—landslides could take place and the Canal would have to be closed to carry out clean up operations. The third possibility was that the Canal could become unprofitable for Panama; in such a situation, Panama could not be tied down to keeping open a canal which was not earning revenues. They (United States negotiators) accepted the first two reasons—natural causes and temporary disruptions—but they did not accept the third reason, lack of profits. This, too, kept the negotiations stalled for a long time.

They argued that if the Canal was not profitable, Panama could obtain money from the United States or the other countries that use the Canal to keep it open. We told them that when the new treaty with the United States ended, we did not

want Panama to be under either direct or indirect obligation to turn to the United States or any other country to request money to keep the Canal open. Our respective positions remained unchanged until we reached the agreement I am about to describe. They said, we can't present to our Congress an article that states you will close the Canal because of insufficient revenues. And we said we could not present an article committing us to operating the Canal permanently when we have no way of knowing if the Canal someday will yield no profit. We finally agreed to eliminate that article, and so Panama was freed of the obligation to maintain the Canal open permanently. The negotiations then went exclusively to the issue of neutrality.

The United States then proposed that there be a neutrality treaty between Panama and the United States and no one else. Because they did not want for either the Russians, the Cubans or the Chinese—they said so exactly—to intervene in the neutrality of the Panama Canal. Our position was that neutrality didn't make any sense if limited to two countries as a result of a treaty between the United States and Panama and that we opposed the other countries not having the right to join in that treaty. They changed their position and agreed to allow the countries of the American continent (except for Cuba), but no others, to join. We said no, that this was meaningless, because in case of a war between the United States and Russia or China, those countries not being a part of the neutrality agreement would be under no commitment to respect the Canal or the Isthmus of Panama. That was another reason for long delays, until they finally accepted the idea that all the countries of the world could join the neutrality treaty.

Later, there arose the problem of choosing a forum for all the nations of the world to join the pact. We said it had to be done in the United Nations. They answered that they did not much like the idea of the United Nations because of their problems with the non-aligned countries, the Third World, the Arabs, etc. They proposed the O.A.S. We agreed, provided that this body only serve as a depository, as the physical location where all the nations of the world would sign the treaty, and that O.A.S. would have no say in determining which countries would sign. This was another cause for discussion. It was solved through a protocol of neutrality—that famous protocol which has been attacked as giving the United States the right to intervene in Panama by some who apparently read such a description in a Miami newspaper. This protocol is only a note* indicating the existence of the neutrality pact. It summarizes the agreement and sets down that country such-and-such agrees to abide by it. That is the famous protocol. It is the same thing as the neutrality treaty but in the form of a protocol (that is what it is called), and the O.A.S. is the depository.

Another issue was preferential right of way through the Canal for American warships. The Americans said that they had two problems. First, they had to please the Pentagon—they had to present it with something it liked so it would support the treaty; and second, that as they would be leaving Panama as soon as the treaty ended, they should be allowed at least that much, if nothing else, because they built the Canal. We pointed out that we recognized they had indeed built the Canal, but that writing in the neutrality pact that the United States warships would have preferential right of way over the rest of the vessels violated the neutrality treaty and that was contrary to the objective of the treaty we were negotiating. This was another cause for lengthy discussion and much analysis. They searching through their books and we searching through ours; they invoking their treaty writers and we invoking ours. This is how these discussions are carried out. Changing their position, they asked for preferential right of way during times when the United States was at war—originally they wanted it in times of peace and war—and that this right be granted only when requested by the ship's captain. We said no—that war time was the least appropriate moment to grant preferential passage right since it would be a violation of neutrality. After long discussions they accepted that U.S. warships could not be granted preferential rights. Then both countries set about looking for a formula which would not involve preferential rights, and we came to the agreement that the warships of the United States, in times of peace or in times of war, and the warships of Panama—we still don't have any now, but maybe by the year 2000 we will have some—will have the right to speedy passage through the Canal. This means that they will have the right to as rapid a passage as possible. We were able to agree on this because it's not in any country's interest to have another nation's warships delaying for long in its territorial waters; so the faster they go through, the better.

Another of the issues in the neutrality pact that we were—I should explain that I am giving you the true picture of what the neutrality agreement will consist of. We

*The meaning of "note" is not clear. It could mean a note of explanation or a small piece of paper.

did not give in either to the American's insistence that the United States and Panama jointly declare the neutrality of the Canal. We said that the declaration of the Canal's neutrality was an act relating to Panama's sovereignty, and that it would have to be a unilateral declaration. After long discussion, they accepted that the declaration would be made by Panama alone, in other words, that Panama be the one to declare the Canal permanently neutral. They proposed that in our declaration we say that the state of neutrality was intended to prevent the Canal from becoming a theater of war. We answered that we were declaring the Canal neutral so that neither the Panama Canal nor the Isthmus of Panama would become a theater of war. They wanted to separate the Canal and the Isthmus. We told them that we could not do that, that the Canal was part of our Isthmus, and that our neutrality only made sense if it covered both the Canal and the rest of the country. We wouldn't be any better off if, rather than dropping a bomb in the canal, they dropped it, for example, on Ocu or Santiago. They accepted that the declaration of neutrality be worded in such a way that neither the Canal nor any part of the Isthmus of Panama could be the object of reprisals in the course of another nation's conflict.

The other point we made in relation to our concept of neutrality is that it is not a neutrality which will allow the United States ships to transit peacefully, but rather one which will allow ships flying all the flags in the world to transit peacefully, notwithstanding what country may be involved, its being a communist country, a fascist country, or a monarchy—that we were not insistent on its being a democratic country to allow it peaceful passage. And finally, that the pact was to be made between the two countries, and it is stated there that Panama declared the neutrality of the Canal, in the manner that I already explained to you, following the establishment of a neutrality pact with the United States and a commitment being made on the part of both nations to maintain that neutrality. This concept of maintaining the neutrality was that which replaced their original position of guaranteeing the neutrality. The upholding of the neutrality is indicated within the treaty and in the protocol all other countries are committing themselves to this protocol.

Later came a discussion on their proposal that the two countries commit themselves to upholding this neutrality under all circumstances. We said that if the phrase "under all circumstances" was included, two important exceptions would have to be made. The first was that this would apply only so long as internal order was not involved, since these are problems for one country or our national guard to address; and second, in the case of an attack on the Isthmus or the Panama Canal by a third country. This was cause for much discussion, and in the end, they preferred to leave out the phrase so that we would not include the exception. We also pointed out that the neutrality pact must indicate clearly that after the 31st of December 1999 at 12 o'clock noon—or at 12 noon as Edwin (Edwin Fabrega) says or at 12 midnight as Ahumada (Adolfo Ahumada) says—that from that date on, the American troops could not be in Panama. After much discussion, they said, "We don't like that phrase—that there can be Russian troops or Cuban troops." Then a proposal was made to change the phrase to read that from the 31st of December 1999 on only Panamanian troops could be stationed in Panama. We were in perfect agreement with them. They were happy, because they had been half-thinking that we are going to call in the Russians, and we were happy because one of our aspirations was precisely that our troops be the only ones here.

So this is the "problem" with the neutrality pact. (Sarcastic) The criticisms made of it—some that you have heard or have read—indicate that we give the United States the right to intervene in our country after the year 2000. These critics think that rights of intervention are granted in the treaty. To the great powers, no one gives the right of intervention; they intervene whenever they feel like it with or without a treaty. When they (the Americans) landed in Santo Domingo, they had no military treaty with Santo Domingo, nor had any right of intervention in Santo Domingo, and they landed anyway. But there are people here who think that it is in the articles of a code (law code) that tell a country if it has the right to intervene or not, and they don't know that it is the bayonets, the guns, and the atomic bomb that gives a country the strength to intervene. And so a country like the United States can land in Panama whenever it feels like it after the year 2000 with or without a neutrality pact. But it cannot land, for example, in Russia, even if Russia tells it to land. Those are the facts of the matter so that with the neutrality pact, we are not giving the United States the right of intervention. What we are giving is an assurance that the Canal will be permanently neutral, that we are not going to close the Canal so that their ships or this ship or that ship cannot go through. Why this neutrality pact? Because they are thinking, "By the year 2000 this country

(Panama) may have gone socialist and become our (U.S.) enemy and we now want to make sure that even if they become socialist, they cannot close our passage."

And, frankly speaking, they do not need this neutrality pact to intervene or not intervene. They need it to present it to their Congress, to tell their Congress, "Look, we are giving the Canal to those Panamanians, but we retain the right to watch over it so that they behave themselves." That's the truth. It's an internal political problem; they are trying to solve an internal problem with a Congress intensely opposed to these negotiations and one which, in addition, includes members who have not been elected by the American people but rather who have become members of Congress of their own accord—these are certain Panamanians living here and others in Miami. (n.b. Referring to exiled people opposed to Torrijos' government.)

So about the neutrality pact, these are its real contents, distinguished Representatives. It was very carefully thought out, as you can see from my description of how its final form was arrived at. I might add that we feel very proud of the way the matter has been resolved. You should have seen the original draft they presented along with the military treaty. Agreeing totally to that would have been shameful; I would not have dared to sit at this table now to give you any kind of explanation if I'd brought with me their original draft for the military treaty and the neutrality treaty.

The other problem concerned the option for the construction of the sea level canal. Two months ago, almost on the day of the opening of the Alaskan pipeline, President Carter delivered a speech in which he said that his government was deeply interested in the construction of a sea level canal either through Panama or through another point in Central America, and right after President Carter's speech the American negotiators brought the question of the option to the negotiating table. During the earlier negotiations of 1966 and 1968 this issue had been intensely debated by the negotiators of that time, Doctor Diogenes de la Rosa and other since it was at that time that they (the Americans) were making the studies which they later completed and they wanted to speed up the time-table for possible construction. But in the present round of negotiations it appears they had put the problem aside until now, with President Carter's speech and the Alaskan oil.

And so the discussion of the option began. We talked about this option approximately two times and we arrived at no conclusion. Then came the Bogota conference.

There, the problem of the option truly made for a crisis, because there a very complete proposal was laid out for agreement by all the presidents, with Carter working through negotiators Linowitz and Bunker, and our side being represented by our Chancellor, Gonzales Revilla, and our negotiating team. The (U.S.) proposed that Panama have an option to build a sea level canal at an unspecified time, and second, that Panama commit herself to the idea that no other country could construct a sea level canal. They presented that proposal in Bogota, and we read it to the presidents. It was the proposal that the negotiators had brought and we read it to them, and as a result the negotiations between the two countries were broken off.

The General said in his statement that we had come to this Bogota conference to celebrate a new treaty only to find that we had come to a wake. There, the struggle between the two countries began, with Bogota taking part also, since the other presidents were meddling as if they were Panamanians too.

There was no way to reach an agreement on what they proposed. Panama's delegation wrote a proposal which met with general approval. Read word for word, it is more or less like this:

Article 3—The possibility of constructing a third set of locks or a sea level canal.

1. The Republic of Panama and the United States agree that a sea level canal could be important in the future or in the context of international relations.

Consequently, after its approval, the question of construction will be dealt with. There isn't even an option. The option relates only to studying the matter. We will sit down and analyze with the United States if it is feasible. If it is, the two countries will build it, maybe during the next 10 or 15 years. The generations of the future will be much more prepared. We do not give you a copy of the treaty because its release is pending on the announcement of President Carter and of General Torrijos, and its becoming an official document. We will publish it wholly when it does become (official), and we will debate it publicly.

The ones who cannot prove that this treaty is better than the one of 1903, that perpetuity is better, will have the problem. That the two million dollars a year is better than what is proposed now. We don't care if they say that General Torrijos is

a dictator; those who are opposed and say that we are not revolutionaries—let them grab their knapsack and their grenades and go prove it with deeds.

CONTINUATION OF STATEMENT BY GARY L. JARMIN

In his speech, Dr. Escobar made eleven points about the Neutrality Treaty and its Protocol but, reduced to basics, four items stand out. First, the U.S. will not have any defense rights past the year 2000 and will not be the guarantor of the neutrality of the Canal. Second, U.S. warships will not get preferential treatment in terms of transiting the Canal, even in time of war, after the year 2000. Third, the Panamanians think that it will not be necessary for them to abide by the Neutrality Treaty in cases of foreign attack or internal disorder. In short, from the Panamanian standpoint, the U.S. role in Canal affairs will be very limited until 1999 and virtually non-existent thereafter, which is a far cry from what we have heard about how the Canal will be kept open and that adoption of this treaty will make it easier to defend our interests.

The question of interpretation is extremely crucial with respect to any treaty and, especially, with regard to this one. But just as important, what actually transpired during these negotiations, i.e., what original proposals were offered by both the U.S. and Panama, what was rejected by either side, why it was rejected and what was compromised, is something that must be fully disclosed in order to clearly understand the intentions, interpretation and strategic outlook of the respective parties (fortunately, Senator Howard Baker had the wisdom to request this information from Secretary Vance on the opening day of these hearings). For example, when he made his speech before the Panamanian National Assembly, Dr. Escobar stated: "You should have seen the original draft they presented along with the military treaty. Agreeing totally to that would have been shameful; *I would not have dared to sit at this table now to give you any kind of explanation if I'd brought with me their original draft for the military treaty and the neutrality treaty.*" (emphasis added)

The question that must be answered is: *What was the United States' original draft for the military and neutrality treaty and why did we compromise?* It seems clear from Dr. Escobar's statements, and, those of other Panamanian officials, that they consider it absolutely intolerable for the United States to have the right to intervene to defend the canal. It should be equally intolerable for the United States Senate to agree to such an outrageous prospect. If the United States does *not* have the clear, legal right, under the terms of this agreement, to defend the Panama Canal, so vital to the protection of our commerce and national security interests, then how can we justify or have the right to defend our interests anywhere in the world?

The United States and Panama are now attempting to resolve these differences by issuing some statements to satisfy opponents of the treaties in their respective countries. But watered down, generalized agreements of interpretation to satisfy opponents of the treaties will not suffice. Whatever actions are necessary should be taken by the United States Senate in order to clarify in the neutrality treaty precisely what our (U.S.) rights are. We cannot, and should not, leave it up to anyone's "interpretation," now or in the future, as to exactly what the United States' rights and privilege are under the terms of this treaty.

Should the U.S. Senate ratify these treaties in their present form, we will be risking, down the road, a major confrontation with Panama over whether or not the United States can intervene militarily to defend the neutrality of the canal.

On the neutrality issue, it is clear that Articles I and II of the Neutrality section are unilateral statements of neutrality by Panama alone. Neither article mentions the United States in conjunction with a declaration of neutrality; they are simply a unilateral declaration by Panama. The fact that Panama alone makes the declaration of neutrality is crucial for one important reason: It simply means that only Panama can declare when the neutrality of the canal has been violated. This means the United States could not legally take any action to defend the canal, if it thought the neutrality of the canal was being violated, without Panama first declaring a violation of the neutrality.

For example, in his August 19th speech, Dr. Escobar stated that Panama could not agree, in writing, that it be obligated to keep the canal open if it was not "making money" or in the case of "internal disorder." Refusal by Panama to oblige itself with maintaining the openness of the canal under these circumstances is very important for several reasons. First of all, it must be understood that the Panamanian government is basically Marxist in orientation and outspokenly aligns itself with Cuba and other "pro-socialist" countries. In an international crisis, such as

occurred in Cuba in 1962, can we be assured that riotous students, in sympathy to Cuba, would not attempt to disrupt the operation of the canal to prevent the passage of U.S. warships? Could not the Panamanian government conveniently declare during such a crisis that the canal was not making money and, therefore, have to close it indefinitely?

In addition, given the heavy communist influence in Panamanian labor unions, could not one day, in a similar crisis, the pilots who move ships through the canal suddenly declare a strike and, thus, paralyze the transit of U.S. warships.

There is also one other provision that would provide for the Panamanians a perfectly legitimate (legal) excuse to hold the transit of U.S. warships. Under Article III, section 1, subsection (e), the treaty provides that warships can be "required to certify that they have complied with all applicable health, sanitation and quarantine regulations." Obviously, the Panamanians could, in an international crisis, declare that all U.S. warships transiting the canal be stopped indefinitely to undergo a health and sanitation inspection. And what could we do about it? Send in the Marines? It makes no sense that this provision be listed under the "vessels of war" section to begin with. Yet, it provides a convenient excuse for the Panamanians to violate the "principle" of neutrality.

MAINTAINING ADEQUATE DEFENSE OF THE CANAL

From the outset, it should be clearly understood that the Panama Canal is still and always will be vital to the defense of the United States. We do not have a two-ocean navy. We have instead a one-ocean navy with two-ocean responsibilities. The transit of warships and war material, troops, etc., from one ocean to another, as during the Cuban missile crisis and Bay of Pigs invasion, is still critical to our national security in moment of international crisis.

There is only one way to guarantee the adequate defense of the canal: The United States should continue, in perpetuity, to maintain a military presence in the Canal Zone. By the year 2000 all U.S. military troops are to be withdrawn and the defense of the canal will be entirely in the hands of the Panamanians. However, the Panamanians are poorly trained and equipped to adequately defend the canal. If 100,000 U.S. troops cannot completely defend the canal, as the Pentagon has stated, then how can 10,000 soldiers of the Panamanian National Guard defend it?

Today we have only 10,000 U.S. troops defending the Canal Zone and, thus far, they have been able to defend it without any major problems. The major reasons for this success is quite simple: They are U.S. troops, not Panamanian. This deterrent role is validated by the same reason our troops in Guantanamo protect it from attack by the Cubans. After all, if we accept the Defense Department's argument that we cannot defend the Panama Canal with 100,000 troops, then how can 5,000 U.S. troops in Guantanamo defend it against 300,000 Cubans? We can and do defend Guantanamo primarily because of the deterrent of a U.S. military presence. It is obvious that the United States military presence in the Canal Zone serves as a deterrent to any potential foe whether it be foreign or domestic. Once U.S. troops are withdrawn, the deterrent is removed. Under these circumstances the canal will become more vulnerable, not less. There is only one way to guarantee an adequate defense of the canal and that is to insure a permanent U.S. military presence.

The United States should have insisted on the right to keep U.S. troops in the Canal Zone indefinitely and not agree to any termination date. Ambassador Bunker told this committee that there is no country with which Panama maintains a "closer" relationship than the United States. If this is true, then why shouldn't the United States be allowed to keep troops in the Canal Zone? The U.S. has military forces in many countries throughout the world. There are few that would argue that Germans, Greeks or Koreans feel their national sovereignty and integrity are threatened by the presence of U.S. troops. And neither should the Panamanians. Yet the U.S. capitulated on this very crucial issue. Obviously, the best way to keep a military presence in Panama would be to reject these treaties and keep control of what is rightfully U.S. territory. However, at the very least, the U.S. and Panama could have agreed to lease military bases to the U.S. after the year 2000. If the U.S. had insisted on such a provision in these treaties, then the question over whether or not we have the right to intervene would not exist. The United States Senate can and should insist that the treaties be altered to provide for a continuing U.S. presence in Panama. The Canal is too vital to the commerce and defense interests of the United States to entrust that only the Panamanian National Guard (which can barely tame a mob of rioting students) will have the sole defense responsibility. The crucial aspect of deterrence must be maintained, and that can only be accomplished by guaranteeing a continued U.S. military presence in the Canal Zone.

VIOLENCE AND LATIN AMERICAN RELATIONS

Two of the central arguments that proponents of the treaties have given for their ratification are: (a) that if we don't give up the canal we will increase the prospects for violence and sabotage from the Panamanians, and, (b) that we will irreparably harm our relations with Latin America. Both are spurious arguments at best.

The United States has been able to adequately defend the canal against sabotage in the past and there is no reason we can't continue to do so in the future. But more importantly, it is the Panamanians who would want to prevent any sabotage since they benefit most from the Canal. Approximately 13% of Panama's GNP, 20% of its jobs and 3% of its foreign exchange comes from the Canal Zone, none of which the Panamanians are going to want to lose. If there is to be any substantial amount of violence, however, this will largely be the result of the U.S. raising the expectations of the Panamanians to an unrealistic degree and by allowing ourselves to be blackmailed by the threats of violence from Panamanian officials. Frankly, it is quite intolerable that our U.S. negotiators continued bargaining with the Panamanians when these threats were made. No nation should negotiate with another under such circumstances. We should have instead cut off negotiations immediately when such threats were made and told the Panamanians that, until they acted more reasonably, we would never discuss a new treaty.

The real issue we are facing is a decision between the most acceptable and least acceptable risks. Certainly we do run the risk of some violence if we reject these treaties, however, this risk is much less than taking the chance of one day finding ourselves having to send in Marines to protect the canal from external or internal threats. This risk of violence or sabotage is also far less of a risk than taking the chance of having Panama become a totally communist state or even a procommunist state (which many argue it already is), firmly allied with Cuba and the U.S.S.R.

Israel's problem with regard to the West Bank serves as an excellent example of confronting a similar "risk" scenario. Many argue that Israel must give up the West Bank to the Palestinians or risk a new war with the Arab powers and continued guerrilla attacks by the PLO. However, Israel considers the prospect of a hostile Palestinian state next to its belly a far greater risk than holding on to the West Bank which is very strategic to Israel's defense. For Israel there are risks either way. Once again, it comes down to what is the most versus the least acceptable risk. When looking at the potential risk of violence from wild-eyed Panamanian students, it is certainly far less than the enormous risks the U.S. will be taking in giving up the canal to a Marxist dictatorship while having no guarantees of our right to protect the canal in the future.

There is one final point that should be made regarding the violence argument. If there is any violence because these treaties are rejected by the Senate, the fault for this should fall squarely on the shoulders of the Executive branch. The White House and our negotiators allowed themselves to be blackmailed by the threats of violence and, now, they are using the same tactics to pressure the Senate into ratifying the treaties. Had our government not negotiated such a terribly vague and unreasonable agreement in the first place, the Senate would not have to face such a difficult decision. In essence, the White House has attempted to place the onus of any future violence on those who conscientiously refuse to support such an unacceptable agreement. The White House is simply trying to avoid any political fallout by "passing the buck" to the Senate.

Perhaps one of the major reasons these treaties are basically unacceptable in the first place, comes as a result of the failure of the Executive branch to consult and advise the Senate during the negotiations. By totally ignoring the Congress, these treaties were presented as a *fait accompli*. Obviously, much more acceptable treaties could have been negotiated had the Senate been consulted. The Senate should not allow itself to be used as a "rubber stamp" by the White House but, instead, properly exercise its authority by insisting on the best treaty, not a document of capitulation to a cabal of Marxist dictators.

LATIN AMERICAN RELATIONS

Perhaps the greatest myth promoted by supporters of the treaties is that the Senate's rejection of them will severely harm our relations with other Latin American countries. The support among Latin American nations for these treaties is not nearly as widespread as is believed. Privately, many of our Latin American allies will state that they are extremely worried over the prospect of a Marxist, pro-Cuban government having control of the Canal Zone. One has to remember that many of these nations have been threatened by communist subversion, from both Cuba and the Soviet Union, and they are not terribly excited over having Soviet influence increase, or appear to increase, so dramatically in the Western Hemisphere.

The lack of enthusiasm by our Latin American allies for the Panamanian position was clearly demonstrated by an almost totally unnoticed event that occurred only two months ago. Panama called a conference in Bogota, Colombia, on August 5th and invited 25 Latin American nations to attend. This conference was to provide a demonstration of solidarity with Panama's position on the treaties. Only five nations, Colombia, Costa Rica, Jamaica, Mexico and Venezuela bothered to attend.

In addition, if threats of violence are deemed the best way to get concessions from the U.S., we should expect more unfriendly demonstrations from Latin American countries, rather than improved relations.

In conclusion, it must be understood, as the past has shown us, that Latin American respect for the U.S. goes up when we take a tough stance and goes down when we capitulate. The United States' stock in Latin America went up after the missile crisis of 1962 and the Dominican crisis of 1965, but we suffered a severe loss of prestige after the Bay of Pigs debacle. Ratification of these treaties will only signal to our Latin American allies that the U.S., once again, is capitulating to the Marxist advance in our hemisphere. Ratification will gain us few new friends but will only undermine even further the respect and credibility of the U.S. throughout Latin America.

In summary, these treaties pose graver risks than the United States and any of our Latin American allies can afford. It is particularly dangerous that we should turn control of the canal over to an oppressive regime that is ideologically aligned with our chief adversaries. Concluding a vague and unreasonable agreement with an irresponsible government is nothing more than a blueprint for disaster. Perhaps the time has come for a new treaty, but not *this* agreement with *this* Panamanian government. The American Conservative Union urges the Senate to act accordingly and to vote against the ratification of these treaties.

STATEMENT OF DR. HERMINIO PORTELL-VILA

Honorable Chairman, Distinguished Members of the Committee on Foreign Relations, Ladies and Gentlemen:

Much has been said in recent days about the manner in which the United States established its presence in the Panama Canal Zone. It is alleged that the U.S. "stole" the territory in order to build the Canal.

As a one time Cuban Ambassador, and as a former professor of history at the University of Havana and at a number of institutions of higher learning in the United States, I have had occasion to study the historical origins of the Panama Canal. And I must submit that the facts do not correspond to many of the popular conceptions now advanced in many quarters.

Let us begin at the beginning, for to understand the present, we must know the past.

The Republic of Panama (28,783 square miles and 1,670,000 inhabitants), came into being in 1903 as a result of the plans of President Theodore Roosevelt for the United States to build an inter-oceanic canal across the Isthmus of Panama after the French had tried and failed. The French rights were bought by the United States. Panama had up to then been an integral part of Colombia, although there had been some unsuccessful secessionist attempts. The first American dealings with the Republic of Colombia for an agreement regarding the canal ended in a deadlock, and not much foreign prodding was needed for a revolutionary movement leading to the proclamation of independence, as the separatist feeling was there and Colombian rule was ineffective.

The Panama Canal has been in operation since August 15, 1914, open to peaceful international traffic and with a continuous increase in the number of the ships using it and their total tonnage. For more than sixty years, it has functioned efficiently and peacefully, rendering most important services to world shipping, helping the economic life of the Republic of Panama, and being very useful to the security, the trade and the economy of the United States as well.

There can be no question that the security of the Panama Canal is vitally important to the United States. Neither can there be doubt that the Canal is in more danger now than at any time before because of Soviet bases and garrisons in Cuba and Soviet domination of the Castro regime. The Castro regime itself is an avowed enemy of the United States; the regime in Panama is only slightly less hostile.

Arnulfo Arias, the last constitutionally elected president of Panama, was inaugurated on Oct. 1, 1968, and ten days later had been deposed by an uprising of the Panamanian National Guard, led by its top officers. They in turn were deposed almost immediately by another officer, Colonel (now General) Omar Torrijos-Her-

rera. He has been the leftist dictator of Panama for the past 9 years, behind a caricature of constitutional government in which the nominal chief of state is "President" Demetrio B. Lakas.

Torrijos was barely 39 years old when he seized power. The son of school teachers, he climbed through the ranks by regular promotion, a stern but skillful military officer who had not opposed repressive measures against the Panamanian rioters in 1964.

In the first months of his dictatorship, Torrijos was considered something of a "playboy." However, in 1969, while visiting New York City, Torrijos told a reporter for the local periodical "Tiempo" that he would like to return to Castro "the visit" that an invading Cuban "guerrilla" had made to Panama in April, 1959. He added that in fact the "first revolution exported by Castro had gone to Panama and that in just reciprocity he ought to return that blow." In the remarks, Torrijos indicated he favored granting the anti-Castro Cubans a base in Panama for their attacks against Communist Cuba, even if his Foreign Minister did not like the idea.

The Castro-controlled press in Havana exploded against Torrijos, and the official newspaper "Granma" said that "The abominable canal man, the gorilla Torrijos, who promoted himself to general and has his chest covered with embroidery and medals, did not surprise anybody with his effrontery." From then on, "Radio Havana," "Prensa Latina" and "Granma," called Torrijos a "gorilla."

All this changed when the Panamanian leftist lawyer Romulo Escobar-Bethancourt (no relative of Venezuelan's ex-President, Romulo Bethancourt), gained influence over Torrijos because of his close contacts with university students, workers and some demagogic elements surrounding Torrijos. Soon, the Torrijos regime helped organize excursions to Communist Cuba so that Panamanians might observe a communist dictatorship in action. As Torrijos began leaning more to the left, the Castroite press stopped calling him a "gorilla." The Panamanian political police, under the command of Col. Manuel Noriega, now lists anti-Communist Cuban exiles among the people to be watched and persecuted.

In 1972, Castro sent delegates, posing as students, to attend the VIII Congress of the Federation of Panamanian Students. Actually, they were specialists in propaganda, political repression and socialist "reform." That was the year in which Panama voted in favor of diplomatic relations with Communist Cuba at a meeting of the Organization of American States. But it also was the year in which the rubber-stamp National Assembly of Panama proclaimed Torrijos "The Maximum Leader of the Revolution." By mid-1974, Communist Cuba and Panama had restored diplomatic relations. Meantime, in Panama, agitation increased for new treaties with the United States regarding the Panama Canal. A massive propaganda campaign was launched to arouse and mold international public opinion against U.S. control of the Panama Canal. Government officials, diplomats, students, professional people, labor bosses, newsmen and others, also were enlisted in the campaign at home and abroad. Torrijos himself played an important role by travelling abroad and attending several international gatherings, some in Africa and Asia.

In Latin America, Venezuela's President, Carlos Andres Perez, became an enthusiastic supporter of Torrijos. So did Mexico's Echeverria, Chile's Allende, Peru's Velasco-Alvarado, Argentina's Campora and Peron, and Colombia's Lopez-Michelsen, the latter conveniently forgetting the millions of dollars Colombia had received from the United States in exchange for its endorsement of the original Panama Canal Treaty.

With Torrijos winning ever more international support, the U.S. government abandoned the psychological contest over the Canal and allowed itself to be cornered in a fight it chose not to continue.

In the early 1970's, neighboring Costa Rica opened its doors to Soviet agents, first for trade and later on for regular diplomatic relations. Soviet-Panamanian contacts increased via border crossings from Costa Rica. Panamanian leftists thus had the cooperation of both the Cuban communists and Soviet agents.

The controlled Cuban press now praised Torrijos. In April, 1973, Raul Roa, the Cuban Foreign Minister, while attending a meeting of the U.N. Security Council, formally gave Panama the backing of Communist Cuba in Panama's claims to the Panama Canal. Torrijos reciprocated with a statement that "each hour that Cuba is kept isolated are sixty minutes of Latin American shame." On August 20, 1974, Cuba and Panama announced that they were re-establishing diplomatic relations and that they had much in common as to international goals. From then on the two countries worked together in attacking the United States.

More government-financed and sponsored trips to Communist Cuba by Panamanian leftists were conducted. On January 10, 1976, it was dictator Torrijos himself, accompanied by scores of newsmen, diplomats, policemen and military, who visited

Castro. He went from Havana to Santiago de Cuba for a spectacular gathering, followed by a special tour of Cuban military installations around the U.S. naval base at Guantanamo Bay. The idea was to link the Panama Canal and Guantanamo as "terra irredenta" to be rescued from the United States.

In April, 1978, Torrijos visited Jamaica and Prime Minister Michael Manley, already at work to impose a socialist dictatorship there, urged that the negotiations for a new Panama Canal Treaty be intensified so that Panama "should have absolute control over that interoceanic waterway." Torrijos, meantime, continued his travels to all Latin American countries, trying to get direct, personal commitments from the other rulers.

The United States, outmaneuvered on all sides, soon resigned itself to tolerate attacks, insults, threats, slanders and protests until it finally approved the drafts of two new Panama Canal treaties. The ceremonial signing in Washington brought most heads of governments in this hemisphere, including those accused by the United States for dictatorial excesses. By all appearances, most came not to honor the United States for its concessions, but to celebrate its humiliation.

The Administration failed to recognize that it was helping dictator Torrijos consolidate the hold of his oppressive regime over the Panamanian people, now in its ninth year. Torrijos now emerged as a hero, statesman, redeemer, even a "reformer."

Panamanian exiles in the United States, and throughout the hemisphere, considered themselves betrayed, and said so. The Christian-Democratic Party of Panama, at considerable risk, issued a protest against the help being given to the Torrijos dictatorship by the U.S.

But Panama's leftists are not yet satisfied. They want the United States out of Panama NOW, without waiting for a new date, and they are saying it. Torrijos' leftist adviser, Romulo Escobar-Bethancourt, now advises Panamanians to be patient—for the time being, because, he says, there will soon be another round of national and international pressure against the United States.

Already, there are ill omens for the U.S. Cuba now serves as a powerful Soviet military base, less than eight hundred miles from the Canal. Cuba itself has demonstrated a military capacity to transport to Angola, across the Atlantic, twenty thousand soldiers with military equipment supplied by the Soviet Union. Last July 22, the Republic of Panama and the Soviet Union signed a treaty of trade and friendship that has had little publicity in the United States. Under the accords, Moscow would have its own stores in the Free Trade Zone at Colon harbor, in Panama, and a branch of the Soviet bank in Panama City. The Russians also are interested in developing the harbor of Vacamonte, on the Pacific Coast, a few miles from the U.S. Howard Air Force Base, and are reported ready to build a hydro-electric plant at Bocas del Toro, on the Caribbean coast of Panama. When the new round of pressure comes, the Soviet Union already will be established in Panama.

Let's look at the record of Torrijos himself. By seizing power, setting up a military dictatorship, and then veering to the left, Torrijos has shown time and again that he is a political opportunist not to be trusted. What he promises today, he will renege on tomorrow. Why should he respect the new Canal treaties any more than he respected the previous ones, or abide by the Constitution of his country, for that matter?

Panamanian citizens in great numbers have fled their country to save their lives or to avoid being put in prison, where torture, and ill-treatment are the rule. Ezekiel Muhtar, a Panamanian citizen now living in exile in Miami, Fla., has described the atrocities at the Island of Coiba, on the Pacific Ocean, where Torrijos keeps his political prisoners, in his book "La Mordida," now in its second edition.

The Panamanian Committee on Human Rights in September 1976 issued its first report on the violation of human rights by the Torrijos regime. It begins with a list of 28 citizens who have been murdered during the political persecutions there. Three of them, Encarnacion Gonzalez, Dorita Moreno and Marlene Mendizabal, were women. The list included the name of Father Hector Gallegos, a Catholic priest who was arrested by the Torrijos police in Santa Fe, Veraguas Province, and has not been heard of since. There is reason to believe he was tortured and killed, and his body was dumped into the sea, weighed down with concrete blocks.

There is a partial list of Panamanian political exiles compiled by the Committee on Human Rights, and it comprises the names of 94 people: men and women, prominent citizens and humble laborers, businessmen, priest, lawyers, newspapermen, farmers, students, military officers and professors.

In January, 1976, while Torrijos was visiting Communist Cuba, a group of businessmen met and drafted an appeal for guarantees to agricultural and industrial production, and also as to tax collections and trade regulations. They were immedi-

ately rounded up and expelled, some as far away as Ecuador. They were not allowed to take with them money, valuables or even spare clothing.

The "G-2" of the political police in Panama, copied even to the name from the Cuban "G-2", terrorizes the people of Panama. Its boss is Col. Manuel Noriega, an admirer of Cuba's Secret Police Chief, the notorious Maj. Manuel Pineiro. Both meet with a certain frequency, in Panama or in Cuba. Pineiro has sent special groups of his agents to be stationed in Panama, among them Maj. Anselmo Martinez, who arrived in Panama by way of Belize in May, 1977.

Half a dozen broadcasting stations in Panama City and elsewhere have been taken over by the Torrijos dictatorship. All others are very much controlled, as is the case with periodicals and wire services—"Prensa Latina," the Castro propaganda organization, excepted.

The game played with the university and high school students is very clever. Their control is in the hands of communist leaders among the professors and student body. They can easily and quickly fan passions, pushing the youngsters into violent activities with different degrees of virulence, especially as to the Panama Canal. They are given limited leeway, followed by beatings and persecution if they go beyond a certain limit.

Economically, Panama is very heavily indebted. The money spent by Torrijos and his friends in propagandizing the Panama Canal issue runs into many millions. The foreign debt is staggering and few know where the money goes or what is done with it. The economic crisis is part and parcel with political and administrative corruption.

Nepotism is rampant. One of Torrijos' brothers, Moises, who became wealthy as a trader and trafficker, is ambassador to Spain. Several nephews, after undergoing training in subversion and "guerrilla" warfare in Castro's schools for the foreign youngsters, now have important positions in the Torrijos dictatorship and they are known to work with the communists. Torrijos' brother-in-law, Marcelino Jaen, handles foreign relations and was the Panamanian official who signed the recent trade and friendship agreement with the Soviet Union.

"Panama will be the next 'Cuba,' under Soviet domination." This is the sad conclusion of those who know what is going on in Panama and the role that Communist Cuba plays in all of this in the service of Soviet imperialism.

Regardless of assurance to the contrary, the stage is set for a round of new pressures on the United States, designed to force it out of the Panama Canal Zone long before the year 2000. The Soviets and their Cuban and Panamanian followers are waiting.

It should be noted that General Torrijos has just completed another tour of Europe, with a final stop in Finland. Very little is known about the contacts Torrijos had while in Finland, which as we know, borders on the Soviet Union.

But it is well known that Torrijos admires Castro and approves his brand of a communist dictatorship. In an interview on Channel One of the French TV September 2, Torrijos said, (and I quote): "I greatly admire Fidel Castro because he changed his country's social structure despite the risks this entailed." (unquote) Does Torrijos want to change the social structure of Panama for a Communist one? What will happen then to the Canal treaties?

While Torrijos was flying back to Panama City from Washington, D.C., on September 9, after the ceremonial signing in Washington, he sent the following message to Castro: "As I fly across Cubas skies on my return to my fatherland, I greet you with friendship, as always. It is my wish that the Cuban people, under your skillful leadership, may continue on their march toward Latin American progress. In Latin America your name is associated with feelings of dignity linked to the elimination of all remnants of shameful colonialism."

That was the real Torrijos speaking!

SPEECH OF HON. HAMILTON FISH

I am honored to appear before this distinguished committee of the United States Senate in opposition to the surrender and giveaway of the American canal in Panama to the Communist existing government there.

I served for almost 25 years on the Foreign Affairs Committee of the House and for approximately 10 years was its ranking Republican member and was ranking Republican member of the Rules Committee for 4 or 5 years. I was also chairman of the first Congressional committee to investigate Communist activities, policies, principles and ideologies back in 1930 and believe I know as much about the aims and purposes of the Communists as anyone in the United States today. I have written several books on the subject.

I am convinced that the Communist tyrannical government at Moscow is the most monstrous form of government that has existed anywhere since Lenin seized power by force and violence in Russia 60 years ago.

The surrender and giveaway of the American canal in Panama to the Communist government of that nation might just as well have been given to Cuba or the Soviet Union and it is time the American people knew the truth of this aspect of this infamous blackmail treaty. If adopted it would be a day of infamy, playing directly into the hands of the Communist dictators at Moscow.

For years the leading Communists at Moscow have been endeavoring to encircle and surround the United States. The take-over by the Communist party and government in Panama would be the greatest victory the Soviet Union has achieved since our surrender to them at Yalta. Our committee back in 1930 did not persecute any liberals or radicals, as its main purpose was merely to find out the definite policies, principles and objectives of Communism at home and abroad. Those who testified such as the Communist candidates for President, minced no words—they hated our form of government. They hated both our religion and freedom. They preferred the red flag to an American flag and they favored a dictatorial, tyrannical government with a world capital at Moscow. There has been absolutely no change in their plans and objectives. The Communist hierarchy hates the U.S., our freedoms and human rights, the religion of our people and above all, because we are the only powerful nation with a limited arsenal of nuclear weapons and submarines that prevents them from Communizing the entire world. They have only one God and his name is Lenin who told them they must Communize the world and in doing so, if they exterminated three-quarters of the people and one quarter remained Communist, that would solve the problem.

This is the reason why they have built up an enormous arsenal of huge nuclear weapons and have a superiority over us for 2 or 3 to 1 in almost every category of nuclear weapons. That is the reason that they are going deeply underground to protect the Russian people whenever they get ready to attack us. They know as well as we do that we have no quarrel with the Russian people and have no desire for additional territory and will not turn on the nuclear button unless attacked. On the other hand, the Communists at Moscow who killed 30 million of their own people and Solzhenitsyn places it at 60, would not hesitate whenever it is to their advantage, to destroy between 100 and 130 million Americans in one night. The whole world would then go Communist within ten days time.

It is simply playing Russian roulette by trying to maintain that the Soviet Union and I don't mean the Communists of France or Italy, have changed their tactics or strategy. They are our enemies, and they are preparing to destroy the United States whom they regard together with the Chinese, as their bitterest enemy.

I want the American people simply to know the truth—and I have tried to convey that message to my old friend George Meany, President of the American Federation of Labor-CIO, who has been one of the most consistent opponents of Communism in this country and throughout the world, by the following letter.

SEPTEMBER 23, 1977.

MR. GEORGE MEANY,
815 16th St., NW.,
Washington, D.C.

DEAR MR. MEANY: I am writing to you as one of my old friends whom I have always admired for your strong stand against the spread of world Communism and for human rights. I confess that I was shocked to learn of your support of the surrender of the American canal to the Communist government of Panama. Not only is the president of Panama an avowed Marxist, but is the virtual head of the Communist People's Party—the only party that exists in Panama. I am informed that both his father and mother were Communists. We might just as well turn the canal over to the Soviet Union. This is nothing but a blackmail scheme by the Communists in Panama to get the equivalent of 700 million dollars from the United States along with the canal or twice the cost of the canal.

To me it is almost reasonable, aiding and abetting our enemies and in case of war, it would amount to treason. I hope when you have a chance to read the contents of the treaty, in which we agree not to build any other canal and in which we have no right to defend it after the year 2000, other provisions affecting adversely the interests of our own American wage earners in Panama, that you will consider, or at least not be active or use your influence for it with the Senators. Polls show that 2 or 3 to 1 are opposed to it everywhere and I believe as soon as the truth is known, that it will become ten to one.

I have always been on the side of peace—I opposed World War II until the attack on Pearl Harbor. I opposed the war in Vietnam and I am still opposed to war with the Soviet Union unless attacked. For that reason I urge strengthening our nuclear defense so no nation would dare attack us.

I honestly believe that if the Senate ratified the treaty, it would be the greatest Communist victory since Yalta and start an epidemic of sequestration of American property throughout the world. And that even the NATO will lose faith in our reliability to keep our commitments to them if we surrender the American canal to a Communistic government in Panama.

Mr. Kissinger, who prevented President Ford from seeing Solzhenitsyn, the greatest freedom fighter in the world and opposed Ford's three defense recommendations in his last speech to Congress is now more responsible than anyone else in aiding and abetting our enemies.

With kind regards and best wishes.

Sincerely yours,

HAMILTON FISH.

The veteran organizations; the American Legion and the Veterans of Foreign Wars, non-partisan organizations composed of Democrats, Republicans and Independents, have taken a very outspoken stand against the surrender of the American canal. Why? Because it is against our own security and strengthens the power of the Communists. I take the position openly and without any apologies to anyone, because this is a free country and I believe in the rights of all people to that freedom that does not exist in the Soviet Union, to say to this distinguished Senate committee that to turn over the canal to the Communist government of Panama is aiding and abetting our enemies and verges on treason. If it was in time of war it would be treason. Furthermore, I believe politically that 75 to 90 percent of the American people are unalterably opposed to this surrender to the Communists. If the treaty is adopted, Watergate would be a mere mosquito bite. If elected public officials, supposed to represent their people back home, defy them and surrender this canal, built by Theodore Roosevelt and the American people 68 years ago, and run efficiently ever since, to the Communists, that is their privilege.

There is probably not a single state that in any referendum, would support this blackmail treaty, aiding and abetting our enemies. No wonder that the American Legion, the Veterans of Foreign Wars and at least two-thirds of the members of the Democratic party, which control this Administration, are bitterly opposed to the surrender of the canal.

Any Senator, naturally has the right to vote any way he wants and to give his reasons. I am not here for the purpose of trying to prevent any Republican or Democrat from committing political suicide. I am not here even in behalf of my own party, for if I were, I would remain silent and hope that the treaty be adopted and that would bring back the Republican party in the biggest landslide that ever occurred. But I am here as an American who loves our country and wants to see its nuclear defense weapons strengthened immediately so no nation would ever dare attack and destroy the United States. And in conclusion I quote a statement made by Max Eastman, a well known former pro-Bolshevik radical and Socialist who said: "One thing, one thing only can save freedom and democracy and that is a clear and bold understanding. Freedom and democracy must have from its leaders incisive and uncompromising exposures of the barbaric nature of the Communist society and the devious methods of the Communist attack. The closer our military and economic cooperation may be, the more pitiless must these exposures be. You cannot save democracy by shutting your eyes to the horrors of dictatorship. You cannot stop the night from falling by turning the lamps down."

In case any supporter of President Carter when a candidate for office a year ago pledged never to surrender "actual control of the canal," should take exception to my criticism of the President or members of his administration, let me quote what former President Theodore Roosevelt said: "To announce that there must be no criticism of the President or that we are to stand by the President, right or wrong is not only unpatriotic and servile, but is morally treasonable to the American people. Nothing but the truth should be spoken about him or anyone else, but it is even more important to tell the truth—pleasant or unpleasant—about him than anyone else."

President Theodore Roosevelt was the most courageous and popular President in the last 100 years and if he had lived one year longer, he would have been nominated by acclamation for President by the Republican party, and would have been overwhelmingly elected. He was the sponsor for the building of the canal and

as a great admirer and supporter of T.R. having left the Republican Party to be elected three terms on the Progressive or Bull Moose ticket to the Assembly, I knew him politically and personally, probably better than anyone alive today except his own family. The very attempt to undo what he considered one of the most constructive acts in his great career is like impeaching him or sticking a dagger in his back in his grave at Oyster Bay. I would be derelict to the memory of this great American President if I did not raise my voice to defend his honor, integrity and patriotism.

PANAMA CANAL TREATIES—NO. 16

Mr. ALLEN. Mr. President, I am going to count this my speech No. 16 on the Panama Canal since the treaties were signed by the two heads of state.

Mr. President, I read today in the Washington Star a very interesting article touching on a matter about which perhaps all Senators should become knowledgeable. The article reports that U.S. Department of Justice sources have confirmed that there is a sealed narcotics indictment in the eastern district of New York against one Moises Torrijos, brother of the present Panamanian Dictator Omar Torrijos. The Washington Star newspaper story does not state the substance of the indictment, but it does report that the indictment has never been disclosed allegedly, because Moises Torrijos has not returned to the United States since the time the indictment was issued, apparently some time during 1972.

You know, Mr. President, I wondered at the time of the signing of the Panama Canal treaties why Moises Torrijos was not in attendance inasmuch as he is currently Ambassador to Spain and presumably would have wished to share in the celebrations held down at the Pan American building. At the time, it did seem strange that since diplomats from every Spanish-speaking country in the world did seem able to attend, yet the brother of the present head of the Panamanian Government found it inconvenient to share in the festivities.

Sometimes, Mr. President, I am slow to get the full picture, but I am beginning to understand the answers to some of the questions that have been troubling me, and there have been plenty of questions, Mr. President, about these treaties. Since reading the article in the Star, I have had brought to my attention certain other bits and pieces of information which perhaps should be further highlighted or recalled. Apparently, Mr. President, back some time in early 1972 or perhaps late 1971, Rafael Richard, the son of the Panamanian Ambassador to Taiwan—I believe the correct date was July 8, 1971—was arrested in New York carrying luggage containing some 150 pounds of heroin. Mr. Richard, who was fairly young for a diplomat, was traveling on a diplomatic passport signed by Mr. Juan Tack, whom Senators will recall negotiated with then-Secretary of State Henry Kissinger for the Kissinger-Tack agreement which formed the framework for subsequent negotiations leading to these proposed treaties now being considered in the Senate. But Mr. Richard was not on his first visit to the United States; he was instead on his fifth visit. And according to a New York Times article by Benjamin Welles, dated March 15, 1972, Mr. Richard had brought into the United States 150 pounds of heroin each trip. But, Mr. President, let us see what happened to Mr.

Richard. According to the New York Times—and, of course, that is the only information I have to go on as to this particular item, the information available in the newspapers—Mr. Richard was given the full privileges of diplomatic immunity and apparently allowed to leave the United States without further question.

Mr. Richard's uncle was not quite as lucky. As reported in the Times, his uncle, Guillermo Gonzalez, and I quote, "an intimate and former bodyguard of Moises Torrijos," was convicted of a felony charge related to heroin smuggling and sentenced to seven years in prison. If Mr. Gonzalez is in prison, perhaps he would know more about this matter, but I do not know whether he has been required to serve his full term and is, therefore, still incarcerated.

About this same time, Mr. President, three American narcotics agents were ordered expelled from Panama by Mr. Juan Tack on 24-hours notice. Mr. Tack asserted that the men, who were agents of the U.S. Bureau of Narcotics and Dangerous Drugs, were interfering with "the internal affairs of Panama." Some internal affairs, Mr. President, I might say, and some diplomats.

So, Mr. President, today we learned that there is a sealed indictment waiting for Mr. Moises Torrijos, Ambassador to Spain, waiting for Mr. Moises Torrijos up there in the eastern district of New York, waiting up there for some 5 years now with no public disclosure whatsoever that Ambassador Torrijos was being sought by our Government. Mr. Moises Torrijos may have known he is being sought by our Government. He found it convenient not to be in the United States over a 5-year period on any occasion. But, Mr. President, the American people did not know and the American people have got to have sharp eyes to pick this story up off the fifth page of the Washington Star to try to piece together just what is going on.

Now, there has been another recent sealed indictment, not 5 years old, but a fairly new sealed indictment which has recently been made entirely public. That indictment involves one Mr. Tongsun Park. Tongsun Park has shown no great inclination to return to the United States either, and quite properly the citizens of the United States have been advised that Tongsun Park is under indictment. Yet, Mr. President, Moises Torrijos is treated differently.

I hold no brief for Mr. Tongsun Park, but it does seem he received one type of treatment and Moises Torrijos another.

On Wednesday, I talked to some extent about the ironclad language used by our negotiators in securing the Panama Canal Treaty in 1903. I pointed out that our negotiators back in those days could and did draft a document which reflected a meeting of the minds, a document without ambiguity, and a document which could be enforced. I am pleased to report to the Senate, Mr. President, that the year following the negotiation of the treaty of 1903, our Government took the prudent step of negotiating with Panama a document entitled "A Treaty for the Mutual Extradition of Criminals." This extradition treaty of 1904 is also an ironclad document without ambiguity. The preamble reads this way, Mr. President:

The United States of America and the Republic of Panama, being desirous to confirm their friendly relations and to promote the cause of justice, have resolved to

conclude a treaty for the extradition of fugitives from justice between the United States of America and the Republic of Panama.

So, they set forth the purpose of this treaty pretty clearly there in the preamble. Article I of this treaty reads this way:

The Government of the United States and the Government of the Republic of Panama mutually agree to deliver up persons who, having been charged with or convicted of any of the crimes and offenses specified in the following article, committed within the jurisdiction of one of the contracting parties, shall seek an asylum or be found within the territories of the other: Provided, that this shall only be done upon such evidence of Criminality as, according to the laws of the place where the fugitive or person so charged shall be found, would justify his or her apprehension and commitment for trial if the crime or offense has been there committed.

We have been advised by the Washington Star that there is a sealed indictment handed down by a grand jury in the eastern district of New York against Ambassador Moises Torrijos, but we do not know what the charges are, we do not know what the evidence is. So, Mr. President, we are left to speculate whether this treaty of 1904 would apply. Presumably, the crime charged would be a felony. Presumably, the crime charged would justify his apprehension and commitment for trial if the crime or offense charged had been committed in Panama. Mr. President, I do not know where Ambassador Moises Torrijos is located today. Perhaps he is at his post in Spain, and perhaps the Department of Justice ought to see if we have an extradition treaty with Spain as we do with Panama. But one thing is certain, Mr. President, when I have referred to the regime in power in Panama as a gangster dictatorship, I have not used the term lightly.

Mr. President, I ask unanimous consent that an article from the Washington Star and an article from the New York Times be printed in the Record.

There being no objection, the articles were ordered to be printed in the Record, as follows:

UNITED STATES INDICTED BROTHER OF TORRIJOS, SOURCE IN JUSTICE DEPARTMENT
SAYS

The brother of Panamanian chief of state Omar Torrijos was indicted in New York five years ago on federal narcotics smuggling charges but U.S. authorities have never been able to arrest him, Justice Department sources have confirmed.

"There is a sealed narcotics indictment in the Eastern District of New York" against Torrijos' brother Moises, a knowledgeable department official said yesterday.

"It has never been unsealed because we have never found him back in this country to arrest him," this source said.

The Miami Herald reported yesterday that Atty. Gen. Griffin Bell told President Carter about a variety of allegations that members of Torrijos' family have been involved in smuggling drugs to the United States.

Department spokesman Robert Havel confirmed that Bell discussed the matter with Carter on October 3.

After inquiries from members of Congress, Bell briefed Carter on the situation. The President agreed with Bell's recommendation that the Justice Department provide the same briefing to congressional leaders, Havel said.

HOUSE MEMBER CHARGES NARCOTICS SMUGGLING INQUIRY TOUCHES "HIGHEST LEVELS" OF PANAMA GOVERNMENT

(By Benjamin Welles)

WASHINGTON, March 15—Representative John M. Murphy charged today that an investigation into heroin smuggling into the United States had touched the "highest levels" of the Government of Panama.

Mr. Murphy, Democrat of Staten Island, who is chairman of a House subcommittee on the Panama Canal, named Juan Tack, Panamanian Foreign Minister, and Moises Torrijos, Panamanian Ambassador to Spain, as the officials allegedly involved in narcotics. Mr. Torrijos is a brother of Brig. Gen. Omar Torrijos, ruler of Panama.

José Antonio de la Ossa, the Panamanian ambassador here, issued a statement vigorously denying the charges. He suggested that Mr. Murphy was reviving old charges because he had been "cold-shouldered" by Panamanian officials during his recent inspection visit to the Panama Canal.

He suggested too that Mr. Murphy was using the drug charges to impede progress toward a new Panama Canal treaty which if negotiated, would restore "sovereignty" over the Canal Zone to the Panamanian Republic.

Late yesterday Mr. Tack ordered the expulsion of three American narcotics agents from Panama within 24 hours. He asserted that the men, agents of the United States Bureau of Narcotics and Dangerous Drugs, had "intervened in the internal affairs of Panama."

The expulsion followed initial reports two days ago in the syndicated column of Jack Anderson linking Mr. Tack and Mr. Torrijos with narcotics smuggling. The first hint of the development came a week ago in a brief allusion by the Panama Canal subcommittee to "confidential" information passed to the subcommittee by the Bureau of Narcotics.

United States officials involved in the treaty negotiations, which have been under way here since June, declined to speculate whether the flareup would jeopardize the talks. Panamanian diplomats, who denied recent reports of an "impasse," said that they thought the talks would not be fundamentally affected.

Mr. Murphy said in an interview today that he and other subcommittee members had been briefed here on Jan. 24 by Customs Bureau agents placed at their disposal by Myles Ambrose, then Director of the Treasury's Bureau of Customs and now President Nixon's special consultant for drug abuse enforcement. The subcommittee was then preparing to visit Panama and the Canal Zone.

A passage from the unpublished report of the subcommittee dated March 8 and entitled "Overview of the Narcotics Problem in Panama" cited a recent drug-smuggling case involving Panamanians and stated in part:

"The [customs] briefing team concluded that based on the customs investigation this case reached into the highest levels of Panamanian officialdom and included Moises Torrijos, the brother of Gen. Omar Torrijos and the Panamanian Foreign Minister, Juan Tack."

The subcommittee report also asserted that this involvement "was confirmed by B.N.D.D. officers in the Republic of Panama on Feb. 23 during the subcommittee briefing in that country."

The State Department said that the bureau had denied "in writing" that its agents had implicated Mr. Tack or Mr. Torrijos in its briefings of the House subcommittee.

A spokesman for the Customs Bureau said that it had nothing to add to what it had told Mr. Murphy and his subcommittee colleagues.

Charles W. Bray 3d, the State Department spokesman, said that the department considered the expulsion of the three agents, Wilbur Plase, Ruben Monzon and Charles W. Cecil Jr., as unwarranted.

Mr. Murphy, a graduate of West Point and a decorated infantry commander in World War II and the Korean war, cited growing drug abuse among American servicemen and dependents in Taiwan, Okinawa, the Philippines, Vietnam, and, especially, Panama.

The subcommittee recalled details of two recent drug-smuggling cases that, it contended, involved Mr. Tack and Mr. Torrijos.

One concerned the arrest in New York last July 8 of Rafael Richard, son of the Panamanian Ambassador to Taiwan. Mr. Richard, who was 23, was travelling on a diplomatic passport signed by Mr. Tack, which gave him immunity from prosecution.

At the time of his arrest he was on his fifth visit to the United States, during each of which he had brought about 150 pounds of heroin, the report said.

He was with Guillermo Gonzales, his uncle, an intimate and former bodyguard of Moises Torrijos.

Mr. Gonzáles, who was believed to be the ringleader, was convicted and sentenced to seven years. The report said United States sources believe that Mr. Tack and Mr. Torrijos were not only sanctioning but were abetting this smuggling.

The other case involved Joaquin Gonzáles, former international transit chief of Tocumen International Airport at Panama, who was indicted in the smuggling of 1 million dollars' worth of heroin to Dallas.

Mr. Gonzáles was arrested by the United States authorities Feb. 6, 1971, when he entered the Canal Zone to attend a baseball game. He was flown to Texas to stand trial and was sentenced to five years. Mr. Tack exerted strong but unsuccessful diplomatic efforts to have him released, the subcommittee said.

THE PANAMA CANAL AND ALLEGATIONS OF DRUG TRAFFICKING

Mr. DOLE. Mr. President, Panamanian strongman Gen. Omar Torrijos will be in Washington tomorrow to meet with President Carter. Reportedly, they will discuss the proposed Panama Canal treaties, and the recent controversy circulating around differing interpretations of treaty language. There is another serious matter which has just come to my attention, which I hope will also be clarified during Torrijos' visit, or soon afterward. This involves allegations of direct involvement by General Torrijos and other members of his family in drug trafficking in the United States and elsewhere, that the distinguished Senator from Alabama (Mr. Allen) alluded to with regard to one incident.

Now, obviously the President of the United States cannot select the individual with whom he conducts his negotiations in international affairs. By the same token, however, our executive branch does have some choice in what is hidden or revealed to the public, which could bear upon those negotiations. It is my understanding that a number of documents now in the possession of the U.S. Drug Enforcement Administration have been "classified," which bear directly upon allegations of drug trafficking by General Torrijos. Those documents should be immediately turned over to the U.S. Senate for examination.

I am told that there is presently within the files of the Drug Enforcement Administration a large volume of materials bearing upon this matter. I have been given a list of 44 specific file codes containing information on the subject.

I am especially troubled to learn that an overt attempt was reportedly made to keep this information out of public purview by moving the intelligence files to another location for temporary safekeeping. I am advised that, just recently, perhaps to avoid embarrassment, these files were returned to the Drug Enforcement Administration's central office.

Mr. President, I do not like to jump to conclusions, and I do not necessary believe everything I am told. However, I do consider the source of this information to be sufficiently reliable to give me deep concern about the nature of the Panamanian leader with whom we are dealing. Suggestions that he—perhaps in conjunction with Fidel Castro—is involved in an illegal international drug operation is cause enough for concern. The allegation that these drugs are being funneled directly into the United States, and that Gener-

al Torrijos himself may be profiting directly from drug sales, makes the matter all the more serious.

SENATE SHOULD HAVE INFORMATION

At the very least, I believe the Justice Department—and the Drug Enforcement Administration in particular—should make its findings on this matter known immediately to the appropriate Senate committee or committees, which can then decide what effect the information might have on ratification of the Panama Canal Treaties. I believe the Subcommittee on Separation of Powers, of the Senate Judiciary Committee, would certainly be entitled to take a look at this material, along with the Senate Foreign Relations Committee, and perhaps others.

Mr. President, I am calling upon the administration to address this serious matter immediately. I believe that President Carter should discuss these allegations with General Torrijos and request a full explanation. There is no better time for this than tomorrow.

In addition, it would be useful for the President himself to examine the files in possession of the Drug Enforcement Administration, and approve their release to appropriate Senate panels for full investigation. If any portion of these allegations are found to be accurate, I hope that the necessary information will be made available to all Members of Congress, and to the American public before the Panama Canal Treaty ratification process is completed.

Mr. President, as the Senator from Kansas indicated, the list containing DEA file references contains about 44 different references. In an effort to be totally cautious, and after making investigation as to whether or not the numbers themselves were classified, and being told that perhaps they were not, but to be on the safe side, after having experienced just last week with the State Department, the Senator from Kansas will not make public the reference numbers, but the Senator from Kansas does believe it is appropriate, at the proper time, to turn these references over to the proper committee, and I would hope that, based on the information available, the files could be subpoenaed or otherwise brought before the appropriate committees in Congress, perhaps in executive session, and looked into very carefully.

But it seems to me that if someone were to ask, "How does this bear on the ratification of the treaties," the Senator from Kansas might state that if these allegations were true, it would have a great bearing on the ratification of the treaties, because it involves one of the principal participants and that individual's integrity.

So I would hope, based upon the statement that, come tomorrow, the President will discuss this matter, if he checks with the DEA and finds the information to be accurate, with General Torrijos.

Mr. President, I yield back the remainder of my time.

Mr. BAKER. Mr. President, I once again commend the Senator from Kansas for his diligence and care in pursuing aspects of this matter which is of so much interest to us. The remarks made by him today, and earlier by the distinguished Senator from Alabama, are in excess of the information available to me, but I would like to add to the record that part that I know, so that he will be seized with what I know, and can determine where to go from here.

The majority leader is present and can corroborate what I am about to say, but I see no reason for not reporting to the Senate that the Attorney General briefed us in connection with certain matters in this respect, and he briefed the chairman and the ranking Republican member of the committee in certain respects. I have suggested to the Attorney General, and it is my understanding that he agreed, that the appropriate jurisdictional committees of the Senate be briefed on such matters as might be relevant to the subject of their consideration.

Mr. President, the only reason I say this is to let the Senator from Kansas know that there has been a contact with the administration, and that it has been my insistence, and I believe that of the majority leader as well, that the Senate be informed on whatever aspects may be relevant, if any. I do not know the details of the transactions or the allegations. I cannot speak for their truthfulness. But I thought, in view of the interest and importance of the matter, the Senate ought to be kept fully informed.

Mr. ROBERT C. BYRD. Mr. President, the minority leader has correctly stated the situation as to our being briefed, and we have been assured we would continue to be briefed as to any further information which comes to the attention of the Attorney General upon this matter.

Mr. BAKER. Mr. President, I would only reiterate one part, to make sure it is entirely clear: It was at our insistence that the Department of Justice make sure that the relevant committees of the Senate be fully apprised of whatever information might be relevant to our consideration of relevant matters.

Mr. DOLE. Mr. President, I appreciate being informed that the matter is moving along. Does that include information as to the allegation that the files may have been removed and then returned?

Mr. BAKER. No. I prefaced these remarks by saying that the Senator from Kansas had more information than I had, and it was to that that I was referring.

Mr. ROBERT C. BYRD. Mr. President, I want to say that I have full confidence in the intention of the Attorney General of the United States to bring to our attention the full relevant information, as he has done, and I have no doubt that he will continue to bring to the attention of the joint leadership and Senate committees any information that he has bearing on this matter.

Mr. President, I yield the floor.

Mr. THURMOND. Mr. President, I commend the able Senator from Kansas for bringing this information to the Senate. It would be my hope that the files referred to by him, that contain such information, would be made available by the administration to the Separation of Powers Subcommittee of the Committee on the Judiciary. I feel that these charges are too serious to be passed on lightly. I feel that this matter should be gone into carefully, and that there should be no action on the part of the administration to withhold files. I do not predict that they will, but I feel very strongly that the information in these files should be made available to the Members of the Senate.

Mr. HATCH. Mr. President, as ranking minority member of the Separation of Powers Subcommittee, I also would like to thank the

distinguished Senator from Kansas for his enlightenment of the Senate, and I think the country, today.

I have had a lot of reports from various sources that the Torrijos regime has been participating for a number of years in drug trafficking. I have, for the most part, chosen to carefully watch those reports, but have not had any particular source that I was willing to rely upon, until today, to give me any indication or information that would lead to reliable or verifiable proof of such trafficking.

We have held some extensive hearings in the Separation of Powers Subcommittee, and we have tried to do everything in our power to bring out a variety of matters concerning the Panama Canal on both sides. I commend the distinguished Senator, and I do believe that the administration ought to provide us with these files, ought to provide us with the appropriate people who can testify, and let us know who they are, so that we can once and for all get this matter out in the open, and determine exactly what type of regime we are dealing with, and above all, what kind of a person we are dealing with in Omar Torrijos.

The chairman of the committee is here on the floor, and I do not mean to usurp his function by making this particular request, but let me just say this, for myself personally: I feel that it is a very reasonable request, and we ought to be able to look into the matter. I think for the benefit of all Members of the Senate, and certainly for the benefit of the country as a whole. As everyone knows, this Panama Canal problem has become one of the paramount problems of our day. There are differing viewpoints and differing sides to this question, but I would like to see both sides brought out, and not just one side. I am not sure we have had enough brought out on the impact of the treaty side to keep people properly informed.

I think the people should know if there is evidence of drug trafficking, and if the evidence you have indicated can be obtained, I think we ought to see it.

I thank the Senator from Kansas for his statement on the floor of the Senate, and certainly want to give any support I can to the committee and to the American people.

[From the Congressional Record—Senate, Oct. 17, 1977]

TREATY AMENDMENTS WOULD CONFIRM JOINT STATEMENT

Mr. DOLE. Mr. President, I am today submitting two amendments to the "treaty concerning the permanent neutrality and operation of the Panama Canal" which is now pending before the U.S. Senate. My amendments are based upon the joint statement issued by President Carter and Panamanian Gen. Omar Torrijos last Friday concerning American defense and passage rights to be guaranteed under this treaty. The Carter-Torrijos statement was intended to reconcile differing interpretations of our rights to defend the canal and to transit the canal quickly in time of crisis. My amendments are intended to clear up the ambiguities in the treaty itself which caused those differences in interpretation. In so doing, I am using virtually the same language contained in the joint statement of October 14.

A POSITIVE STEP

I think that the joint statement issued on Friday by President Carter and General Torrijos was a step in the right direction in clearing up confusion over our defense and passage rights under the Panama Canal Treaty. This had become a source of extreme concern to myself, and to many other Members of the Senate. The Carter-Torrijos statement indicates that there is, at least, some agreement between the two heads of state about U.S. rights under the treaty. But it does not end there. The solution is not that simple.

Since the leaders of both nations have agreed upon this more specific language, it should be incorporated into the treaty itself. There is no longer any justification for leaving the treaty language ambiguous. In fact, it is essential that the treaty itself be modified to reflect the agreement.

AGREEMENT MUST BE WRITTEN INTO LAW

It is important to remember that the joint statement, by itself, is not binding. It has no legal effect. In fact, General Torrijos announced on his return to Panama that he did not sign anything while he was in Washington. So I would suggest that he may not think it is even binding at all. Neither Carter nor Torrijos will occupy positions of authority when the treaty provisions becomes significant in the year 2000, so there must be some basis in law to insure that their pledge will be honored.

It is for that reason, that I am introducing these two amendments to the treaty on permanent neutrality, containing language which is virtually identical to that in the Carter-Torrijos statement.

Because my amendments seek to incorporate the same language used in the statement, I trust that the administration will have no objections to their adoption by the Senate. For several weeks now, the administration has argued that any amendments or reservations to the Panama Canal treaties would be unacceptable because they would require renegotiation of certain portions of the treaties.

But the Carter-Torrijos agreement disproves the notion that renegotiation of certain parts of these treaties is impossible. It disproves the notion that the present proposal is necessarily "the best treaty we can get."

In fact, improvements in both the basic treaty and the treaty on permanent neutrality are both possible and practical. I believe that Congress has a responsibility to continue to press for direct clarifications and improvements in both treaties. Certainly, the joint statement issued last Friday would never have been made if congressional pressure for clarification had not been exerted during the past several days.

Previously, I introduced amendments and reservations bearing on other aspects of these treaties as well. Each of them is based upon genuine concern about significant portions of the treaties. I do not undertake these modification efforts lightly. But I do think that this recent instance has demonstrated just how important it is that all of us in the Senate continue to carefully analyze this treaty for possible defects or omissions. And if we find them, we must seek to correct them. This is our constitutional responsibility and our duty to the American people.

Mr. President, I ask unanimous consent that the text of the amendments be printed in the Record at this point.

There being no objection, the amendments were ordered to be printed in the Record, as follows:

AMDT. No. 7 (EXEC. 95-1)

At the end of article IV, add the following: "Each of the Parties shall, in accordance with their respective constitutional processes, defend the Canal against any threat to such regime of neutrality, and shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal. Any United States action shall be directed at insuring that the Canal shall remain open, secure, and accessible, and such action shall not be directed against the territorial integrity or political independence of the Republic of Panama."

AMDT. No. 8 (EXEC. 95-1)

At the end of the first paragraph of article VI, add the following: "The provisions of this paragraph are for the purpose of, and shall be construed as, assuring the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, assuring that such vessel go to the head of the line of vessels awaiting transit of the Canal, in order to transit the Canal rapidly."

THE PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, during the previous 3 weeks beginning September 26 and running through October 14, the Committee on Foreign Relations held a series of hearings on the proposed Panama Canal agreements. During that 15-day work period, the committee devoted 11 days to the consideration of these agreements, hearing a total of 68 witnesses, including 16 executive branch witnesses, 15 witnesses from Congress, and 37 outside experts and public witnesses. Regrettably, neither President Ford nor Governor Reagan was able to accept the committee's invitation to

testify on this matter, despite our best efforts to accommodate them.

I believe, nevertheless, that the committee has compiled a full and complete hearing record, both pro and con. We will further endeavor to get these hearings printed just as quickly as we can for the information of the Senate, the Congress, and the public-at-large.

In view of the clarifying statement issued last Friday, the committee will meet Wednesday morning to go over this matter with the conegotiators, Ellsworth Bunker and Sol Linowitz. While nothing further is scheduled beyond this meeting, the committee in the days ahead, I am sure, will be discussing how it wishes to proceed. The necessity for further hearings, it seems to me, will depend in very large part on any gaps that may be uncovered in reviewing the hearing record established thus far.

I want to thank all the members of the committee for their diligence and cooperation throughout the committee's hearing process on the proposed treaties and I ask unanimous consent that a complete list of all the witnesses heard by the committee be printed in the Record.

There being no objection, the list was ordered to be printed in the Record, as follows:

LIST OF WITNESSES TESTIFYING ON THE PROPOSED PANAMA CANAL AGREEMENTS WHO APPEARED BEFORE THE COMMITTEE ON FOREIGN RELATIONS, SEPTEMBER 26-OCTOBER 14

ADMINISTRATION WITNESSES

Monday, September 26:

The Honorable Cyrus Vance, Secretary of State.

The Honorable Ellsworth Bunker, Ambassador at Large and Co-Negotiator, Panama Canal Treaties.

The Honorable Sol Linowitz, Co-Negotiator, Panama Canal Treaties.

Tuesday, September 27:

The Honorable Harold Brown, Secretary of Defense.

General George S. Brown, Chairman, Joint Chiefs of Staff.

Adm. Robert L. J. Long, Vice Chief of Naval Operations.

Lt. Gen. D. P. McAuliffe, Commander-in-Chief, U.S. Southern Command.

Thursday, September 29:

The Honorable Griffin B. Bell, Attorney General.

The Honorable Herbert J. Hansell, Legal Adviser, Department of State.

The Honorable Clifford L. Alexander, Secretary of the Army.

Maj. Gen. H. R. Parfitt, U.S. Governor of the Canal Zone.

The Honorable William J. Jorden, U.S. Ambassador to Panama.

Friday, September 30:

The Honorable Brock Adams, Secretary of Transportation.

The Honorable Richard N. Cooper, Under Secretary for Economic Affairs, Department of State.

The Honorable Anthony Solomon, Under Secretary for Monetary Affairs, Department of the Treasury.

Howard F. Casey, Deputy Assistant Secretary for Maritime Affairs, Maritime Administration.

CONGRESSIONAL WITNESSES

Tuesday, October 2:

Senators—The Honorable Strom Thurmond, The Honorable Ernest F. Hollings, The Honorable James B. Allen.

Congressmen—The Honorable Samuel S. Stratton, The Honorable Baltasar Corrada, The Honorable Daniel J. Flood.

Wednesday, October 5:

Senators—The Honorable Mike Gravel, The Honorable Paul Laxalt, The Honorable Robert Dole, The Honorable William L. Scott, The Honorable Jesse Helms.

Congressmen—The Honorable John M. Murphy, The Honorable Larry McDonald, The Honorable Donald M. Fraser, The Honorable Robert L. Leggett.

OUTSIDE EXPERTS AND PUBLIC WITNESSES

Admiral Thomas H. Moorer, USN-Ret.
 Admiral Elmo R. Zumwalt, Jr., USN-Ret.
 General Maxwell Taylor, USA-Ret.
 Mrs. Patricia Fulton, President, Pacific Civic Council, Canal Zone.
 Mrs. Charlotte Kennedy, President, Cristobal-Margarita-Brazos Heights Civic Council, Canal Zone.
 Mr. Harold Green, President, Gamboa Civic Council, Canal Zone.
 Mr. Louis Fattorosi, Vice President, Canal Zone Federation of Teachers.
 Tuesday, October 11:
 Professor Jorge Dominguez, Center for International Affairs, Harvard University.
 Dr. Abraham F. Lowenthal, The Woodrow Wilson Center.
 Professor Donald Dozer, University of California.
 Professor Lewis Tambs, Arizona State University.
 Robert M. Bartell, Liberty Lobby.
 Franklin Delano Lopez, Chairman, Puerto Rico Democratic Party.
 Phillip Harman, Canal Zone Non-Profit Public Information Corp.
 Wednesday, October 12:
 William P. Thompson, President, National Council of Churches.
 John Cardinal Krol, Archbishop of Philadelphia on behalf of U.S. Catholic Conference.
 Morris Levinson, Vice President, Synagogue Council of America.
 Professor Donald E. Miller, Church of the Brethren.
 Kenneth Boehm, Young Americans for Freedom.
 Mrs. (Leopoldo) Rose Marie Aragon, Mr. Richard Eisenmann, Panamanian Committee for Human Rights.
 Dennis Small, U.S. Labor Party.
 Thursday, October 13:
 Lane Kirkland, Secretary-Treasurer, AFL-CIO.
 Martin Gerber, Vice President, United Auto Workers.
 Alfred J. Graham, President, Canal Zone Central Labor Union and Metal Trades Council, AFL-CIO.
 Capt. J. R. Williams, President, Panama Canal Pilots' Association, Canal Zone.
 Rene C. Lioeanjie, Regional Director, Central & South America National Maritime Union, Canal Zone.
 John Fred Schlafly, Chairman, Emergency Task Force on the Panama Canal, American Council for World Freedom.
 Gary L. Jarmin, The American Conservative Union.
 Dr. Herminio Portell-Vila, Editor, Radio Free Americas, American Security Council.
 The Honorable Hamilton Fish, Former Congressman from New York.
 Friday, October 14:
 The Honorable Henry A. Kissinger, Former Secretary of State.
 The Honorable Dean Rusk, Former Secretary of State.
 Robert Charles Smith, National Commander, The American Legion.
 Frank D. Ruggiero, National Commander, AMVETS.
 Maj. Gen. J. Milnor Roberts, USAR, Executive Director, Reserve Officers Association.
 Col. Phelps Jones, USA-Ret., Veterans of Foreign Wars.

THE PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations continued hearings on the Panama Canal treaties on Friday, October 14, receiving testimony from the following witnesses:

- (1) The Honorable Dean Rusk, Former Secretary of State.
- (2) The Honorable Henry A. Kissinger, Former Secretary of State.
- (3) Panelists:
 Robert Charles Smith, National Commander, The American Legion.

Frank D. Ruggiero, National Commander, AMVETS.

Maj. Gen. J. Milnor Roberts, USAR, Executive Director, Reserve Officers Association.

Col. Phelps Jones (USA-Ret.), Director, National Security & Foreign Affairs, Veterans of Foreign Wars.

I ask unanimous consent that the prepared text of the statements of these witnesses be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

REMARKS BY DEAN RUSK

Mr. Chairman and distinguished Senators.

I am very glad to be here this morning to express my views on the Panama Treaties now pending before you. I am especially glad to be here with my distinguished friend Mr. Henry Kissinger. The fact that we are here together is a reminder that four Presidents and four Secretaries of State, of both political parties, have been closely involved in the negotiations which have led to the documents now before you for your consideration under the Constitution. Other Presidents in this post-war period have also felt the pressures for a change in the status quo originated by the Treaty of 1903.

My remarks will be relatively brief and will consist of the two or three main considerations which led me to support the proposed Treaties with Panama. Since you are exercising a solemn constitutional responsibility, you will necessarily go into every aspect of these Treaties in great detail but as a private citizen, I propose simply to point to those aspects of the problem which seem to me to be decisive in forming my own opinion.

I begin with the conviction that the Treaty of 1903, as amended, offers a very fragile platform on which to try to stand in these closing decades of the 20th Century. In the mid-1960's, during and after the tragic riots in Panama, it became apparent to us that history had overtaken the status quo in Panama and that a new relationship would have to be found if our vital interests in the operation and safety of the Canal were to be assured. Here I do not rest upon the murky circumstances surrounding the secession of Panama from Colombia and the conclusion of the Treaty with Mr. Bunau-Varilla, a citizen of France with uncertain credentials as a representative of Panama. It is a fascinating story with a colorful cast of characters. But I see little point in our now wearing sack cloth and ashes over what our grandfathers did in another historical era, when what happened in most of the world was determined by decisions made or not made in a handful of western capitals. We should not, however, be under the illusion that those events could stand the test of modern standards of treaty making.

The 1903 Treaty seemed to me to take its place alongside the so-called "unequal" treaties which certain western powers imposed upon China in the Nineteenth Century and the Capitulations which gave certain powers extraterritorial rights in the Ottoman Empire. Even if we had acquired absolute title to the Canal Zone, which we did not, the general international policy and practice of decolonization would have rendered the status quo in Panama untenable.

The Vienna Convention on the Law of Treaties is now pending before your committee and your action upon it has been delayed for reasons well known to you. I would suppose, however, that the contents of that Convention already apply to the United States and to other nations since the Convention simply codifies established rules of customary international law.

It seems to me that the 1903 Treaty with Panama is vulnerable to the doctrine of "fundamental change of circumstances" (*rebus sic stantibus*) found in Article 62 of the Convention. In my view, the United Nations Charter contains the overriding statement of international law and policy—despite our occasional irritations over the conduct of Members in some organs of the UN organization itself and the many failures of Members of the world community in giving effect to Charter precepts. The Charter insists upon the "sovereign equality of all its Members" (Article 2, paragraph 1) and calls for respect for "the equal rights . . . of nations large and small" (Preamble). I have already mentioned decolonization, well established both in principle and practice by the Charter and by the history of this post-war era.

Treaties are the primary source of international law partly because they are drafted in relatively precise terms of legal obligation and, more importantly, because they represent the consent of the sovereign parties who agree to them. We can not seriously suggest that the 1903 Treaty represents the consent of Panama or

of its people. It would be accurate to say that if the United States were a party to a treaty which became obnoxious to our public policy and repugnant to our people, we would move to denounce it and relieve ourselves of its burdens.

Article 64 of the Convention on the Law of Treaties states, "if a new preemptory norm of general international law emerges, any existing treaty which is in conflict with that norm becomes void and terminates." Lawyers have debated at considerable length this doctrine of "jus cogens" and the identity of the norms which can be said to be preemptory in character. They are probably few in number. I would suggest to you that, in the modern world, one nation can not maintain a presence within another nation without the consent of the second nation. If the situation in Eastern Europe is different, the contrast merely emphasizes the general rule and provides no precedent for the United States. We have withdrawn from valuable bases and installations in Libya, Ethiopia and Pakistan; we have seen the use of bases in Turkey sharply restricted by that Government; we withdrew our forces from France on the demand of President de Gaulle. I can imagine the astonishment on President de Gaulle's face had I been instructed to tell him that we could not withdraw our forces from France because their presence was covered by an agreement between our two countries. We know that such bases and personnel as we have in other countries require the consent of the governments concerned and that some of them have charged us very high prices for that consent. The 1903 Treaty with Panama is not an adequate substitute for such consent: it is not an arrangement which could be negotiated in this latter part of the 20th Century. I do not know whether President Theodore Roosevelt was accurately quoted in a remark about Panama: "We wanted it; we took it." But let us be under no illusion—an attempt to maintain our position in the Panama Canal Zone on the basis of the 1903 Treaty would be an act of force—as in Eastern Europe. We can choose that course if we are prepared to pay the heavy political, economic and military costs involved.

In concluding my comment on the status of the 1903 Treaty, let me add that I do not believe that we could afford to allow the validity of that Treaty to be tested in the International Court of Justice. I am glad that that Treaty has not been pursued in the General Assembly of the United Nations where I would suspect we would be almost alone in the voting. Some of our closest friends would leave us because of considerations of general policy. When the United Nations Security Council met in Panama in 1973 and had before it a resolution on Panama, hostile to United States interests, it was necessary for our representative to exercise a veto, with no Member of the Council voting with us. There were 13 "yes" votes, the U.K. abstained, and the United States cast the only negative vote. Close friends such as France, Australia, Austria and Kenya voted against us.

An alternative is to try to safeguard our interests in the Panama Canal by agreement between ourselves and Panama in a modern setting. There are very strong feelings among the peoples of our two countries, feelings which make it very difficult for governments to find agreement with which all can be satisfied. These feelings will be further acerbated during the present debate in both countries about the new treaties; already what is said in one country is being used to inflame feelings in the other country. Opponents of these treaties object to our making such agreements with a dictator. Having been involved with this problem before the present regime in Panama came to power, I would suggest that the more democratic the government in Panama, the more insistent they would be on a prompt and fundamental change in the arrangements regarding the Canal.

Our national interest lies in access to and the safety of the Panama Canal itself, not in a continuation of our special position in the Zone. I believe that our interest in the Canal includes a residual responsibility to the maritime nations of the world and to certain nations of our own hemisphere for whom the Canal is a life line. But surely we should attempt to satisfy these interests by agreement and should seek to engage the friendship and cooperation of the Panamanian government and people in the decades ahead. We can give ourselves a chance to repair the injuries we have inflicted upon national pride and individual dignity and proceed in the future on the basis that we and the Panamanians need each other in these matters.

We must take into account, however, the possibility that events will not work out as we now hope. Under the new treaties, we shall have 23 years to test the ability of Panama and ourselves to proceed on the basis of agreement. The responsibilities which we would have until the year 2000 clearly make it possible for us to insure the operation and safety of the Canal. Beginning with the year 2000, questions regarding passage and safety of the Canal would be governed by the provisions of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. Under Article IV of this Treaty, "The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this

Treaty." The joint responsibility of the United States and Panama for that "regime of neutrality" as spelled out in the Treaty gives us, in my judgment, all that we need to maintain our essential interests in the matter, namely, passage and the security of the Canal itself.

I am aware, Mr. Chairman, of the discussion which has occurred about whether Article IV of the Neutrality Treaty is understood in the same way by both ourselves and Panama and that discussions have been going on between Senators, the Executive Branch and Panama on that point. It would be inappropriate for me to inject myself into those discussions at this point. I might offer one observation, however, which may be relevant. I hope that we and Panama would not get tangled up with each other over the word "intervention". That is a word which has accumulated many barnacles over the years and carries with it memories which we ought to try to forget. What we are interested in is access to and the security of the Panama Canal. Measures to assure its passage and safety do not mean interference in the internal affairs of Panama.

In any event, I do not believe that we should approach such matters in terms of the worst cause imaginable but rather through a genuine desire and expectation to work things out on an amicable basis. Providence has not given us the ability to pierce the fog of the future with accuracy and the year 2000 is a long way off. Perhaps we should not, today, try to answer every problem which might be posed to some future President and Congress. I must confess, however, that Article IV of the Neutrality Treaty played a major role in my own decision to support these two Treaties. If, God forbid, it should ever become necessary for a President and a Congress to take strong measures to keep the Canal functioning and safe, they would be in a far stronger position to do so under the Treaties of 1977 than under the anachronistic Treaty of 1903.

Thus, whether we are thinking of the principles upon which we hope to see a cooperative community of nations move into the future or are thinking about a hard headed approach to adverse contingencies which may lurk in the future, it seems to me to be to our advantage to give effect to these two new Treaties. The consequences of not doing so could be very severe. I see no point in inviting these consequences upon ourselves now when we have a good chance to avoid them altogether.

STATEMENT OF THE HONORABLE HENRY A. KISSINGER

Mr. Chairman, I am pleased to have the opportunity to express my views on the proposed treaties with Panama which are before you. Over a period of years I participated in the negotiations and have given much thought to the question of how we can best assure in the decades ahead our interest in the free, neutral, and efficient operation of the Panama Canal.

You have already heard from the Secretaries of State and Defense from Ambassadors Bunker and Linowitz, from the Joint Chiefs of Staff and other officials of the Administration. You have had an opportunity to assess the detailed provisions and background of the two new treaties and the Administration's reasons for urging that the Senate advise and consent to ratification. In supporting ratification I want to address not the detailed clauses of the agreement but some fundamental issues raised by the treaties.

Our nation's foreign policy must be based on a conception of enduring national goals and permanent responsibilities, not on the accidents of personality or change for the sake of novelty with the advent of each new Presidential Administration. The future well-being and security of this country can never be a partisan issue. They affect every American, and, given our central role, every human being concerned with the preservation and strengthening of the cause of freedom.

Our substantial stake in the Panama Canal is a case in point. The United States has a vital interest in the free, neutral, and efficient operation of the Canal. This interest cannot be compromised; we cannot foresee the day when it will be inconsequential.

Up to now this interest has been identified with the precise treaty relationship we established in 1903 under vastly different circumstances. But four successive Presidents and their Secretaries of State, representing both political parties, have been persuaded over a period of thirteen years that a new treaty relationship with Panama is more likely to serve the long-term security and foreign policy of the United States; above all that it would best assure what is the essence of our interest: the efficiency, neutrality, accessibility, and security of the Canal. All four Presidents come to the view that the Treaty of 1903 no longer adequately assures that interest. The present arrangements include provisions which are no longer

essential and which could over time actually make protection of our vital interests more difficult by forcing us into actions increasingly in conflict with our traditional allies in the Western Hemisphere.

It is my conviction that the two treaties recently negotiated with Panama do indeed protect our long-term interest in the Canal more effectively and under conditions more in keeping with present-day realities than is possible under the 1903 Treaty.

We must recognize that however we in the United States may view that Treaty, the rest of the world and especially the nations of the Western Hemisphere do not regard it as an equitable and freely negotiated agreement. It was reached in ambiguous circumstances and no Panamanian ever signed it. Some even question its legality. To insist on these arrangements would mean that over time we would be compelled to fall back on the use of force as the ultimate basis for our presence. This we should be prepared to do when our vital interests can be defended in no other way. But this is not the case here because the treaties give us a clear, and on balance a better, alternative.

Under the terms of the new Panama Canal Treaty, nothing of real significance to us in the existing arrangement for management and defense of the Canal will change during the remainder of this century. The United States will continue to control operation of the Canal; United States military forces will continue to provide for defense of the Canal from within Panamanian territory. At the same time, the new treaty arrangement establishes a cooperative working relationship with Panama which will enhance our ability to ensure the Canal's security and efficient operation, provide for an orderly transition, and increase Panama's stake in the long-term secure and neutral operation of the Canal.

After the year 2000, when management of the Canal passes to Panama, Article IV of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal will become controlling. The Neutrality Treaty not only establishes the legal obligation of both Panama and the United States to maintain a permanently neutral Canal, it also defines neutrality clearly in terms of concrete standards for the operation of the Canal which both parties are pledged to maintain. Article IV makes the United States a guarantor of that permanent neutrality. It thus gives the United States the continuing right, unilaterally if necessary, to defend the Canal and its operation against threats to the neutrality of the Canal—and thus, the ability to defend the Canal for the indefinite future. And this same regime of neutrality, and our right and responsibility to underwrite it, will apply as well to any other international waterway that might be built in Panama in the future.

Furthermore, under Article V of the Neutrality Treaty, Panama would relinquish the right to invite or accept foreign military forces or foreign military installations anywhere in the Republic. This would bar Panama from engaging in an alliance with any other power in a way which involved the presence of military personnel on its soil. By the same token, Panama's breach of that commitment would entitle and oblige the United States to take appropriate action to ensure the Canal's neutrality.

We would not, in short, have a general right of "intervention" in Panama's internal and domestic affairs. Nor would we want such a right. But we have under the new treaties the right and obligation to take such action as is required to ensure that the Canal remain permanently neutral—free of the threat of foreign military presence and forever open to the ocean-borne commerce of the world on a non-discriminatory basis.

The new treaties will establish a far stronger legal underpinning and political environment for the protection of our interests in the Canal while retaining all the essentials of assuring the Canal's security. Their ratification is thus an opportunity to advance fundamental American foreign policy interests. Their rejection, on the other hand, would be read by the nations of the Hemisphere as a demonstration that this nation stands on force as the final arbiter even when a constructive alternative is available. Such a course would be unnecessarily costly to many other of our interests, particularly to the solidarity and alliance of the Western Hemisphere nations that has been central to our foreign policy for generations. And I am convinced that we shall not again be given the opportunity to safeguard and advance our interests on terms as favorable as those which have just been negotiated. The moment when we are clearly strong enough to defend our rights in the Canal and while the Canal is free of immediate threat and menace provides the best opportunity to preempt a potential crisis and to secure the future of the Canal on mutually beneficial terms.

Let me turn now to some of the concerns and questions that have been raised with respect to the new treaties.

First, some have asked what would happen if Panama were to abrogate the treaties. There is no question that this is a possibility. But it must be viewed against the near-certainty that the 1903 Treaty will not be accepted any longer either by Panama or by the other nations of the Hemisphere. The question therefore is which arrangement puts us in the best legal, political, and military position to protect our rights and interests if we are forced to do so by the unilateral action of Panama. I believe that the new treaties will significantly *reduce* the risks of abrogation, and will also create far better conditions in which we could defend our rights if abrogation should occur.

By establishing a relationship of shared responsibility and benefit, the new treaties make Panama a partner in a successful Canal enterprise. They increase Panama's stake in safeguarding the vital interests we wish to assure—a free, open, safe, and well-run Canal. The new arrangement accords with the reality that consent and cooperative endeavor are the only bases for secure operation of a canal which is located within Panamanian territory and even now is run by a predominantly Panamanian labor force. But if, despite everything, we have to act to defend the Canal, we would be in a far stronger position to do so in the name of a 1977 treaty freely negotiated and signed in the presence of the heads of government of most of the Western Hemisphere nations than in the name of an agreement concluded seventy five years ago and which every Latin American nation in every recent meeting of the Organization of American States has repeatedly urged us to replace.

One of the strongest arguments in favor of ratification is in fact its impact on cooperative Western Hemisphere relationships. Our decisions on these treaties will testify to them whether or not we are willing to resolve disputes with them on the basis of negotiation. This does not mean that ratification of the treaties will resolve all differences between us and our neighbors to the south. Our capacity for cooperation, understanding, and imagination will be tested in this Hemisphere long after the Panama issue is resolved and for as far into the future as one can see. There will be many who do not wish us well in the area even if we ratify the treaties. But failure to ratify will provide hostile forces with a permanent issue of incalculable value around which to rally and encourage a vast new tide of anti-American sentiment and make it politically impossible for our friends to rally to our side.

I find it significant that no Hemisphere leader, regardless of what his private feelings on this issue might be, feels able publicly to take, any position other than that of strongest support for the modernization of the 1903 Treaty. This reflects the depth of public sentiment on the issue. No government and no public opinion in any of the countries of this Hemisphere would be willing to support us if we now refuse to modernize the Canal relationship. We would witness a gradual deterioration of our relationships even when some leaders might prefer to retain constructive ties. If the treaties are accepted, on the other hand, our many friends in the Hemisphere will be enabled to cooperate in the development of a constructive Western Hemisphere policy.

Another question which has been raised is whether the neutral status of the Canal would mean that hostile warships could transit the Canal and, in effect, benefit from U.S. protection. I can only comment that the United States has and must continue to have at its disposal other means to defend its vital security interests in any such situation. The United States must have the capacity to control the sea lanes; hence we must be able to prevent hostile ships from reaching the Canal. If we do not maintain that capability, we are in a perilous condition indeed and the provisions of a legal document will be precious little help.

I recognize the deep feeling of many Americans who wish, after the Vietnam tragedy, to see an end to yielding and retreat by the United States. No one can appreciate such concerns better than one who strove for an honorable outcome during the Vietnam period. But the Canal is not the issue to select to demonstrate that we remain strong and resolute. Panama is the smallest and weakest of nations. We are not "giving" the Canal to Panama; we are, rather, ensuring our ability to protect it. By taking constructive action now to revise our relationship with Panama in an atmosphere free of physical pressure, while we are still able objectively to assess the long-term risks and benefits, we will be demonstrating fundamental strength, not weakness. It is just this ability to distinguish between symbol and reality, to plan for future needs and to take timely action to advance our basic interests that is the essence of a strong and effective world policy.

Firmness in the defense of essential national interests is vital. But a nation assures its international position by understanding and defining clearly what its interests are and taking the precise appropriate and necessary action to safeguard those interests. Unreasoning adherence to the status quo has never been the mark of an effective and vigorous foreign policy.

We have demonstrated ourselves capable of meeting the challenge of the unprecedented on many occasions in the past. At the end of World War II, we embarked on a number of new initiatives—the Marshall Plan, the North Atlantic Treaty, Point Four, to cite a few—that constituted a dramatic change from the course we had followed in the past. We did so because we realized that the new circumstances of the post-war era required new responses—that we could not assure the security and prosperity of our nation by adhering to the isolationist policies of the past. To cling to outmoded approaches was to allow ourselves to be overwhelmed by future events.

And there are many more recent examples of constructive response to changing world conditions. The efforts to control the arms race, the opening of relations with China, our efforts to modernize the institutions of international economic cooperation are cases in point. In each case, we did not hesitate to modify old policies and arrangements when we felt that our national interest would only be preserved by doing so.

The new Panama Canal treaties should be viewed in the same light. They mark a step forward, an improvement over the present situation. They present you and the people of this country with an opportunity to modernize an outdated arrangement that has itself come to threaten the very interests it was designed to protect.

Beyond the immediate issue with which they deal, these treaties represent the most important and serious international undertaking formally submitted to the Congress by the Administration of President Carter. Thus you have a doubly grave responsibility: a rejection of the treaties would not only cause a crisis in our relations with the nations of the Western Hemisphere; it would in addition weaken the President's national authority at the beginning of his term. It would thus be a demonstration of national weakness, which would be taken by friend and enemy alike as evidence that we are systematically incapable of recognizing and pursuing our international objectives because of domestic division, doubt and conflict. This would be all the more so because we have every reason to consider that the new treaties in fact advance our interests and are seen as such throughout the world.

In supporting both the concept of a new treaty arrangement and the essential structure of what has been negotiated I do not mean to imply that the Senate's role in the ratification process should be that of a mere rubber stamp. On the contrary I believe that the Senate can and should make a constructive contribution clearing up ambiguities in the current texts and assuring the American people that our vital interests are indeed being safeguarded.

My support of the treaties is based on my reading of two key provisions—a reading which coincides with the Administration's interpretation:

First is our right to "maintain the regime of neutrality" under Article IV of the Neutrality Treaty, and

Second is the meaning of our right to "expeditious transit" under Article VI of the Neutrality Treaty.

With respect to our right to defend the Canal, I concur in the Administration's interpretation that we have the right and obligation to act, if necessary unilaterally, to defend the Canal's neutrality. It is unfortunate that the word "intervention" has been injected into the debate to characterize that right; this word conveys implications with respect to interference in the domestic affairs of Panama that we neither need nor claim, and which are provocative throughout Latin America. With respect to expeditious passage, I consider that it must mean "priority passage" in wartime and speediest possible passage at all times.

The fact remains that these interpretations have been drawn into question—partly by ambiguous statements of Panamanian officials understandably concerned with their own ratification process and subject to attacks, which are the mirror image of the opposition in this country, that they have yielded too much to the US. Ambiguity is, of course, the essence of diplomacy; it often permits each side to maintain its domestic position while safeguarding essential international interests. I have resorted to it in negotiations on several occasions.

I have never considered ambiguity of language acceptable, however, if it masked a true difference of interpretation. Whatever the words of an international instrument may say, it is vital in my experience that both sides share the same understanding of the intent of that instrument. In this particular case, ambiguity or lack of public understanding could sow the seeds of future crisis if in fact the parties are not of a single view as to the central provisions of the treaties.

I believe, therefore, that the Senate can play its constructive role by explicitly and formally endorsing the interpretation of Article IV that has been put forward by the President and the Secretary of State: that the new treaty confers upon the United States the right and obligation unilaterally to defend neutrality of access to

the Canal, and to defend the Canal itself should that ever become necessary. I see no need at this juncture to renegotiate the treaties. Nor do I favor a Senate reservation which implies a split between the Congress and the Executive on a matter which calls for national unity.

The Senate interpretation should be reduced to formal and explicit language with the Senate's advice that it be submitted by the Administration as an integral part of the instrument of ratification either by protocol or some other method which would ensure that it becomes the authoritative and mutually acceptable explanation. Another way of dealing with the interpretation would be an agreed minute between Panama and the United States which would then be endorsed by the Senate as part of the ratification process. Either course would ensure that there could be no question or ambiguity in the future.

The same procedures could be followed with respect to the meaning of "expeditious transit." Either the Senate or an agreed minute with Panama should state that in time of war United States naval ships and auxiliaries should be given priority passage and at all times the speediest passage possible. In either case the full Senate should approve the interpretations by a two-thirds majority.

I wish to express my strong hope that these steps be taken in harmony and cooperation with and not in repudiation of the Administration. They are fully consistent with the Administration's interpretation. They reflect our necessities; they take nothing away from Panama's dignity. The ability of the two branches of government to work out a constructive solution to this problem is a great service they could render to America's position of continued leadership in the world. I can think of no event more reassuring to our friends and allies around the world than the positive resolution of this difficult debate in cooperation between the Congress and the President after all the divisions of the last ten years.

This is now the real issue of the Panama Canal treaties and their ultimate significance. I am confident that statesmanship on the part of all concerned will bring this debate to its proper, positive conclusion. For thirty years this country has borne a vital responsibility for international security, for the health of the world economy, and for the cause of human freedom. To fulfill this historic role we must be a united people; Congress and the President, Republicans and Democrats, must all have the sense that we are engaged in a shared enterprise. It is in this spirit that the Panama Canal treaties must be considered, and it is in this spirit that I respectfully urge their ratification.

STATEMENT BY ROBERT CHARLES SMITH

Mr. Chairman and members of the committee: It is a distinct pleasure for me to appear before you today representing The American Legion. Needless to say, we are each aware of the thousands of inches of newsprint and the hours of television coverage which have been devoted to the proposed Panama Canal Treaty in the past month. My reason for appearing before you is two-fold: first, to represent the viewpoint and position of The American Legion as adopted by our recently concluded 59th National Convention, and to spell out—objectively and dispassionately—what our concerns are and why we object to this specific treaty.

With me this morning is our Chairman of The American Legion's Foreign Relations Commission, Dr. Robert P. Foster, who for the past 14 years has served as President of Northwest Missouri State University located in Maryville. Dr. Foster has visited Panama and, along with Commission members, has examined the Panama situation for quite some time. During this time, he has discussed the matter with treaty proponents and opponents, including both U.S. and Panamanian negotiators. He will be available for questions from the Committee following my statement.

Today, I have come to speak for our four million members of The American Legion and the American Legion Auxiliary. We represent miners in West Virginia; grain growers in Illinois and Iowa; energy producers of Texas; machinery manufacturers in New York; and shipping industry of all states where rivers and harbors open to the sea . . . altogether we represent a composite and microcosm of the United States. For most of us in The American Legion and all our citizens are either buyers or sellers of commodities passing through the Panama Canal.

Moreover, all of us are dependent on the protection of the U.S. Navy to control the seas surrounding our country in the center of the Western Hemisphere. Quite frankly, the main thrust from every Legion Post has been the same deep apprehension about the proposed Treaty with Panama. Not the least concerned were our Legion Posts in the U.S. Canal Zone. Did the United States really intend to abandon

its citizens to a dictatorship? If so, what did the United States stand to gain from such a giveaway?

What our Legion people do not understand is why is it necessary to have a new treaty. Have we, the people of the United States, been unfair, unjust or dishonorable with the Panamanians? I think not. We have lived up to our agreements of 1903, and subsequent revisions of that Treaty. No one has accused the U.S. Government with inefficiency. In fact, the contrary is true.

There are suggestions that the discovery of Alaskan oil by our space satellites in the early '60's brought about sudden realization by the oil industry that the U.S. Canal Zone, a U.S. Government reservation, was not the ideal type of property for the shipment of large tonnage of crude oil. Perhaps some type of commercial arrangement, even with a foreign country, was preferable for a booming international business.

Witnesses before this Committee from the U.S. Canal Zone told our staff that one major oil company is already building a large oil pipeline across the Republic of Panama. The tree line is cut and the pipes are being unloaded. One of the Canal pilots told us he was on board the S.S. Pennsylvania Sun and S.S. Cove Trader when bargaining was going on inside the U.S. Canal Zone between Panamanian customs officials and the ships officers. The Canal pilot, Capt. Leonard E. Bell, heard the full story and it sounded like tales from the Barbary Pirates of another century.

There are suggestions that a few large international bankers saw the possibility for placing large loans with Torrijos, either because Torrijos offered high interest rates, improved Panamanian management with lower labor costs, or some of the profits from the crude oil flowing from the north slope. In any case, the bankers must have seen the possibility of profits. We know that numerous U.S. and international banks have loaned billions to the Torrijos government and to Panamanian addresses.

There have been suggestions that Communist subversion started in the mid-50s from Prague inciting people to oppose U.S. ownership in the Canal Zone. This may have had a profound effect. The Washington Evening Star ran a story from Bonn, Germany on September 13, 1956 that "international communism has opened an agitation campaign in Latin America against U.S. control of the Canal Zone." Of one thing we can be sure. It was not U.S. national security interests that abet these new treaties.

There are political considerations and military considerations to this treaty. There are economic and environmental problems of considerable magnitude for the United States, the Western Hemisphere and the entire world.

From a political standpoint, I think our firm consideration must be the beliefs and convictions of the people of the United States. Within the last two years, we have seen numerous polls to determine the attitude of U.S. citizens. Those polls have shown that from 50-90% Americans oppose the proposed Treaties which were signed on September 7, 1977 by President Carter and Gen. Omar Torrijos.

We in The American Legion believe under our system of government that the will of the people is very important. The knowledge, the will and the dedication of our people provide the amperage to our national life.

At the Legion National Convention in Denver, we heard the pros and cons of the proposed Treaty. We heard from Ambassador Sol Linowitz as pro-Treaty, and we heard anti-Treaty viewpoints from expert witnesses, including those of Senator Hatch. In our American Legion Magazine, we invited Panama's Foreign Minister Gonzalez Revilla's pro-Treaty and Congressman Daniel Flood's anti-Treaty to give their positions. When it came time to vote on our Foreign Policy resolution at the Convention, we deliberately set the Panama Resolution, No. 445, aside so we could offer each Department from each State the opportunity to vote. The pressure to vote was so strong from the thousands of convention delegates that we could not take a roll call vote by state. Support of The American Legion's Resolution 445 which opposes the Treaty was unanimous. The silence of pro-treaty support seemed even more persuasive than did the unanimous vote against the Treaty. (A copy of this resolution is attached for your perusal.)

I will now discuss the reservations and objections which we have to this proposed Treaty. The first is the strategic and military importance of continued U.S. control of the Canal and the Canal Zone. At the onset, we realize that the United States has a one-ocean Navy with a global responsibility.

Today all but 13 of the ships in the U.S. Navy—the exception being the large aircraft carriers—can pass through the Canal. Moreover, we, along with the Congress, must be "forward looking" and long-range prognosticators regarding the true effects now and in the future of the proposed Treaty. As each of you are aware, we have made a national commitment to the "mini-carrier" concept. And, when they

come on line in 3-5 years, I have been assured by the Navy that they can transverse the Canal, making the Canal even more important in a military sense in the years ahead.

Hanson Baldwin has recently written: "It is ironic, indeed, that in an era when the U.S. Navy needs the Canal to a greater degree than at any time since the end of World War II, Washington is considering its abandonment. The Navy today is in the same strategic bind it was in prior to World War II: It is a one-ocean Navy (in size and power) with two-ocean responsibilities. We are outnumbered in submarines and surface ships by the Soviet Union, and, more than at any period since 1945 the Navy must have a quick transfer capability between the Atlantic and Pacific in order to meet sudden crises.

"General V. H. Krulak, USMC (Ret.), writing in the summer 1975 issue of *Strategic Review*, summarized the Canal's naval importance: 'In truth the Panama Canal is an essential link between the naval forces of the United States deployed in the Atlantic and in the Pacific. It is only because of the waterway that we are able to risk having what amounts to a bare-bone, one-ocean Navy.'

"During the Vietnam War about 98 percent of all supplies for our forces were shipped by sea; of this total, approximately 33 percent were loaded in East and Gulf Coast ports and transited the Canal. The volume of military-sponsored cargo in the four years from 1964 to 1968 increased for dry cargo, by some 640 percent and for petroleum products by about 430 percent. And the number of U.S. Government vessels (chiefly naval) transiting the Canal increased from 284 in 1965 to more than 1,500 in 1968."

Within the military community, and among the retired and active military, there is great diversity of opinion. In addition to the letter of four distinguished Chiefs of Naval Operation, including the former Chairman of the Joint Chiefs, Admiral Thomas H. Moorer, saying that the proposed Treaty is contrary to the security interests of the United States, we are hearing from many military leaders and the majority of these opinions, like the majority of our citizens, are opposed to the give away of the Zone and the Canal.

As you are aware, Admiral Moorer forcefully reaffirmed his views to this Committee earlier this week and clearly stated the indispensable strategic importance of the Canal.

From a military viewpoint, a commander never gives away strategic territory which he may have to fight to regain. The U.S. Canal Zone is strategic territory. All the military, both active and retired agree on that point.

From an economic perspective, the Canal is vital to United States interests. In 1975, approximately 14,000 ships transited the Canal of which 45 percent originated in the United States and 23 percent were bound for the United States. No other nation even approaches the invaluable, economic stake which we have in the Canal. However, the Canal is important to all maritime commercial nations since 96 percent of the world's merchant fleet can transit it.

The Canal is just this year assuming an additional commercial importance to the United States as Alaskan oil begins to flow. When the Alaskan pipeline reaches its full capacity, it will yield 1.2 million barrels of oil a day. The west coast of the United States can accommodate only 700,000 barrels a day. This means that approximately 500,000 barrels a day cannot be used on the west coast, and must be transported to the east. No pipeline has yet been constructed across the United States, and the trip around the Horn, as has been demonstrated, is not economically feasible. Unhindered use of the Panama Canal is critical until an adequate pipeline can be constructed.

From an over-all economic perspective, should the tolls go up another 25-30% as projected by Ambassador Sol Linowitz, and the tolls since 1973, have already gone up about 50%, many of our exports will be priced out of the world market. The grain producers and dealers, for example, frequently depend on a fraction of 1% as their profit margin.

You may have read in the *Journal of Commerce*, September 20, 1977, where the New Orleans Port Director, Mr. Edward S. Reed stated: "Since grain exports are the United States' best source of balance of payments loans, I think it is incumbent upon the Federal Government to closely scrutinize the possible effects of canal toll increases on the farm commodities exported from the United States." Mr. Reed's comments would pertain to all farmers, farm commodities, shippers and port facilities involved in our U.S. agricultural exports.

In the same *Journal of Commerce* article, the President of Lykes Brothers Steamship Company, Mr. W. J. Amoss, Jr., expressed his opposition to the Treaty because of its adverse impact on Canal users. Mr. Amoss, who had previously supported the

Treaty, said the proposed Treaty spelled sheer disaster for operators east of the Canal and going westbound through the canal.

I stress the economic impact that United States commercial interests will suffer because this starts the day the Treaty is ratified, Ambassador Linowitz has stated the tolls will immediately go up 25 to 30 percent. And just what are the economic facts for such port and shipping centers as Boston, New York, Baltimore, Hampton Roads, Charleston, Mobile, Houston and New Orleans?

I mentioned New Orleans last because Louisiana is my home state. People living along the bayou are genuinely concerned about the ramifications of this proposed Treaty on our trade, jobs and general economic conditions.

I do not wish to overstate the dangers we foresee for Louisiana and the Gulf States but 38% of all water-borne commerce, over \$30.0 billion in world trade, move from the Gulf ports. Over one-half of all the grain exported from the United States moves from the Gulf ports and about one-third of these grains pass through the Panama Canal. The Port of New Orleans is the nation's number one importer of iron and steel products. Eighty-seven percent of these products arrive via the Panama Canal.

We could spotlight other ports and jobs threatened by toll increases. Hampton Roads for example is the world's largest coal port. Over half of the 32 million tons of coal leaving Hampton Roads goes through the Panama Canal. It is my understanding that over 300,000 jobs in Virginia are either directly or indirectly affected by the Hampton Roads port complex.

I noticed in a letter to the Editor of the Washington Post on 7 October 1977 that the Port of Baltimore has a vital interest in the Panama Canal. Seventeen percent of all Baltimore's foreign commerce utilizes the Canal. The letter also stated that Maryland's State Senate and House of Delegates had by unanimous vote supported Resolution 34 calling for the United States to retain sovereignty over the U.S. Canal Zone and the Canal.

Moreover, at the present time, the United States has an over-all investment in Panama of \$7 billion. By the year of our total evacuation under the terms of the Treaty, that interest will have grown to \$9.3 billion. To add insult to injury, the Treaty proposes that we pay some \$50.0 million per year, plus about \$350.0 million in economic and military aid to have the Torrijos group take over the territory and property.

In short, all these elements of economic benefits which I have mentioned in structures, payments and loans for development will in 23 years amount to the sum of \$2.262 billion. This is compared to what Panama would receive under the current Treaty during that same period, which would be the ridiculous amount of \$52 million.

Contrary to popular argument, control of the Canal by the United States serves the best economic interests of the people of Panama. In 1976, U.S. agencies purchased over \$29 million worth of goods in Panama, and we paid over \$108 million in wages to non-U.S. citizens. United States private investments amount to 50% of the capital investment in Panama; and U.S. employees spent \$39 million there.

In the Preamble to The American Legion Constitution, we pledge to "safeguard the principles of justice, freedom and democracy" in 1977 terms this translates into human rights. As this Committee is aware, Panama is a dictatorship, or in the words of Ambassador Bunker before Congressman Murphy's committee, an "authoritarian" government.

The aspect of the Torrijos government which is most significant, is that it is a repressive dictatorship. Freedom House, the respected organization which ranks countries on the basis of human rights, gives Panama the lowest rating in Latin America. Panama received the same 1977 rating on political and civil liberties as the Soviet Union and was rated even lower than Cuba.

Gen. Torrijos came to power in Panama by a coup and is governing without the consent of the people. The truth is that since Gen. Torrijos participated in the overthrow of Panama's constitutional government by gunpoint in 1968, 1.6 million people have lost their human rights. There is no recognized party except the Communist Party, called the People's Party, El Partido del Pueblo. Furthermore, the monies from Panama Canal annuities do not go directly to the people, the money goes to the Torrijos power group.

As we are all aware, the Panamanian constitution requires a plebiscite vote of the people for ratification of any new Treaty, which will be held on October 23. The sad irony is that the controlled and censored Panama press—"guided" in the terms of our chief negotiator—will never give a full and objective account of the Treaty to the Panamanian people.

Another concern which we have is the political association and economic stability of the government in Panama. On the economic side; under Gen. Omar Torrijos, Panama's national debt has grown from \$167 million to \$1.5 billion. The debt service alone will consume 39% of that country's budget this year. Panama's Department of Planning indicates that to refinance loans coming due, together with the \$139 million deficit, a total of \$323.6 million will be required. Obviously, Panama cannot financially afford to have the Treaties rejected either.

Politically, Torrijos has also busied himself with making closer political and commercial ties with the Soviet Union. Again, according to the U.S. Information Agency, top officials from the Soviet Politburo and Central Committee of the Soviet Communist Party visited Panama last June. Almost immediately after the Soviet Politburo team left Panama, a Soviet commercial delegation headed by Nikolai Zinoviev arrived and concluded a major Soviet-Panama commercial agreement with the Torrijos regime. This agreement, according to news reports in the Torrijos-controlled newspaper *Critica*, could result in the opening of a Soviet bank to run Soviet commercial activities throughout Latin America as well as a series of other multi-million-dollar-trade and construction projects with Panama.

Whether it was a Treaty of intent or a pact of infinite promise, we don't know. The treaty was signed by Omar Torrijos' brother-in-law, Marcelino Jaen, and Soviet leader Nikolai Zinoviev who is also listed as a KGB agent. After the signing, Panama's Jaen declared the Soviet treaty "... is an event of deep historic signing, not only for our country, but for the American continent as well, who are always facing strong forces that represent a philosophy that is contrary to the destiny of Latin America."

Of deepest concern is Torrijos' close ties with Fidel Castro and Cuba. Cuba under Castro continues to aggressively export and pursue communist domination and control of other nations. Several weeks ago, the New York Times reported that 4000 more Cubans were sent to Angola recently to "stabilize the nation's most serious crisis since the 1976 civil war." The 4000 Cuban troops would increase Cuban troop strength in Angola to 19,000. This to me clearly indicates that Castro hasn't backed off one inch from his declared goal of communist domination of the Western Hemisphere and the world.

Also of concern is the reliability of the Panamanian dictator to live up to what he signs. Panama has violated the present Treaty at least 11 times during the past two years. These violations included such militant acts as the Panamanian National Guard taking up positions in December 1975 within the U.S. Zone; attempting to arrest and actually shooting a citizen in the U.S. Zone in January 1976; setting off bombs and explosions in the U.S. Zone in October 1976, and capturing a vessel, the Sea Wolf, which was operating inside Canal Zone waters and burning and desecrating the United States flag.

Our Ambassador, whose official car was shamelessly destroyed several days ago, has protested such lawless Treaty violations, but one must question the wisdom of appeasing and making further concessions to a government whose recent history is pockmarked with deliberate violations of the current Treaty. If our current Treaty with Panama is being violated on a routine basis, where is the logic that such attitudes and behavior will improve between 1977 and 1999, the magic year when Torrijos is supposed to get everything, lock, stock and barrel?

I would like to turn now to the question of United States sovereignty. Many of the arguments for the switch in sovereignty and much of the conscious or subconscious motivation for it stem, in part, from ignorance or distortion of the manner in which the Panama Canal territory was acquired by the United States and of the wording of the original Treaty of 1903.

Contrary to these assertions from public officials who should know better, we did not steal the Canal, nor does Panama have residual, titular, or any other kind of sovereignty over it. The United States bought the Canal territory—a strip across the Isthmus of Panama some 50-miles long and 10-miles wide—at a cost to the American taxpayer that far exceeded the cost of the Louisiana Purchase, the Mexican cession, the Florida Purchase, the purchase of Alaska, or any other territorial acquisition.

Despite current contentions by the State Department that the 1936 Treaty revisions recognized Panama's sovereignty over the Canal Zone, it is clear that in both wording and intent the Treaty actually re-emphasized the sovereignty, in perpetuity, of the United States.

History and the law appear to indicate in no uncertain terms that there is no merit whatsoever to the concept that the Treaty of 1903 vested so-called titular sovereignty or residual sovereignty in Panama. The wording is clear and unequivocal: "The Republic of Panama grants to the United States in perpetuity the use,

occupation and control" of the Canal Zone. "The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned . . . which the United States would possess and exercise if it were the sovereign . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority." One cannot transfer sovereignty unless one has it. The United States has, and will retain until Congress decides otherwise, complete sovereignty and control over the Canal Zone in perpetuity.

Even Gen. Torrijos in his remarks following the formal signing acknowledged United States sovereignty and I quote: "What nourished the hopes of Panamanians for the recapture of their sovereignty was the feeling that the North American people fundamentally harbored no colonial aspirations," [emphasis added].

I will now turn to the Treaties and the accompanying Annex and Protocol. This analysis is based upon the limited time in which these Treaties have been available to the layman and I urge each member of this Committee to scrutinize these documents.

(1) Sovereignty is the crucial factor in the new Treaties. Both the Prologue to the Canal Treaty, and at least six other times in the document, Panamanian sovereignty over the U.S. Zone and the Canal is acknowledged. As I stated earlier, once Torrijos is granted sovereignty all other questions are irrelevant.

(2) According to our analysis of the Treaty, should Panama abrogate the Treaty, the United States would have no legal basis in international law to maintain its position in the former Canal Zone.

(3) Article II, Section 1, of the Canal Treaty specifies that it should "be subject to ratification in accordance with the constitutional procedures of the two parties." However, it would appear that the Executive Branch is seeking ratification of the treaties without seeking enabling legislation from the House of Representatives to transfer real properties, appropriation of funds and perhaps other legislation which is not spelled out, as required by the Constitution of the United States. This bypassing of the House of Representatives appears to be an usurpation of legal powers which is clearly conveyed to the House by the Constitution.

(4) Article XII, Section 2(b), states that "during the duration of this Treaty the United States of America shall not negotiate with third states for the right to construct an inter-oceanic canal on any other route in the Western Hemisphere, except as the two parties may otherwise agree." In plain terms, the United States has surrendered its rights to negotiate for a competing canal elsewhere in the Western Hemisphere unless it has Panama's consent.

(5) Article V of the Canal Treaty directs that employees of the Panama Canal Company, their dependents and other American nationals should "abide by the laws of the Republic of Panama and abstain from any activities in competition with the spirit of this Treaty." This Article also directs that they abstain from any political acts in the Republic of Panama. As I stated earlier, there are American Legion Posts in the Canal Zone and I am deeply concerned about forcing American citizens to submit to a dictatorship and their surrender of rights as Americans.

(6) Article XIII relates to payments to Panama for the right to operate the Canal. One such payment of \$10 million per year from profits is cumulative which means there is a possibility that we could, over the 23 year period of the Treaty, end up owing the Panama government \$230 million.

Additionally, I have strong reservation and objections to the Neutrality Treaty: (1) Only Article IV of this Treaty bears upon U.S. responsibility concerning the neutrality of the Canal and the entire document is so vague as to be virtually meaningless. In my lay reading of the entire Neutrality Treaty, I find no assurance that the United States can intervene to assure the neutrality of that vital area.

(2) Article III(e) states that "vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the canal." This statement assures the passage of warships through the canal of nations which may be at war with the United States.

(3) Article VI, Section 1, states that vessels of war and auxiliary vessels of the United States and the Republic of Panama "will be entitled to transit the canal expeditiously." The exact meaning of the word "expeditiously" is vague at best. Even more confusing is the interpretation place on the word "expeditiously," by the Chief Panamanian negotiator, who said that the United States would not be given "preferential rights."

In Louisiana we regard a contract as no better or no worse than the intent and interpretation of the contracting parties. Treaties are actually a form of international contracts where nations agree to abide by the terms specified. As this Committee knows, we are getting a wide variety of interpretations on such matters as the right of intervention, the right of priority passage for U.S. warships. Escobar Bethancourt

has recently told Panamanian audiences that the United States wanted but did not get "priority or privileged passage." This information was later authenticated in a "confidential" cable released by Senator Dole which quotes Lopez Guevara that Article IV on neutrality urges U.S. officials to stop using the word intervention. Intervention is prohibited by international law.

It would be unwise at best to even further consider ratification of any treaties in any form until the serious differences in U.S. and Panamanian interpretations are closely and unquestionably resolved.

In brief summary, an evaluation of the facts about the Treaty have brought us to the day of the signing, September 7, 1977 . . . a bad day for the United States.

United States military and national security losses alone are sufficient to reject the treaty. We are giving up our naval fleet flexibility at a time when we have fewer than 400 ships in the entire United States Navy. Economic losses of the United States are difficult to calculate, but logic dictates that U.S. consumers and exporters are going to pay the toll increases. Additionally, the cost to the U.S. taxpayer is in the billions. The Torrijos government is living on borrowed money and borrowed time.

Politically, human rights under Torrijos are no better than they were under Hitler during the 1930s and yet by supporting this Treaty, our United States Government is propping up a dictatorship. Worse yet, our government is forcing Americans to live under totalitarian rule and abide by its laws and decrees. That's what World War II was all about.

The pressures the White House can bring are enormous as all of us know. The resources at the President's disposition almost defy our collective imagination. The Treaty signing festivities on September 7 were an example of Presidential style and substance. We in the Legion, whole recognizing the awesome power of the Presidency and the Executive bureaucracy, also believe that the ultimate power in the United States resides with the people . . . with people like our members.

I will close with one question: if this Treaty is basically good for the United States, why does the Administration have to make such an effort to prove to Americans that it is in our national interest? Those of you in the Senate must know what the people are thinking. You know the Legion Posts and grass roots opinion runs about 80% against the giveaway.

We believe this proposed Treaty will ultimately be decided by the people. We believe this is one defeat the United States can avoid. It is a loss we need not accept and you can count on The American Legion Posts to stand firm.

PANAMA CANAL

Whereas, the United States is the rightful and legal owner of the U.S. Canal Zone and the Panama Canal, having acquired this U.S. property through court tested treaties and agreements and mutually agreed upon payments to Colombia, Panama and the individual land and property owners; and

Whereas, the United States Supreme Court has ruled that the United States is legally entitled to sovereignty and ownership of the U.S. Canal Zone for the purpose of building, operating, protecting and maintaining a canal across the Isthmus; and

Whereas, the United States has lived up to its obligation under the Treaty to the letter of the law; and

Whereas, the political, economic and the military factors offer conclusive evidence that it is in the vital national interest of the United States to retain sovereignty and ownership of the U.S. Canal Zone and Canal; and

Whereas, over three-fourths of our American citizens consistently voice their opposition to any kind of "giveaway" or dilution of U.S. sovereignty over this territory; and

Whereas, the United States as leader of the free world has a moral obligation to remain fair, firm and strong when faced with political blackmail; and

Whereas, surrender of the U.S. Canal Zone would be tantamount to a major military defeat with enormous consequences for evil; now, therefore, be it

Resolved, by the American Legion in National Convention assembled in Denver, Colorado, August 23, 24, 25, 1977, that we reiterate and reaffirm our continuing and uncompromising policy in opposition to any new Treaties or Executive Agreements with Panama, relating to the U.S. owned Panama Canal and its protective frame of the U.S. Canal Zone as expressed and set out in separate resolutions adopted consecutively at each annual American Legion National Convention since the Miami Convention in 1960; and, be it further

Resolved, that we strongly urge all elected members in the U.S. Congress to oppose any new treaty with the government of Panama which: (a) in any way

dilutes full U.S. sovereignty, ownership and control; (b) cedes U.S. territory or property; (c) surrenders any jurisdiction and control which would threaten the economic and security interests of the United States; and, be it further

Resolved, that The American Legion rejects the actions of the Executive agencies of the federal government in attempting to by-pass the Constitution of the United States, and we fully support Article IV, Section 3, Clause 2, of the Constitution which provides that only the Congress has the authority to dispose of U.S. Territory.

STATEMENT OF AMVETS NATIONAL COMMANDER FRANK D. RUGGIERO

Mr. Chairman and Honorable Members of the Committee:

AMVETS is grateful for this opportunity to present the views of our organization on such a vital issue as the much publicized and highly controversial Panama Canal Treaties. It is our opinion that few matters in recent history have held the importance or portentousness of this fateful issue.

In concert with our great brother organizations, AMVETS speaks to this matter in the sense that we, the veterans of our Nation's wars, are of a right and necessity deeply concerned with the future of the U.S. defense posture in general and in the Western Hemisphere specifically. As do other concerned Americans, we address ourselves also to those issues which affect international and hemispheric commerce and embrace our national economy. Therefore, the issues involved here are directly germane to our concerns and activities, for what segment of our society has more right to oppose that which we believe threatens the United States' defense and economic position on the "American land mass."

The Administration and some Members of Congress have challenged the term "sovereignty" as that term pertains to the Hay-Bunau-Varilla Treaty of 1903. They claim that the United States was never granted sovereignty over the Canal Zone in the legal sense. We do not argue that point. The dictionary definition of the term "sovereignty" is of little importance in this issue as we see it. The fact remains that any reduction in American military forces on the Isthmus of Panama and the loss of United States control over the Canal Zone could be disastrous. The U.S. defense posture, south of the Rio Grande would be virtually non-existent. The Canal, regardless of its inability at present, to accommodate the super-carriers and super-cargo vessels remains as the single most important water-way on the western half of the globe. The Isthmus itself, the Canal notwithstanding, serves as the roadway between all of the Americas and is, in our opinion, the "crossroads" of the hemisphere. This demands American presence and control to ensure that Communistic or otherwise adverse influences will not "choke off" North America from South America. The President's concern over "human rights" can best be served by maintaining our strong position in Panama and preventing the influence of Castro Cuba and other elements from establishing a toe-hold.

Furthermore, we are not convinced that the people of Panama, and we refer to the common people, not the pseudo-intellectuals, are desirous of having the United States pull out of the Canal Zone. Indeed, we have reason to believe that is the last thing they want to see happen. In this regard, we quote from an article which appeared in the Chicago Tribune of March 25th by Mr. Ronald Yates:

"Incredibly, and in spite of an almost daily diet of government inspired anti-American rhetoric in the Panamanian press, the poor and the unemployed of this Nation of 1.7 million say they are not ready to run Americans out of Panama but rather are prepared to fight to keep the Canal in United States hands." And Mr. Yates found this to be a typical remark of a Panamanian-on-the-street: "You see, the only people in Panama who have ever given the United States trouble are Communists, rich university students, and parasitic intellectuals who live off the blood and sweat of people like us," he continued. "We have nothing against America or the Canal Zone because we know as long as America has control of the Canal, there will be jobs for Panamanians. But as soon as you (America) give it back to Panama, it's going to go all to hell and nobody will have jobs."

We fully appreciate that the passage of seven decades would necessitate adjustments in monetary considerations commensurate with today's values. We do not oppose any reasonable arrangements in this connection. Our sole opposition is to any Treaty which would dilute or compromise U.S. control of the Canal Zone now, or in the future.

General Torrijos was reported to have said "in the event that peaceful negotiations for a phasing-out of United States control were closed, a campaign of violence against the 15,000 Americans in the Zone would be inevitable." "Two options would be open to me," he continued. "To smash it or to lead it—and I am not going to

smash it." If we give in to this "threat," how could we guard against "sabotage" by subversive elements of Panamanian military forces? This prompts other questions:

1. If we (the United States) grant the desired concessions to Panama, what guarantee will we have that Panama will live up to its end of the bargain?

History should have taught us that treaties with dictator forms of government are not worth the paper they are written on. One has but to remember the "Munich Pact" between Nazi Germany and England, inter alia to realize the value of such agreements. We are informed that, notwithstanding the Torrijos' Government, every Government of Panama since the creation of the Republic in 1903 has expressed the desire for a new treaty. It occurs to us that to turn over the control of a facility such as the Canal, which requires great financial sustenance and technological expertise, to a nation whose governmental foundations are so weak as to allow dictators to take over, would be a great disservice to all nations whose commerce rely to a large degree on the Panama Canal.

2. If Communist influences prevail, such as those we suspect exist currently in the Caribbean area, how will we defend the Canal Zone should Panama succumb to these influences?

The interpretation by American proponents of the Treaties is that the United States will be entitled to intervene to protect the Canal and that United States warships will be entitled to expeditious or privileged passage through the Canal. This has been their strong argument in favor of the Treaties. Yet, on August 24th of this year, Panama's chief treaty negotiator, Dr. Bethancourt, stated at a press conference that "the pact does not establish that the United States has the right to intervene in Panama, nor does it provide the United States with the right to determine when (that) neutrality is violated."

The right to expeditious or preferential passage is also a matter of interpretation. According to Dr. Bethancourt, the Panamanian interpretation differs from the American dramatically when he said "if the gringos with their warships say 'I want to go first,' that is their problem. We cannot go that far." In view of these statements it would seem that closer examination is in order.

A strong stand must be made if we are ever to regain the "image" we once projected abroad. Some would say that by granting the Panamanian demands the United States would gain the respect of the "Third World nations." We think not. We believe that the opposite reaction would take place and that we would be looked upon as a "pushover." Respect is given to the strong, the assertive, the fair. Again, we do not oppose a fair financial arrangement, but not in the form of tribute.

We are asked if we were in the position to make the decision: "Would we be willing to go to war in order to retain United States control of the Canal Zone?" We ask, in turn: war with whom? Are we to believe that Panama by herself or all of the Latin American nations collectively would wage war against the United States over this or any other issue? Or, do we believe that the Third World and/or Communist nations, including Red China and the Soviet Union, would join forces in such an adventure? We believe the possibilities of such an occurrence are too remote to merit consideration.

It has been further suggested that should the Treaties not be ratified, the veterans' organizations and other anti-Treaty groups would share collectively the blame for whatever "reprisals" are taken against American personnel in the Canal Zone. That, in effect, "their blood would be on our hands."

It is, and would be, the responsibility and solemn obligation of the Commander-in-Chief of the U.S. Army, Navy and Air Force to take whatever measures necessary, including armed force, to ensure the defense of the Canal Zone and the safety of its inhabitants.

In conclusion, Mr. Chairman and Members of the Committee, we offer no alternatives to the current status of the United States on the Isthmus of Panama except in the area of more financial equity, and, indeed, recognize no need to enter into any further negotiations with the Republic of Panama which would attempt to eliminate or phase-out United States control of the Canal Zone.

Again, and finally, Mr. Chairman, we thank the Committee for this opportunity and will attempt to answer any questions the Members may wish to ask at this time or we will be happy to respond in writing, for the record.

STATEMENT OF MAJ. GEN. J. MILNOR ROBERTS

Mr. Chairman and Members of the Committee: I wish to thank you for the opportunity to testify before your committee and in such distinguished company. The Reserve Officers Association is a professional association of officers of all the armed services, regular and reserve, but primarily consisting of citizens who dedi-

cate extra time and effort to the national defense over a full time civilian career in your local communities. Twice in the last four years, these reservists have expressed their opposition to any arrangement which would result in diluted control, operation, and defense of the Panama Canal and Canal Zone. We believe that this particular treaty that is before you today is appeasement in phases which can only whet the appetites of those who would disrupt the peace and freedom of the nations of the Caribbean and Central and South America, as well as disrupt the defense of the United States.

We recognize that the Panamanians are less than happy with the 1903 Treaty. It is not hard to see why. The Panama Canal cuts through their country like an interstate highway through your home town. It is a highly visible barrier and while it is a major source of the Panamanian national income it is not like Arabian oil or a Chinese port. We built it and we paid for it three times. We paid off the French Company, the Panamians and the Colombians. It is ours in any real sense of the word, and the Panamanians have profited greatly from our management of the Canal.

The question is therefore one of giving it up or sharing it. The proponents of the treaty ask, why keep the Canal? And say that there is no good reason to keep it. We would rather ask, why should we give it up? And we say, there is no good reason to give it up.

We have been told, in essence, that the Canal is not vital to our economy or our national defense, and that we cannot defend the Canal against a presumed Panamanian Viet Cong. The evidence used to substantiate these allegations is presented in a manner which classically illustrates the old propaganda trick called "card stacking". Much of the evidence is misleading, flimsy, even irrelevant. For example, for what earthly reason would a submarine officer desire to submerge his submarine while in the Canal? All warships are vulnerable while in the Canal and always have been.

In a more serious vein, it is alleged that we have a two ocean navy and therefore we do not need the Canal. It is also pointed out that very few naval ships have used the Canal in recent years and several ships such as the super carriers and super tankers are too large to use the Canal.

In response to this seductive but spurious argument, we point out that we have had a "two ocean Navy" since the Canal was built, a Navy which is dependent on the Canal for wartime logistical support. Heavy bulk cargoes such as ammunition, fuel, food, and vehicles are used in prodigious amounts in a combat zone. Ninety-six percent of the tonnage that went to Vietnam went by ship, over seventy percent of which went through the Panama Canal. A peacetime force uses less than one-tenth of the wartime tonnage requirements, much of which is procured locally, hence the smaller number of ships.

We also point out that there have been serious discussions of making the Navy a "one-ocean Navy" because of the high cost of ships which also would be of smaller size.

The risks and costs of a 6,000-mile detour around South America in the event of the denial of the Canal to U.S. shipping would be devastating to overseas military combat operations, particularly in the Pacific. First, the increase in mileage would cut the amount of tonnage received in a combat zone by half or require a doubling of the size of the cargo fleet. Secondly, the detour itself would increase the vulnerability of the shipping lanes to submarines, commerce raiders, land based aircraft, and missile armed fast patrol boats. This in turn would require more naval assets to be spent on sea control missions in lieu of missions related to the strategic projection of national power.

The fact that many of the super tankers and super carriers cannot use the Canal is more a liability of the ship than of the Canal. We would also point out that a super tanker of 100,000 tons is both a lucrative and vulnerable target for military action.

In addition to the naval and shipping aspects of the Panama Canal, the Canal Zone also features the only major U.S. airbases for ready access to Central and South America. These facilities are significant not only for the defense of the canal, but for the defense needs of the Southern Hemisphere. We may have need for the Panama Zone air facilities that are related to problems in areas outside Panama. At the same time, we may lose the fields themselves or have restrictions on their use resulting from renegotiations of our military presence in the former Zone such as has happened in Italy, Libya, and Spain.

On the economic side, we find it hard to believe that the Canal is not vital to the national economy at the very time that Alaskan oil is being shipped to a fuel hungry Northeast. We should also note that as much as three quarters of the

shipping of some of the Central and South American nations goes through the Canal.

We believe that there can be no doubt that the Canal is vital to both our national economy and particularly our national defense. The administration has used the Joint Chiefs of Staff to present evidence of the Canal's non-essentiality and indefensibility. What you hear from the Joint Chiefs is what the administration wants you to hear and should be viewed as evidence of the discipline and obedience of the Joint Chiefs to their civilian bosses.

The Joint Chiefs tell us that it will take 100,000 U.S. troops, the equivalent of an Army Corps with supporting Naval and Air Forces, to defend the Canal against a determined guerrilla threat. The annual operating costs of an Army combat division in a Vietnam style war is approximately one billion dollars; therefore the costs of defending the Canal, according to the JCS estimate, is approximately two or three billion dollars a year.

We must also examine the nature of the internal threat to the Canal. By internal we mean, from Panama by largely Panamanian forces. It must be conceded that many of the key ingredients of another Vietnam are there. The high school students form a vocal, articulate, and influential nucleus with widespread popular support. There are outside groups who would be more than happy to fund, train, and equip Panamanian guerrilla forces. There is a visible symbol of what some consider "colonialism," the Canal itself.

One major ingredient is missing, however. It clearly is not in the Panamanian national interest to destroy the Canal. Forty percent of the national income comes from the Canal. Destruction of the Canal would be an unparalleled disaster to the Panamanian economy outrivaling crop failure, drought, or a drop in the price of bananas.

A more likely threat to the Canal by Panamanians is a threat of selective interdiction or blockade of American shipping by a threat to the ships in the Canal. This threat can be accomplished by relatively conventional landbased forces using short range combat weapons including tanks, anti-tank systems, light artillery, and small arms. The size and shape of the Zone as a buffer around the Canal prevents this type of action short of actual invasion of the Zone itself.

Selective interdiction may also be accomplished by guerrilla forces equipped with anti-tank weapons and special demolitions. This military capability will exist regardless of who runs the Canal and must be regarded as a constant threat to guard against. We must take into consideration the fact that as long as Old Glory flies over the Canal in any capacity, there will be those in and out of Panama who will desire to use the threat of closing the Canal to achieve political leverage over the U.S.

It is against this latter threat that the friendliness of Panama is extremely important. On the other hand, placing Panamanian military forces in close proximity to the Canal interdiction by unfriendly Panamanian interest. World public opinion might cause us to hesitate to move against Panamanian troops blockading the Canal if those troops were there by treaty right.

The Canal Zone, as a military buffer area, is affected the most by the treaty. If the Zone is abolished, most of the military installations and Canal facilities under the control of the U.S. or the U.S. Canal Corporation until the year 2000 will be left in an exposed position. We note that the Canal Zone is unique in the sense that not only is it U.S. territory, an agency of the U.S. Government holds the title to the land. This is clearly illustrated by the fact that no one may own his own home in the Zone. All those who live in the Zone live in government owned housing and are either Panama Canal Company employees or U.S. military personnel and their dependents.

Much has been said about the Americans who live in the Zone, Proponents of the treaty say that these citizens have caused considerable unrest by their so-called colonial privileges of low cost stores, housing, etc. It is ironic to note that the status of those who live and work in the Zone will not change substantially in this regard as they will be covered in a Status of Forces Agreement (SOFA) like American military and civilian government employees are in places all over the world.

We are also concerned over the financial arrangements of the treaty. We note that some \$50-70 million will be paid to Panama from the proceeds from the Canal. This increase is allegedly to come from an increase to tolls of thirty cents a ton. With ships weighing many thousands of Canal tons, the increase in tolls is expected to be substantial. An upper limit on Canal tolls is placed in the fact that the tolls must be less than the cost of a trip around the Horn. Since the Canal runs at a \$7 million deficit, we ask whether the American taxpayer is going to pay directly into the coffers of the Panama Canal Commission that replaces the Panama Canal

Company? If such is to be the case, we have a case of a direct payment to Panama using the treasury of the Panama Canal Commission as a laundry or conduit.

We should also examine the inflationary impact of increased Canal tolls on our own economy, which needs no inflationary pressures, and those of our neighbors to the South who need inflation even less.

Absolute neutrality of the Canal, as envisioned by the Treaties, is not in the best interests of the United States nor of the nations of the Western Hemisphere. Economically, the Panama Canal's customers are substantially different from those of the Suez Canal, being fewer and mostly American, North and South. Three quarters of the traffic in the Canal is related to U.S. trade, representing 16.8% of U.S. waterborne commerce. While the tonnage may be less for Latin American trade, the percentages are higher; Panama Canal traffic as a percentage of national waterborne commerce is 76.8% for Nicaragua, 41.3% for Peru, 34.3% for Chile, and 32.5% for Colombia. Clearly, Western Hemisphere interests should dominate control of the Canal.

Traditionally, the U.S., through the Monroe Doctrine, has over-watched and protected the Western Hemisphere from outside influence; this treaty opens the door for substantial outside influence. In this light it should be remembered that the U.S. had the right to "restore order" to the Isthmus of Panama long before the Canal was a gleam in De Lessups eye.

The ambiguities of key concepts of this treaty, recently highlighted by Senator Dole, remind us of the old adage, "good fences make good neighbors." When territory is being divided between two nations for defense purposes, ownership of a few yards of ground may be of great significance and substantial argument, as was illustrated in the negotiations in the Korean War at Panmunjon and in Palestine in the late forties and early fifties. We may be creating a can of worms, not a concrete treaty of lasting value.

Given a real or implied Panamanian threat of violence to the present Canal, the question of a sea level canal or third lock in Panama is not relevant to argument favoring adoption of the treaty, as any new canal construction in Panama is subject to the same threat. On the other hand, a sea level canal on route 8 in Nicaragua and Costa Rica or on route 25 in Colombia might prove to be cheaper than defending the present canal or taking it back from unfriendly hands.

Finally, we recognize that the Panamanian people want a new arrangement. We can understand and sympathize with the desire of the Panamanian people to go from one part of their country to another without going through foreign customs or without harassment from our police. Unfortunately, we have not heard enough from the Panamanian people as to what are their specific complaints against us so that the American people and this Senate can judge the merits of the treaty, or devise one more amenable to both peoples.

In summary, we find no good reason to give up the Canal and its Zone, and the pro-treaty arguments are unsound, fallacious or frivolous. Finally, we wish to point out that this treaty appears to be a form of appeasement in phases to a conjured threat of a Panamanian Viet Cong; a threat which is more spectre than substance. We know, and the world knows, that appeasement, even the appearance of appeasement is too tempting a morsel to the hungry hounds of war. It is also particularly humiliating to the American public to appease anyone so soon after our misfortunes in Vietnam and Angola.

We caution the Senate to examine carefully the exact wording of this treaty and all the multiple annexes and side agreements and the nuances of the words used therein that describe our rights to keep the Canal open, accessible, efficient, and under our control.

BIOGRAPHICAL SKETCH

Major General J. Milnor Roberts, USAR, became Executive Director of the Reserve Officers Association 1 October 1975. He had served as Chief U.S. Army Reserve from 1 June 1971 until 2 June 1975, after nomination by the President and confirmation, on 5 April 1971, by the United States Senate. Previously he was Deputy Chief Army Reserve and was the first general officer to hold that post.

General Roberts was commissioned a Second Lieutenant, Infantry, from ROTC at Lehigh University, Bethlehem, Pa., in May 1940. He entered on active duty in January 1942 and served as an instructor at the Ft. Benning Infantry School and at an Infantry Replacement Training Center. Following assignment as Commanding Officer, Company "E", 88th Glider Infantry, he participated in the landing at Omaha Beach 6 June 1944 as Aide-de-Camp to LTG Leonard T. Gerow, CG, V Corps. Subsequently, he was Assistant Military Government Officer; Executive Officer, Military Government Section; and Assistant Intelligent Officer for V Corps.

After his release from active duty in December 1945, he served with the US Army Reserve's 314th Infantry Regiment first as Intelligence Officer, then Operations Officer, Executive Officer, and Commanding Officer of the 1st Battle Group. He subsequently commanded the Combat Command Section, 79th Command Headquarters (Divisional) following which he was named Mobilization designee to the Office, Chief of Information, Department of the Army. In December 1967 he was appointed first commander of the 99th Army Reserve Command headquartered in Pittsburgh. He was promoted to Brigadier General in May 1968.

General Roberts has been awarded the Distinguished Service Medal; Legion of Merit; Bronze Star Medal; French Croix de Guerre with Silver Star; the Czechoslovakian Military Cross of 1939; the Bronze Arrowhead for participation in the "D Day" Normandy Invasion; and other U.S. and foreign awards.

A member of ROA since 1946, he has served as an officer of his local chapter and on several national committees. He is Past Commander, Pittsburgh Chapter, Military Order of the World Wars; Past President, Fort Pitt Chapter, Association of the US Army; Past President, Pittsburgh Sigma Chi Alumni Chapter; Past Director, National Advertising Agency Network, and is Vice-President-at-large, Society of American Military Engineers.

General Roberts is a member of the Sons of the American Revolution and a direct descendant of one of General George Washington's commanders at Valley Forge, Colonel George Gibson, who lost his life later during the campaign for the Northwest Territories in 1791.

STATEMENT OF COL. PHELPS JONES, U.S. ARMY, RETIRED

Mr. Chairman and Members of this Distinguished Committee: My name is Phelps Jones and I serve the more than 1.8 million members of the Veterans of Foreign Wars of the United States as their Director of National Security and Foreign Affairs.

I am pleased and honored to have been invited to appear before this distinguished body to share with you the position of the V.F.W. on the proposed treaties affecting the interoceanic canal and its framework, the U.S. Canal on the Isthmus of Panama. Our National Commander-in-Chief, Dr. John Wasylik, of Sandusky, Ohio, has asked me to convey to you his appreciation for this opportunity.

Last month, Dr. Wasylik presented the V.F.W. position to the Committee on International Relations of the U.S. House of Representatives. This September 16th statement covers, in detail, V.F.W. rationale for opposing both the assumptions undergirding the U.S. negotiating position and the treaties which emerged from the negotiations.

To avoid pointless repetition, I request that the Chairman include our National Commander's earlier statement as a part of the record of these proceedings.

This earlier statement includes the unanimously passed Resolution Number 402, the heart of which reads:

"Be It Resolved, by the 78th National Convention of the Veterans of Foreign Wars of the United States, that:

"(a) U.S. operation, control and defense of the Canal are non-negotiable;

"(b) tensions relating to the administration of the Canal Zone be resolved on the spot without disturbing present treaty arrangements;

"(c) U.S. citizens and employees in the Canal Zone continue to meet their responsibilities under U.S. sovereignty;

"(d) the foregoing position be again communicated to both the President (who in October, 1976 asserted that he would 'never give up complete or practical control' of the Canal) and the Congress;

"(e) the Panama Canal Zone send to the Congress of the United States a delegate such as is done in Puerto Rico, the District of Columbia, and the Virgin Islands; and

"(f) the proposed treaty being put forward by the Carter Administration be defeated in the 95th Congress."

If anything, since this resolution was passed on August 23rd, both additional reflection and events have fortified our resolve.

The September 7th White House signing extravaganza was unmistakably designed to be a "media event" which would overwhelm any serious consideration of the proposed treaties on their merits—or lack thereof. In candor, my organization was affronted by this stagey event and the inherent premise that U.S. national interest on this issue could best be discerned and advanced by polling foreign nations.

The trumpeted U.S. right to act militarily to preserve the Canal's neutrality, under Article IV of the Neutrality Treaty, has been directly disavowed by two

Panamanians most directly involved: negotiators Carlos Lopez Guevara and Romulo Escobar Bethancourt. Mr. Bethancourt assured the rubber stamp Panamanian National Assembly on August 19th that, not only was U.S. military intervention not permitted under Article IV, but also the Canal could be closed by Panama if: (a) no profits accrued; (b) internal disorders erupted; or, (c) there was a landslide. A few days later, Mr. Bethancourt offered some observations on the "expeditious" passage reportedly assured U.S. warships:

"Expeditious passage does not mean privileged passage. As a matter of fact, the concept of privileged passage was rejected . . . if after examining the provision, the Gringos with their warships say, 'I want to go through first,' then that is their problem with the other ships waiting there. We cannot go that far."

Mr. Chairman, we have long heard that the proposed treaties are the product of thirteen years of painstaking negotiations fully supported by four Presidents. Yet today we witness American negotiators unable properly to explain with any conviction what it is that Panama agreed to in the very elastic language of Article IV of the Neutrality Treaty. As we well know, Panamanians, with alacrity and acerbity, repeatedly tell us what they did not agree to.

I find it impossible to believe that four Presidents, their Secretaries of State, and the current Joint Chiefs of Staff could now find solid reasons to support the tragic/comic opera bouffe being played out to ascertain what it is, in fact, that thirteen years of "painstaking" negotiations have really meant.

Certainly, Mr. Linowitz missed the mark badly when he informed this body on September 29th that "in no way does (the proposed treaty) limit our ability to act," and "U.S. warships can go to the head of the line even if other ships are waiting to get in." Mr. Linowitz convinced only Mr. Linowitz on these points. His Panamanian colleagues were clearly unmoved.

We have all noted that the Joint Chiefs of Staff have been assigned a key role in "educating" the presumably backward American public on the proposed treaties.

As a retired career soldier whose service included duty on the Joint Staff and in the office of the Chairman, JCS, I have an abiding appreciation of our senior military people as officers of honor and perception. They are among the most convinced Constitutionalists in our country. I do not, and will not, question their sincerity and conviction on this matter. I do, however, point out that the aggressive use of the service chiefs by the Administration makes shabby use of the JCS in what is obviously an intense domestic debate with important political overtones.

Over the 30 years since 1947, when the JCS System was formally set up, my research shows me only three occasions—one per decade—when the JCS was invoked by various Administrations in an effort to pre-empt prolonged political consideration of a national policy issue: (a) in 1951 when General Bradley supported President Truman's desire not to expand the Korean War as called for by General MacArthur; (b) the 1963 support of the JCS for the limited test ban Treaty; and, (c) the current use.

One final point on this matter of the Administration and the JCS. If the Administration truly believes the Chiefs collectively represent an unassailable source of policy wisdom on the matter of the proposed treaties the question can be fairly put: why limit the public role of the JCS to the matter of the Treaties only? The decision on the B-1 Bomber, the proposed withdrawal from Korea and a host of other defense issues could have the "wraps" removed and the JCS urged to come forward and tell-it-like-it-is. My concern is that such transparent use of the senior military will, rightly or not, decrease their credibility on some future occasion when the Chiefs, on their own, feel compelled to stand up and be counted on some issue central to our survival.

Mr. Chairman, some concluding thoughts.

As this Committee was supremely unimpressed by the argument that five American Presidents sought an outcome in Vietnam different from that which happened, I urge you to apply the same level of skepticism to the current "four Presidents have favored" argument advanced by the Administration.

As to the possibility of violence absent treaty ratification, the recent burning of Ambassador Jordan's automobile in Panama suggests that some level of violence will arise from some quarter no matter what happens. The U.S.—most certainly to include the V.F.W.—is threatening no one. We are being threatened periodically by a Panamanian regime which alternately forecasts violence or states their abhorrence of the violence they have earlier forecast. A nice trick.

I have attempted to think through formulae short of uninterrupted U.S. sovereignty which would assure the President the "practical control" he stated a year ago he never would cede. It doesn't work. So-called U.S. "Pre-eminence" or "practical control" short of uninterrupted U.S. sovereignty, equals being on the Isthmus on

Panamanian sufferance which could be withdrawn over night. When we cede sovereignty, as the proposed Treaties would have us do, we are placed on a slippery slope without a solid case under the law should Panama, for whatever reason, elect to nationalize the Canal operation. There is no way to get from the cession of "sovereignty" to "practical control" As Hanson Baldwin has pointed out, to talk as if we can is "double-talk."

One aspect of this issue has escaped notice to this point.

This body is deeply aware of the high, and increasing, level of inter-dependence between and among the nations of the world. Often this undeniable fact of growing interdependence is cited as a compelling reason for a muted American response to some event outside our borders. What has, I believe, never been emphasized is that the responsible professional 63-year American custodianship of the Canal, for the benefit of the entire world maritime community, is a practical example of the inter-dependence among nations being understood, accepted, and efficiently served.

Finally, after words and perceived symbols fade, geography endures. Along with Gibraltar (British since 1713, not just since 1903), Suez, and the Straits of Malacca, the U.S. Canal and its protective framework, the Zone on the Isthmus of Panama, will be important to the commerce of many nations and vital to hemispheric and Free World safety for as far ahead as any of us can see.

It is the considered judgment of the Veterans of Foreign Wars of the United States that uninterrupted U.S. sovereignty over the Canal and the Canal Zone is in the supreme national interest and we urge the United States Senate, as an act of enlightened and unapologetic statesmanship, to return the proposed Treaties to the President with your advice, but without your consent.

I will try to answer such questions as you choose to ask.

Thank you.

STATEMENT OF DOCTOR JOHN WASYLIK

Mr. Chairman and Members of this Distinguished Committee: My name is Doctor John Wasylik, and my home is in Sandusky, Ohio. As National Commander-in-Chief of the Veterans of Foreign Wars of the United States, I am pleased and honored to appear before this distinguished body to share with you our views on the proposed Treaties affecting the Inter-Oceanic Canal and its framework, the U.S. Canal Zone on the Isthmus of Panama.

I am accompanied here today by two of my V.F.W. colleagues, Mr. Cooper T. Holt, Executive Director of our Washington Office and Colonel Phelps Jones, USA (Ret.), my Director of National Security and Foreign Affairs.

As you may be aware, positions in the Veterans of Foreign Wars are arrived at democratically at our annual National Conventions.

Our 78th National Convention was held in Minneapolis, Minnesota during the period August 20-26, 1977. Fourteen thousand delegates, representing more than 10,000 V.F.W. Posts and 1.8 million members were joined by delegates representing more than 600,000 members of the V.F.W.'s Ladies Auxiliary.

Our delegates gave respectful attention to arguments supporting the proposed treaty advanced by the Chief of State, U.S. Army, General Bernard W. Rogers, USA, and arguments opposing the treaty as set forth by Senator Strom Thurmond (S.C.).

Following these two thoughtful presentations by two patriotic and dedicated Americans, on Tuesday, August 23d both the V.F.W. and the Ladies Auxiliary delegates were asked by the Chair for an expression of their views. Both groups of delegates voted unanimously to accept Resolution Number 402, 'U.S. Sovereignty Over the 'United States Canal' Located on the Isthmus of Panama.'

Following this display of solidarity, the Chair gavelled the Convention into order and repeatedly asked if there was anyone there present who desired to speak in favor of the Treaty and assured the delegates that anyone who so desired would be given a courteous and respectful hearing.

No one rose to oppose the unanimous views of the delegates. With the Chairman's permission, I would like to read the "Be It Resolved" portion of Resolution Number 402, with the request that the entire Resolution be included in the transcript of these hearings.

On the Canal Treaties issue, the heart of our mandate reads:

"Be It Resolved, by the 78th National Convention of the Veterans of Foreign Wars of the United States, that:

"(a) U.S. operation, control and defense of the Canal are non-negotiable;

"(b) tensions relating to the administration of the Canal Zone be resolved on the spot without disturbing present treaty arrangements;

"(c) U.S. citizens and employees in the Canal Zone continue to meet their responsibilities under U.S. sovereignty;

"(d) the foregoing position be again communicated to both the President (who in October, 1976 asserted that he would 'never give up complete or practical control' of the Canal) and the Congress;

"(e) the Panama Canal Zone send to the Congress of the United States a delegate such as is done in Puerto Rico, the District of Columbia, and the Virgin Islands; and

"(f) the proposed treaty being put forward by the Carter Administration be defeated in the 95th Congress."

This is where we stand. Now why do we hold so resolutely to this view?

In the first instance we are totally unpersuaded both by the assumptions which led to the treaty negotiations and by the proposed treaties which emerged from these negotiations.

Since August, 1914, the United States Canal on the Isthmus of Panama has been responsibly operated and defended to the benefit of the United States, the International shipping community, Panama, Central America, and Latin America.

The "payaway treaty" clique has fallen back on (1) implied blackmail ("unless we give it to the Panamanians, they may blow it up"), (2) self-fulfilling prophecy (forecasts of Vietnam-like guerrilla warfare), and, (3) self-inflicted descriptions of "colonialism."

The current ploy of much of the "prestige media" on the Canal question is, feigning more disdain than anger, to dismiss all who have stood in steadfast opposition to the proposed "payaway" (an accurate term, "sell-out" would imply the Panamanians are seeking to buy our \$7 billion Canal; they are not) as jingoistic non-readers of history who are carelessly calling for war.

Nothing could be farther from the truth.

Long before the Canal and the Canal Zone turned into a political issue, the V.F.W. sought to inform the American public of the true nature of the issues involved.

There follows arguments advanced by the "payaway apologists" and the relevant V.F.W. response.

"Payaway" apologists: How can anyone in 1977 argue for a policy of "colonialism?"

V.F.W. Response: Colonialism is, definitively, an exploitative arrangement where-in a natural resource; i.e., cotton, rice, tin, etc., is farmed, harvested, or mined by an oppressed people for processing, manufacturing, packaging and sale of the finished product abroad.

Panama "oppressed?" Clearly not! Panama (a) has the highest per capita income of any of the seven countries of Central America and stands 4th (of 20 nations) in all of Latin America; (b) is dependent on the Canal and the Zone for 30% of her foreign currency earnings while 13% of her gross national product arises from the same source.

Panamanian per capita wealth is about twice that of Colombia who, until 1903, was the country of which pre-1903 Panama was a province.

Panama "oppressed?" Tell *that* to Cambodia!

"Payaway" Apologists: What is needed is a modern arrangement to replace a treaty (Hay-Bunau-Varilla) now 74 years old.

V.F.W. Response: Modernity, like beauty, rests in the eye of the beholder. Britain has occupied the "Rock of Gibraltar" since the 1713 Treaty of Utrecht which ended the War of the Spanish Succession. (Sensible people are thankful the British have been on the "Rock" for the past 264 years.) Unlike the Canal, Gibraltar has not played any significant role in Spanish economic growth. Like the Panamanians, the Spanish are unhappy about the status quo. Unlike our State Department, the British Foreign Office has kept a lid on the situation (to the benefit of us all) for 264 years, not 74.

Perhaps we should ask the British Foreign Office to conduct a "crash course" on how to protect vital national interests for our State Department.

"Payaway" Apologists: But the Hay-Bunau-Varilla Treaty of 1903 gave the U.S. all rights, powers, and authority "as if it (the U.S.) were the sovereign of the territory." The words "as if" indicate that it is Panama, and not the United States, which holds either "titular" or "residual" sovereignty.

V.F.W. Response: Those who so happily produce the "as if" clause conveniently forget to add what follows in this "in perpetuity" treaty; i.e., "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority."

The bulk of the scholarship on the sovereignty issue supports the V.F.W. view. A family of treaties (a) with "New Granada" in 1846; (b) with Britain in 1901; and, (c)

with Colombia in 1922, all undergird and extend the sovereign pre-eminence of the U.S. as clearly recognized in the 1903 treaty with Panama; a treaty, incidentally, deliberately ratified after the signing by the Panamanian Senate.

"Payaway" Apologists: Secretary of State John Hay advised President Theodore Roosevelt that the 1903 Treaty was advantageous to the United States and disadvantageous to Panama.

V.F.W. Response: Is there some natural order that mandates that most or all of the treaties entered into by the U.S. must be disadvantageous to America; the Paris Accords of 1973 bringing "peace" to Southeast Asia comes readily to mind.

Hays view notwithstanding, as earlier indicated, the 1903 Treaty has been a success story for all concerned, most specifically including Panama.

"Payaway" Apologists: How would you like to see America divided in two by the Mississippi River as the Canal divides Panama?

V.F.W. Response: Unlike the example of the Mississippi, the construction of the Canal and the birth and continued existence of a Panama, independent from Colombia, are inextricably linked. So while the U.S. Canal and the U.S. Zone, given human nature, may never be objects of popular admiration in Panama, nonetheless, the clear linkage between the U.S. presence and their national existence is there and, we suspect, most Panamanians understand this unalterable fact of their nationhood.

"Payaway" Apologists: Who wants to fight another "Vietnam" over the Canal?

V.F.W. Response: No non-institutionalized person ever wants (a) any war, or, (b) most especially a Vietnamese-type encounter in which we will the battle, but not the victory.

The war-like language about the Canal and the Zone arises from occasional flights of oratory by General Torrijos ("We will walk the Ho Chi Minh Trail. It is long and exerts a heavy toll in blood."), from various Panamanian student groups, from supportive revolutionary rhetoric from Castro, and most disturbingly, by U.S. officials who, I would judge, believed that even an allusion to our defeat in Vietnam would suffice to unnerv the American people in their natural desire to retain our preeminence in the Canal. This latter tactics has backfired badly, and, if anything, has produced an opposite effect.

The real question is: apart from the 1964 student disorders, we've had 74 years of peace, stability and progress in the Canal. Can this record be sustained or improved upon by the transparent "partnership" with Panama being advocated by the State Department? Remember, once America is meeting her responsibility as a matter of Panamanian suffrage and not unequivocal U.S. rights, we can be asked to pull out overnight.

"Payaway" Apologists: But the Canal is especially vulnerable to sabotage.

V.F.W. Response: It always has been, but it has only been in the last three years that this long standing vulnerability has been pointed out to us, often by our own negotiators. Again, how would the pullout of the U.S. garrison enhance the security of the Canal from any group or faction seeking to make some irrational Third World "point" by blowing a lock or draining Gatun Lake?

If the Panamanian Government's reply is that they are unable to control their own citizens' actions in the face of a continued U.S. presence in the Canal, the question then looms: how reliable a "partner" would the Government of Panama be in any "partnership" with the United States in confronting any non-Panamanian; ie, Cuban pressure?

"Payaway Apologists: But the Canal and the Canal Zone are Panama's most important "natural resource."

V.F.W. Response: The Canal is not a "natural resource." It was built over a 10-year period by the Corps of Engineers. It is a quintessentially "artificial" or man-made enterprise. Secondly, the weight of history, law, and logic demonstrates that it is "ours" not "theirs."

"Payaway" Apologists: But whatever the merits of the clause might have been in the past, aren't we "painted into a corner" by the February, 1974 "Statement of Principles" agreed to by Secretary Kissinger and Foreign Minister Tack and the recent Treaty signing extravaganza?

V.F.W. Response: When you're "painted into a corner," you have two basic choices: (a) keep on painting; or, (b) use whatever turpentine is on hand to "unpaint" and get out.

In 1967, Panama rejected an initialed draft of a new treaty. Our State Department can well use this earlier Panamanian rebuff as a valid precedent for re-examining the validity of the 1974 "Statement of Principles" and the resultant proposed treaties.

"Payaway" Apologists: Have you ever seen the stark contrast between the "manicured" lawns of the U.S. Canal Zone and the poverty and squalor of Panama over the fence?

V.F.W. Response: Yes. A ridiculous bit of imagery insulting to both the Zonians and the Panamanians, who are placed in the nonsensical position of favoring litter and uncut grass.

The Canal Zone is not Grosse Pointe, Beverly Hills, Tuxedo Park or Chevy Chase. It is—and it should be—a typical American community adjusted for life in the tropics.

The best way to assure Americans in the Zone have a spokesman is to have the Canal Zone send a delegate to the U.S. Congress as does Guam, Puerto Rico, the Virgin Islands, and the District of Columbia.

"Payaway" Apologists: But the U.S. pays an annual "rent" to Panama. Doesn't this mean that Panama owns the Canal?

V.F.W. Response: It is not "rent" for land or the Canal (we bought the property four times; from Panama, from the individual land owners, from the failed French enterprise and from Colombia). It is an annuity paid to Panama (as it was earlier to Colombia) for displacing the old trans-Isthmus railroad. Not even the U.S. government is so soft in the head that it pays "rent" on land that it owns four times over.

"Payaway" Apologists: What is the matter with the proposed Treaties' goals on this issue; i.e., "to assure that the Canal is operational, secure, efficient and open, on a nondiscriminatory basis to world shipping."

V.F.W. Response: The "goals" cited above are a precisely accurate description of the present arrangement. In short, why seek "goals" that have already been achieved?

"Payaway" Apologists: Do you mean break off negotiations and thereby incur the wrath of all of Latin America, bring an abuse of America in the UN, and incur, perhaps, the public opposition of even our NATO allies?

V.F.W. Response: If we retreat when we're clearly right, we will have surrendered, in advance, all our influence on other and more ambiguous international disagreements.

Three or four (of 20) Latin American countries, not, of course, including Panama, enjoy a significant degree of democratic freedoms. Democratic or authoritarian, many need the Canal operation even more than we do. I have neither seen nor heard of any hard intelligence that even suggests an international army drawn from Latin American states would either march on the Canal or seek to infiltrate the Zone in an international Vietnam-type operation. (Cuba, of course, having tasted a "revolutionary victory" in Angola is a separate matter.)

As for NATO, as the Arab-Israeli "Yom Kippur War of 1973" so clearly underscored, our allies do not have concerted policies apart from the defense of the NATO treaty area. I would expect a resolute U.S. stand on the Canal would gain the understanding and support of our major European friends.

As to the UN, we are in a classic "no win" posture with the General Assembly and its Third World plus communist majority. Former Ambassador "Pat" Moynihan's perception that many Third World countries in wanting to rip off the wealth of others are really calling for "duly sanctioned looting." His view has relevance here.

To sum up our total opposition to the proposed treaties:

If we wrongfully "cave in" on the sovereignty issue, we are on the Isthmus at the sufferance of the volatile dictatorship of Brigadier General Torrijos. We could be asked to leave overnight. Do we then skulk out or do we stand our ground?

The Canal is much closer to Cuba than is Angola. Soviet-inspired Cuban involvement on the Isthmus could well wear a "Panamanian Cloak." We would undoubtedly agonize, but we would probably acquiesce.

The proposed "Neutrality Treaty," which we are told, would permit U.S. military action to defend the Canal, is "waffling" brought to an art form. The Panamanians have agreed to no such thing in writing or in their rhetoric. The Administration may kid itself. It should not be allowed to kid the American people.

Panama's wretched record in "human rights," as attested to by the January 30, 1977 "Freedom House" study, needs no amplification here. The Administration seems unembarrassed by this manifest hypocrisy. Our President went so far as to embrace, literally, General Torrijos following the signing extravaganza.

I mean no disrespect to the Joint Chiefs of Staff, but until the late 1975 they were silent upon the Treaty negotiations. I will not comment upon their recent shift in view, but the unfettered military advice of former Chief of Naval Operations calling for continued U.S. pre-eminence makes the compelling military case.

In reviewing the Panamanian Student riots of 1964, I note the following prominent Americans were then quoted as follows:

Ambassador Ellsworth Bunker: the assault on the Canal Zone had been led by "persons trained in communist countries for political action of the kind that took place" and that "the Government of Panama instead of attempting to restore order, was, through a controlled press, television, and radio, inciting the people to attack and to violence."

Former President (then Minority Leader) Gerald R. Ford: "With Cuba under the control of the Soviets through its puppet, Castro, and with increased Communist Subversion in Latin America, a Communist threat to the Panama Canal is clearly a grave danger. The American people will be shocked by the terms of this (Johnson Administration) treaty."

Joseph A. Califano, Jr. (Currently Secretary of HEW, then an Assistant to the Secretary of Defense): "We know that some of the leaders were known and identifiable Communists, members of the Communist Party of Panama, and people who belonged to the Vanguard of 'National Action,' which is openly and proudly the Castro Communist Party in Panama."

Now, I realize that 13 years have passed and that people often change their minds over time.

My question is: what hard evidence, available to all of us in 1977, caused these three distinguished Americans to change their minds over recent years about the nature of the Communist threat in Panama? We would all profit if they would share this new information with us.

In conclusion:

What the proposed Treaties embody is a slow motion act of strategic self-mutilation.

Only 13 of our warships cannot transit the Canal today. As Navy ships get smaller, even this small number will decrease.

The Canal and the Zone (a) save 8,000 miles and 15-30 days; (b) have the only ship repair facilities within 1,600 miles on the Atlantic side and 2,500 miles on the Pacific side; (c) have, in Howard Air Force Base, the only high performance air base within 1,000 miles; and, (d) is the only U.S. logistical base south of the Rio Grande.

As to the possibility of violence should the Treaties not be ratified, no one in America, especially including the V.F.W., is threatening anybody. We are being threatened by a Panamanian strong man who, seemingly on alternate days, either threatens violence or abhors it. And this is the man with whom we seek a "partnership?"

What, then, does the V.F.W. propose?

(a) A revised U.S. position which would immediately disabuse Panama of any major territorial, defense, control or operational aspirations; ie, America is not running the Canal on Panamanian sufferance.

(b) Generosity and imagination on real life human grievances (ranging from parking places to job opportunities) where a long term U.S. administration may have needlessly chafed Panamanian citizens; and

(c) A major modernization packet to ready the Canal for ships now too large for passage and other measures all of which would combine to give a major boost to Panama's diversifying, albeit debt-ridden, economy.

To conclude:

An opinion research poll indicated that Americans favor, by 76-16%, continued U.S. sovereignty over the Canal and the adjacent Zone.

Change is an imperative when a given status quo is unworkable.

Change does not equal progress when current arrangements not only do a job, but do it superbly.

The Panamanians want very badly to have their way and far too many in the State Department see it their way; ie, reciting "Panamanian Perceptions" ad nauseam.

Our people can, should and must be brought unapologetically to defend a 74-year record America and the world maritime community have unarguably benefited from.

Thank you.

RESOLUTION NO. 402: U.S. SOVEREIGNTY OVER THE "UNITED STATES CANAL"
LOCATED ON THE ISTHMUS OF PANAMA

Whereas, Article II of the 1903 Convention between Panama and the United States, modified in part by the 1936 Treaty between the two Governments, states:

ARTICLE II

"The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land under water for construction, maintenance, operation, sanitation, and protection of said canal of the width of ten miles extending to the distance of five miles on each side of center line of the route of the Canal to be constructed; the said zone beginning in the Caribbean Sea three miles from mean low water mark extending to and across the Isthmus of Panama into the Pacific Ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the zone above described shall not be included in this grant . . .

"The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco; and"

Whereas, the United States has more than fully met its obligations to Panama under existing treaty arrangements and, moreover, has efficiently and responsibly accommodated a large number of transits and amount of tonnage through the canal; and

Whereas, the United States has paid for the Canal and the Canal Zone four times (1) to Panama, (2) to the failed French Consortium, (3) to private citizens of Panama, and, finally, (4) to Colombia; and

Whereas, the revolutionary government of Panama, a product of coup d'etat, has since June 1971, under the guise of seeking new canal treaty arrangements, undertaken a bitter and sustained campaign and anti-American propaganda fueled in large part by Cuban and Soviet communists; and

Whereas, given the emotionally irrational situation in Panama, a political/psychological "timebomb" is being consciously fabricated by the revolutionary government of Panama, set to explode to the detriment of the United States and the world shipping community; and

Whereas, due largely to our unswerving V.F.W. support, patriots in the United States Senate, led by Senators Thurmond (S.C.), Helms (N.C.), and McClellan (Ark.), have gone on record in opposition to the unprincipled "Statement of Principles" signed by former Secretary of State Kissinger and the Panamanians, and a parallel effort is being similarly supported in the House of Representatives, led by Congressman Dan Flood (Pa); now, therefore

Be it resolved, by the 78th National Convention of the Veterans of Foreign Wars of the United States, that:

- (a) U.S. operation, control and defense of the Canal are non-negotiable;
- (b) tensions relating to the administration of the Canal Zone be resolved on the spot without disturbing present treaty arrangements;
- (c) U.S. citizens and employees in the Canal Zone continue to meet their responsibilities under U.S. sovereignty;
- (d) the foregoing position be again communicated to both the President (who in October 1976 asserted that he would "never give up complete or practical control" of the Canal) and the Congress;
- (e) the Panama Canal Zone send to the Congress of the United States a delegate such as is done in Puerto Rico, the District of Columbia, and the Virgin Islands; and
- (f) the proposed treaty being put forward by the Carter Administration be defeated in the 95th Congress.

PANAMA CANAL POLL

Mr. THURMOND. Mr. President, the overwhelming opposition of the American people to the giveaway of the Panama Canal was amply proven in a recent poll on that subject by the weekly National Enquirer newspaper which claims 15 million in circulation throughout the United States.

Ninety-seven percent of those responding said "no" to the question "Should the United States turn control of the Panama Canal over to Panama?"

The Enquirer took no position on the question, but offered to its readers arguments on both sides of the issue by two distinguished Members of this body.

The newspaper pointed out that over 4,500 replies had been received in the poll to date with 4,376 against giving up control and 140 in favor.

Mr. President, I ask unanimous consent that this article in the October 18, 1977 issue of the Enquirer, published in Lantana, Fla., be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

POLL: 97 PERCENT SAY DON'T GIVE CONTROL OF CANAL TO PANAMA

An overwhelming majority of readers responding to an Enquirer poll say the United States should not turn over control of the Panama Canal to Panama.

First results of our poll, announced in the September 27 issue, show that of 4,516 ballots cast, 4,376 or 97 percent voted "no" on the question: "Should the United States turn control of the Panama Canal over to Panama?" Casting "yes" votes were a total of only 140 readers, or 3 percent.

As usual in our polls, The Enquirer took no sides on the question, but presented the pro and con views of leading spokesmen. Arguing against the Panama Canal Treaty, which is backed by President Carter and awaiting Senate ratification, U.S. Sen. Orrin G. Hatch (R-Utah), warned that giving up the Canal undermines U.S. security and well-being.

Opposing this view, U.S. Sen. Mike Gravel (D-Alaska) said that the new treaty is not only fair, it also protects American interests.

Watch for further results of this poll in future issues.

THE PANAMA CANAL TREATIES

Mr. THURMOND. Mr. President, late Friday evening, President Carter and General Torrijos issued an unsigned joint statement of understanding on differing United States and Panamanian interpretations of the treaties.

After reading press reports over the weekend, it appears the so-called understanding is a very informal diplomatic document. It is not even a signed agreement as General Torrijos pointedly said on his return to Panama when he declared in a cavalier manner, "I haven't even signed an autograph."

On the issue of intervention, the statement, in part, provides—

... each of the two countries shall in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

In addition to this language, however, the joint statement provides—

This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama.

The point is that the canal becomes internal to the affairs of Panama 6 months after ratification of the treaties. Sovereignty and control pass to Panama, and any action taken by the United States will be subject to the above proscription. I am unable to determine who defines intervention or what the definition of intervention would be.

The issue of expeditious passage also remains unclear. I am unable to discern who determines priority passage and what conditions constitute emergencies sufficient to bring about expedited treatment.

This vague two-party statement has clarified nothing, and any further drafting should be approached as treaty amendments, not general statements subject to varying interpretations. The new "understanding" is merely an interpretation of the treaties by the current leaders of the two countries affected and the fact such an interpretation was needed testifies to the ambiguities in the treaty itself. Only the treaties are permanent and only the treaty documents will serve as a basis for future decisions.

Today the United States does not base its rights in Panama on what leaders of that period said it meant, but rather upon the bare words of the 1903 treaty itself. This same application will apply in future years to the Panama Canal treaties we are being asked to ratify today.

Even if the statements were clear, which they are not; even if they were signed, which they are not; even if they were in the form of amendments, which they are not; they still leave unsettled the central objection to the treaties—relinquishing ownership and control of a vital commercial and defense asset to the unstable, left-wing dictatorship of General Torrijos.

Again, the question comes to mind—Who can best operate, defend, and keep the canal open for the rest of the world—the United States or the Torrijos regime?

Mr. President, in order to share a number of news items on this matter with my colleagues, I ask unanimous consent that the statement of understanding as issued by the White House, the Foreign Information Service broadcast report, and an article carried by the Washington Post, be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

STATEMENT OF UNDERSTANDING

Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

The Neutrality Treaty provides that vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly.

[From the Foreign Information Broadcast Service]

PANAMA: TORRIJOS RETURNS, SAYS NOTHING SIGNED IN WASHINGTON

Gen. Omar Torrijos Herrera arrived back home at 1700 today, when all the world's newspapers are reporting and commenting on his interview this morning with President Jimmy Carter. He returned in a special jet which landed at the Rio Hato Air Base. He was accompanied by Agricultural Development Minister Col. Ruben Dario Paredes, Presidency Minister Fernando Manfredo and Romulo Escobar Bethancourt, chief of the Panamanian negotiating team. He was also accompanied by special guard Sergeant Jose de Jesus Martinez and his private secretary, Celia De Gaswell.

General Torrijos was received by the Rio Hato garrison chiefs and by the guards which are stationed at his farallon home. Our reporters filmed General Torrijos arrival and recorded his brief statements concerning his long and positive trip.

Torrijos said that he was tired from the trip and wanted to rest before making extensive statements. He said that he considered the tour very beneficial for Panama and that we could rest assured that everything negotiated and everything discussed was in his people's favor. He added that he understands that the people are very defensive concerning their sovereignty and that during his meeting with President Carter he had not signed even one autograph. Questioned about the comments which arose after his meeting with Carter, Torrijos repeated that he had signed nothing at all and had done nothing to change the new treaties signed on 7 September. He said that the small groups which are opposed to the treaties also have their rights, but that this is nothing to worry about, that on the contrary, this provides stimulation for positive accomplishments.

Torrijos' wife, children and other relatives arrived on a special flight in Rio Hato a few minutes after Torrijos arrived. Bidding farewell to our reporter Santa Maria Llamas, Torrijos said that he will soon hold a news conference.

[From the Washington Post, Oct. 16, 1977]

GEN. OMAR TORRIJOS DENIES SIGNING NEW CANAL PACT

PANAMA CITY, October 15.—Gen. Omar Torrijos, fresh from a meeting with President Carter on the Panama Canal treaties, has denied reports here that he signed a pact giving the United States the right to military intervention in the canal.

"I haven't even signed an autograph," Torrijos said yesterday when his flight from Washington landed at the Rio Hato air force base, near his beach house. He said he was too tired to make further comments.

Torrijos said Carter had been very affable and that they had talked about the process of ratifying Panama Canal treaties by the U.S. Senate and the people of Panama.

[After Torrijos and Carter met Friday, the United States and Panama issued a joint communique clarifying Washington's treaty right to intervene to maintain neutrality of the canal even after it reverts to Panamanian control in the year 2000. Neither leader signed the communique.]

THE PANAMA CANAL TREATIES—NO. 17

Mr. ALLEN. Mr. President, over the past weekend the news media covered extensively the visit to the White House made by Panamanian Dictator Omar Torrijos. The dictator apparently had been called in for a conference with the President to discuss the right of priority passage for the U.S. Navy and the right of the United States to intervene to guarantee canal neutrality—two of the many ambiguous provisions found throughout the proposed Panama Canal Treaty and the proposed Neutrality Treaty. Other matters, possibly involving the indictment of Moises Torrijos, the dictator's brother, may also have been under discussion; however, press accounts did not allude to that possibility.

In any event, at the conclusion of the conference, amid much fanfare and jubilation, yet another Panama Canal agreement was announced allegedly clearing up the two problems under discussion. At first, many thought that the agreement was at least a signed document. But we soon learned that the purported agreement was, in fact, an unsigned document wholly devoid of any binding legal effect.

But, Mr. President, even assuming that this document had been signed and even assuming that this document could, therefore, be treated as an executive agreement, or a reservation to treaty—I assume that is what it is going to be called if it is ever agreed to by our negotiators and sent up to be added to the treaty—does this document clear up ambiguities or does it simply create more? Clearly, Mr. President, we are in worse shape now than we were before the dictator's visit. For example, on the question of the right to intervene to guarantee the neutrality of the canal, the document reads:

The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal.

Now, that does not sound too bad, but look at this, Mr. President, that provision is followed by this language:

This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

So, the dictator is seeking here to protect and preserve his dictatorship.

So, Mr. President, here we are back at square 1—more confused than ever. Does this language mean that the United States has the right to intervene within Panama to protect the canal against all aggressors, including Panama.

That is a possible aggressor. Panama, in entering into these treaties, does not guarantee that there will not be insurrection, sabotage, violence, demonstrations. So one of the aggressors may well be Panama.

Or does it mean that the United States may take action only outside Panama against third countries violating canal neutrality? Perhaps, on the other hand, it may mean that the United States can act within Panama to defend the canal's neutrality, but only against third nations. One guess is as good as another.

Mr. President, why can we not have a document which is clear and unambiguous on its face? Do they not have any lawyers down at the Department of State who are capable of drafting a simple contract?

That is what this really is: a high level contract between nations.

Mr. President, they need to hire some lawyers down there who know that a binding contract to be performed over a period of years ought at least to be a signed document.

We do not have that at this time.

These proposed treaties are at least signed, but they themselves are obviously of no value in understanding our rights, since all these extraneous documents keep having to be drafted by platoons of lawyers at the behest of ill-advised negotiators. Certainly, this latest document does nothing but add to the confusion.

Yet, Mr. President, here is former Ambassador Linowitz telling the press at the time the document was announced, and I quote from his remarks:

There has never been any misunderstanding between President Carter and General Torrijos as to the exact meaning of the treaties. The statement is intended to put to rest any misunderstanding as to what is intended under the treaties.

There must have been some ambiguity if they had to issue a statement to clear up the ambiguity.

It would be difficult to see how there was no misunderstanding and now find the issuance of a statement to clear up ambiguity.

You know, Mr. President, I am glad former Ambassador Linowitz thinks that President Carter and Dictator Torrijos have had no misunderstanding over the exact meaning of the treaties because that at least guarantees that two people on the face of the Earth can read these treaties and make some sense out of them. But what about the rest of us? What about future Presidents? What about future dictators—or, hopefully, what about future elected Panamanian presidents—which they do not have now, of course? What are they going to have to go on? If ratified, these treaties could stay in effect for many years and would be the best and only evidence of what was actually agreed. But it is indeed comforting, Mr. President, to know that at least the President and the dictator, according to former Ambassador Linowitz anyway, do mutually understand the exact meaning of these quite baffling provisions. Many of us do wish they would let us in on the secret.

So, Mr. President, former Ambassador Linowitz says there is a meeting of minds; let us hear what Dictator Torrijos had to say no sooner than he left the room where this so-called agreement was promulgated. Dictator Torrijos summarized the meaning of this new document this way:

If a great power attacks the canal or puts the canal in danger, it is the right of the United States to go and defend the canal. But it does not have the right to intervene or interfere in the internal affairs of Panama.

So, Mr. President, already the Panamanians have got their own version of the meaning of the so-called agreement, and I am sure the Department of State will soon too have its own interpretation.

I might say Mr. Torrijos boasted when he got back to Panama that he had not signed a document, he had not even signed an autograph when he was in Washington, conferring with the President; so he is boasting of the fact that he has not signed anything.

Looking at the language of the document, I must say that Dictator Torrijos may well be correct in his assessment of this unsigned paper. As I read the document, it seems to be saying that the United States can take action away from Panama to defend the regime of neutrality which would be established under the neutrality treaty. But, of course, that right would be close to useless if the United States did not also have the right to defend in place the canal itself. In other words, if Panama—if Panama decided the canal would no longer be neutral because of an alliance formed with another nation, presumably with Cuba or with the Soviet Union, or if Panama decided that it would be convenient to impose discriminatory tolls, or if Panama decided to make difficult the passage of ships of particular nations, Dictator Torrijos or his dictator successor would be in a position to assert that, all neutrality aside, the United States had no right—no right whatsoever—to intervene within Panama or to interfere with the internal policies and affairs of Panama. Here we are, Mr. President, back at square one.

What have we actually gained, Mr. President, by this latest diplomatic triumph—and I might add, Mr. President, I do not believe the country can take too many more diplomatic coups in our dealing with Panama. What have we gained? True, we all read the headlines boldly proclaiming that the President and the dictator had agreed on canal defense rights, but once again, as the truth leaks out, we learn that the document is not even signed, that the document itself is ambiguous, that the document creates problems, Mr. President, and does not solve problems.

This latter point is particularly clear when a thorough examination is given to the language purporting to clarify the rights of American warships to rapid transit of the Isthmus. This language reads as follows:

In case of need or emergency, warships may go to the head of the line of vessels in order to transit the canal rapidly.

What this unsigned document does not say, however, is who gets to decide what is a case of need or what is a case of emergency. Panama might have one idea about what constitutes an emergency situation and we might have another idea.

Why not say it, Mr. President, in simple terms? I suggest the following, which may well be offered as an amendment to the treaty when it comes up here, in the Senate:

United States warships have the right of priority passage at any time and may at all times proceed ahead of waiting merchantmen.

No, Mr. President, I guess that is too simple so we have elected instead in this unsigned, meaningless, nonbinding, and confusing document to foment still further potential disagreement by apparently leaving to the Panamanians the right to determine what

emergency or which case of need is sufficient to justify priority passage by American war vessels. I think I shall change this word that I have suggested, "waiting merchantmen" to say merely "waiting vessels" rather than merchantmen; that U.S. warships have the right of priority passage at any time and may at all times proceed ahead of waiting vessels.

But listen, Mr. President, what former Ambassador Linowitz is reported to have said on this subject:

We are hoping it will lay to rest the questions that have been raised so that we can go forward with the approval of the treaties. I don't think, personally, that any further action will be required.

Former Ambassador Linowitz does not seem to be paying too much attention to what is going on over here on the Senate floor, Mr. President, because if he did, he would know that this unsigned, ambiguous document clarifies nothing and does nothing whatsoever to address the many, many other serious—indeed, fatal—defects found throughout the proposed treaties.

I would suggest, Mr. President, that the Department of State pay closer attention to what is being said over here in the Senate because sooner or later, the Department of State has to face up to the simple fact that these treaties are so poorly drafted throughout that the Senate could not properly consent to their ratification. Even proponents of a canal giveaway recognize that fact. Even proponents recognize that both treaties must be rewritten in their entirety.

In my judgment, Mr. President, the Senate should undertake this onerous task. The Senate should, by amendment, rewrite these disastrous proposals now under study in the Committee on Foreign Relations. The Senate should, acting as the Committee of the Whole, sit down to the hard work of undoing the damage and unraveling the mystery of why the Department of State was incapable of reaching an agreement with the Panamanian negotiators which could, at a minimum, protect the vital national security interests of our country.

Unsigned documents clarifying nothing, understandings of no binding legal effect, reservations of rights not agreed to by the other party, are not going to be sufficient. Fanfare and hoopla in the press is not going to be sufficient. The only course of action is extensive and thorough page-by-page, paragraph-by-paragraph, sentence-by-sentence, word-by-word consideration and amendment of each and every provision of both treaties. Both treaties, Mr. President. This process will be long and tedious, very long and very tedious, but if these treaties are not soon withdrawn, it is a duty, Mr. President, we must soon undertake inasmuch as others have not. We must unfortunately also go ahead with the painful process of resolving all of the questions surrounding the peculiar manner in which the treaties were negotiated.

Mr. President, I feel that, as time goes on, we shall see other statements to clear up other ambiguities. I feel that, in the final analysis, we are going to have to amend these treaties here, on the floor of the Senate, and send this amended treaty back to the negotiators to serve as a guideline for further negotiation.

Mr. President, I appreciate the Chair's lenience. I know I have consumed all my time. I yield the floor.

PANAMA CANAL TREATIES

Mr. SCOTT. Mr. President, as indicated on several occasions in the past, I am opposed to the ratification of the proposed Panama Canal treaties and this position is in line with the views that have been expressed by the people of Virginia in correspondence and telephone calls to our office. In fact, roughly 96 percent of the people contacting the office are opposed to ratification. Yet, evidence continues to accumulate that the President intends to utilize the full force of his office as Chief Executive to change the views of individual Senators and to change the opinions of the American people. To my mind this will prove to be a difficult task and I would like to cite as an example a copy of a letter received from a Virginia constituent. Let me read the letter omitting the name and address of the writer and also omitting identifying portions of a telegram enclosed with the letter. The letter reads as follows:

OCTOBER 12, 1977.

HON. WILLIAM LLOYD SCOTT,
U.S. Senate, Washington, D.C.

DEAR SENATOR SCOTT: As a registered and active voter of Virginia I am writing to ask that you vote against ratification of the Panama Canal Treaties. I must also request that you not use my name in this matter as I have been told indirectly to support these treaties by General David C. Jones, Air Force Chief of Staff.

I am enclosing a copy of a message that General Jones sent to all commanders. Paragraph 5 makes it quite clear that we as military personnel are expected to support these treaties.

Although I can not speak out publicly against the Panama Canal Treaties, I will not speak out in support of them either. Because of my position in the military, I would appreciate it if you and your staff not reveal how you received the enclosed message.

Sincerely,

The unclassified telegram has a number of identifying features indicating the wide distribution it received within the specific command to which it was referred. These features removed, it reads as follows:

For Commanders from General Jones.
Subject: Panama Canal Treaties

1. On 10 Aug. 1977 Panamanian and U.S. negotiators announced agreement in principle on a conceptual framework for two new treaties. One, the neutrality treaty, provides for the permanent neutrality of the canal; the second, the Panama Canal Treaty, deals with the operation and defense of the canal. Both treaties would enter into effect after ratification and document exchange processes are complete. The neutrality treaty will be of indefinite duration, whereas the Panama Canal Treaty will terminate in all aspects on 31 December 1999.

2. The Panama Canal is a major defense asset, the use of which enhances United States capability for timely reinforcement of United States forces. Its strategic military advantage lies in the economy and flexibility it provides to accelerate the shift of military forces and logistic support by sea between the Atlantic and Pacific Oceans and to overseas area. United States military interests in the Panama Canal are in its use, not its ownership. The proposed treaties would assure that access to and security of the Panama Canal are protected in time of war and peace.

3. As President Carter has stated, "We will have operating control and the right to protect and defend the Panama Canal with our own military forces until the end of this century. Under a separate neutrality treaty we will have the right to assure the maintenance of the permanent neutrality of the canal as we may deem necessary."

4. The Air Force actively participated in the development of all defense related aspects of the proposed treaties, and fully supports them. They would provide a basis for development of a continuing friendly relationship between the United States and Panama which would be of significant importance in insuring that the Panama Canal would be available to the United States when needed. Once the U.S. no longer operates the canal, the proposed neutrality treaty would provide an adequate basis for safeguarding our interests in the canal.

5. It is important that our personnel, particularly our senior people, understand our support for the proposed treaties.

Now, Mr. President, if the Air Force Chief of Staff, Gen. David C. Jones, has sent telegrams to all of his commanders and the President has indicated he intends to educate the American people in the Panama Canal Treaty so that they will insist that it be ratified by the Senate, is it not reasonable to assume that this telegram from the Air Force Chief of Staff is a part of the educational process and that the Chiefs of Staff of our other military services, as well as the heads of our civilian departments and agencies are also utilizing the vast apparatus of the Federal Government to influence public opinion so that it will parallel that of our Chief Executive.

I have been led to believe over the years that ours is a representative form of Government, where elected officials, whether they be Members of the U.S. Senate or President of the United States, act on behalf of the people who elect them to office and that the ultimate will or sovereignty resides in the people of the country collectively not in the Members of the U.S. Senate or in the President of the United States.

Frankly, I hope the President will have a change of heart and come to recognize that we do have popular sovereignty in this country and that he too is subject to the sovereign will of the people. They have made it very plain in their communications, both orally and in writing to their elected representatives, that they do not want this treaty ratified. A change on his part would indicate that the President himself is growing in wisdom and stature and that he too is capable of being educated.

THE PANAMA CANAL TREATIES—NO. 18

Mr. ALLEN. Mr. President, on several occasions I have brought to the attention of the Senate the various devices and schemes proposed by our negotiators to deliver cash to the Panamanian dictator without the necessity of including those means and methods in the terms of the treaties and without the necessity of seeking, through the constitutional process, appropriations for such purposes in the form of legislation originating in the House of Representatives. In short, Mr. President, I have already previously and frequently expressed my own sense of outrage at the many and varied methods employed to circumvent the Constitution both with respect to appropriations and with respect to the right of the Senate to advise and consent to treaties without action by the House of Representatives providing for the disposition of the property of the United States, that is, the Canal Zone and the Panama Canal. But unfortunately, there is more to discover.

We have seen how soft loan agreements are proposed to be used to funnel sums to the Panamanian dictator; we have seen how the successor corporation to the Panama Canal Company would be pillaged by mandated payments to Panama; we have seen how commerce will be burdened by increased tolls levied to provide for loan repayment to the large international banks; we have seen how the present Panama Canal Company would be stripped of its most profitable assets, such as the Panama Canal Railroad and the Panama Canal refueling facilities, in order to provide ready cash direct to General Torrijos; we even have seen how U.S. taxpayers would be asked to pay \$10 million per year to Panama for the privilege of being subjected to the oppression of the so-called legal system of the dictator—and certainly that is the height of irony, Mr. President, that upon our delivery up to Panama of U.S. territory and property, we would thereafter pay Panama to oppress our own 37,000 U.S. citizens now living in the Canal Zone.

Mr. President, we have seen all these things, and we have accepted the opinion of Nicolas Ardito Barletta, Panamanian Minister of Economic Planning, that the projected cash flow over the 23-year term of the Canal Treaty will be \$2.262 billion in 1977 dollars. All this, Mr. President, without a single appropriation and in large measure without even Senate advice or consent.

You know, Mr. President, the principal check on the power of the executive branch, a check heretofore carefully and jealously guarded by the Congress, is the power to appropriate or, more properly, the power to refuse to appropriate from the Treasury.

I see the distinguished Senator from Idaho (Mr. Church), the second-ranking majority member of the Foreign Relations Committee. He has been a strong advocate through the years of the Congress using the power to control the purse strings of the Nation to influence foreign policy. Unquestionably, the war in Vietnam was brought to a close because Congress refused to appropriate further the carrying on of that war. So we have power, which has been carefully and jealously guarded by the Congress, to appropriate, or, more appropriately, in this case, we should have the power to refuse to appropriate, from the Treasury.

The deliberate circumvention of Congress in forking over these vast sums to a reprehensible dictator is beyond the pale, cannot on any grounds be supported, and would certainly itself alone be grounds for defeat of any elected official who permitted the people of the United States to be plundered by the unthinking for the benefit of the unjust.

Mr. President, in our prior discussions of these rip-offs, we may have overlooked by accident an item amounting to some \$319 million which our negotiators propose to, in effect, extract from American workers and American taxpayers. To be sure, in the grandiose schemes conceived down there at the Department of State, \$319 million must look like a drop in the bucket. But frankly, Mr. President, it galls me that our negotiators must have figured we here in the Senate would not even notice this particular strategy.

Mr. President, the Panama Canal Company is a corporate entity run as a business and subject to the Corporation Control Act of 1950. At present, the unrecovered investment of the Company is \$319 million. That is what the Canal Company owes the U.S. Treasury as the balance of the cost for building the canal.

This unrecovered investment is, in effect, a debt owed to the U.S. Treasury. Since the opening of the Panama Canal, this debt has produced over the years some \$642,080,000 in interest payments from the Canal Company into the U.S. Treasury. Additionally, Mr. President, \$40 million of the principal sum initially owed to the Treasury has also over the years been repaid. These payments of principal have occurred as follows: \$10 million in 1955; \$5 million in 1956; \$10 million in 1960; \$10 million in 1968; and \$5 million in 1969. Annual interest payments have also been quite substantial, and in 1976, Mr. President, the Panama Canal Company paid to the Treasury \$16,600,000 in interest on the present outstanding unpaid principal of \$319 million.

So, Mr. President, the operator of the canal owes the U.S. Treasury \$319 million. What we are doing under the treaties, is giving Panama this canal on which \$319 million is still owed free from any indebtedness whatsoever, giving them free and clear title, not requiring the \$319 million to be paid.

This is a business, Mr. President, a business which has a liability, a business which has over the years reduced its debt and has paid interest into the Treasury for the benefit of U.S. taxpayers.

Certainly, if Panama should take over the canal under these treaties, why should they not be required to pay off the mortgage, so to speak? If a person has a house on which there is a mortgage and that person gives the house to someone, would it not be proper for them to pay off the existing mortgage on the house rather than to make a gift of the house free and clear?

That is what we are being called upon to do. The Canal Company, the operator of the canal, owes the U.S. Treasury, owes the American people, \$319 million. But as we give the canal to them under the treaties, we do not require this \$319 million to be paid.

The operation of the Panama Canal is a profitable business. They are able to keep up their interest payments; they are able to make their principal payments. If we give the canal to them, why not

give it to them subject to this indebtedness so that the U.S. Treasury could at least get back a portion of the cost of the canal?

Do not give it to them free and clear; give it to them subject to existing mortgage, shall we say.

But let us look, Mr. President, at what our negotiators have worked out with the Panamanians. Bear in mind, Mr. President, that our negotiators are proposing to give away the Panama Canal Zone, the Panama Canal, all the plant and facilities belonging to the Panama Canal Company—our negotiators are planning to more or less give away the whole operation lock, stock and barrel. Yet, Mr. President, as part of this process and in addition to the \$2.262 billion in 1977 dollars already slated for delivery to the dictator, our negotiators have worked out a way to stick the American taxpayer with this \$319 million debt. Our negotiators propose to set up an entirely new operating entity in Panama to carry out the present business being conducted by the Panama Canal Company. This new operating entity would be called the Panama Canal Commission. It is just a change of words, but they can start off owing no money and canceling this \$319 million debt for this new company.

It would more or less spring to life upon implementation of these treaties, somewhat as Athena sprang from the head of Zeus. With no prior history and as a corporate entity unto itself, this new proposed Panama Canal Commission would get nearly all the assets of the Panama Canal but none of the liabilities.

If a person sells a business to somebody, it is sold subject to its indebtedness, or take account of the indebtedness into consideration on the price to be paid. But no price is to be paid here. It is going to be a free gift with the cancelation of the mortgage, in effect, which is now on the canal.

Of course, Mr. President, some of the assets of the Panama Canal Company would be ripped off right at the beginning and given directly to the Dictator, but the great bulk of the assets of the Panama Canal Company would be transferred to this new Panama Canal Commission; the \$319 million debt, however, would remain a liability of the defunct Panama Canal Company.

It would not have any income or any assets, but they would owe the money. This debt would not be transferred to the operating company, the Panama Canal Commission.

Mr. President, there is no ambiguity about these provisions. They are very clear as to what is going to happen. This is certainly the case of a needed amendment to the treaties to at least provide that this new commission which is going to take over will assume this indebtedness of \$319 million to the people of the United States.

So, really, the Panama Canal Company owes this money and it should be paid. It should be paid out of the revenue. They are making enough money to continue paying the interest and, gradually, to reduce the principal. That is not being required, though, in the treaty. I think that is certainly one basis for an amendment that I hope the Senate will adopt.

So they get the canal, Mr. President, they get the business, but they do not get the debt. The United States taxpayer—you know who he is, Mr. President. He is the man that always foots the bill; he is the man out there working on a dock trying to earn a living

for his family; he is the man in a cornfield in Iowa working in the hot sun; he is the man in a steel mill in Youngstown, Ohio, sweating to produce steel so that other workers can assemble automobiles. And, Mr. President, he is the man that, every time the Department of State gets its fingers in the pie, has to pay. So the taxpayer is going to have to pay this \$300 million and it is not going to come out of the revenues of the canal. They go to this new commission, which, in effect, is saying that they go to Panama.

And whom does he have to pay, Mr. President? In this case, he has to pay a repressive, petty gangster dictator. In this case, he has to pay an elitist gangster government which makes no effort on behalf of its own destitute people but which is perpetually preoccupied with the pursuit of individual personal profit by whatever means, apparently even illegal means resulting in the death and suffering of our own citizens in this country.

But I am digressing, Mr. President, from my purpose, because even though I find disgusting the suggestion that our Nation ought to give this gangster regime one of our most valuable national assets while, at the same time, paying to it billions in U.S. funds, my real purpose in speaking this morning is simply to raise the impropriety—as a matter of simple business ethics—my purpose is simply to raise the clear impropriety of delivering all of the assets of one company to another new company and thereafter saddling the stockholders of the old company with all the debts, all the liabilities, and none of the benefits.

But I do not suppose that fact ever occurred to anyone down there at the Department of State. I do not suppose they have given any thought as to what business the Panama Canal Company could go into to cover its \$319 million debt to U.S. taxpayers. With no assets and no business to operate, it is going to be pretty rough to come up with that kind of money. It is going to take a real miracle worker just to come up with the annual interest of \$16 million from a company with no income and no assets.

Obviously, Mr. President, the Panama Canal Company would be bankrupt if these treaties are ratified, and the owners of the Panama Canal Company, the people of the United States, would again be left holding the bag.

What did our negotiators obtain for this \$319 million concession? What benefits are likely to accrue from saddling U.S. taxpayers with this unpaid liability? Frankly, Mr. President, I can find nothing whatsoever anywhere in the treaties to justify the assumption of this debt or of the payment to Panama of the other tremendous sums proposed to be paid. We have gained no concessions whatsoever from the Panamanians. We have gained no rights which we did not already possess under the existing treaty structure. Our negotiators have given in on every issue and our negotiators have even proposed that we assume the debts of the potentially profitable business we are presenting to Panama.

These treaties lack mutuality of contract; these treaties are unsupported by consideration; these treaties are, as they have been identified from the outset, a simple giveaway. One almost questions the necessity for having a treaty at all if these are the sort of proposals being advanced by the Department of State. It is all give and absolutely no take.

There is one final footnote to this particular deception which I have made the subject of my speech this morning. Inasmuch as the new Panama Canal Commission would be free from debt and would possess perhaps the most valuable commercial asset in the world, the Panama Canal, would we not very soon see demands made by our Panamanian partners that the newly acquired assets of the Panama Canal Commission be pledged as collateral for loans from the U.S. Treasury or from the always-accommodating international commercial banks, using international bond sales or other devices designed to raise capital to feed the appetite for profit of the Panamanian dictatorship and international banks.

Mr. President, in my judgment based on my study of Panama's record in the international capital market, we would expect to see dictator Torrijos knocking on the door of the large banks almost immediately, if he has not already pledged the revenues of our Canal to secure new loans to cover the massive debt owed by his bankrupt regime. In this process, Mr. President, we can expect neither the bankruptcy of dictator Torrijos nor the bankruptcy of the international banks, but we could expect further demands on the U.S. Treasury to cover the spendthrift activities of both.

PANAMA CANAL TREATIES

Mr. THURMOND. Mr. President, the administration is currently engaging in a vigorous campaign to sell the proposed Panama Canal treaties because of threats of what might happen in Panama if the treaties are defeated. Treaty proponents are constantly pointing out that there will be violence, terrorism, sabotage, and maybe even another Vietnam if the treaties are not ratified.

I would like to call attention to an article in the Wall Street Journal by Roger Fontaine entitled, "Scare Talk and the Canal," dated August 22, 1977.

Mr. Fontaine accurately forecasts in this article the tactics the administration would use in selling the treaties. He does an excellent job of rebutting the "scare talk" reasons for giving up the canal.

In addition, I would like to point out an article in the October 20, 1977, edition of the Chicago Tribune entitled "Why Public Rejects the Canal Pact," by Louis Harris. This article indicates that according to the latest Harris survey, the vast majority of Americans in every section of the country are opposed to Senate ratification of these treaties.

Mr. President, I ask unanimous consent that these articles be printed in the Record.

There being no objection, the articles were ordered to be printed in the Record, as follows:

[From the Wall Street Journal, Aug. 22, 1977]

SCARE TALK AND THE CANAL

(By Roger W. Fontaine)

Negotiators for the Carter administration have reached an "agreement in principle" with Panama on the "basic elements" of a new treaty on the Panama Canal.

Although the exact language has not yet been fully drafted, the main features call for transfer of the canal and the 533-square mile Canal Zone to Panamanian control in 23 years. The military presence of the U.S. would end by the year 2000, after which we would continue to have the unilateral right to insure an open and neutral canal. This latter provision clearly implies the right to military intervention, although the Carter administration does not like to use that term. A major controversy will undoubtedly flare up over this point.

But what is interesting about the proposed treaty is not its novelty but its utter familiarity to those who have had the patience to follow the negotiations over the last few years. The supporting arguments are also familiar, and they will now be echoed by most of our foreign policy establishment, including Gerald Ford and Henry Kissinger. Yet these arguments are still open to serious criticism, not, as our pro-treaty pamphleteers would have it, the criticism of the uninformed, the jingoistic and the merely nostalgic.

Three scare arguments are especially prominent, and need especially to be reviewed. First, that the canal is vulnerable to sabotage. Second, that a full-blown guerrilla war might break out in Panama. And last, that in such an event the United States would be condemned by all of Latin America, if not by the entire Third World.

The Carter administration, facing a suspicious Senate and public opinion, will probably rely on these arguments in its campaign for ratification. Suggesting that the U.S. is being subjected to extortion by tiny Panama is accurate enough, but the truly important part of the equation is that we Americans are engaging in acts of self-extortion. We are frightening ourselves with disaster scenarios which although superficially plausible have never been thoroughly dissected.

FEAR OF SABOTAGE

First, the fear of sabotage. Although the canal is and always has been vulnerable, wrecking it is obviously to no one's advantage, and least of all to that of the Panamanians. Since North American capital would be required to restore operations, Panama would remain as dependent as ever on the United States. Furthermore, a treaty which delays full control until the year 2000 seems unlikely to stay the hand of the young and impatient saboteur.

Second, guerrilla warfare. The specter of another Vietnam is an effective weapon, no doubt, in persuading a war-weary American public to surrender its rights on the isthmus. But the extent of the problem remains to be analyzed properly.

The potential does exist for small urban terrorist squads, recruited from Panama's large student population, to make lightning raids into the zone. They might stage robberies, kidnappings and assaults on police or civilian functionaries in the zone as well as in Panama itself. U.S. military and police units would find it tempting to chase these raiders back into Panamanian territory, thus provoking nationalist outcries.

Yet a truly serious insurgency is unlikely. Panama is not Vietnam in size or resources, nor does it have a nearby neighbor willing to aid the "liberation struggle." Furthermore, the Panamanian chief, General Omar Torrijos Herrera, is unlikely to provide the training and logistical support necessary to transform urban terror squads into full-fledged rural insurgents. Declaring war, even *sub rosa* war, on a superpower is still a dicey business.

Moreover, Gen. Torrijos may well find it more in his interest to stamp out, than to encourage insurgents. The regime remains extraordinarily dependent on foreign investment, foreign banks and, yes, foreign tourists—none of whom would enjoy working and playing in Belfast-style surroundings.

Finally, Gen. Torrijos is even less likely to enlist outside material support, even from such friends as Fidel Castro and Muammar Khadafy. The risks are too great and these gentlemen have too many other preoccupations. The Cuban leader, moreover, knows very well that Latin American guerrillas have an extraordinary rate of failure. Their only hope would be to wear down U.S. public opinion through a sustained campaign of terror, not a wholly irrational hope, but far from the worst case scenario of the treaty's supporters.

The third major pro-treaty argument is the fear of alienating world opinion, a familiar scenario which arises whenever there is a question of using force to insure American interests. Ambassador Sol Linowitz, one of the treaty negotiators, has even stated that the new treaty will "prove" us magnanimous to a skeptical (third) world. Yet if this world is not convinced of U.S. benevolence after our rebuilding of post-war Europe and our billions of foreign aid dollars to scores of underdeveloped countries, one more act of charity will not convince it. This treaty might just as well reinforce the notion that America is acting, not from generosity but from weakness.

To criticize this argument is to question the notion that what others may think must control our policy. No serious man should be concerned with critical opinion of Panama emanating from Conakry or Kampala, or much less Moscow.

Yet Latin America is a somewhat different case since, with the exception of Cuba, none of its countries are our sworn enemies. The depth of our ties with this region is matched only by those with Western Europe. Yet even though no Latin American regime publicly supports the United States, the depth of pro-Panamanian feeling varies considerably from country to country. It is strongest in Venezuela, Colombia and possibly Mexico; it is weakest in the southern cone of South America. For example, Brazilians, heavy users of the canal, have privately expressed deep misgivings over Panamanian control.

ONLY FIVE NATIONS

Despite Gen. Torrijos's numerous meetings with regional leaders, the last one held in Bogota early this month, he has managed to get the collective support of only five other nations.

Moreover, a surrender of the canal is not likely to gain us lasting respect or affection. And why should it when the obvious way to deal with us is to make more demands in an unfriendly a fashion as possible?

Beyond these arguments, our reluctance to hang on the canal reflects a sense of uneasiness, of guilt at maintaining what is so glibly described as a "colonial enclave." Our presence simply can't be squared with the radical anticolonial (to wit, antiwestern) sentiment that is now the common intellectual coin of the globe.

Yet it must be pointed out that Panama has benefited mightily from a resource that it alone could not exploit. It is a fact of life that the canal is a major international waterway that simply cannot be operated, much less defended, by one of the smallest countries in Christendom. That it would strike many as arrogant to state these facts is a mark of the extent to which we have absorbed the doctrine of international egalitarianism. National duty is not easily transferred nor fundamental geopolitical facts altered by political bombast.

The United States must retain the major role in running and defending the canal. It is still open to question how precisely to define that role, as well as the nature and extent of Panama's contribution. What should not be open to debate is the right of this country and the other users to an open and secure passageway between the planet's two principal oceans.

In spite of the attempts to secure ratification through scare arguments, this treaty does not fit these requirements.

[From the Chicago Tribune, Oct. 20, 1977]

HARRIS SURVEY: WHY PUBLIC REJECTS THE CANAL PACT

(By Louis Harris)

By 51 to 26 per cent, Americans are opposed to the United States Senate approving the treaty with Panama that President Carter and the Panamanian government recently signed. The treaty is rejected by a wide margin in every section of the country: by 49 to 31 per cent in the East, by 54 to 25 per cent in the Midwest, by 52 to 22 per cent in the South, and by 49 to 31 per cent in the West. However, among college-educated people, opposition to the treaty is a much narrower 45 to 39 per cent.

According to the latest Harris Survey of 1,536 adults nationwide, here are some of the reasons people give for opposing the treaty:

A 65-to-22 per cent majority feels that "the U.S. was given ownership of the Panama Canal in return for our building it there originally, so it is perfectly proper for us to keep owning it."

A 65-to-17 per cent majority believes "it is wrong for the U.S. to give up the Panama Canal under the threat of guerrilla warfare against our troops there."

By 64 to 11 per cent, people also think that "the present ruler of Panama threw out the elected government, and it is possible that a new dictator will take over there and say he will not agree to the treaty after we have agreed to give up control."

By 53 to 29 per cent, a majority feels that "if the U.S. gives in to pressure to give up the Panama Canal, Castro and the Communists will take it as a sign that we can be pushed around in other parts of Latin America."

By 67 to 17 per cent, a sizable majority believes "it adds insult to injury by making the U.S. pay \$50 million a year until the year 2000 in addition to them giving up control of the canal."

In addition, several of the key arguments put forth by the Carter administration in behalf of the treaty are also rejected by the public:

By 61 to 24 per cent, a majority disagrees with the contention that "it is wrong for the U.S. to own the Panama Canal, which goes right through the middle of another independent country, Panama."

By 52 to 24 per cent, a majority also disagrees that "times have changed, and throughout Latin America, continued U.S. control of the Panama Canal is pointed to as an example of this country wanting to have unfair control over smaller countries in this hemisphere."

By 53 to 26 per cent, a majority objects to the idea that "the Panama Canal is not as important as it once was, since big supertankers and aircraft carriers can't go through it, so it is a mistake to make such a fight over our keeping control of it."

There are two general arguments favoring the treaty that meet with public approval:

By 62 to 15 per cent, people are reassured that "the U.S. will still have complete access in the future for its ships to go through the Panama Canal."

By 52 to 28 per cent, a majority also feels that "by agreeing to give back control of the canal to Panama, we are sending a message to the rest of the world that we can be fair and generous to much smaller nations."

Ironically, despite their general disapproval, Americans do not find the chief provisions of the treaty objectionable:

A 60-to-64 per cent majority supports the idea that "the U.S. will maintain control of the Panama Canal until the year 2000."

A 61-to-21 per cent majority favors "the U.S. having military troops stationed in the Panama Canal Zone until the year 2000."

A 63-to-17 per cent majority approves the provision that "Panama guarantees that, after the year 2000, the Panama Canal will be kept 'neutral,' open to every country, including the U.S. to use for its ships."

By a 55 to 24 per cent, a majority approves the provision that "the U.S. will be allowed to defend the Panama Canal after the year 2000 to be sure that all nations can send their ships through it."

By 51 to 28 per cent, a majority favors the clause providing that "the Panamanians will be trained to run the canal and given increasing responsibility for running it from now to the year 2000."

By 61 to 18 per cent, a majority also approves the provision that "Americans who live and work in the Canal Zone will continue to enjoy full American rights, and if they break Panamanian law, they will serve sentences in American prisons."

However, one key provision of the treaty meets with definite disagreement:

By 64 to 17 per cent, a majority disagrees with the provision that "each year until the year 2000, the U.S. will pay the government of Panama \$50 million for the right to control the Panama Canal."

All of this lays bare the pressure points of the Panama Canal Treaty controversy. But we have here a case where the overall feeling of the American people is more important than the sum of the parts. Most Americans oppose the treaty for a simple reason: They remain unconvinced that it is really necessary for this country to give up control of the canal.

PANAMA CANAL NEWS COVERAGE IN WASHINGTON POST

Mr. THURMOND. Mr. President, It is disappointing to me that the largest circulation newspaper in our Nation's Capital, the Washington Post, has apparently allowed its editorial support of the Panama Canal Treaty to influence its news coverage on this important issue.

As the Foreign Relations Committee conducted its hearings on the canal treaty each day, I have noticed that comments by proponents of the treaty always received greater play than the views of opponents. The Post has appeared to consistently follow a biased and uneven policy in its news coverage of the treaty hearings.

This slanted coverage came to a head last Friday, October 14, when testimony by former Secretaries of State Dean Rusk and Henry Kissinger in favor of the treaty was headlined without one single word that other important witnesses even appeared that day in opposition.

On that same day, October 14, leaders of the American Legion, the Veterans of Foreign Wars, the American Veterans of World War II, Korea, and Vietnam, and the Reserve Officers Association all testified against the treaty.

Further, Maj. Gen. Milnor Roberts, director of the ROA, revealed in those hearings, that 309 retired generals and admirals had notified him of their opposition to the treaty.

Consistent with their one-sided coverage of this issue the Post totally ignored this impressive list of treaty opponents which included Gen. Lyman Lemnitzer, Adm. John McCain, Brig. Gen. John Eisenhower, and other respected military leaders.

Mr. President, a newspaper has an obligation to inform its readers about both sides of an issue irrespective of its editorial policy. The Post is wrong when it ignores arguments on the other side of this issue, and I believe the Congress and the people of this area are too smart to be misinformed or misled by such tactics.

In closing, I ask unanimous consent that the ROA news release titled "309 Generals, Admirals Against Panama Canal Treaties, ROA Survey Shows," a story the Post totally ignored, be printed in the RECORD.

There being no objection, the news release was ordered to be printed in the RECORD, as follows:

309 GENERALS, ADMIRALS AGAINST PANAMA CANAL TREATIES, ROA SURVEY SHOWS

WASHINGTON, D.C., October 18.—Gen. Lyman L. Lemnitzer, former NATO Commander; Adm. John C. McCain, the former Commander in Chief, Pacific; Gen. Charles L. Boite, former Vice Chief of Staff, U.S. Army; Maj. Gen. Earnest L. "Mike" Massad, former Deputy Assistant Secretary of Defense; Maj. Gen. Kenneth O. Sanborn, former Commander, U.S. Air Forces—South, Panama; and Brig. Gen. John S. D. Eisenhower, USAR, son of the late President Eisenhower, are among the 309 flag rank officers who have gone on record opposed to Panama Canal Treaties signed by President Carter on September 7. Only 7 expressed their support.

Included are generals and admirals of all the services—regular, Reserve and National Guard—who voiced their opposition through the Reserve Officers Association of the United States (ROA), chartered by Congress to advise on matters of national defense.

Their position—free of political constraint—was cited Oct. 14 by Maj. Gen. J. Milnor Roberts, ROA Executive Director, in testimony before the Senate Committee on Foreign Relations.

"We had asked our members who are not 'muzzled' to speak up so that our fellow citizens are not misled into the conviction that all military leaders think the treaties are the best thing since landing on the moon," General Roberts said. "Regardless of their personal opinions, what you hear from the current Chiefs of Staff is what the Administration wants you to hear. They could not possibly object publicly with their civilian bosses, including President Carter who signed the treaties," Gen. Roberts said. "In supporting the treaty, the joint chiefs have differed from the great majority of their military colleagues who are free to express their opinion."

Among other military leaders in opposition to the Panama Canal treaties were: Lt. Gen. Robert W. Colglazier, Jr., AUS (Ret.), former Deputy Chief of Staff—Logistics.

Lt. Gen. Stanley "Swede" Larsen, USA (Ret.), former Deputy Commander-in-Chief, Chief of Staff, U.S. Army—Pacific.

Vice Adm. J. F. Bolger, USN (Ret.), former Deputy Chief of Naval Personnel.

Maj. Gen. Glenn C. Ames, AUS (Ret.), nationally recognized leader, also, in the National Guard Association, Association of the United States Army, and former Adjutant General of California.

Maj. Gen. Homer I. "Pete" Lewis, USAFR, former Chief of Air Force Reserve. And even a Carter, Maj. Gen. Leslie D. Carter, USA (Ret.), of Midlothian, Va.

ALABAMA

Maj. Gen. George F. Hammer, USAF, Tuscaloosa.
 Brig. Gen. W. W. Duffey, USAR, Ret. Birmingham.
 Brig. Gen. Lewis C. Pattillo, USAR, Hartselle.

ARIZONA

Maj. Gen. Benjamin W. Fridge, USAF, Tempe.

ARKANSAS

Maj. Gen. Herman H. Hankins, AUS Ret., Arkadelphia.
 Brig. Gen. Thomas F. Butt, USAR, Fayetteville.

CALIFORNIA

Lt. Gen. Stanley R. Larsen, USA Ret., San Francisco.
 RADM R. D. Adams, USNR Ret. San Francisco.
 Maj. Gen. Glenn C. Ames, AUS Ret., Woodland Hills.
 Maj. Gen. William H. Baumer, USAR, La Jolla.
 RADM Anthony A. Braccia, USNR, Orinda.
 Maj. Gen. C. Lyn Fox, AUS Ret. San Francisco.
 RADM John E. Harlin, USNR Ret., Fullerton.
 Maj. Gen. W. J. Hixson, AUS Ret., Oceanside.
 Maj. Gen. Henry K. Kellogg, AUS, Ret. Los Altos.
 RADM William McCloy, USNR, Newport Beach.
 Maj. Gen. Douglas J. Peacher, USMCR, La Jolla.
 RADM Carl E. Watson, USNR Ret., Richmond.
 Brig. Gen. Fred C. Faupel, Jr., USAF Ret. Chatsworth.
 Brig. Gen. Philip J. Donovan, USAR Santa Monica.
 Brig. Gen. Stewart L. Hall, AUS Ret., San Diego.
 Brig. Gen. William H. Klenke, Jr., USMC Ret., Pauma Valley.
 Brig. Gen. Michael L. Matte, USAFR Ret., San Diego.
 Brig. Gen. A. J. Maxham, NG Ret., Long Beach.
 Brig. Gen. Charles McCormick, Jr., USAR Ret., Rancho Mirage.
 Brig. Gen. Keith E. McWilliams, ARNG, La Jolla.
 Brig. Gen. Wallace H. Nickell, USAR, W. Sacramento.

CONNECTICUT

Brig. Gen. Alphonse J. V. Fiedorczyk, USA Ret. Stamford.
 Brig. Gen. James D. Hewett, USAR, Kensington.
 Brig. Gen. John J. King, AUS Ret., Hartford.

DELAWARE

Brig. Gen. Albert W. Adams, USAR Ret., Bethany Beach.

DISTRICT OF COLUMBIA

Adm. John S. McCain, Jr., USN Ret.
 Maj. Gen. Lowell J. Bradford, USAR Ret.
 Maj. Gen. Robert E. L. Eaton, USAF Ret.
 Brig. Gen. Nicholas E. Allen, USAFR Ret.
 Brig. Gen. James H. Kidder, AUS Ret.
 Brig. Gen. Thomas H. King, USAF Ret.
 Brig. Gen. Eugene Phillips, USAR.

FLORIDA

RADM Carlos C. Cardeza, USNR Ret., Sanibel.
 RADM George J. Coleman, USNR, Miami.
 Maj. Gen. Richard H. Cooper, USAR, Orlando.
 Maj. Gen. Chester P. Hartford, USAR, Naranja.
 RADM John P. Ingle, Jr., USNR Ret., Jacksonville.
 RADM James R. McCormack, USN Ret., Port Charlotte.
 Brig. Gen. Malcolm K. Beyer, USMC Ret., Jupiter.

Brig. Gen. Edward S. Branigan, Jr., AUS Ret., Clearwater Beach.
 Brig. Gen. Charles D. Briggs, Jr., USAF Ret., Indialantic.
 Brig. Gen. Edsel O. Clark, USAFR, Daytona Beach.
 Brig. Gen. Thomas Fuller, AUS Ret., Gainesville.
 Brig. Gen. Gerald A. Hart, USAFR, Plantation.
 Brig. Gen. David C. Hastings, USAR Ret., Jacksonville.
 Brig. Gen. Eugene Muller, AUS Ret., Boca Raton.
 Brig. Gen. Philip D. Myers, AUS Ret., Coral Gables.
 Brig. Gen. James D. Randall, USAR, Brandon.
 Brig. Gen. Wilbur A. Smith, USAFR Ret., Indian Rocks Beach.
 Brig. Gen. Louis F. Stuebe, USAR Ret., Tallahassee.

GEORGIA

Maj. Gen. Earl O. Anderson, USAF Ret., Atlanta.
 RADM Hugh H. Howell, Jr., USNR, Atlanta.
 Brig. Gen. A. F. Brandstatter, USAR, St. Simon Island.
 Brig. Gen. Prentiss Courson, AUS Ret., Savannah.
 Brig. Gen. David E. Mayer, AUS Ret., Groveton.

ILLINOIS

Maj. Gen. L. J. Conti, USMCR, Arlington Heights.
 Maj. Gen. Francis P. Kane, AUS Ret., Chicago.
 Maj. Gen. Julius Klein, AUS Ret., Chicago.
 Maj. Gen. Cyrille P. LaPorte, USAR, Flossmoor.
 Brig. Gen. Lawrence H. Allen, Jr., USAR, Des Plaines.
 Brig. Gen. W. R. Allen, AUS Ret., Algonquin.
 Brig. Gen. L. V. Anderson, USAR, Glenview.
 Brig. Gen. John C. Brogan, USAR, Golf.
 Brig. Gen. O. C. Hudson, AUS Ret., Princeton.
 Brig. Gen. Robert L. Johnson, USAR, Palatine.
 Brig. Gen. Alfred K. Nelson, USAR, Chicago Heights.

INDIANA

Maj. Gen. Leston N. Carmichael, USAR, Columbus.
 Brig. Gen. John O. Bradshaw, USAF Ret., West Lafayette.
 Brig. Gen. Robert M. Leich, USAR, Evansville.
 Brig. Gen. Duncan N. P. Pritchett, USAF Ret., Indianapolis.
 Brig. Gen. Robert P. Porter, NG, Fort Wayne.

IOWA

Maj. Gen. Merrill B. Evans, USAR, Prole.
 Brig. Gen. R. A. Lancaster, USAR Ret., Des Moines.

KENTUCKY

Maj. Gen. C. Beach, Jr., USAR, Beattyville.
 Maj. Gen. Benjamin J. Butler, USAR Ret., Louisville.

LOUISIANA

Maj. Gen. C. F. Duchein, USMCR Ret., Baton Rouge.
 Brig. Gen. Melvin I. Bookman, AUS Ret., Metairie.
 Brig. Gen. Angelo L. Ferranti, ARNG Ret., Baton Rouge.
 Brig. Gen. Russell T. LeBlanc, USAR, River Ridge.

MAINE

Brig. Gen. William F. McGonagle, AUS Ret., Hollis.

MARYLAND

RADM Charles J. Costello, USNR Ret., Bethesda.
 Maj. Gen. Benjamin L. Hunton, USAR, Hyattsville.
 RADM William P. Stephens, USNR Ret., Annapolis.
 Brig. Gen. C. L. Sayre, AUS Ret., Leonardtown.
 Brig. Gen. W. E. Thompson, Jr., ANG Ret., Whiteford.

MASSACHUSETTS

Maj. Gen. John J. Maginnis, AUS Ret., Worcester.
 Brig. Gen. Costas L. Caraganis, AUS Ret., Lowell.

Brig. Gen. Richard C. Carrera, ARNG, New Bedford.

MICHIGAN

Maj. Gen. Alden G. Glauch, USAF, Traverse City.

MINNESOTA

Brig. Gen. Edward D. Clapp, USAR, St. Paul.

Maj. Gen. Norbert J. Hennen, USAR, Minneapolis.

MISSISSIPPI

RADM Edward F. Beyer, USNR Ret., Bay St. Louis.

Brig. Gen. William D. McCain, USAR, Hattiesburg.

Brig. Gen. Edmund W. Montgomery, II, USAR Ret., Jackson.

MISSOURI

Maj. Gen. William H. Blakefield, USA Ret., Boonville.

Maj. Gen. William A. Dietrich, USAF Ret., Kansas City.

Maj. Gen. Herbert T. Johnson, AUS Ret., Ferguson.

Maj. Gen. Raymond F. McNally, Jr., USAR Ret., St. Louis.

Brig. Gen. Robert E. Adams, USAR, Kansas City.

Brig. Gen. Bill C. Branson, USAR, St. Louis.

Brig. Gen. John S. Gullledge, USAF Ret., Carl Junction.

Brig. Gen. John T. Pegg, AUS Ret., Vicksburg.

NEBRASKA

Brig. Gen. Richard C. Allgood, Jr., USAR Ret., Lincoln.

NEW HAMPSHIRE

RADM Carl G. Gesen, USNR Ret., Concord.

Brig. Gen. Edward Haseltine, USAFR Ret., Reeds Ferry.

Brig. Gen. Boleslaw H. Pokigo, AUS Ret., Goffstown.

NEW JERSEY

Brig. Gen. E. J. Breen, USAR, Edgewater.

Brig. Gen. Rogers B. Finch, USAR Ret., Little Silver.

NEW YORK

VADM J. F. Bolger, USN Ret., East Hampton.

Maj. Gen. J. W. Kaine, AUS Ret., E. Williston.

Maj. Gen. Charles C. Nast, NG Ret., New York.

Maj. Gen. Laddie L. Stahl, USAR, Rexford.

Brig. Gen. Walter F. Alt, USAR Ret., Buffalo.

Brig. Gen. Charles D. Barrett, USAR, Painted Post.

Brig. Gen. Hugh J. Cox, AUS Ret., New York.

Brig. Gen. Edward J. Czerniuk, AUS, Flushing.

Brig. Gen. John Dorsey, AUS Ret., New York.

Brig. Gen. Murray Kitt, USAR, Niagara Falls.

Brig. Gen. Howard O'Connor, USAR Ret., Croton on Hudson.

NORTH CAROLINA

RADM Edward U. Austin, USNR, Charlotte.

Brig. Gen. Alex B. Andrews, USAF Ret., Raleigh.

Brig. Gen. James K. Durham, USAR, Smithfield.

NORTH DAKOTA

Maj. Gen. LaClair A. Melhouse, USAR Ret., Bismarck.

OHIO

RADM I. H. Cammarn, USNR Ret., Columbus.

RADM Richard Freundlich, USNR, Cleveland.

Maj. Gen. James L. Murray, USAFR, Perrysburg.

Brig. Gen. James M. Abraham, USAR, Gahanna.

Brig. Gen. Carlton S. Dargusch, USAR Ret., Columbus.

Brig. Gen. James A. Gleason, USAR, Cleveland.

Brig. Gen. Ronald S. Huey, ANG, Kettering.

Brig. Gen. Donald Lynn, USAR, Youngstown.

Brig. Gen. Howard Payne, Jr., USAF Ret., Dayton.

OKLAHOMA

Maj. Gen. Ernest L. Massad, USAF Ret., Ardmore.
 Maj. Gen. Hal Muldrow, Norman.
 Brig. Gen. Edward M. Frye, USAF Ret., Stillwater.
 Brig. Gen. Leslie W. Lane, USAF Ret., Tulsa.

OREGON

Maj. Gen. Ladd F. Hunt, USAF Ret., Beaverton.
 RADM Thomas J. Killian, USNR Ret., Portland.
 Brig. Gen. Victor H. English, USAF Ret., Beaverton.

PENNSYLVANIA

Maj. Gen. Harry K. Fluck, USAF Ret., Camp Hill.
 Maj. Gen. William E. Miller, USAF Ret., Camp Hill.
 RADM Charles E. Rieben, Jr., USNR Ret., Upper Darby.
 Brig. Gen. Clarence D. Bell, ARNG, Media.
 Brig. Gen. Thomas N. Corbin, AUS Ret., Camp Hill.
 Brig. Gen. Joseph C. Dolan, USAF Ret., Johnstown.
 Brig. Gen. John S. D. Eisenhower, USAF Ret., Valley Forge.
 Brig. Gen. Thomas P. Fox, AUS Ret., Bryn Mawr.
 Brig. Gen. George R. Gallagher, USAF Ret., Pittsburgh.
 Brig. Gen. James S. Gallagher, USAF Ret., Latrobe.
 Brig. Gen. William B. Gold, Jr., USAF Ret., Jenkintown.
 Brig. Gen. Walter D. Griffith, ARNG, Johnstown.
 Brig. Gen. John F. Linehan, Jr., USAF Ret., Philadelphia.
 Brig. Gen. John H. McLain, USAF Ret., Edgewood.
 Brig. Gen. W. A. Morgan, USAF Ret., Altoona.
 Brig. Gen. Gus G. Nagy, ARNG, Duquesne.
 Brig. Gen. James N. Robertson, ARNG Ret., Media.
 Brig. Gen. Watson C. Stoner, Jr., NG Ret., Waynesboro.

SOUTH CAROLINA

Maj. Gen. Don O. Darrow, USAF Ret., Myrtle Beach.
 Maj. Gen. Robert M. Jones, AUS Ret., Clemson.
 Maj. Gen. C. D. Merrill, USAF Ret., Hilton Head Island.
 Maj. Gen. Donald A. Yongue, USAF Ret., Orangeburg.
 Brig. Gen. Forrest A. Abbott, USAF Ret., Greenville.
 Brig. Gen. Grady Brooks, USAF Ret., Lyman.
 Brig. Gen. Charles P. Deane, USAF Ret., Hilton Head Island.

TENNESSEE

RADM Moore Moore, Jr., USNR, Memphis.
 Brig. Gen. W. D. Tidwell, Jr., USAF Ret., Madison.

TEXAS

Lt. Gen. Robert W. Colglazier, AUS Ret., San Antonio.
 Maj. Gen. Edward I. Creed, USAF Ret., San Antonio.
 Maj. Gen. John H. Foster, USAFR Ret., San Antonio.
 Maj. Gen. H. W. Hardy, USMCR, Houston.
 Maj. Gen. Stuart Haynsworth, USAF Ret., Houston.
 RADM Dallas F. Jordan, USNR Ret., Dallas.
 Maj. Gen. Homer I. Lewis, USAFR, Eagle Pass.
 Maj. Gen. Richard Mulberry, USMCR, Dallas.
 Maj. Gen. Warren E. Myers, USAF Ret., San Antonio.
 RADM C. H. Taylor, USNR Ret., Houston.
 Brig. Gen. Raymond Astumian, USAF Ret., Rockwall.
 Brig. Gen. A. S. Brussell, USAF Ret., Kemp.
 Brig. Gen. O. D. Butler, USAF Ret., College Station.
 Brig. Gen. A. B. Crowther, USAF Ret., San Antonio.
 Brig. Gen. Richard E. Fisher, AUS Ret., Marble Falls.
 Brig. Gen. Joe N. Frazer, Jr., AUS Ret., Eagle Lake.
 Brig. Gen. John H. Grimm, USAFR, Houston.
 Brig. Gen. Harry Huff II, USAFR, San Antonio.
 Brig. Gen. Ben J. Mangina, USAF Ret., Denison.
 Brig. Gen. Eugene J. Mincks, USAF Ret., Houston.

Brig. Gen. James H. McPartlin, USAFR, Richardson.
Brig. Gen. C. R. Sublett, AUS Ret., Dallas.

UTAH

Maj. Gen. Ray D. Free, AUS Ret., Salt Lake City.

VIRGINIA

Gen. Charles L. Bolte, USA Ret., Alexandria.
RADM Richard Black, USNR Ret., Woodbridge.
RADM Martin D. Carmody, USN, Alexandria.
Maj. Gen. L. D. Carter, USA Ret., Midlothian.
Maj. Gen. Carl J. Dueser, AUS Ret., Boyce.
Maj. Gen. F. H. Garber, USAR, Richmond.
Maj. Gen. Samuel R. Gay, Jr., USAR, Lynchburg.
Maj. Gen. Richard C. Hagan, USAFR Ret., Annandale.
RADM W. C. Hughes, USNR Ret., Falls Church.
RADM Alexander Jackson, Jr., USN Ret., Rapidan.
RADM John B. Johnson, USNR Ret., Vienna.
Maj. Gen. Charles E. Loucks, USA Ret., Arlington.
Maj. Gen. Milton A. Pilcher, AUS Ret., McLean.
Maj. Gen. J. Milnor Roberts, USAR, Arlington.
Maj. Gen. John J. Milnor Roberts, USAR, Arlington.
Maj. Gen. John S. Warner, USAFR, Arlington.
Brig. Gen. M. T. Ball, ARNG Ret., Richmond.
Brig. Gen. Harry Disston, ANG Ret., Keswick.
Brig. Gen. William H. Martin, Jr., ARNG, Richmond.
Brig. Gen. John W. Morgan, USAR, Hampton.

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Brig. Gen. Max K. Bitts, USAR Ret., Langley.
Brig. Gen. W. B. Hamilton, USAR Ret., Tacoma.
Brig. Gen. James B. Mason, AUS Ret., Tacoma.

WEST VIRGINIA

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WISCONSIN

Maj. Gen. H. R. Hackbarth, USAR, Hartford.
Brig. Gen. Roger H. Lehman, USAR, Brookfield.
Brig. Gen. Roy W. Peters, AUS Ret., West Bend.

CALIFORNIA

RADM Charles Tighe, USCG Ret., San Diego.
RADM Scott Whitehouse, USNR Ret., Corona Del Mar.
RADM Edwin M. Wilson, Jr., USNR, Santa Rosa.
Brig. Gen. Joseph G. Reban, USAR Ret., Huntington Beach.
Brig. Gen. Luther W. Sweetser, Jr., USAF Ret., La Canada.

FLORIDA

VADM A. F. Schade, USN Ret., Port Charlotte.
Brig. Gen. S. B. Wuertenberger, AUS Ret., Cape Canaveral.

GEORGIA

Brig. Gen. A. Lester Henderson, USAR Ret., Savannah.

INDIANA

Brig. Gen. Robert H. Simmert, USAR, Jasonville.

MISSOURI

Brig. Gen. Richard S. Payne, AUS, Charlotte.

NEW JERSEY

Maj. Gen. John L. Winston, USMCR Ret., Gladstone.

NORTH CAROLINA

Brig. Gen. Richard S. Payne, AUS, Charlotte.

PENNSYLVANIA

Brig. Gen. Charles S. Hendericks, ANG, Altoona.
 Brig. Gen. Robert M. Sheaffer, NG Ret., New Cumberland.

SOUTH CAROLINA

Maj. Gen. Thomas J. Thorne, USAR Ret., Charleston.

TEXAS

Maj. Gen. Kenneth O. Sanborn, USAF Ret., San Antonio.

VIRGINIA

RADM Henry J. Wuensch, USCG, Petersburg.
 Brig. Gen. William E. Reynolds, AUS Ret., Salem.
 Brig. Gen. James A. White, USAR, Salem.

WISCONSIN

Brig. Gen. William J. Crandall, USAFR Ret., Madison.
 Brig. Gen. Leo R. Weinshel, USAR Ret., Milwaukee.

CALIFORNIA

Maj. Gen. Wendell B. Sell, USAF Ret., Encino.

INDIANA

Maj. Gen. Howard S. Wilcox, USAR Ret., Indianapolis.
 Brig. Gen. Joseph A. Thomas, USAFR, Indianapolis.

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RADM Judson L. Smith, USNR Ret., Baltimore.

MICHIGAN

RADM George A. Weaver, USNR Ret., Sterling Hts.

MISSOURI

Brig. Gen. Robert L. Shirkey, USAR, Kansas City.
 Brig. Gen. Leigh R. Wilson, ARNG, Maryville.

NEW YORK

RADM Samuel S. Wald, USNR, New York.
 Brig. Gen. E. J. Strong, NG, Ret., Staten Island.

NORTH CAROLINA

RADM Arthur H. Padula, USNR, Oxford.

OHIO

Brig. Gen. William W. Davis, AUS Ret., Westerville.

PENNSYLVANIA

Brig. Gen. Albert B. Starr, USAFR Ret., Pittsburgh.

ARIZONA

Brig. Gen. Robert McMath, USAF Ret., Scottsdale.

ARKANSAS

RADM Leslie L. Reid, USNR, Rogers.

CALIFORNIA

Maj. Gen. Stuart D. Menist, AUS Ret., Kentfield.
 RADM Charles Paxton, USNR Ret., Encino.
 Brig. Gen. Donald N. Moore, USAR Ret., Wofford Heights.

COLORADO

Brig. Gen. Robert R. Owen, USAR Ret., Evergreen.

DISTRICT OF COLUMBIA

Gen. L. L. Lemnitzer, USA Ret.

FLORIDA

RADM Robert P. Owens, USNR Ret., Miami.
 Brig. Gen. George S. Purple, AUS Ret., Clearwater.
 Brig. Gen. Patrick A. Rickard, USAF Ret., Ft. Myers.

KANSAS

Brig. Gen. Roger E. Whitcomb, USAR Ret., Wichita.

LOUISIANA

RADM John D. McCubbin, USCG Ret., New Orleans.
 RADM M. Wayne Stoffle, USCGR, Metairie.

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Brig. Gen. Cyril C. Sheehan, USMCR Ret., St. Paul.

NEW HAMPSHIRE

Brig. Gen. Donald P. Dressler, USAFR, Hollis.

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Brig. Gen. Alden E. Stilson, Jr., USAR, Johnstown.

PENNSYLVANIA

Brig. Gen. Henry T. Waller, USMCR, Lumberville.

TEXAS

RADM O. A. Lively, USCGR, Dallas.
 Brig. Gen. George Frimpter, USAFR, San Antonio.
 Brig. Gen. James T. Roberts, AUS Ret., San Angelo.
 Brig. Gen. Roger L. Zeller, USAFR, San Antonio.

VIRGINIA

Maj. Gen. Willard P. Milby, USAR, Richmond.
 Maj. Gen. W. Thomas Rice, USAR Ret., Richmond.
 RADM Hugh Warren, USNR Ret., Charlottesville.
 Brig. Gen. Harry H. Treadaway, USAR, Richmond.

WASHINGTON

Brig. Gen. Albert G. Peterson, USAR Ret., Seattle.

ARIZONA

Brig. Gen. Frank I. Pethick, USAR Ret., Sun City.

CALIFORNIA

RADM Frank Raab, USNR, Los Angeles.
 Maj. Gen. Edwin B. Taylor, USAR, Sacramento.
 Brig. Gen. Jack Jew, USAR, San Francisco.

FLORIDA

Brig. Gen. Robert A. Berman, USAF Ret., Ocala.
 Brig. Gen. F. L. Vidal, USAFR, Satellite Beach.
 Brig. Gen. Fred J. VonDaacke, USAR, Lakeland.

HAWAII

Maj. Gen. Robert L. Stevenson, USAR Ret., Honolulu.

ILLINOIS

Gen. Horace F. Wulf, USAR, Calumet City.
 Maj. Gen. Daniel J. Manning, USAR, Clarendon Hills.
 Brig. Gen. Carl F. Steinhoff, USAR Ret., Chicago.

MINNESOTA

Brig. Gen. Gustaf P. Olson, AUS Ret., Sartell.

MISSOURI

Maj. Gen. Donal L. Turkal, USAR, St. Louis.

MONTANA

Brig. Gen. Emil Eschenburg, USAR, Helena.

NEW YORK

Brig. Gen. Mortimer O'Kane, Woodside.

OKLAHOMA

Maj. Gen. Walter L. Starks, USAR, Stillwater.

PENNSYLVANIA

Brig. Gen. Edwin D. Miller, USAR Ret., West Chester.

SOUTH DAKOTA

Brig. Gen. Henry A. Smith, Jr., AUS Ret., Onida.

TEXAS

Maj. Gen. George P. Munson, Jr., USAR Ret., Houston.

Brig. Gen. Mike P. Cokinos, USAR, Beaumont.

WASHINGTON

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WYOMING

Maj. Gen. George O. Pearson, USAR Ret., Sheridan.

ARIZONA

Brig. Gen. Marcus Westervelt, USA Ret., Tempe.

ILLINOIS

Maj. Gen. Ted W. Sorensen, USAFR, La Grange.

NEW MEXICO

Brig. Gen. Coryton M. Woodbury, USAR, Farmington.

PENNSYLVANIA

Maj. Gen. Frederick A. Welsh, USAR, Rydal.

UTAH

Brig. Gen. Sterling R. Ryser, USAR, Salt Lake City.

WASHINGTON

Brig. Gen. Jack H. King, USAR, Vancouver.

TENNESSEE

Brig. Gen. Herman A. Norton, USAR, Nashville.

WASHINGTON, D.C.

Maj. Gen. Michael P. Ryan, USMC, Ret.

SENATOR HANSEN ON THE PANAMA CANAL TREATIES

Mr. THURMOND. Mr. President, our distinguished colleague from Wyoming, Senator Hansen, has presented an excellent statement on the Panama Canal treaties to the Senate Foreign Relations Committee. I have read Senator Hansen's statement, and find it a convincing argument against treaty ratification.

He has eloquently put the current treaty debate in its proper perspective by stating:

These treaties are the wrong treaties, at the wrong time, for all the wrong reasons.

Mr. President, as one who has been an opponent of treaty ratification, I urge all my colleagues to study the statement our distinguished colleague has presented to the Foreign Relations Committee. Cliff Hansen is a man of keen intellect, whose views are respected by all of us in the Senate. His analysis will be most beneficial to all Members of the Senate.

Mr. President, in order to share this excellent statement with my colleagues, I ask unanimous consent that it be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT OF SENATOR HANSEN

Mr. Chairman, and members of the Committee: I greatly appreciate this opportunity to express my views before this Committee on the Panama Canal Treaties. My position over the last ten years is a matter of public record. I have always maintained I would oppose any treaty under which the U.S. relinquishes total control of the Canal Zone, its defense positions and the rights to operate the Canal. I have not altered my position.

Some weeks ago I told President Carter I would withhold judgment until I had the opportunity to study and to familiarize myself with the terms of both the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. But I have now concluded such a study and made a decision. I remain opposed to both treaties as they are presently drawn.

THE WRONG TREATY FOR THE WRONG REASONS

The fact that a new treaty has finally been negotiated comes as little surprise. Talks have been going on sporadically for many years under several administrations. I will not suggest that these talks should not have occurred, in light of several years of political turmoil and economic hardships within Panama. I will not say a new treaty is not entirely necessary. I will not deny that a reevaluation of the situation may have been advisable in the interests of cooperation between the two countries.

The question of sovereign rights has been debated extensively. Therefore, I will not address myself to that issue. I believe there are far more important aspects of these Treaties upon which to base my opposition.

What concerns me are the conditions under which the United States has negotiated these treaties. We have reacted to threats of violence from the leftists within Panama, and we have been led to believe our withdrawal from the Canal Zone is being favored by the Latin American community as a whole. The new treaties have been held up to us as a chance to set an example for the world in demonstrating our sincerity with regard to the sovereign rights of individual governments. Our presence in Panama has been pictured as the last example of colonialism in the Western Hemisphere. We are expected time after time to feel guilty for our presence there. We have been told it is time to make amends for our past errors. I do not buy that. It is dishonest to play on the conscience of the American people and to thus ignore the fundamental questions involved.

This is not the issue. Charles Maechling stated in a recent editorial that "Treatment of the Panama Canal as a Latin American political symbol rather than as a global strategic and economic asset has distorted important treaty issues." The Panama Canal Zone is far too important an issue to be held up as a testing ground; a kind of acid test. As a result of this approach, we have negotiated from a position of weakness; we have remained on the defensive throughout the recent months as talks progressed, and I believe we have capitulated on every major issue to the demands of the Panamanian Government. These treaties are the wrong treaties, at the wrong time, for all the wrong reasons.

UNRESOLVED QUESTIONS

I am concerned about the role the media has played in this drama. Time and again human rights issue involving the personal and political freedom of the Panamanian people have been ignored or minimized by the media in an effort to avoid

setbacks in the treaty negotiations. There have been charges and countercharges, but all have received scant attention and no comment from the State Department. The charges may all be unsubstantiated. But that has not yet been thoroughly resolved.

There have been as well, allegations involving the bugging of Panamanian quarters. Though the charges seem to have been dealt with, I wonder if they have completely resolved. I am concerned that the Attorney General sought to intervene when the Senate Judiciary Subcommittee on Separation of Powers subpoenaed those records which may have clarified the situation. While I realize there may be some question of committee jurisdiction involved, I would hope the Senate Intelligence Committee has been completely satisfied in its investigation of the matter. It would be unfortunate if the incident did in fact have any influence on the negotiations, one way or another.

I am concerned about the way the Administration chose to publicize the signing of the treaties.

The U.S. Constitution guarantees to the Senate equal participation in the adoption of treaties with foreign nations. This is an essential element in assuring that the American people have an input in the contracts made with other nations. Far from presenting a treaty to the United States Senate on which we would advise and consent, President Carter has attempted to present the Senate with a "fait accompli."

I have since been very pleased with the extent to which this Committee has gone in receiving testimony of all those interested in this vital issue.

Ratification remains the sole prerogative of the United States Senate.

There is some serious question as to whether the House of Representatives will in fact have an opportunity to exercise its Constitutional right to decide on the disposition of U.S. property within the Canal Zone. The Attorney General has taken it upon himself to assert that House approval is not needed. I cannot agree. I would hope the Administration does not insist on maintaining that position.

Members of the Armed Services, both active duty and retired status, are very divided over the Canal issue. Heavy support for the treaties is coming from senior officers currently serving, while those senior officers no longer serving are opposed to the terms of both treaties. I have long been one of the most ardent supporters of our defense establishment and have always believed in the exceptionally high caliber and integrity of our commanding officers. However, I cannot completely ignore that unfortunate situation recently when a commanding officer was immediately and publicly relieved of his duty when he expressed his doubts concerning the wisdom of one aspect of the Administration's foreign policy. While we must rely on members of our armed forces on matters involving our national defense I believe it is important that in light of recent events we keep in mind conflicting pressures under which such officers function.

Testimony from within the Administration has also differed with regard to the defensibility of the canal. The State Department has contended that the Canal is indefensible, as if that were some kind of logical argument to give up a fight before it begins. In advocating this position, the State Department has carried its propaganda to the American people in a most regrettable manner.

While the State Department has espoused the indefensibility of the Panama Canal, the Defense Department has confirmed what our common sense had already told us, that the Canal is indeed defensible. Obviously, it has occurred to the Administration recently that if we are entering into a treaty which gives us the right to defend the canal, it cannot be maintained that the canal is indefensible. Whether or not the canal is defensible is a matter which the State Department and the Defense Department ought to settle between themselves before the debate goes much further.

All the reasons put forth in support of the treaties have not convinced me. Representative Robert Dornan of California, in responding to those testifying in favor of ratification, said, "If a rejection of this treaty comes, it will not be an ungenerous act but a statement that we (the United States) have very little to apologize for. So far you've only given us two reasons for this treaty; that the Latin American people will love us more if we do it and to prevent the bloodshed of thousands of Panamanians if we don't do it." He is correct in his assessment of the arguments being used in favor of these treaties. They are weak, indeed.

ALTERNATIVES

It is extremely unfortunate the Administration is determined by means of this treaty to relinquish all practical control and rights of defense in the Panama Canal Zone.

Despite a widely publicized show of support, there are also serious reservations among the Latin American countries with regard to the terms of the treaties. At the gathering of the Organization of American States in Granada this year, that organization voted 19-0 for a resolution stating that canal tolls should reflect only the actual operating costs of the waterway. Panama did not vote and the United States abstained. I do not believe all of Latin America wants the United States out of the Canal Zone and again, I cite the State Department for perpetuating this false impression as a means to gain support for its policies. The countries of Latin America have as much to lose as the United States should the tolls be raised or access to the Canal limited.

The entire negotiation process was based on the threat of violence and deteriorating relations with the Latin American community, resulting in a treaty full of ambiguities and under which U.S. rights are not adequately protected.

Therefore, I have cosponsored six amendments and two reservations which Senator Dole has had the foresight to introduce. These reservations, and the amendments especially, would correct what I regard as the most serious weakness in the treaties.

The first amendment I have cosponsored with Senator Dole would reinstate the right of the United States to negotiate with any other State for the right to construct an interoceanic canal through that State. Any treaty which provides for less will be inadequate.

Article XII of the Panama Canal Treaty contains a provision which would allow the United States to build a second canal, if we should ever wish to do so, only in the country of Panama. At the same time, the treaty contains no commitment on the part of Panama to agree to permit us to construct that canal, should we decide to do so. Yet we are prevented from constructing one elsewhere. This provision is totally unacceptable. Why we would agree to build a second canal only in the country which has demanded possession of our first canal, is totally incomprehensible. I cannot believe our negotiators accepted such a provision, knowing full well the implications.

Article XIII of the Panama Canal Treaty deals with what has aptly been described as "ransom" or "conscience money." Currently, Panama receives a \$2.3 million annual annuity. Under the terms of this treaty, the annual annuity would increase to between \$70 and \$80 million. A clause in this Article also binds our Government to negotiate an economic loan package amounting to almost \$345 million.

The second Dole amendment which I have cosponsored reduces Panama's share of the canal's annual operating revenues from 30 cents per net ton to 15 cents per net ton for each vessel transiting the canal. It would further eliminate the biennial adjustment of this rate according to changes in the U.S. wholesale price index. Finally, the amendment would eliminate that provision which would supply Panama with up to \$10 million per year depending upon revenues. The amendment also provides that during any period in which the canal is inoperable, the fixed annuity shall cease, regardless of why the canal is closed.

Article XI of the Panama Canal Treaty provides for the 'orderly transition' of jurisdiction over the Canal Zone. The Administration is emphasizing a 23-year period in which this will occur. In actual fact, as soon as the treaty enters into force, the Republic of Panama shall gain full jurisdiction over the Canal Zone. A complete transfer of U.S. judicial, administrative and regulatory authority will be accomplished within 30 months.

In my opinion, this does not constitute an orderly transition. I believe there are very few American citizens who will remain in the Canal Zone, knowing they will be under the jurisdiction of the Republic of Panama. Large numbers may return to the United States, leaving a void in the manpower support of the operations of the Canal.

The third amendment which I cosponsored would allow the Panama Canal consultative committee to study the situation after the treaty takes effect and make a recommendation as to when the period of transition should actually end. However, January 1, 1990, will be the earliest time at which that would take place. Any treaty which subjects our U.S. citizens to Panamanian law and civil and criminal justice within 30 months after the treaty enters into force is totally impractical. Transfer of the administration of the Panama Canal Commission from United States to Panamanian leadership takes place on January 1, 1990, and it is only logical the two dates be coordinated.

I have cosponsored a fourth amendment to add a new Article XV to the Panama Canal Treaty which stresses the importance of maintaining and properly observing internationally recognized human rights, including civil and political rights in the

Canal Zone. As I noted earlier, there remains a great deal of unresolved questions involving charges of civil and political human rights violations. The Administration and the State Department cannot operate under a double standard on the human rights issues, in the name of expediency when it comes to concluding a treaty with the government of Panama.

Article IV of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, I believe, is the weakest article of the treaty. There is nothing in Article IV which assures that the United States can unilaterally intervene in the defense of the canal whenever necessary, regardless of how the Administration has sought to explain the section. And, as has been so recently illustrated, the Panamanians have explained this article to their people in opposite terms. Panamanian negotiator Escobar Bethancourt stated in August, "The neutrality pact does not provide that the United States will say when that neutrality is violated." As has been already noted, Panamanian interpretation is at least 50 per cent of the definition. Reinforcing the misunderstanding, Senator Dole recently released a cable in which Lopez Guevara, one of the Panamanian treaty negotiators, stated "Intervention is simply forbidden by international law. Panama cannot agree to the right of the United States to intervene." If this is in fact the definition, the treaty is unacceptable. I would hope the Administration settles the matter as expeditiously as possible.

The fifth amendment which I have cosponsored with Senator Dole adds a provision specifically guaranteeing U.S. authority to intervene militarily on behalf of the canal when we determine its neutrality to be threatened, whether from the outside, or the inside, which could very well be the case.

Article VI of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal includes a provision which grants the United States "expeditious" passage through the canal in times of crisis. This provision alone is an admission which negates that argument espoused by proponents of the Treaty who would deny the strategic importance of the Canal during a time of crisis. However, the word "expeditious" is inadequate and open to subjective interpretation, as it has already been, by the Panamanian government. In August, Escobar Bethancourt said in a public broadcast to the people of Panama, "Expeditious passage does not mean privileged passage. As a matter of fact, the concept of privileged passage was rejected." Lopez Guevara reiterated those sentiments in the cable released recently saying expeditious passage does not mean the United States ships may "go to the head of the line." If this is in fact the case, we have been grossly misled by the Administration.

I have cosponsored a sixth amendment which would specifically stipulate that during a period of crisis, American war vessels and auxiliary vessels will be entitled to privileged passage through the canal. Without this amendment, the treaty is unacceptable.

In addition to these six amendments which I have cosponsored with Senator Dole which would improve upon the treaties considerably, I have cosponsored with him, two reservations to the resolutions of ratification.

The first reservation would require that Panama demonstrate, during the duration of the treaty, significant progress toward observing the internationally recognized human rights of its citizens.

The second reservation would reaffirm the Constitutional responsibility of the House of Representatives to participate in transfer of ownership of the Canal Zone territory. As I stated above, I am disappointed in the Attorney General's statement that House consideration of the treaties is not necessary, and I applaud the efforts of those Congressmen who filed suit recently in U.S. District Court seeking a reaffirmation of their Constitutional right.

In addition, I wholeheartedly support those Senators and State law officers who filed suit this week asking the United States Supreme Court to uphold the exclusive right of Congress to dispose of federal property under Article IV of the Constitution.

Mr. Chairman, I commend Senator Dole for having taken the initiative on these important issues, and I am pleased to be a cosponsor of these amendments.

In my opinion, this entire matter of negotiating the treaties has been mishandled from the start. I would hope the Senate Foreign Relations Committee, in its usual thoroughness and attention to detail, will refrain from reporting out these treaties before all the remaining questions are answered.

SENATOR THURMOND'S LEADERSHIP IN THE PANAMA CANAL ISSUE

Mr. HATCH. Mr. President, the newly proposed treaties with Panama have stirred up a considerable amount of discussion here in the Senate. I am pleased that so many Senators are finally taking a keen interest in this subject. Debate is long overdue.

For many years, our distinguished colleague from South Carolina (Mr. Thurmond) has endeavored to direct the Senate's attention to the crisis that our State Department was creating in Panama. It was Senator Thurmond, for instance, who, in anticipation of these treaties, took the lead in 1975 by introducing Senate Resolution 97, with 38 cosponsors. This legislation, which the State Department chose to ignore, put the State Department on notice that there was widespread opposition in the Senate, and among the American people, to the surrender of the Panama Canal. Many of the difficulties that we now face in Panama could have been avoided, in my judgment, had the State Department heeded the advice of Senator Thurmond.

It was also Senator Thurmond who, in 1974, offered S. 2330, a bill to modernize the operations of the Panama Canal. This creative legislation is based on the unassailable assumption that modernization would not only benefit the Panamanians and all nations which rely on this important waterway, but is, indeed, the best solution to our problems in Panama from an engineering, navigational, political, and military standpoint.

Major modernization of the existing canal, as Senator Thurmond has explained, can and should be done under the existing treaty of 1903. Developed within the Panama Canal organization after World War II, the Terminal Lake-third locks plan would provide a third lane of larger locks for larger vessels, the physical removal of the bottleneck locks at Pedro Miguel, the consolidation of all Pacific locks south of Miraflores, and the creation of a Pacific terminal lake to correspond with the eminently superior layout of the Atlantic end at Gatun. This work would enable uninterrupted summit level navigation from the Atlantic locks to the Pacific locks, and greatly simplify marine operations. Approximately \$171 million has already been spent on this project.

In addition to aiding normal commercial shipping and enabling the transit of larger ships and tankers, the completion of the Terminal Lake-third locks plan would also benefit both the United States and Panama with increased employment. It is the least expensive and the most practical alternative to the proposed surrender of the canal and the construction of a new sea-level canal. What is more, it is highly doubtful that this modernization will ever take place if the canal is transferred to the Panamanians.

Reiterating the need for completion of the Terminal Lake-third locks project, Senator Thurmond recently delivered an important address on the Panama Canal Treaties before the U.S. Chamber of Commerce International Policy Committee in Washington, D.C.

Mr. President, I would like to share this address with my colleagues, and I ask unanimous consent that it be printed in the Record.

There being no objection, the address was ordered to be printed in the Record, as follows:

REMARKS BY SENATOR STROM THURMOND

It is a distinct honor to be here this morning to present to the Chamber my reasons for opposing the treaties with Panama. I am pleased you recognize the need to participate in this national debate, as oftentimes lack of participation by a group of your stature is misread as a position of acquiescence.

My interest in the Panama Canal is long-standing. Over the years I have introduced several bills to modernize the Panama Canal. In the 94th Congress, I offered a resolution signed by 38 other Senators opposing the surrender of this waterway to Panama. Last August, I visited the Canal Zone for briefings and study to ascertain any changes since my previous visit several years before.

While I recognize the need for some adjustments with Panama concerning the Panama Canal, I see the retention of U.S. control as basic to the protection of our interest.

My 1976 resolution was more than sufficient warning to both the Ford and Carter Administrations relative to the Senate's concern in this matter. The treaties have been signed with great fanfare in an atmosphere of threats and violence by Panama. Panamanian chief negotiator Escobar Bethancourt went so far as to say "... This country (Panama) will take a course of violence" if the treaties are not ratified.

At no time in my memory have such threats and pressure been exerted on the Senate as is the case with these treaties. In making our decision, however, we must rationally decide what is in the best interest of our Nation, irrespective of the pressures and threats directed toward us.

Recently, treaty proponents have made a number of arguments to attempt to justify ratification. I would like to comment on some of these points:

USE VS. CONTROL

The central argument made, as enunciated by Defense Secretary Harold Brown, is that "use of the Canal is more important than ownership."

My position is that only through ownership can we be assured of control over this vital waterway. Once ratification takes place, sovereignty is surrendered. At that time the rights of Panama in Canal affairs will become dominant, as ownership by them means eventual control, which in turn governs use. I do not feel a small nation of 1.7 million people, with a history of 59 government changes since 1903, has the stability or economic strength to manage and finance a waterway of the Panama Canal's complexity.

U.S. RIGHTS OF PASSAGE

Treaty proponents also argue expeditious passage rights for our ships in time of emergencies adequately protects our interests.

Why then did our negotiators and the Defense Department seek "priority passage" during the negotiations? Despite our position as the world power most affected by the use of the Canal, the Panama officials say our ships are not guaranteed a place at the head of the line in emergencies. On this point, Admiral Thomas Moorer, former Joint Chiefs Chairman, declared Monday, "I submit that ownership and control, on one hand, and priority passage and defense, on the other, are synonymous."

INTERVENTION RIGHTS

Treaty proponents argue further that our rights to use the Canal are guaranteed under the Neutrality Treaty because the Treaty itself does not rule out U.S. intervention to assure its availability.

Even Treaty advocates, such as General Maxwell Taylor and Admiral Elmo Zumwalt, described the Treaty provisions on this subject as "ambiguous" and "fuzzy."

Admiral Zumwalt went so far as to suggest we attach a separate Resolution to the Treaty to nail down U.S. rights to step in if Canal movement was impaired.

PANAMA'S GOVERNMENT

Treaty proponents also argue that the Panamanian dictator Torrijos has the support of his people.

Why then have there been no free elections during Torrijos' 9-year reign, which has pushed the national debt from \$167 million to over \$1.5 billion, and brought

economic stagnation to Panama? One might also ask, Does the Panamanian government have the political strength or will to resist outside interference? Once sovereignty is given to Panama, will that government remain friendly to the U.S.? If U.S.-Panama relations are bad, then the only other great power to which they could turn would be the Soviet Union, through its figurehead Castro.

ANOTHER VIETNAM

As I stated earlier, the Treaty has been presented to the Senate under the implied threat that if we do not ratify, we will be inviting another Vietnam.

More likely, if we relinquish control of the Canal, we will have another Cuba to our South. Vietnam was a foreign nation distant from the U.S., while the Canal is in our Hemisphere and we have operated it for the benefit of Panama and the world. The Panama Canal Zone and the Canal are U.S. territory; Vietnam was not.

HUMAN RIGHTS

Treaty proponents also argue our credibility on human rights is involved.

That point raises the question as to why then are we being asked to make a national hero out of the Torrijos government? The respected liberal organization, Freedom House, which the State Department has cited in its annual report to Congress, rates Panama as "not free." It states that, on both civil and political rights, Panama has one of the worst records in the world.

COST OF THE GIVEAWAY

Treaty proponents claim the U.S. should be willing to pay Panama up to \$1.5 billion during the process of transferring control since we have paid many other foreign governments billions for base rights.

In other countries where we have base rights, we are merely renting their land. In Panama, we bought the land from the Panama Government, paid all landowners and even squatters, plus paying the French Canal Company and Colombia. In the *Wilson v. Shaw* case, the U.S. Supreme Court stated the Canal is without doubt U.S. property.

JOINT CHIEFS' POSITION

Proponents argue that the Joint Chiefs of Staff favor the Treaty. This is true, but most retired officers do not support it. Shortly a list of those military leaders opposed to the Treaty will be released, and I assure you it will be a long one.

Furthermore, the Treaty is a political issue, while Canal use is mainly a Navy issue. Four past Navy Chiefs oppose the Treaty. One of this group, Admiral Moorer, served as the past Chairman of the Joint Chiefs. Admiral John McCain, Commander-in-Chief of our Pacific forces during the height of the Vietnam War, has stated, "it is my conviction that U.S. interests are best served by keeping the Canal." This Committee should also note it is significant that to date not one active duty military officer has publicly opposed the Treaty.

COST TO SHIPPERS

Another point, and a key one to businessmen, addresses the claim by Treaty advocates that increased tolls will finance the additional payments to Panama.

They seem to forget that Canal passage costs have increased 45% in the past three years and the Canal is still operating at a deficit. In addition, while the increased use of the Canal to transfer oil from Alaska to the East Coast will mean more business for the Canal, it also means higher tolls to shippers and higher oil costs. The U.S. business community and the American taxpayer will be saddled with that expense. In fact, the Chairman of the Merchant Shipping Council, Mr. W. J. Amoss, Jr., has switched from an advocate of a Treaty to an opponent of this Treaty. He said the increased toll costs will spell "sheer disaster for operators east of the Canal", which incidentally means shippers on the Eastern Seaboard.

The weakness of these nine arguments by Treaty advocates is further compounded when we consider other issues which have been raised.

Six months after ratification of the Treaty, the Canal Zone ceases to exist and about 65 percent of the land and 10 of the 14 U.S. bases are given to Panama. The remaining land adjoining the Canal itself is under limited U.S. control for the purpose of operating the Canal. We then oblige ourselves to begin paying the Panama government huge sums in various ways, totalling up to nearly \$1.5 billion over the next 22 years.

NEUTRALITY TREATY AMBIGUOUS

One of my most significant concerns is the *ambiguity* contained in the Neutrality Treaty. This deserves special attention. Ambassador Linowitz and others have maintained that no limits were spelled out in the Treaty, so we will be free to take whatever steps are necessary to protect the neutrality of the Canal. These remarks might be reassuring to the American public, except for the comments made by Chief Negotiator Bethancourt on these provisions to the Panama Assembly on August 19. He stated:

"Those people believe that the right to intervene is granted, but nobody grants the big powers the right to intervene. They intervene wherever they damn well please with or without a pact."

Additionally, in an August 24, 1977 radio broadcast, Mr. Bethancourt is quoted as saying:

"The pact does not establish that the United States has the right to intervene in Panama. This word (intervention) was discussed and eliminated . . ."

Later he stated: ". . . the neutrality pact does not provide that the United States will say when neutrality is violated."

Indeed, Articles IV and V of the Neutrality Treaty are so ambiguous as to lend themselves to various interpretations. This reason alone is sufficient to reject the Treaties.

BROAD CONCERNS

These are some of the specific concerns I have relative to these Treaties. There are other broader issues involved. Will our ratification of these treaties be seen as a pattern of withdrawal in view of our retreat in Korea, Southeast Asia and possibly Taiwan? This misguided direction of our foreign policy engenders consternation on the part of our Allies and audacity on the part of our adversaries.

This type of audacity has even been highlighted by the reckless and provocative statements of Mr. Bethancourt and others about violence.

We cannot hope to deal effectively with other Nations as a world leader if we yield to blackmail. That is the only word to describe the threats of violence and sabotage which treaty proponents are broadcasting far and wide, and using as their chief argument for ratification. If the Senate were to ratify a treaty in the face of such threats, it would show the world a new policy alien to our national character and our history, and which would invite further exploitation.

POSITIVE ALTERNATIVES

Before closing I wish to make clear I am not opposed to a new arrangement with Panama. In the past, I have supported the Terminal Lake-Third Lock Modernization Plan. This would provide for approximately \$2.5 billion in capital investments over a 5 to 10 year period. Such a major step will provide an opportunity for mutual cooperation and an even greater partnership between the people of the United States and the people of Panama.

Another part of the Treaty with which I find fault is the provision prohibiting our construction of a sea-level canal prior to the year 2000, except in Panama or only with the permission of Panama. In this instance, we have surrendered an option which may be forced upon us.

CANAL GREAT ACHIEVEMENT

The Panama Canal stands as a monument to American foresight, ingenuity, and perseverance. Author David McCullough, who recently published "The Path Between the Seas," a history of the Panama Canal, has written:

"It is the physical expression of a boundless confidence, one which believed tomorrow will be better. If an archaeologist were to come across only the locks and the cuts in that jungle, his conclusion would be: 'What a civilization it must have been to build this!'"

Adds McCullough:

"Many people feel that by relinquishing the canal we are saying something profound about ourselves, that we have reached a turning point in our growth as a nation. Will we go forward as a people with our skill and great machines, or have we become a people who are pulling in and withdrawing?"

In conclusion, neither our interests nor the interests of the people of Panama are served by the treaties. The only outcome of ratification can be danger ahead.

CONCERNING INTERPRETATION OF PROVISIONS OF THE PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations resumed its consideration of the proposed Panama Canal agreements this morning by taking additional testimony from negotiators Ellsworth Bunker and Sol Linowitz.

Our purpose in asking the negotiators to come back at this point was to give the members an opportunity to discuss with them the clarifying statement pertaining to the neutrality agreement which the White House released Friday, October 14, following General Torrijos' brief return visit to this country.

This morning, the committee devoted 2 full hours to examining the "Statement of Understanding" and discussing its meaning with Messrs. Bunker and Linowitz. This was a very positive and useful meeting and as chairman of the committee I want to say that, so far as I am concerned, it served to clarify all of the major, as well as some of the minor, differences of interpretation that have surfaced since the signing of the agreements. As a result, I am hopeful that Senators will be satisfied after examining the statement and the discussion of it this morning that there are now no differences of interpretation between the United States and Panama. I think this morning's hearing record makes it quite clear that we are all on the same wave length.

For the information of the Senate, I ask unanimous consent that a copy of the "Statement of Understanding," along with a copy of the transcript of a press conference held October 18 by Panamanian negotiator Romulo Escobar Bethancourt, be printed in the Record. I ask my colleagues to study this material very carefully because I believe it will serve to answer many of the questions that have arisen about the interpretation of the proposed Panama Canal pacts.

There being no objection, the material was ordered to be printed in the Record, as follows:

STATEMENT OF UNDERSTANDING

Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly.

PANAMA: ESCOBAR TELLS PRESS OF CARTER-TORRIJOS MEETING

(Opening remarks by Panamanian negotiator Romulo Escobar Bethancourt at news conference held at journalists house.)

Good afternoon, distinguished journalists. We have called this news conference on instructions from General Torrijos and the national government, the purpose being to provide information on the meeting held in Washington between President Carter and General Torrijos.

While General Torrijos was on his tour of Israel and West Europe, he was invited by President Carter to stop over in Washington on his return trip to have a talk. President Carter was interested in two things: First, to exchange views with General Torrijos on his tour of Israel and West Europe, and to obtain the reaction of those countries or their rulers regarding the treaties signed between Panama and the United States. The second point was for the two heads of state to meet to clarify some matters which were causing confusion in Panama as well as in the United States. Specifically, this referred to two points, both of which are part of the Canal Neutrality Treaty.

In Washington, the two heads of state first held a private meeting during which they discussed the general's trip to Israel and Europe. Subsequently, they held a broader meeting between President Carter and his adviser and General Torrijos and his advisers. The following matters arose at this meeting: President Carter pointed out that, in spite of the fact that both he and General Torrijos clearly understood the points concerning the Neutrality Treaty, the following had occurred: The U.S. Senate Foreign Affairs Committee was interpreting Articles IV and VI of the Neutrality Treaty in a manner different or contrary to the way it was being interpreted in Panama by us, the government's spokesmen, and that this was causing confusion in both countries.

General Torrijos expressed the same view and said he was very pleased to hold this meeting, because if a concrete interpretation was to be forthcoming on these problems, he wanted the interpretation to be made before 23 October, the date of the plebiscite in Panama. The two heads of state, with the participation of their respective advisers, continued the meeting and went right into the items in question.

The first of these topics was Article IV of the Neutrality Treaty, which states that both Panama and the United States pledge to maintain the neutrality (of the canal—FRIS) so that the canal may remain open peacefully and in a nondiscriminatory manner to all ships. This language had been perfectly understood by the negotiators and the rulers of both countries, but the confusion arose with regard to the following: Whether or not the United States had the clear and indisputable right to defend the canal in order to keep it open to the world's ships, on the one hand, and whether, on the other hand, this involved the right to intervene in the domestic affairs of the Republic of Panama.

Why did the problem arise? Because some Senators in the United States maintained that the language used in Article IV effectively gave the United States the right of defense against attacks on the Panama Canal in violation of the Neutrality Treaty. They extended this to mean that, as a consequence of this right of defense, they had the right to intervene in the Republic of Panama.

On the other hand, ever since the first public and official explanation in our country on 19 August, to the assembly of Corregimiento Representatives, we said that the intent of article IV was to point out that, in effect, Panama and the United States had the right to defend the canal against attack in order to keep it open for transit by all the world's nations, but that the scope of this right of defense at no time could be extended to mean the right to intervene within the Republic of Panama.

After the two heads of State managed to define these basic facts, we were able to divide the problem in such a way as to be able to clarify it. The objections being made in the Foreign Relations Committee of the U.S. Senate, on the one hand, and the objections in Panama, on the other, would have no reason to exist once the two heads of state managed to develop this thinking and this common interpretation.

During the talks between President Carter and General Torrijos and at the meeting, the U.S. President reiterated that at no time had his country interpreted article IV to mean the right of intervention in Panama's internal affairs: that it had always interpreted this as a right of defense against any attacks on the canal in violation of the neutrality treaty; and that the U.S. interest was fundamentally based on the fact and need that the canal must remain peaceful and permanently open to traffic by all ships of all nations of the world. In this sense the Panama Canal constitutes an interoceanic waterway that is vital not only to U.S. commerce and shipping, but to many countries of the world as well.

Therefore, this was President Carter's reasoning. In addition, he very wisely pointed out that his country was not currently in a position to engage in intervention, because it already has had experience with intervention in the internal affairs of other countries. General Torrijos recognized in President Carter a very moral stance regarding the political conduct of his government and of the United States, based precisely on the criterion that, although his country is a great power, it is turning away from the type of intervention that it carried out in the past in Vietnam, Santo Domingo and a number of other places in the world.

We honestly believe that the two heads of State developed a stronger understanding at this meeting, not only in regard to settling the negotiation and treaty issue, but also in regard to the political conception of the new relations that must prevail between our two countries and between the United States and the other countries of the American continent.

A single interpretation was then agreed upon so that no conflicting interpretation or standard would be expressed in the United States and Panama regarding article IV. The two heads of state agree that the correct interpretation of article IV is based on two facts: That attacks or acts of aggression against the Panama Canal grant to Panama and to the United States the right to defend it, in order to prevent such attacks, and so that the canal may remain neutral, open and peaceful for all nations. In addition, at no time does such defense involve, refer to or grant to the United States the right to intervene in Panama's internal affairs.

On the initiative of General Torrijos and President Carter to clarify the concept further, it was even pointed out that, in addition, any action taken by the United States to maintain the canal being open to all nations would never be an action aimed against the territorial integrity or the political independence of the Republic of Panama. We believe that in this way, through the unification of this stand, a real separation is made between the problem of the canal's defense against attacks and acts of aggression, and the act of intervention which we Panamanians have always rejected and which we have said was never embodied in the neutrality treaty. This position has now been strengthened with the unified interpretation by the two heads of state on this problem.

In this regard this becomes specific, since President Carter said this textually. What I am going to do here is repeat how this stand was reached to prevent continued confusion in Panama and in the United States with regard to the scope of article IV of the neutrality treaty.

According to the treaty on permanent neutrality and the operation of the Panama Canal—in parentheses, the neutrality treaty—Panama and the United States have the responsibility of insuring that the canal will remain secure and open to ships of all nations. The correct interpretation of this principle is that each of the two countries, according to its respective constitutional procedures, will defend the canal against any threat to its neutrality and consequently will have the right to act in case of aggression or threat directed against the canal or against the peaceful transit of ships through the canal.

You can see that this first part specifically states the right to defend the canal by Panama and by the United States, specifically to keep the canal open, and to prevent any obstruction of the transit of ships. The unified interpretation continues in the following manner: It does not mean and will not be interpreted as meaning a U.S. right to intervene in Panama's internal affairs. Any action by the United States will be directed at insuring that the canal remains open, secure and accessible, and will never be directed against the territorial integrity or political independence of Panama.

You can see that in this specific case, the two heads of state managed to unify their stands regarding the true scope of Article IV: That is, to defend the Canal against attacks or aggression directed at closing it or at obstructing the passage of ships. The actions which Panama or the United States could take are directed toward this specific purpose. But in the case of the United States, no action can ever be directed toward the territorial integrity or political independence of Panama, which is precisely what we Panamanians are defending and have been maintaining since the signing of the Torrijos-Carter treaty.

On the second point—in this case related to Article VI of the neutrality treaty—the transit of U.S. and Panamanian warships in an expeditious manner through the canal, the two heads of State clearly stated what exactly was meant by expeditious passage through the canal by U.S. and Panamanian warships. They discussed this problem and pointed out that, fundamentally, expeditious passage means quick transit, without obstacles with the least possible processing. In addition, it was pointed out that in case of an emergency or necessity, in such specific cases expeditious passage would permit the warships of both countries—but naturally primarily

those of the United States, because we do not yet have warships—to go to the head of the line of ships awaiting transit, the purpose being to go through the Canal quickly.

General Torrijos said yes, he did consider this necessary and appropriate because one of the things we did not agree with was that the warships should spend too much time in Panamanian territorial waters, much less in cases of emergencies or necessity.

Why? Because a prolonged delay could make that ship an object of reprisal within our territorial waters. Therefore, the sooner it left, the more secure our country would be. Second, warships which would remain for a long time in our country's territorial waters would have negative social consequences, because they generally carry large crews and a large number of soldiers, and a prolonged stay would disrupt normal life in our cities.

Those who are old enough to remember what occurred in Panama during World War II will understand exactly what kind of problem is caused by a prolonged presence of foreign troops in our territory—social problems, problems of disrespect for women, drunkenness, fights, scandals and so forth. Therefore, in the case of necessity or in the event of war, having warships go through the Canal quickly not only fulfills an aspiration of the United States—which, naturally, in an emergency wants its ships to transit the Canal quickly—but also is to the advantage of Panama, which does not want such ships to remain in its territorial waters. On this basis, therefore, a uniform interpretation of the true meaning of expeditious passage through the Canal was achieved.

It is unified in the following manner: The neutrality treaty provides that U.S. and Panamanian warships and auxiliary vessels will have the right to transit the Canal in an expeditious manner. The intention is, and it will be so interpreted, to insure the transit of those ships through the Canal as quickly as possible, without obstacles, with simplified processing and in case of necessity or emergency, to go to the head of the line in order to transit the Canal quickly.

This is therefore the meaning which the two rulers have now accepted as the single interpretation of the expeditious transit of warships of the United States and Panama. Besides,—and this is most important—since the general was returning from his tour of Israel and West European states, he consulted the various chiefs of state on the scope of this problem of expeditious passage and how it could affect these nations support of the neutrality treaty. In this respect, those whom he consulted told him that they were not concerned about this; that the problem would arise only if the Canal were closed: that having U.S. warships pass first was no problem; that the serious problem, they reiterated, was if the Canal were closed; because a large percentage of those nations economies are based on the transit of their vessels through the Panama Canal; and that one of the reasons why they congratulated Panama and the United States for having reached a peaceful settlement was not merely because of their solidarity with our country's just cause, but also because of their great concern that the Canal remain permanently open, as their economies would be seriously affected otherwise.

Consequently, we can tell this distinguished group of journalists that as a result of the meeting between President Carter and General Torrijos in Washington, we have made it possible for the contents of Article IV of the neutrality treaty to be specifically interpreted by the two chiefs of Government who signed the treaties.

I believe an important step has been taken in really clarifying what had become cause for great concern to us Panamanians and the U.S. Senators. To us, the vital part is clearly explained and reiterated by President Carter: that the article neither had been interpreted, nor would be interpreted, and cannot be interpreted, as a U.S. right of intervention in our internal affairs, and that U.S. actions cannot affect our territorial integrity and political independence.

Later I am going to distribute this same sheet, although you already know its contents since it was published recently in the papers. I wanted to hold this news conference to explain to you how this unification of positions was reached and, in addition, to answer any questions you may want to ask.

Question. My question is very brief. Is it a fact, as U.S. news agencies have reported, that a joint communique had been signed?

Answer. No, there was no joint communique. What I am reading to you is an interpretation reached by the two chiefs of state. It is, however, an interpretation which neither one signed because it was not deemed necessary since they had signed the treaty. As signatories of the treaty and as chiefs of state, they were merely giving their interpretation of two articles of the neutrality treaty. When General Torrijos said he had not signed a single autograph, he meant just that, since no document was signed. In these negotiations there is nothing that is secret.

If they had signed something, such a signed document would have been released immediately to the Panamanian press for publication.

When we speak of an interpretation by the two signatories of the treaty we merely mean that the two chiefs of government are saying: What we signed means this. They do not have to sign a statement saying we interpret it in this manner simply because the document which includes the text of the articles was signed by them. In fact, it is just as President Carter had said previously, that when the United States says it can defend the canal against attacks and aggressions and when Panama says that this did not mean the right of intervention, they are both actually speaking about the same thing (as heard) as being certain. What they did was meet for him to confirm to his Senate, his people, and we, to our people, the interpretation of what they had signed.

Question. Some Senators are asking that the interpretation be included as part of the treaty, as they consider it important to understanding the scope of the text. Would Panama accept this 5 days before the plebiscite?

Answer. That would be a decision for the general (Torrijos—PPIS) to make. However, we cannot abide by what the Senators want because they have their own problems and procedures there, their own legal system. In fact, I believe they have already concluded the period of hearings. Nevertheless, we cannot adapt our procedures to that of the U.S. Senate. Each country has its own procedure, and ours is through a plebiscite which is scheduled to be held on 23 October. When General Torrijos met with President Carter on this specific issue, they were not adding anything at all to the treaty; they were merely confirming an interpretation which the two countries had already made in article 4 of the neutrality treaty but which, in both countries, did not seem to be very clear.

Question. Latin America is a region of political instability. Article 4 of the neutrality treaty guarantees the defense of canal by Panama and the United States. However, if a government should emerge which is hostile toward the United States as a result of the canal, do you believe that the United States would intervene in Panama to put down the violent nature of such a government?

Answer. No. That is precisely why the interpretation points out the political independence, that this will not affect the political independence. This means that the Republic of Panama could have governments which are friendly or hostile toward the United States in the future, which we cannot know. But the commitment of Panama as a state with regard to the United States and in relation to all the other countries of the world and those that adhere (to the neutrality treaty—ERIS) is to keep the canal open. It does not mean to be friendly toward any particular country. It means that it must keep the canal open even if it is an enemy of that country. This is the real meaning of the concept of neutrality. Therefore, regardless of the kind of political regime which emerges in Panama, it can never close the canal, not just in the case of the United States, it cannot close the canal to any of the other countries. I would say that it cannot close the canal even if it wanted to since Panama's necessity in the case of the canal is precisely that it remain open. Otherwise, the ships would not transit the canal and would not pay tolls.

Therefore, one cannot make the neutrality treaty dependent on the type of political regime that may exist in Panama or in the United States. The regimen of neutrality demands that the canal remain open not only to the U.S. flag, but to all flags of the world, without discrimination.

Question. (In English) you told us about how you thought Panamanians would vote in the plebiscite. I would like your opinion on whether you think the U.S. Senate will ratify the treaty, and I also want to know if you still feel the way you felt in August, when you said that if it does not ratify the treaty, Panama will take a course of violence, a road to violence.

Answer. When I am asked questions connected with the negotiations, I like them to be asked in Spanish.

(Unidentified person in English) Ann Susie, Ann Susie, would you be so kind to say that in Spanish, please?

(Question in English) I can't. (Words indistinct).

(Unidentified person in English) If you make that question a little shorter, I will try.

(Questioner repeats question, unidentified person in the group translates into Spanish).

Answer. Regarding your question about whether the U.S. Senate will or will not ratify the treaty, Susie, I cannot answer that because I am not a Senator, and since I am not a Senator, I cannot determine what the U.S. Senate's decision will be. I do believe that President Carter's Administration, several Senators, as well as various

civic and labor organizations in the United States are making a major effort to convince the Senators of the advisability of reaching a "negotiated solution with Panama in connection" with the treaty.

Regarding your question about whether Panama will choose the path of violence if the Senate does not ratify the treaty, I cannot answer that either for a very simple reason: one cannot predict the future. One does not know what the fate of the people is. We do know that the Panamanian people want to be liberated, but we also know that the Panamanian people and government have always sought the peaceful path in this process of liberation. They have always used peaceful means. They have always tried to reach an agreement that is mutually acceptable to our two countries. We cannot say that Panama will choose the path of violence because if we did we would be guessing. We believe that in this new relationship, it is more feasible to seek the path of negotiations than the path of violence.

Question. Dr. Bethancourt, I would simply like to get this clear: Has the test of the articles which motivated the meeting between Carter and Torrijos been in any way altered after their talks?

Answer. Which articles?

Question. Article IV of the Neutrality Treaty.

Answer. Oh, I see. No, no they have not been altered in any way. Those articles have not been touched, those articles retain their wording, those articles are including in the Neutrality Treaty. The problem was regarding what you have asked is that, in connection with articles IV and VI, the two leaders have said: This article IV and this article VI mean the following . . . in other words, the method of interpretation of the articles, not their alteration.

Furthermore, what they have said is what has been said all along, the only difference is that now they got together to say it in order to unify the interpretation of the two articles in both countries.

Question. Dr. Bethancourt, there is great concern—concern which I share with all Panamanians—regarding which country in the future will interpret or decide if neutrality has been violated or has been or is being threatened, particularly because of the interventionist nature of the United States in the past, a history of intervention which Panama itself has suffered from, as we are an occupied country. Only today the newspaper *La Republica* reported that U.S. troops and advisers are in Nicaragua fighting the Sandinist Front guerrillas. We would like to know if there are any mechanisms or if there will be any method of consultation between the two countries in such an event. In other words, has this been foreseen, was this been discussed, or is this written down anywhere in the treaty?

Answer. There is no exact method of interpretation on how violations of the neutrality treaty will be determined. Generally, in these treaties one cannot go into a multitude of juridical details. In this case they would be procedural details concerned with juridical procedures. If one did this, one would never conclude a treaty. One would have to draft several codes.

Therefore, it cannot be specifically indicated in the neutrality treaty that the method of interpretation will be this way or that. The general treaty includes an article which states that in case of a discrepancy between the two sides concerning the interpretation of an article, they will reach an agreement between themselves or, if necessary, they will appoint an arbiter to decide the issue. This is the general way these situations are handled.

On this basis Panama concluded a treaty with the United States, after that unilateral declaration, a treaty which reiterates the maintenance of neutrality. But this is not an ambiguous neutrality. It is the neutrality specifically mentioned there. Therefore, if something were to occur in Darien, for example, this would have nothing to do with the canal. Thousands of things could occur on the Isthmus of Panama, as in all other countries of the world. The neutrality treaty indicates a specific situation. It applies to the canal. So as to make it possible for ships to transit. If, for example, in Darien or in some part of the country the government of the Republic of Panama should stop a ship for A, B or C reasons, this is something which has absolutely nothing to do with the Panama Canal. What Panama will not do, under the neutrality treaty, is prevent a ship that is coming exclusively to transit the canal from doing so. This is the meaning (of the neutrality treaty—BRIS).

Therefore, in order to discuss violations of the concept of neutrality established in this treaty one has to look directly at the objective on which the treaty is based: That is, to keep the canal from being closed, thus preventing the passage of ships, and to prevent any hindrances to the passage of ships which come to transit the canal. This is the key to how the scope of the concept of neutrality is measured. But this is not outlined in the treaty concerning the canal. If we used the method you

mentioned, we would have to add to each article the procedure by which the article would be implemented. This would be highly impossible. This is not done even in codes. You see, for example, that the penal code lists the crimes, the criminals and the subjects. It is another code, the judicial code, which indicates what procedures are used to judge those crimes and apply the corresponding punishment. If the penal code, in addition to defining crimes and criminals, were to include the procedures, it would not be a functional code.

The same thing applies to treaties. Treaties indicate the points of agreement—the subject, the substance of this subject. The procedure (interrupts sentence—FBIS). For example, here in these treaties you will see that many of these things are developed by different procedures: For example, procedures to be developed by the commission which will administer the Panama Canal, procedures to be developed by the Joint Board for the Defense of Canal. But these procedures are not specifically outlined. What the treaties gives is the subject matter which is being agreed upon by the two countries and the clause which I mentioned to you concerning what procedures are followed for (sentence left unfinished—FBIS).

(Question indistinct.)

Answer. Those are different problems. One thing has nothing to do with the other. As far as the expiration date is concerned. It is clearly established. It is known to be 31 December 1999, and noon, Panama time. There is an article which states this and which cannot be disputed.

The other article concerns the date of expiration on which the canal is returned to Panama, with no cost, except as agreed upon by the two parties. (Sentence as heard—FBIS) why (the phrase—FBIS) except as agreed upon by the two parties? Because, let us suppose that in 1996 or in 1999, with 1 or 2 years remaining before the treaty between Panama and the United States expires—this is a hypothetical case—that is, 2 years before the treaty expires, there should be the need to make an investment for X, Y, or Z reasons related to the functioning of the canal. Then the United States could say to Panama: Well, 1 year remains before our administration ends, but in this year it will be necessary to invest, let us say \$5 million and we believe that to make such an investment now, when we have 1 year to go, is absurd from the point of view of our economy. Panama could then decide to say: Go ahead and invest the \$5 billion and when you turn over the Canal, we will recognize this debt of \$5 million. This is a hypothetical case. That is why one says except as agreed upon by the two parties, because the matter is not closed, because one does not know what contingencies may occur. However, one says except as agreed upon by the two parties because if they do not agree on anything, then the canal has to be returned free of costs to the Republic of Panama. If Panama were to say: "No, do not make the investment, or if you do it will be at your expense because we are not going to recognize this sum, then there would be no agreement. When one stipulates except as agreed upon by the two parties, this means the two parties must reach an agreement in this regard.

But this was nothing to do with the treaty termination date. Because as to the treaty termination date, if it were not a fixed date or if it were a fixed date but with the possibility of extension, this would appear in this article and it would say 31 December 1999, except for whatever the parties might otherwise agree upon. It would say so there, but it does not say so because the termination of U.S. control is emphatic with regard to U.S. presence here in Panama: At noon on 31 December 1999, Panama time period, nothing else is said.

The other refers rather to a problem of an economic nature, a problem of some investment that might have to be made at the last minute when there is only a short time left before Panama recovers the canal. In this case the two parties will have to agree on whether Panama agrees to assume the debt or not. That would be a problem between the two countries. However, about wanting to take what one article states and give it a meaning in another article, this does not make sense. This does not make sense because they are different subjects and each article contains what one wants it to contain. When that article is related to another article, it is so stated. You can see this in the treaty. When administration or defense is mentioned, reference is made to the schedules. You have to refer to the schedules because the articles state that these schedules will expand on the contents of that article. When one article is related to another, it is stated that the article is related to another article.

In law practice we cannot prevent attempts at all kinds of interpretations. This cannot be prevented. Furthermore, the lawyer always has a tendency to do this. This is why we have courts where, when a prisoner is being tried, one lawyer is accusing him and another is defending him over the same issue.

However, there is another matter, which is commonsense. Commonsense is superior to law. Commonsense is what tells you when something is clear. Commonsense cannot be twisted or changed no matter how much you argue against it. For example, if you hit an egg with a hammer and the egg breaks, there is no lawyer in the world who can deny it. Nevertheless, commonsense will tell you that if you hit it with a hammer, the egg will break.

Therefore, this problem must be clear with regard to the fact that these documents are open to many interpretations. However, we do have commonsense and this indicates to you that there is a termination date in this treaty. It is clearly stated in one of its articles which is devoted to, and even has as its title, the termination date. This article says that it expires on 31 December 1999 at noon Panama time and nothing else. It does not say that it is related to another article, or that one has to look in an annex for more information, or that one has to seek an exchange of notes to explain it, or that one has to seek a subsequent agreement or a subsequent interpretation. This article shows that it can stand on its own, that it does not need interpolations or another article to indicate whether or not it applies.

What is occurring now is an attempt to seek interpretations in order to create uncertainty—to create uncertainty with regard to this problem, so that people will think: Is it true or not that it expires on December 31, 1999? That is the aim, because we are 3 or 4 days away from the plebiscite. There are lawyers who have said that the Hay-Bunau-Varilla treaty is better than this one. They have said this, but they have not taken the Hay-Bunau-Varilla Treaty and read it to the people article by article. They have not done this. They have said the Hay-Bunau-Varilla Treaty is better than this. Let us keep that one. Moreover, this is degrading, but they have gone that far. And worse things will happen.

However, one thing is being forgotten. They are forgetting—in an attempt to think of themselves as very intelligent, or in believing that one can play with all kinds of ideas—one important thing, which is the common man. The common man is used to living with commonsense daily, and he cannot be deceived. He cannot be asked the kind of question which Plato asked in attacking sophists, such as, tell me the meaning of a man who is not a man, who is sitting in a tree which is not a tree and hitting the tree with a stone which is not a stone. This is for the sophists, this is not for the common man.

Question. My question refers to next Sunday's plebiscite. What percentage of the people will vote yes, in the opinion of the government?

Answer. I cannot answer that because I have not consulted the government concerning such a percentage. However, based on my very personal opinion, starting with the fact that everyone who votes yes will be voting for a new treaty and that everyone who votes no will be voting for keeping the Hay-Bunau-Varilla treaty, I believe that a large percentage of our people will vote yes. Naturally, I am not a prophet and cannot tell you exactly what that percentage will be.

Question. Comrade, I would like to know why the Republic of Panama in Article VII says: The Republic of Panama will adopt the measures necessary to insure that no other use of the land and water of the canal basin will exhaust the supply of water necessary for the continuous and efficient management, functioning and maintenance of the canal and will not interfere with the U.S. rights to use the waters of the canal basin. Panama needs water for its people to live. The Panamanian pays for his water. The Panamanian needs electricity. Why does Panama subsidize a country, which I respect but which is the world's largest economic power, and why do we give it our water?

Answer. I am going to divide your question into two parts, the one about the Panamanian people needing water and the other concerning why we took the decision not to deforest or not to interfere with the waters for use in the canal. First of all, the two points are not contradictory because the maintenance of the hydrographic basin is important to provide water for our people and for the operation of the canal. Second, we must protect the hydrographic basin in this case, in relation to the canal, because otherwise we would have to close it. If there is not water, the canal must be closed. That is a great truth. And it is not a question of subsidizing the United States in that respect. The fact is that the canal constitutes, according to our geographic position, one of our resources, part of our wealth, to develop our country. That is why we are struggling to put a termination date on the treaty with the United States, so that the canal will become our property. This is also the reason why during the 23-year-period we have agreed with the United States to receive approximately \$80 million a year instead of the present ridiculous sum of \$2.6 million.

Since it is an economic resource, we must first maintain that economic resource, take care of that economic resources, and obtain the greatest possible benefit for our

country and our people. If, according to your theory, we deforest the hydrographic basin, that would be tantamount to Venezuela setting fire to its oil wells. If Venezuela sets fire to its oil wells, it would destroy one of the principal sources of its wealth.

That measure is directed at conserving sufficient water for the operation of the canal, not just now that the United States has it, but also after it is turned over to us. Furthermore, it would be absurd for us to deforest the hydrographic basin, for us to alter the water situation, or not to try to better the water situation because then we would not only have no water for the canal, but we would not have water for our country.

For instance, take the case of Panama, so as not to talk about other countries. What has happened in certain regions of our country? Indiscriminate deforestation, the felling of trees, the turning of places which years ago had abundant vegetation into barren areas has resulted in diminished rainwater reserves and a decrease in our water levels. It has resulted in an alteration of our annual rain levels to the point that last year we had one of our country's worst droughts.

By protecting our hydrographic basin, we are not engaging in anything blasphemous or doing this because the gringos have such pretty faces. We are not interested in having the canal close down. We are interested in seeing it function and in having the canal. * * *

Question. But then why do they not pay for the water? It says here that they will use the water free of charge. How come we have to pay for it?

Answer. We pay for its consumption.

Question. That should be free of charge because they consume it, too.

Answer. For its consumption, we pay for its consumption. The water. * * *

Question. They consume it, too. * * *

Answer. Enough!

JOHN WAYNE AND THE PANAMA CANAL TREATIES

Mr. ROBERT C. BYRD. Mr. President, on behalf of the Senator from Minnesota (Mr. Humphrey), I ask unanimous consent that a statement by him, as well as the text of correspondence he has received from John Wayne to which this statement makes reference, be printed in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

There being no objection, the text of correspondence was ordered to be printed in the Record, as follows:

STATEMENT BY SENATOR HUMPHREY

Last week, I received a letter from John Wayne and his statement reviewing the Panama Canal Treaties. Since Mr. Wayne has had close ties to the Republic of Panama going back to the 1940's, I think his views on the discussions now focusing on the Panama Canal Treaties deserve our attention.

While I would urge my colleagues to give close attention to Mr. Wayne's statement, I would like to call their attention to his conclusion:

"The new Treaty modernizes an outmoded relation with a friendly and hospitable country. It also solves an international question with our other Latin American neighbors, and finally the Treaty protects and legitimates fundamental interests and desires of our Country."

I found Mr. Wayne's analysis of the new treaties particularly thoughtful. He is a man of impressive integrity and patriotism for his country. Therefore, his views are most relevant.

BEVERLY HILLS, CALIF., October 11, 1977.

SENATOR HUBERT H. HUMPHREY,
U.S. Senate, Washington, D.C.

DEAR SENATOR: Enclosed is a statement regarding the Panama Canal Treaty. As usual, our dear provocative press misquoted me. This has increased my mail by letters from people who are concerned about my reaction to the Treaty. The enclosed is the answer that I am sending to them.

I would appreciate it if you would read the enclosed review which I have made. Through friends and a few years of experience, I have had the opportunity to know a little about the situation down there. I might add that I have friends on both sides

of the political spectrum. They are all still living the same life in the same manner as they were before the Torrijos change of government eight or so years ago. Their personal liberties do not seem too badly interfered with. None of them are in jail, and they have perhaps a little more respect for the law.

At any rate, the statement enclosed is a point of view that I think is worthy of your attention.

Sincerely,

JOHN WAYNE.

Enclosure.

STATEMENT REGARDING PANAMA CANAL TREATY

My interest in Panama goes back to the 40's. I have friends on both sides of their political spectrum. As a matter of fact, my first introduction to the Panamanian situation was in the 30's when Harmodio Arias was president. He was probably the best liked figure in all of South America and one of the very few presidents who has ever completed a term up to and since that time. His wife and his son Tito, then about 12 years old, visited me in California. Another son Tony was Godfather to one of my daughters. I am only going into these personal things to show you that I have had reasons to give attention to our relationships down there.

I have followed the Panamanian situation since the time the State Department insured us losing good relationships with Panama by changing their policy and charging extremely high prices for tuition for the children of several Panamanian families to go to Canal Zone schools. These families were continually involved in the leadership and administration in Panama. I think it would have been quite obvious with their children attending our schools that they would have our point of view. I wrote a letter to our Administration at that time to apprise them of this situation. Nothing was done.

You say that it is a blow to you to learn from the press that I favor the surrender of the Panama Canal. I certainly did not. I was appalled when General Eisenhower did just that and gave the sovereignty of the Canal away by allowing the Panamanian flag to fly there; but at that time, neither Congress, nor the press, nor the conservatives uttered any kind of cry. I did, but it was a voice in the wilderness.

In checking to find the reason for President Eisenhower's actions, I found out that although we had the rights to the ownership and jurisdiction of the Canal that Panama had not surrendered sovereignty of same. I also found out that the United States in the Arias-Roosevelt Treaty of 1936, ratified by our Congress in 1939, recognized the sovereignty of Panama in the Canal Zone as it was originally stated in the 1903 agreement.

Under negotiations during the Kennedy Administration, it was further agreed that any place within the civil area that the American flag flew, there must be a Panamanian flag raised.

Our people in the Zone tried to avoid this by removing flag poles. This started irrational actions by both sides. During those student riots which took place in 1964, our then president, Lyndon B. Johnson told the world that there would be a gradual return of the Canal to Panamanian possession. There were still no outcries from the people who are now complaining, but the above acts plus common decency to the dignity of Panama demanded a re-evaluation of our Treaty.

Now, let's take the Treaty for what it is. We do not give up one active military installation for the next quarter of a century. We do transfer to Panama in the civil Canal area such governmental activities as police and fire protection, civil administration, post offices, courts, customs, garbage collection, and maintenance of certain areas which are not necessary to manage the Canal. The Canal will continue to be run by an American agency. The Board of Directors of that entity will be comprised of nine members—five members of the Board, American—and four Panamanians who will be selected by the United States from a list proposed by Panama. This Board of Directors will not have any authority on our military bases which we will have there for a quarter of a century to insure this Treaty.

The Treaty insures all American citizens working in the Canal their continuing jobs to retirement and the continued uses of their rented homes at the present rate which averages around \$150 per month including all their utilities, garbage collection, sewerage, upkeep of the grounds and maintenance including gardening lawns and painting of buildings. This is guaranteed to each until retirement or completion of their contracts.

When the Canal Company transfers these responsibilities to Panama, they will also transfer \$10,000,000 a year of the toll charges to take care of them. I doubt if this will cover the costs. So does our government. Therefore, this United States

Canal Company Agency which will still be running the Canal for the next 20 years will be instructed to raise the toll charges 30 cents per ton or about $\frac{1}{100}$ of a cent and a half per pound to be given to Panama to cover such contingencies as inflation and to insure the above responsibilities plus rental for the 120,000 acres which these United States will continue to hold for its military installations and also the use of a 4,000 square kilometer water shed as a water reservoir to take care of our civil and military needs in the area. This added toll charge could amount to \$40,000,000 in the years to come; but not one cent of it will come out of our pockets.

None of this will cost the American taxpayer one cent. We will not be required to pay \$1 to Panama when this Treaty is put into effect.

I explained to the press when I was interrogated that I am only one of 200,000,000 private citizens of the United States and that I am not presuming to establish our foreign policy. I suggested that perhaps the facts as I have presented them to you might be put in a more enlightening manner to our citizens.

Regarding Communism, quite obviously, there are some Communists in General Torrijos' administration as there have been and probably still are in ours. Back in the days of McCarthy, it was proven that a great number of people in our government were Communists. For his high-handed manner with the use of the Committee, he was censored; but the truth of his findings were never questioned.

There will always be accusations and counter-accusations in this area. General Torrijos has never followed the Marxist line. Even in his speech when he visited Cuba, he stated that Castro had insured schooling and developed a system of feeding his people but at a high social cost. Because of this he stated that what was aspirin for Cuba was not necessarily the right medicine for Panama which is putting it about as plainly as possible when you are visiting in a foreign country that you are not agreeing with their methods.

Such rumors and accusations mushroom to a degree that it is hard for anyone to defend themselves. General Torrijos' government has not followed the Marxist line. He does have his Escobar Bethancourt as we have our Andrew Young, neither of whom were elected by either populus. A quarter of a century from now—when and if this agreement is carried out to the letter of the law—and we decide that it is proper to remove military installations, Escobar Bethancourt will be an old and forgotten character; and Young will probably be relegated to some posh job in our civil service from which he cannot be fired or taken care of by some liberal foundation as was Hiss.

I hope that the pragmatic view that I have of this situation is understandable. I have carefully studied the Treaty, and I support it based on my belief that America looks always to the future and that our people have demonstrated qualities of justice and reason for 200 years. That attitude has made our country a great Nation. The new Treaty modernizes an outmoded relation with a friendly and hospitable country. It also solves an international question with our other Latin American neighbors, and finally the Treaty protects and legitimates fundamental interests and desires of our Country.

U.S. BANKS IN PANAMA

Mr. PROXMIRE. Mr. President, I wish to call to the attention of my colleagues information concerning the activities of U.S. banks in Panama. The recently concluded treaty with Panama has stirred speculation that U.S. banks may have excessive exposure in Panama and therefore, have a special interest in the benefits to Panama from the financial portions of the agreements.

As chairman of the Committee on Banking, Housing, and Urban Affairs, I asked the Federal Reserve Board and the Comptroller's Office to provide detailed information on U.S. bank exposure in Panama. I ask unanimous consent that their replies, including the tables appended thereto, be printed in the Record.

The PRESIDING OFFICER. Without objection, it is so ordered.

[See exhibit 1.]

Mr. PROXMIRE. Mr. President, the data supplied by the bank regulatory agencies show that U.S. banks had total claims on Panama of \$2,831 million as of December 31, 1976. Reports for

June 30, 1977, are not yet fully tabulated, but it appears that total exposure has not grown and may have declined: All national banks had just \$773 million in claims in Panama, and 20 large banks (including large State member banks involved in lending in Panama) had \$2,162 million in claims in Panama. Data obtained for June 30, 1976, indicate total U.S. bank exposure in Panama was \$3,417 million. Further revision of the figures may yield a different result, but based on what is available currently, U.S. banks seem to have reduced their exposure in Panama during the past year, although overseas operations in general and other off-shore banking centers outside London (Bahamas, Cayman Islands, Singapore, Hong Kong, Bahrain, and so forth) in particular have been expanding rapidly.

Panamanian claims of U.S. banks do appear large in relation to claims on other Central American countries. Total U.S. bank claims on the other five republics were \$1,478 million at the close of last year, as compared with \$2,831 on Panama. But claims on Panama are enlarged by its role as an offshore international banking center, a role not played by other Central American republics. From one-quarter to one-third of bank claims on Panamanian residents are claims in fact on the branches of other foreign banks (principally European banks) in Panama. These interbank deposits are fully backed by the parent banks and should be excluded from an assessment of true bank exposure in Panama. It should also be noted that a much higher percentage of total claims on Panama are externally guaranteed (Panama, 21.3 percent; Costa Rica, 8.9 percent; El Salvador, 3 percent; Guatemala, 1.7 percent; Honduras, 9.3 percent; and Nicaragua, 3.7 percent).

Claims on Panama are largely short-term claims despite its use as a center for booking loans to be used throughout Central America. As of December 31, 53.5 percent of U.S. bank claims had maturities of under 1 year. As of June 30, 52.1 percent of all national bank claims on Panama had maturities of less than a year and the percentage was slightly higher (53.8 percent) for the 20 largest national banks.

The U.S. bank operations in Panama are concentrated in a few large banks. Three banks, which happen to be state-chartered banks, holds 50 percent of the claims held by 20 large U.S. banks on Panama, that is, \$1,081 million.

Four national banks hold 62 percent or \$481 million of the claims of all U.S. national banks on Panama. The six U.S. banks with the largest claims on Panama (of which at least four are State-chartered banks) hold 75 percent or \$1,622 million of the claims of 20 large banks on Panama. Some of this country's largest banks do very little business in Panama. And 13 of the 20 largest national banks do no business with other foreign banks and 5 do no business in Panama at all.

The bank regulatory agencies also provided information on the claims on Panamanian residents with more than 1 year to maturity as a percentage of bank capital. Only two banks, both State banks, had claims on Panama equal to more than 10 percent of capital. When claims carrying the guarantee of a party outside Panama are excluded, no bank has loans over 1 year to maturity which exceed 4 percent of its capital. Thus the potential losses

which any single bank could suffer in Panama if all loans to all nonguaranteed borrowers were in default are less than one-half the bank's single borrower limit. To put it differently, no bank is more heavily exposed in total claims with maturities over 1 year in Panama than it is authorized to be exposed to a single domestic corporate borrower.

FEDERAL RESERVE SYSTEM,
Washington, D.C., October 11, 1977.

HON. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs, Washington, D.C.

DEAR MR. CHAIRMAN. I am pleased to respond to your letter of September 19 requesting information about U.S. bank claims on Panamanian residents.

Enclosed are four tables prepared by our staff which provide the information in question. These tables are derived from several different sources. Table 1 was prepared from data collected by the Federal Reserve as of year end 1976 from a group of approximately eighty U.S. banks; these data were published in a press release issued on June 3, 1977.

Tables 2, 3 and 4 were prepared from data as of mid-1977 collected in a new survey on bank exposure conducted by the Federal Reserve in cooperation with other bank supervisory authorities. Twenty large U.S. banks reported total claims on Panama amounting to \$2.2 billion in this survey, compared with \$2.8 billion of claims on Panama reported in the earlier survey noted above for a larger group of banks. Data collected in the new survey are still being processed by our staff and may be subject to further revision. If significant revisions should occur later in the course of the editing process, I will provide you with a revised set of tables.

Data in Table 3 have been combined into groups of three banks in order to preserve the confidentiality of data for individual banks.

I hope this information will be useful to your Committee. Please let me know if I can be of further assistance.

Sincerely yours,

ARTHUR F. BURNS.

U.S. BANK CLAIMS ON PANAMA

TABLE 1.—Total U.S. head office, foreign branch and foreign subsidiary claims on Panamanian residents, December 31, 1976

[Millions of dollars]

Total Claims.....	2,831
1 yr or less.....	1,514
Over 1 yr to 2 yr.....	90
Over 2 yr.....	323
Unallocated.....	904

Source: FR 2029. Report filed by approximately 80 banks.

TABLE 2.—Claims on Panama of 20 large U.S. banks, June 30, 1977

[Millions of dollars]

Claims on banks.....	589
Claims on banks with head offices in other countries (including branches or affiliates of U.S. banks).....	463
Claims on private nonbanks.....	583
Claims on official institutions.....	261
Claims on private nonbank and official institutions externally guaran- teed.....	1729
Total claims on Panama.....	2,162

¹From the regular 502S statistical report, it is estimated that branches of U.S. banks in Panama had liabilities of \$367 million to local residents as of June 1977.

Source: Federal Reserve and Comptroller of the Currency Foreign Exposure Reports.

TABLE 3.—*Shares of individual banks in large U.S. banks' total claims on Panamanian residents and in their total claims on Panamanian offices of non-Panamanian banks, June 30, 1977*

Bank (left column):		
Shares of individual banks in total claims on Panama of 20 large banks (middle column):		
Shares of individual banks in total claims on Panamanian offices of non-Panamanian banks of 20 large U.S. banks (right column):		
1, 2, 3.....	50.0	34.9
4, 5, 6.....	25.1	26.6
7, 8, 9.....	13.3	9.3
10, 11, 12.....	5.6	8.0
13, 14, 15.....	3.4	6.5
16, 17, 18, 19, 20.....	2.6	5.2

Source: Federal Reserve and Comptroller of the Currency Foreign Exposure Reports.

TABLE 4.—*Claims on Panamanian residents with more than 1 year remaining to maturity as a percentage of capital for 20 large U.S. banks, June 30, 1977*

Bank:	Percent ¹
1.....	13.2
2.....	10.4
3.....	8.6
4.....	4.0
5.....	3.3
6.....	3.0
7.....	3.0
8.....	2.8
9.....	1.1
10.....	1.0
11.....	1.0
12.....	.8
13.....	.5
14.....	.5
15.....	.5
16.....	.4
17.....	0
18.....	0
19.....	0
20.....	0

¹ Included in these percentages are claims that carry the guarantee of a party outside Panama. The amounts of such guaranteed claims cannot be precisely calculated for loans with more than one year to maturity. However, the total of nonguaranteed loans over one year to maturity does not exceed 4 per cent of capital for any bank on the list.

Source: Federal Reserve and Comptroller of the Currency Foreign Exposure Reports and FR 416.

COMPTROLLER OF THE CURRENCY,
Washington, D.C., October 12, 1977.

HON. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter dated September 28, 1977 requesting information regarding the commitments of U.S. national banks in Panama.

1. As of June 30, 1977, total claims, including foreign branches and subsidiaries, on Panamanian residents aggregated \$773 million with \$403 million due in one year and under, \$288 million maturing over one to five years, and \$82 million due in five years and over.

2. On June 30, 1977 the proportion of such claims which represented claims on United States and foreign bank branches in Panama, that is excluding Panamanian banks and other Panamanian residents, totaled \$279 million.

3. For each of the twenty largest United States national banks, claims on Panamanian residents as a percentage of total national bank claims on Panamanian residents, were:

Bank	Amount ¹	(²)
A.....	7	0.90
B.....	0	0
C.....	0	0
D.....	0	0
E.....	22	2.84
F.....	1	.13
G.....	163	21.08
H.....	0	0
I.....	5	.65
J.....	0	0
K.....	137	17.72
L.....	44	5.69
M.....	1	.13
N.....	87	11.25
O.....	12	1.55
P.....	94	12.16
Q.....	3	.38
R.....	25	3.23
S.....	34	4.39
T.....	4	.51
Total.....	639	82.61

¹ In millions of U.S. dollars.

² Percentage of total claims on Panamanian residents.

For each of the twenty largest United States national banks, claims on non-Panamanian banks as a percentage of total national bank claims on non-Panamanian banks and residents, were:

[Amount in millions U.S. dollars]

Bank	Amount	Percentage
A.....	0	0
B.....	\$1	0.36
C.....	0	0
D.....	0	0
E.....	0	0
F.....	37	13.26
G.....	0	0
H.....	0	0
I.....	36	12.90
J.....	0	0
K.....	0	0
L.....	20	7.16
M.....	0	0
N.....	0	0
O.....	6	2.15
P.....	0	0
Q.....	76	27.24
R.....	0	0
S.....	33	11.82
T.....	0	0
	209	74.89

For each of the twenty largest United States national banks, claims on Panamanian residents with more than one year remaining to maturity, as a percentage of each bank's total capital, were:

Bank:	Percentage of total claims
A.....	0.46
B.....	0
C.....	0
D.....	1.10
E.....	0
F.....	0
G.....	1.83
H.....	0
I.....	8.38
J.....	1.45
K.....	0
L.....	2.85
M.....	0
N.....	.74
O.....	.31
P.....	1.03
Q.....	.41
R.....	2.89
S.....	2.51
T.....	.74

We hope this has been responsive to your inquiries.

Sincerely,

JOHN G. HEIMANN,
Comptroller of the Currency.

BALTIMORE SUN DISCUSSES COMMERCIAL IMPACT OF PANAMA CANAL TREATIES

Mr. HELMS. Mr. President, one of the least discussed aspects of the Panama Canal treaties is the impact which those treaties will have upon the U.S. consumer, shipper, farmer, and jobholder.

The economics of the Panama Canal are complex. They can easily be unsettled by very minute readjustments of costs—costs which include not only canal tolls, but also costs in extended shipping time, uncertainty, and breakdowns. If the canal is closed, if the tolls are increased, or if the operation becomes inefficient or uncertain, then there will be an adverse multiplier effect throughout the U.S. economy, with some regions bearing the brunt in terms of jobs, hardships, and lower incomes.

It is already admitted that the terms of the treaties will require an immediate increase in tolls of at least 25 percent and more probably at least 40 percent. The exact amount and the projected impact will not be known until a formal study is completed in January. A study made in 1974 showed that the maximum practical increase in tolls at that time was 75 percent. Since then tolls have been increased 3 times amounting to a 50-percent increase. It seems clear that the current proposals will require a toll level substantially in excess of the 1974 limitation.

Mr. President, the Baltimore Sun, which is published in one of the Nation's leading port cities, is perhaps more sensitive to the realities of the waterborne commerce trade than other newspapers of note. Last Sunday, it published a major article on the commercial impact of the Panama Canal treaties written by Joseph S. Helewicz and James A. Rousmaniere, Jr. It is the first important review of these issues in the press that has come to my attention, and I recommend it to all of my colleagues.

Mr. President, I ask unanimous consent that the article from the Baltimore Sun, entitled "The Panama Canal: Who'll pay the freight?", be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

[From the Baltimore Sun, Oct. 23, 1977]

(By Joseph S. Helewicz and James A. Rousmaniere, Jr.)

The automobiles we drive. The fuels that heat our homes. The fruit we eat for breakfast. And the televisions which provide our entertainment.

Many of these products come through the Panama Canal. Lately, some of the producers of these goods, and some of the shippers who transported them, have begun to rethink ways of moving the products to us.

They are thinking of avoiding the canal—for economic reasons.

In all the brouhaha in recent months over the Panama Canal and its importance to national security, hardly any word has been said on what the treaty means to the movement of goods from wellhead and factory through the 50-mile canal to us, the consumers.

When the subject is discussed, it is almost always as a consequence of a political event: the closing of the canal. The assumption is that if the canal is not closed, commerce—all 120 million tons a year—will flow unabated through the system of locks and channel.

The economics of canal traffic is more complex than that. The immense commerce flowing through the isthmus has a different stake for everyone, and that includes the consumer.

Those stakes are vital—they involve business and money and jobs. Just how they will be affected is not clear at the moment.

Consumers, the ones who always get it in the end, do not know and they likely will remain in the dark as long as the economic issues are given short shrift.

Carter administration officials have done little to put the matter on the front burner. Their talk of the economic impact of the treaty has been on the order of a put-down.

For example, Sol M. Linowitz, the principal treaty negotiator, has been quoted as saying the canal is "economically obsolescent" to United States interests. And hardly any of the businesses which rely on the canal are stepping forward to challenge that line of thinking.

Yet in recent weeks, business interests such as those in the maritime industry and others have become critical and outspoken on the treaty, and more is on the horizon.

Some have stepped forward before, specifically to oppose toll increases set by the Panama Canal Company, a U.S. government unit. Predictably, some are complaining about tolls again. There is a difference this time around, however.

The principal outside economic consultant who is working on the treaty confided in an interview that he is having reservations, indeed grave concerns, over the ultimate impact of higher tolls at the canal.

The concerns may be hard to grasp. Toll rates for ships can range from \$15,000 to \$40,000 for each transit. At current rates, the toll's impact is comparatively miniscule.

The effective toll on the shipment of a 40-pound box of bananas is 8.2 cents; a ton of sugar has a toll cost of only 85 cents; a barrel of crude oil has a toll rate of 14.8 cents, hardly enough to show up at the grocery counter or the gas pumps.

Nevertheless, some industries are worried. Shippers of bulk products, such as grain and coal out of the country's heartland for delivery to East Asia, are concerned that tolls are already at the breaking point.

They fear that another increase, coming on top of three increases in the past few years, will make the canal an uneconomical route for shipping.

Further, they contend that once the Panamanians get full control of the canal, it will be difficult to predict the levels of rate increases in years to come.

Recently, some shipping interests have begun to look seriously for alternate ways to get their products from the Pacific to the Atlantic, and vice versa, in an effort to remain competitive. That means holding down the costs of getting the product to the consumer.

The producers of North Slope Alaskan oil, for instance, have begun an earnest drive to build a \$500 million pipeline that will carry their crude from receiving terminals in California to refineries in Texas.

The pipeline, which is facing environmental opposition, is an alternative to shipping through the Panama Canal to the Gulf Coast.

In addition, steamship lines are experimenting with the Suez Canal as an alternative to using the Panama access to the lucrative South Pacific markets.

Shipping companies also are engaging in innovative combinations of rail and ship services to entice producers, like the billion-dollar European wine and liquor business, into shipping their goods through the Gulf Coast ports and the railroads to the West Coast, instead of through the canal.

Ecuador, one country which relies heavily on the canal for imports and exports, may be forced to relocate an entire market for one of its principal export products—the banana.

The country's low-profit banana export trade may not be able to swallow continued toll increases, economists say. Japan, it happens, is beginning to develop a taste for the fruit, so there is hope for the Ecuadorian plantations.

While this looking for alternative routes and markets is going on, few individual businesses are playing to the public with their concerns about the canal's future.

For example, instead of asking to testify in Washington on the treaty, some shipping executives have gone quietly to the federal negotiators to influence the course of bargaining.

These same interests have not asked to air their concerns before the Senate Foreign Relations Committee, which is holding hearings on the treaty issues.

A senior staff member of the committee said last week that he was "surprised" no commercial interests have stepped forward.

Two of the most elite business organizations in the United States, whose members presumably would benefit from happy neighbors to the South, have decided to avoid a public position.

The Business Roundtable, a group of 160 heads of the top companies in the country, decided against publicly supporting the treaty, though the group's leader and Carter confidant, Irving S. Shapiro, chairman of du Pont de Nemours & Co., individually asked members to voice support.

The Council of the Americas, a group of 230 industries which controls 90 per cent of private U.S. investment in Latin America, likewise has not taken a position on the current documents, and it may never do so, according to one source.

The business concerns over the treaty are varied. And so are the reasons for not going to a public forum with complaints.

Maritime executives, for example, have said privately that it would be poor timing to make a pitch to Congress for help. The industry, and specifically maritime labor, has been accused of attempting to buy members of Congress through campaign contributions.

There are other reasons why commercial interests have not spoken up:

Ely Brandes, an economist and consultant to the Panama Canal Company, who now is examining the treaty, attributed the silence to human failings.

"There are very few people in any line of business who have tried to face a problem before it came upon them."

For some industries, like the coffee traders, the impact of toll increases is insignificant. "It just one more nail (in the coffin)," said one disgruntled official of a major commodity importer.

William Merrill Whitman, retired secretary to the canal company, and treaty critic, said commercial interests "have been lulled into a feeling of security by the State Department, which wants to get the treaty through."

The whole discussion of the economic issue hinges on what tolls will be charged, and who will pay. Everyone agrees that tolls will increase, but the range of estimates is wide open.

Predictions run to a gradual 25 per cent increase through the end of the century, the view of treaty supporters, to more than 300 per cent, foreseen by the pact's harshest critics.

The canal, completed in 1914, operated for 60 years with no toll increases at all and has had only 3 in its history, all coming since 1974, when the waterway was losing money.

Some experts point out that those increases have had profound impacts on world markets, such as forcing producer to seek out new, and unanticipated, buyers.

For example, Peru used to ship large volumes of iron ore through the canal to East Coast steelmakers, but now it hardly ships any. Peru found it could not compete with ore from Venezuela, Liberia and Brazil, cargoes that do not have to be shipped through the canal.

Fortunately for Peru, it found a waiting Japanese market for its ore. An ironic twist is that the iron going to the Japanese is being made into steel that now is haunting American producers and their work forces.

The canal toll increases also served in part to create a new method of shipping cargoes from the Far East to the Midwest, via the West Coast.

Known as "mini-land bridge," ships and rails combine to carry products over the seas and over the Rockies. The service diverts shipments from the all-water canal route, as well as more expensive East Coast ports.

That is what toll increases have done in the past. As for the future, there is wideranging conjecture. In the flux of discussion, treaty critics have made mind-boggling estimates on toll increases and potential economic impacts.

Some of their statements have provided an illuminating look at how government officials involve themselves as commentators on complex issues.

For example, Richard C. Turner, the attorney general of Iowa who unsuccessfully filed suit to block the treaty, contends tolls will increase from 300 to 500 per cent.

"Iowa is the second-largest exporter of feed grains and soybeans in the United States," he said in an interview. "The toll increase is going to have a tremendous effect on us. It's going to price some of the farmers out of the market."

When asked where he got his percentage estimates, Mr. Turner said he read the figures in a newsletter circulated by Representative Neal Smith (D., Iowa), who served on a House Appropriations subcommittee that was looking into the costs of treaty negotiations.

An aide to Representative Smith said the legislator heard the estimate while on the subcommittee's trip to Panama a year ago. Mr. Smith did not pursue the matter. "It was just a projected fear," the aid said.

Another state attorney general, Evelle J. Younger of California, made a similar warning of economic disaster in a public release last month.

When pressed for supporting data on the warning, an aide could only reply, "Gee, I think he got that from a speech [Ronald] Reagan made. I'm not sure."

For its part, the Carter administration, which is pushing the treaty, has shed little light on the potential economic impact.

Farmers called to Washington in September by Bob S. Bergland, the Secretary of Agriculture, were told tolls might increase 25 per cent over the next 22 years.

Panama Canal Company sources, on the other hand, say tolls will increase immediately by as much as 40 per cent.

A State Department official said tolls would not be allowed to go "beyond the point of diminishing marginal returns."

That level is not now known, but Mr. Brandes, the consultant, says that level is nearly at hand.

The California-based economist said in an interview that he was heartened by signs that both sides on the treaty talks recognized that the canal can only produce so much revenue.

"Previous studies," he added, showed "that you can go four times up."

How far up can tolls go now? Mr. Brandes, who will complete a study on the matter early next year, is not sure. But he cautioned, "There's a danger. We're not very far from the point where we will get declining returns."

The steamship operators, the industry that stands to be affected most directly by canal toll increases, agrees with Mr. Brandes' line of thinking. They believe the tolls have hit the limit, but their ranks are split on how to address the issue.

Extreme friction between steamship operators who use the canal and those who ply other routes was played to its fullest at this month's meeting of the National Propeller Club, a major maritime trade group, which met in Galveston, Texas.

The group easily voted through resolutions for a bevy of federal subsidy programs, but when it came to the canal treaty, the best the members could do was pass a loosely worded resolution calling for construction of a second canal.

Port operators have been more assertive. The Gulf Ports Association, whose members rely heavily on the grain export business, appealed directly to President Carter to defer implementing the treaties.

The group's members are concerned that toll increases in the 30 percent range will price American farmers and exporters out of the international grain sales business and, thus, eliminate the fallout they get from the trade.

The fallout is substantial and varied: more business, stable employment and higher taxes to their communities.

Gulf port administrators say that countries like Canada and Australia, which will not have to contend with the economics of the Panama Canal, will be placed at a definite pricing advantage over American grain producers.

Meanwhile, the Association of American Port Authorities, which represents port operators in the entire Western Hemisphere, including Panama, expects to take some sort of position on the treaty at an upcoming meeting in Mexico City.

The group will have trouble reaching a unanimous position because it includes Canadians and Latin Americans who, unlike American port operators, are unwilling to commit themselves on what they view as a political issue.

American port operators are like everyone else in this debate. They cannot agree on the economic issues because those issues are so broad and perplexing.

One reason is that the forces of economics are so varied. But there is one undisputable economic fact of life: When costs rise, the consumer pays.

Consider this scenario. If the canal's tolls rise, or if the waterway is poorly operated, shipments could be diverted to other markets or routes.

It is a scenario in which one mode of transportation, waterborne shipping, would lose, along with the immense benefits associated with ports, ranging from substantial tax revenues to paychecks for longshoremen.

Competitors of steamship lines, such as the railroads, would win, becoming the beneficiaries of diverted business. In addition, traditional markets could fall by the wayside while new ones are created.

This is but one of many scenarios that make up the big picture of international commerce.

At the end, the consumer may ask: "Should I be concerned how my clock radio comes to me?"

Under the din of political debate over strategic controls, hemispheric influence and ownership rights, basic economic questions like this have not been asked. The economic ties—the delivery of products—are the closest ties individuals may have to the Panama Canal.

THE PANAMA CANAL TREATIES—NO. 19

Mr. ALLEN. Mr. President, one of the principal dangers which would face the United States should the Senate give its advice and consent to the proposed Panama Canal treaties is the possibility—indeed, the probability—that some future government in Panama would repudiate the treaties on grounds that the treaties had been negotiated by an illegal dictatorial regime not authorized to act on behalf of the Panamanian people. The argument would be that the acts of the overthrown dictator of Panama should not be allowed to bind the new legitimate Panamanian Government and hence that any previous actions taken by the dictator would be *ultra vires* and therefore voidable. A future government could well take the position, and with some justification I would think, that Dictator Torrijos was no more authorized to act on behalf of Panama than was the Frenchman Bunau-Varilla.

Of course, Mr. President, in my judgment Bunau-Varilla was the properly designated representative of the Government of Panama and the treaty of 1903 was legally ratified by the Constitutional Constituent Assembly of Panama even prior to ratification in the U.S. Senate, so I do believe that the treaty of 1903 is a binding document, but in the eyes or hindsight of many Panamanians, the treaty of 1903 was improperly procured. I am, therefore, only relating what I believe to be the likely opinion of Panamanians in future years with respect to any treaties which might be promulgated under the rule of the present military dictatorship.

But, Mr. President, the possibility of future Panamanian repudiation of these proposed treaties is not simply my speculation. On August 31 at a press conference held here in Washington, representatives of the Panamanian Committee for Human Rights made an emphatic statement. And something that does not exist down in Panama at the present time is, of course, human rights for the citizens of Panama. Representatives of the Panamanian Committee for Human Rights are outside Panama, of course, and they are seeking to influence the decisions of the Government there with respect to the granting of human rights to the people of that country.

This Committee on Human Rights stated emphatically that Omar Torrijos did not speak for the Panamanian people and if democratic institutions returned to Panama, no treaties negotiated by the dictator would be recognized as binding. That does not mean, Mr. President, that a future government would return to the status quo that existed at this time. That means that they being in control of the canal would keep the canal under such conditions as they set, certainly as to the right of the United States to defend the canal and the right of prior passage. They would not give the canal back. I do not mean that when I say they would repudiate the treaty, but they would take whatever they already had and seek to get a whole lot more.

These are the people who might well return to positions of authority should Dictator Torrijos be deposed.

Somewhere along the line these dictators fall by the wayside. They do not stay in forever. Some have long periods of prosperity

and incumbency, but sooner or later the people catch up with them and they are deposed, and I predict that is what will happen to Torrijos unless he is undergirded by these treaties and the economic benefits that come to his regime from the tens of millions of dollars each year that would go into his coffers, some \$70 million a year from the canal revenues.

Again, Mr. President, on October 11, Dr. Winston Robles, a leader of the Panamanian exile community in southern Florida, stated to the House Committee on International Relations, and I quote his statement:

All governments that come to power by force try to give legitimacy to their origins and legality to their malpractices. In 1972 Torrijos dictatorship called elections for a "Constitutional Assembly." With all political parties and activities proscribed, except the government party "Movimiento Nuevo Panama" and the "Partido Del Pueblo" (Moscow oriented communist party), and absolute control of newspapers, television and radio stations, it was not surprising that the government won 504 of the 505 carefully screened "representatives."

So if they could win 504 out of 505 representatives to the assembly it is quite obvious that they could have bettered the 2-to-1 ratio in favor of the Panama Canal treaties in the plebiscite that was held last Sunday in Panama. They saw fit to say that it was a 2-to-1 margin. Obviously if they had said, as they very well could have, that it was 100 to 1 that would make the U.S. Senate and the people of the United States skeptical of the bona fides of the election result.

So, they decreed that it was 2 to 1. They could just as easily had it 100 to 1. If it had been 100 to 1, it might have caused the Senate to look with some skepticism on the treaties, for if they were so heavily balanced in favor of Panama we might have a closer look, but if it were just a 2-to-1 margin in favor of the treaties it looks as if maybe Panama did not get such a good deal after all.

That apparently was the thought process of the dictatorial regime.

So, Mr. President, it is pretty clear that the norms of democracy observed in Panama represent nothing but a farce played to the world audience. It is crystal clear that these people in this constitutional assembly are solidly under the thumb of the gangster dictator and equally clear that they have little or no choice as to what course of action they collectively or individually choose to follow.

But, Mr. President, Dr. Robles continues to describe the actions taken in 1972 in Panama designed to give some semblance of legitimacy to the Torrijos dictatorship. He continues to describe this so-called constitutional assembly.

This selected, rather than elected, assembly held its first meeting October 1, 1972. A week later the "new constitution" was approved without discussion and the "constitutional assembly," even to the surprise of its members, found itself transformed into a "Legislative Assembly"—but one without power to legislate.

That is the type of government they have down there, showing it is completely under the thumb of the dictator. What we have here then, Mr. President, is a so-called constitutional assembly transformed into a legislative assembly which is something akin to a debating society with appointed members selected by the dictator but without any power to legislate. This unelected body was therefore established under a constitution designed primarily to uphold

the facade of legitimacy while giving the substance of power to one man. But here is what Dr. Robles has to say:

The new constitution subordinates the legislative, executive, and judicial power to the National Guard. It eliminates the separation of powers and places the legislative power in a "Legislative Council" composed of the Cabinet Ministers and *any* number of members appointed by Torrijos. It also states that Torrijos is the "Maximum Leader."

Maximum leader, Mr. President. That means that power may be shared with appointed lackeys, but at the bottom line only one man decides. No separation of powers, Mr. President, and no power outside the dictatorship, for that matter. That points out the importance of our own Senate and House of Representatives insisting on maintenance of the powers delegated to each by the U.S. Constitution.

Here is what Dr. Robles has to say about the reason for going through the motions of adopting this unusual constitution:

The Constitution exists only for "cosmetic" reasons and does not impose in practice any limits to the use and abuse of the governmental powers. This concentration of dictatorial powers, without parallel in the constitutions of any other Latin American country, does not give, however, a complete idea of the real power that the dictator and the National Guard exercise. For example, the Article 29 of the Constitution prohibits expatriation, but several hundred Panamanians live in exile and are not allowed to return to their country.

So, Mr. President, these Panamanians who have managed to escape to a country where they are able to state their views without at least any immediate fear of reprisal have got a very low opinion of Dictator Torrijos and, consequently, an even lower opinion of the legal effect or validity of any treaty negotiated by him. I might add, Mr. President, that Dr. Robles' view is one that I also share inasmuch as I believe it to be inappropriate for the United States to enter into a treaty relation calling for partnership in the joint operation and defense of a strategic waterway with a government whose leaders are either criminals or the associates of criminals. Dr. Robles made the same point when he described life in Panama to the members of the House Committee on International Relations:

Today Panamanians live in constant fear. Telephones are tapped, mail intercepted, houses searched in the dark of night, people arbitrarily arrested, and the population intimidated by an organization of paid informers. This government, its officers and its friends are involved in all kinds of legal and illegal businesses. The involvement of high ranking officers in drug traffic is well known.

And I might say, Mr. President, that we have seen some hints of the extent of that involvement in previous discussions here on the floor of the Senate and elsewhere. Certainly the American people should be alerted to the character of this Government that the Department of State has seen fit to treat so handsomely and with such great deference.

Yet, Mr. President, much has been made in our own media here in Washington about this so-called plebiscite conducted on Sunday, October 23, in Panama, but listen to Dr. Robles' explanation of the legal effect of this plebiscite. And before quoting him, Mr. President, I would like to remind Senators that Dr. Robles is a lawyer of great international standing and certainly the foremost authority on the Panamanian Constitution. Here is Dr. Robles' analysis of the legal effect of the Panamanian plebiscite:

The Panama Constitution provides that any Canal Treaty must be "submitted" to a national plebiscite. However there is a confusion. The plebiscite does not have any binding effect because the power to approve a treaty belongs to the Assembly of District Representatives—(Article 141 of the Constitution). The plebiscite is an expedient to give the treaty the appearance of a popular approval. However, what kind of a plebiscite can be held without a free press, without freedom of assembly, and without freedom of thought and expression? What is the value of a plebiscite under the constant manipulation of information by the government-controlled press, radio, and television?

With questions like that being asked, Mr. President, this plebiscite then is not going to be a very solid foundation for a new treaty, at least not in the eyes of some subsequent, freely constituted, legal Panamanian Government.

Dr. Robles also points out that it does not really matter whether the plebiscite was conducted freely or not because, and I quote his remarks:

The plebiscite is a simple problem for the Panamanian government. It does not matter how many vote aye or nay. What matters is who is going to count the votes.

So the results of this plebiscite could very easily have been tailored, Mr. President, to achieve the best public impact. And public impact is pretty important to our Department of State. You know, Mr. President, the U.S. Embassy in Panama had a study prepared by a Mr. John L. Jackley, on the subject, "The Impact of the New Canal Treaty." In addition to much other advice, Mr. Jackley suggested to our diplomats the following:

A lot of good press would be essential for success: In this situation *we could make good use of the controlled press situation of the isthmus*. If it doesn't work, no propaganda would sell it. But it can be given at least an initial breath of promise through *skillful manipulation of the available media*.

So it has been recommended, Mr. President, to the Department of State that the controlled press down there in Panama be utilized to full advantage to rig the results of this plebiscite. And you know, Mr. President, for the best psychological impact here in the United States, they would not want a 100-percent vote—that would be too obvious; they would want a vote showing some significant opposition but overall strong approval—and that is about what we have gotten out of these results reported from Panama.

Mr. President, with the Department of State being advised "to make good use of the controlled press," certainly we ought to be able to understand the feelings of the Panamanians who wish to see their country free, and certainly we ought to be able to understand their feeling that any deal negotiated with Dictator Torrijos is not binding and is in itself a threat to the prospect that Panama will ever regain freedom.

Dr. Robles summarizes the situation in this fashion:

Panamanians do not want to replace a bad treaty with one that is going to be imposed with Torrijos playing the same role that Bunau-Varilla played in 1903. The new treaty does not solve "the causes of conflict" between the two countries. On the contrary, it adds a few new ones, as, I am sure, many members of Congress are aware. However in this ever-changing world, permanent does not mean eternal. Sooner or later the dictator will fall. Then the treaty is going to be rejected by Panamanians and their governments and all the resentment against the dictatorship will be reflected in the future relations between Panama and the United States.

And that is the bottom line, Mr. President. Sooner or later the dictator will fall, and sooner or later any treaties negotiated with

the dictator would be by the Panamanian people completely and properly repudiated, and the United States will be blamed correctly for perpetuating a dictator whose time is already past.

PANAMA CAN'T OPERATE THE CANAL

Mr. THURMOND. Mr. President, one of a number of questions which the Senate should consider in the Panama Canal debate is whether the Panamanian Government will remain friendly to the United States if control is transferred to that country.

Additionally, does that Government have the political strength or will to resist outside interference? Does Panama have the economic vitality to maintain and protect this vital waterway?

Ron Hendren, writing in the October 18 edition of the Greenville News, examines the lack of technological sophistication which makes a transfer of control to Panama highly questionable.

This lack of technology raises other questions. If the Panamanians are unable to cope with the complex operation of the canal, to whom will they turn? If to us, it will mean great outlays of cash. The only other great power to whom they could turn would be the Soviet Union.

Mr. President, the Ron Hendren column entitled "Panama Can't Operate Canal," which appeared in the October 18 edition of the Greenville News, is excellent reading in light of these concerns. In order to share this column with my colleagues, Mr. President, I ask unanimous consent that it be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

PANAMA CAN'T OPERATE CANAL

WASHINGTON.—In all the prolonged, impassioned debate over the Panama Canal, the one question that ought, over all others, to be answered has yet to be asked: Can the Panamanians run it?

The answer is no.

Not only could the Panamanians not run it today, there is serious question whether an intensive training campaign begun tomorrow would ready them for the task in time. For in all their years of living next door to the canal, and despite their sustained enthusiasm for reclaiming what they view with some justification to be rightfully theirs, our unhappy neighbors have demonstrated virtually no inclination or capacity to master the technology to operate the thing.

I said technology; perhaps art is a better word: It takes a dozen years to learn how to pilot a ship through the locks, a feat that has been compared to nursing a hot dog through a series of eyedroppers. Only a handful of men have mastered it, none of them Panamanians. And piloting is only one of more than a score of canal jobs requiring special skills obtainable only through a lifetime of dedicated apprenticeship.

For me, the history and politics of the canal pale in comparison to the importance of that present-day reality. Whether the trench is rightfully ours in perpetuity, whether we are there illegally, or whether, as Sen. S. I. Hayakawa (R-Calif.) put it, we stole it fair and square—all those are important considerations. We also need to know beyond doubt whether, if we leave, we will retain the right of unilateral military intervention, and whether our warships will receive preferential passage.

These are important questions that ought not even be asked until the Panamanians demonstrate as much enthusiasm for learning how to run the canal as they have for winning control of it.

To say no to that doesn't reflect politics, conservative or liberal. It's just plain common sense. Before those treaties are ratified—if they are ratified—there ought to be a clear, written understanding that we will not leave, nor be expected to do so, until we are satisfied that the Panamanians can operate the canal.

[From the Congressional Record—Senate, Oct. 27, 1977]

THE PANAMA CANAL TREATIES: QUESTIONS AND ANSWERS

Mr. CRANSTON. Mr. President, Time magazine associate editor, Edwin Warner, recently contributed an excellent piece concerning the Panama Canal treaties in the October 31, 1977, issue of Time.

In plain language, Mr. Warner poses the major questions about the Panama Canal treaties and what effect approval of the treaties would have. His responses to those questions are reasonable and succinct.

I believe this information will be of interest to my colleagues and ask unanimous consent that the questions-and-answers section of this Time essay be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

THAT TROUBLESOME PANAMA CANAL TREATY

(By Edwin Warner)

... Amid all the rhetorical smoke surrounding the canal treaty, people are understandably confused about the hard facts—and realities. Some key questions about the pact and what its approval would mean:

Q. How important is the Panama Canal for the U.S.?

A. Of course, it is still important, but not nearly so vital as it used to be. About 8 percent of U.S. international maritime trade passes through the waterway, much of it in non-American vessels. Some 4 percent of American coast-to-coast trade transits the canal, compared with 9 percent in 1964 and 50 percent in 1940. Few U.S. warships make the trip; the supercarriers are too big, and the nuclear submarines are vulnerable to detection and attack because they must be on the surface to make the crossing. Besides, the U.S. has maintained two virtually separate navies in the Atlantic and the Pacific since World War II. Strategic materials are increasingly transported across the country by rail and truck. While disruption of the canal would be troublesome for the U.S., it would be far from fatal.

Q. What claim does Panama have to the canal?

A. Historically, at least, not much of one. The U.S. will be ceding the canal to Panama but not "returning" it, since Panama never really possessed it. If anything, Colombia was the aggrieved party. With American connivance, Colombian rebels "liberated" the isthmus from the Bogota government in 1903 and turned the rights to build the canal over to the U.S. Panama and its canal came to life together; without the canal, Panama could scarcely exist as a viable nation. Canal revenues account for some 25 percent of Panama's gross national product, 20 percent of its employment and almost 40 percent of its foreign exchange earnings. Thanks to the canal, Panamanians have one of the highest per capita incomes of any nation in Latin America: a still very modest \$1,060. In one sense, Panamanians can be grateful that America decided to build the canal.

Yet the present anomaly remains a small but proud nation cut in half by a huge waterway under the control of a foreign power. The arrangement may once have been economically justified, even a historical necessity, but it is a current indignity for Panamanians. As Venezuelan President Carlos Andres Perez Rodriguez told Carter: "The Panamanians feel exactly about the Canal Zone as North Americans would feel if the British owned the Mississippi River." In fact, Americans had much the same attitude as contemporary Panamanians when the Spanish and French (not the British) controlled the Mississippi at the turn of the 19th century. In 1956 America supported Egyptian sovereignty and condemned the British and French attempt to recover the Suez Canal. The U.S. has had too much experience with double standards in dealing with the Communist world to indulge in the same practice.

Q. Can Panama run the canal as well as the U.S.?

A. The American record is hard to beat. There have been remarkably few accidents or sinkings considering the amount of traffic. Yet there is no reason to assume that Panamanians cannot do as well; the Egyptians have learned to run the Suez Canal, which admittedly lacks the complex system of locks of the Panama

Canal. Says a senior State Department official: "Nowhere is it written that you have to have a Georgia Tech degree to run the canal. The canal is damned important economically to the Panamanians. It is their only natural resource, and they will take care of it." Writes Vermont Royster, former editor of the *Wall Street Journal*: "For us, the canal is at most one adjunct to commerce and defense. For Panama, the canal is vital, the closing of the canal would be a disaster."

At the moment, Panama does not have the skilled manpower to take over the canal. But it has 23 years to train pilots, technicians and mechanics—a sufficient amount of time, one would think, since it takes a mere twelve years to train a brain surgeon. Panama has also said it would hire other nationals if there are not enough native citizens to do the job.

Q. Can the U.S. intervene militarily to protect the canal once Panama is in control?

A. No question has aroused more anxiety or opposition to the pact. Until 2000, the U.S. will control the canal and its military bases. After that the treaty states that the U.S. and Panama shall maintain the "neutrality" of the canal, a clause that seemed alarmingly vague to many people. When it became apparent that this concern was about to sink the treaty, Panama's head of state, General Omar Torrijos Herrera, went to Washington, and he and Carter issued a joint "statement of understanding." The "correct interpretation," they said, is that each country shall defend the canal against any aggressive act or other threat to its neutrality and shall make sure that it remains "open, secure and accessible." But the U.S. has no "right of intervention in the internal affairs of Panama." This seems to lead to a certain ambiguity. How can the U.S. defend the canal without somehow intruding in Panama's internal affairs? Treaty proponents admit the distinction is a fine one but think that it can be observed. The U.S. asks nothing more of Panama than a functioning canal.

The Carter-Torrijos understanding seemed to answer the question of intervention to almost everyone's satisfaction. Senate Majority Leader Robert Byrd, who has not said how he stands on the treaty, described the understanding as "a very important diplomatic achievement and a big plus for the President and the treaty." Republican Senator Robert Dole, one of the pact's chief critics, called the joint statement a "step in the right direction," his most favorable remark to date.

The Carter-Torrijos understanding also cleared up another controversial point. The treaty gives both nations the right to send its warships through the canal "expeditiously." But how expeditiously? Panamanian officials, under fire from the left, insisted that U.S. vessels would be granted no special treatment. A number of U.S. Senators found that position unacceptable. The new statement specifies that warships of either country would be entitled to "expedited treatment" and, during emergencies, could go to "the head of the line of vessels."

Q. What if the U.S. fails to ratify the treaty?

A. The reaction in Latin America would be dramatic. Countries on the coast of Latin America that depend heavily on the canal—Peru, Ecuador, Venezuela—have privately advised the U.S. that they have some misgivings about eventual Panamanian control. But publicly they would doubtless join the rest of the continent in denouncing the U.S. for a breach of faith. Certainly the rejection would sour American relations with Latin America and intensify distrust and hostility.

Failure to ratify would also be a gift to America's worst enemies. Latin America's left wing opposes the pact because it ensures a U.S.-Panamanian partnership for the foreseeable future and, perhaps more important, because it eliminates a major source of antagonism between the U.S. and its southern neighbors. Notes the *Buenos Aires Herald*: "The Latin American left is clearly dismayed at the emergence of an agreement which may prove satisfactory to most Latin American opinion, ranging from the center left to the center right." If the Senate were to reject the pact, the Latin left would be able to say, "We told you so," and would probably gain adherents among disillusioned moderates. No right-winger in the U.S. is more fervent in his desire to see the treaty fail than is the Latin American left.

Q. If the U.S. does not ratify the treaty, can it protect the canal from violence?

A. Not very easily, say the people who should know: the Joint Chiefs of Staff. They believe it is in the national interest to cede control of the waterway. Acting alone, surrounded by a hostile population not only in Panama but in the rest of Latin America, the U.S. would need an estimated 100,000 troops to put down a determined guerrilla effort. And even that sizable a force could not seal off the waterway's lock mechanisms, dams and power plants from some kind of sabotage. A band of skilled terrorists, for example, could approach the Gatun Dam through the dense jungle with relative ease. Properly placed explosives could blow up the dam, drain the water that is required to operate the locks and put the whole canal out of

commission for as long as two years. General George Brown, Chairman of the Joint Chiefs of Staff, told Time Correspondent Jerry Hannifin: "If I were a guerrilla backed by Fidel Castro or somebody, I would just love those Panamanian jungles. They are better than even the jungles of Viet Nam. An organized guerrilla effort would cost us heavily. That is why we want the Panamanians on our side from scratch under the new treaties. We need them to help us." If the U.S. were forced to take some kind of military action to protect the canal in, say, the year 2027, it would be in a far stronger moral position if it had approved the treaty. Then it would be fighting on behalf of Panama, not against it.

The Panama Canal treaty is no historical accident, no caprice of idle statesmen. It has been twelve long, arduous, ruminative years in the making; it is an idea whose time has come—and whose time may be running out, given the objection to the treaty among many Latin Americans, especially in Panama. Strongman or not, Torrijos is faced with opposition, chiefly radicals who are considerably farther to the left than he is. If the treaty is not ratified, if trouble breaks out in Panama, it will be all the harder to draw up a subsequent pact in an atmosphere of mutual recriminations. Responsible citizens of both countries would look back on the present period as an opportunity that was tragically missed."

HOW CANAL TREATIES WOULD BENEFIT IOWA FARMERS

Mr. CULVER. Mr. President, for the people of Iowa one of the most important questions concerning the proposed Panama Canal treaties is the impact those agreements would have on American agriculture, and in particular farm exports.

Recently the Des Moines Register published an analysis of this issue by one of Iowa's most respected commentators, Lauren Soth. Mr. Soth details the importance of the canal for agricultural exports and concludes that our agricultural interest calls for every reasonable foreign policy to keep that route open. That goal, he argues, requires that these treaties be ratified.

Mr. Soth also declares:

The surest way to close the canal and to put our farm exports under handicap, particularly in the growing Asian markets, is to try to hold control of the canal by force.

In view of the importance and timeliness of these facts for the people of Iowa and other agricultural states, Mr. President, I ask unanimous consent that the full text of Mr. Soth's article be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

HOW CANAL TREATIES WOULD BENEFIT IOWA FARMERS

(By Lauren Soth)

Public opinion polls show large majorities of Americans opposed to Senate ratification of the Panama Canal treaties which have been signed by President Carter and Panama's ruler, Gen. Omar Torrijos.

The popular opposition to the treaties appears to be based on chauvinistic feelings about not giving up "our territory." It cannot be the result of serious thought about economic consequences.

The principal stake (practically the only stake) of the United States in the canal is its value for commercial shipping, especially for exports of agricultural products. The canal is vulnerable to sabotage or guerrilla attack. No treaty and no military guard can assure complete protection.

But it is evident from recent uprisings that continuing the U.S.-imposed one-sided arrangement on the canal would risk interruptions of traffic and destruction of the lock system.

American farmers have been expanding their markets in Asia tremendously in the last two decades. Japan now is the largest single country market for U.S. farm products. Of the total of around \$23 billion of agricultural exports this year, about

\$8.5 billion will go to Asian markets, \$4 billion to Japan. About 70 per cent of the U.S. farm commodities export to 15 markets in Asia last year passed through the Panama Canal.

One-fifth of all American agricultural exports last year were shipped through the canal.

The canal is particularly important to the big-volume trade in corn, soybeans and wheat. The U.S. Department of Agriculture (USDA) reports that one-fifth of total corn exports moved through the canal, a fourth of soybean exports and nearly half of grain sorghum exports.

The proportion of wheat shipped that way is not so high, since the white wheat and hard spring wheat of the Northwest usually are shipped via Pacific coast ports. But much of the hard red winter wheat of the Great Plains goes through Panama.

The tolls for shipping through the canal will go up under the new treaties, but they would have to go up anyway because of higher operating costs—even if the U.S. could get away with its present low rate of payment to Panama (which it cannot). The tolls are expected to increase about 25 to 30 per cent under the new treaties. But this would add only about five per cent to the total shipping cost for most products going through the canal.

Of course, the higher shipping cost would apply to all canal users. The United States still would have a transportation cost advantage over Brazil in shipment of soybeans to Japan, for example. If the canal were closed to U.S. use, however, Brazil would have a 50-cent a bushel edge, since we'd have a longer haul around Cape Horn.

The Panama Canal is important to the United States for internal as well as international trade. Many bulk commodities shipped between eastern and western parts of the country go through the canal, including canned fruits and vegetables, citrus and dried fruits.

Several of the least thoughtful opponents of the treaties argue that the canal should remain in U.S. hands exclusively in order to assure use of this trade route for American farm products. That kind of reasoning is possible only for a Rip Van Winkle who has been asleep in the last 20 years and oblivious to the political trends in South America and to the riots in Panama.

The surest way to close the canal and to put our farm exports under handicap, particularly in the growing Asian markets, is to try to hold control of the canal by force.

Because of the energy situation, we will have to rebuild our railroad system in the next few years. This will make it feasible to move more products east and west by rail and perhaps permit greater exports of farm products to Asia from West Coast ports.

But the longer ship route, through the canal, undoubtedly will continue to be the cheapest way from the Midwest—and our agricultural interest calls for every reasonable foreign policy to keep that route open.

That seems to me to require the ratification of the Panama Canal treaties.

THE PANAMA CANAL TREATIES—NO. 20

Mr. ALLEN. Mr. President, in one of my earlier speeches to the Senate on the subject of the proposed Panama Canal treaties, I emphasized the fact that one of the major flaws of the proposed treaties, is that the new proposed treaties, rather than building on and modifying our existing treaty relationship with Panama, would wipe out that relationship in its entirety and would, in effect, start out completely anew. Now, certainly there are advantages in a fresh start in almost any project, and I would be the last to insist that it would be impossible to start anew in our dealings with Panama, but, Mr. President, if that course of action is to be followed, then much greater care must be given to preserving the substantive rights of the United States than has been given thus far in this new reordering of the structure of the bilateral rights and obligations now existing between the United States and the Republic of Panama.

But because we have had such close diplomatic ties with Panama since the formation of the Republic of Panama in 1903, in my judgment, regardless of the ultimate outcome, we would still make a grave error and would make our task unnecessarily difficult if we were to abolish in toto all existing treaties, protocols, executive agreements, exchanges of letters, and similar notes, memorandums or other documents bearing on the Panama Canal and on the close ties of the United States with Panama. However, Mr. President, near total abolition is exactly what is contemplated by these proposed treaties.

Article I of the proposed Panama Canal Treaty would in one stroke abrogate virtually every document of significance negotiated with Panama in the past 74 years. Article I would wipe out presumably both the good and the bad without discriminating between the two. Article I would, for example, wipe out the present monopoly the United States enjoys with respect to construction of any canal across the Isthmus of Panama and would leave the Soviet Union or any other third nation free to negotiate with Panama for rights to construct a new sea level canal, either within the present Canal Zone or at some other location in the isthmus. It would leave the Soviet Union or Cuba or some other third nation with which Panama might enjoy particularly cordial relations complete freedom to negotiate even for completion of the third locks canal now lying within the canal and initially worked on by the United States prior to World War II.

So, Mr. President, that is one example of an existing right of the United States which would be destroyed by this wholesale meat-ax abrogation of all existing significant treaty ties with Panama. But there are plenty of other rights now enjoyed by the United States which would be lost, presumably forever. Also among the many and valuable rights now enjoyed by the United States which would be destroyed with the implementation of article I is our present right to deny access to the canal to a belligerent vessel of war or any other vessel which is employed by a belligerent power as a transport or fleet auxiliary. The United States obtained this right in an agreement concluded in 1914 between Robert Lansing, then acting Secretary of State, and Eusebio A. Morales, Ambassador Plenipotentiary for Panama. A protocol of the agreement, the protocol of 1914, was signed at Washington on October 10, 1914, and entered into force on the same day. It is found at 38 Statutes at Large 2042. In pertinent part, Mr. President, the protocol reads as follows:

Hospitality extended in the waters of the Republic of Panama to a belligerent vessel of war or a vessel belligerent or neutral, whether armed or not, which is employed by a belligerent power as a transport or fleet auxiliary or in any other way for the direct purpose of prosecuting or aiding hostilities, whether by land or sea, shall serve to deprive such vessel of like hospitality in the Panama Canal Zone for a period of three months, and *vice versa*.

In other words, Mr. President, that is a very diplomatic way of saying simply that if either Panama or the United States decided not to allow the passage of a belligerent vessel of another nation, then that vessel had best go around the horn because it could be a 3-month wait for passage through the canal. In practical effect, the protocol of 1914 gives to the United States the right to forbid the

passage of a vessel belonging to a nation at war with any other nation, and the rights set forth in the protocol, when coupled with the territorial interest of the United States in the Canal Zone, guarantee to the United States the legal authority to deny passage to a belligerent vessel belonging to a nation making war on the United States or on an American ally.

Without this protocol, Mr. President, or without the retention of territorial rights in Panama, the United States could find itself in the ridiculous position of having agreed, as a matter of international law pursuant to these proposed treaties, to permit the passage of warships of a nation attacking this country or of a nation invading an ally of this country. One can almost imagine the grim race which might be conducted by American warships and belligerent vessels of an enemy nation—a race which, if won by the United States, would perhaps entitle the United States to move to the head of the line of merchant vessels but which, in any event, if lost by the United States, would entitle the belligerent vessels equally to free and unimpeded passage through the isthmus. The war and the race could presumably be resumed on the other side.

Mr. President, that cited prospect is obviously farfetched and represents a fact situation which would be, in practice, almost inconceivable. But, Mr. President, the scenario I have described would be, nevertheless, completely permissible within the legal confines of these proposed treaties. Why not be more honest about the matter? Why not lay out on paper exactly what the position of the United States is? Why surrender rights vital to our national security interests while at the same time asserting that we could, through military might, secure the desired result? No, let us be candid with Panama and with ourselves.

We now have the right as a matter of international law to deny passage through the canal to belligerent vessels of other nations. What possible good can be achieved by setting up the legal fiction that the canal will always remain perfectly neutral and that even in time of a war in which the United States is itself participating, the canal will be available to ships of all nations?

I might point out, Mr. President, that should we in fact adhere at some future date to this legal fiction which would be set abroad in these proposed treaties—should we in fact adhere to the concept that we will guarantee the perfect neutrality of the canal itself in all circumstances—then the United States could find it necessary to tie down in the Caribbean and the Pacific military and naval forces, which might be better utilized elsewhere, solely in order that those forces could watch the approaches to the Panama Canal.

This argument is not new, and I recognize, Mr. President, that much has changed in naval strategy with the advent of nuclear weapons, but certain basic principles of warfare are going to remain immutable throughout the ages, and certainly in some later war, either conventional or nuclear, in which the United States or an ally of the United States unfortunately might become engaged, in some future unhappy day, we could well expect to see physical control of the Panama Canal as a significant military factor. Prior physical control is the key, because otherwise the United States could face the task of a Normandy-like invasion of

the isthmus or the expense and danger of perpetual naval over-watch.

So, Mr. President, while we are worried here in the Senate about obtaining an amendment to these treaties to make clear that U.S. warships would have the right of priority passage through the canal, let us not overlook the broader issue of control of the canal during wartime, and let us not overlook this protocol of 1914 which would be quietly wiped out by article I of the proposed Canal Treaty. Let us instead consider protecting our rights to the canal in wartime, and let us consider direct incorporation of the protocol of 1914 into the body of the proposed Canal Treaty so that the protocol may continue in full force and effect in order to guarantee thereby to both Panama and the United States the right to deny effectively the hospitality of the waters of the Republic of Panama or the hospitality of the waters of the Panama Canal Zone to any belligerent vessel of any country. Let us maintain our rights within the legal text of our treaties with Panama and not through the threat of force of arms.

THE PANAMA CANAL TREATIES—NO. 21

Mr. ALLEN. Mr. President, on Tuesday, I talked at some length about the repressive character of the Panamanian Government and the impropriety of propping up the current Panamanian dictator through Senate advice and consent to a new treaty relationship which would tend to perpetuate the dictator's regime and which would be rightfully subject to repudiation by a later legitimate Panamanian Government. I emphasized that subsequent repudiation of these proposed treaties by a legitimate Panamanian Government was not in the least conjectural, but was instead a matter of plain record, inasmuch as leading Panamanian exiles have already testified to the House Committee on International Relations that, after the downfall of Dictator Torrijos, these treaties would not be worth the paper on which they are written.

To refresh the memory of Senators on this point, I will quote again from the remarks made before the House committee by Dr. Winston Robles, the chief spokesman for the Panamanian exile community here in the United States. Dr. Robles stated the matter in this fashion:

Sooner or later the dictator will fall. Then the treaty is going to be rejected by Panamanians and their governments, and all the resentment against the dictatorship will be reflected in future relations between Panama and the United States.

Mr. President, Dr. Robles' remarks ought to be heeded. They foretell the great danger for the prospect of long-term friendship with the Republic of Panama and they foreshadow dire problems for the United States should Dictator Torrijos fall from power and thereby cease to be the guarantor of these treaties. The good will of Dictator Torrijos cannot be the linchpin of good relations with the people of Panama.

So, Mr. President, Dr. Robles' remarks ought to be taken into account. Since these treaties depend—and let us face the matter honestly—since these treaties depend only on the word of a small-time gangster dictator, will we not soon see a vested interest in guaranteeing that this same smalltime dictator remains in power, or that his successor regime remains in power, in perpetuity? Do we not run the risk of ratifying these treaties of becoming in perpetuity the champions of a repressive government, rather than the consistent and active proponents of human rights in Panama, in the United States, and in all countries? Certainly, even a casual student of these proposed treaty arrangements would recognize that the United States, after ratification of these treaties, would have a heavy stake in seeing continued the Torrijos dictatorship, since virtually every provision of significance does depend on the continuance in power of the military regime now dominating Panama.

This latter point has not been lost on commentators who have followed this debate. Last Friday, the Washington Star carried a particularly perceptive editorial by Charles Bartlett which was entitled, "The Case for Delay on Panama," Mr. Bartlett suggests a third alternative to ratification or rejection of the Panama Canal treaties. Of course, Mr. President, in my judgment, these treaties

should be promptly rejected, out of hand and without embarrassment, because these treaties are so laden with substantive and technical defects as to make them unworthy of favorable action in the Senate and, indeed, except for the gravity of the situation, unworthy even of efforts to correct by amendment the many obvious errors and the even more numerous latent flaws. But, Mr. President, notwithstanding my own opinion on this subject, I do feel that the third option suggested by Mr. Bartlett should receive close scrutiny inasmuch as his suggestion would at least prevent the United States from assuming the role of guarantor of the Torrijos dictatorship, one of the most repressive regimes ever to govern a nation in the Western Hemisphere. Mr. Bartlett suggests simply that the Senate defer action on the Panama Canal treaties until Torrijos loosens his death grip on the people of Panama.

Mr. President, Charles Bartlett describes his idea—and this may well, indeed, also be the idea of others, including some members of the Senate—he describes his idea in this fashion:

This strategy contemplates a delay as long as the three years which preceded Senate approval of the 1936 treaty. It has its roots in varied doubts on the character and intentions of President Omar Torrijos.

Mr. Bartlett apparently feels that delayed action on the treaties could cause some semblance of basic human rights to be reestablished in Panama. I, for one, believe it will take more than a delay in ratification of these treaties to reestablish democracy in Panama, but perhaps delay would cause some steps in the right direction to be initiated. In reviewing the recent public relations offensive launched by Dictator Torrijos, Mr. Bartlett seems to doubt that any significant steps have in fact been taken by the dictator to improve human rights in Panama, and he notes that the so-called free debate which preceded the plebiscite held last Sunday "could be the start of a new era or a mere gesture to propitiate the U.S. Senate." Mr. Bartlett rightfully suspects this plebiscite was held strictly for stage effect here in the United States, and in further discussing the dim prospects for real progress in improving human rights in Panama, he goes on to point out the following:

The signs are not encouraging. Gerardo Gonzalez, the former Communist leader who is now Torrijos' vice president, has asserted in recent days that Panamanians would not have had a new treaty if they had persisted in "the farce which in the past they considered democracy." He termed elections "a complex and repudiated system" which divided Panamanians into groups.

So, Mr. President, the Vice President of Panama, Gerardo Gonzalez, a former Communist, is not impressed with an electoral process which tends to divide voters into groups—presumably into groups not enamored of Torrijos' pro-Marxist regime. Former Communist Gonzalez—I assume he is no longer a Communist because that is what Mr. Bartlett reports—former Communist Gonzalez would undoubtedly prefer to see these treaties promptly ratified here in the Senate without delay so that the pro-Marxist regime now in power can fully consolidate its authority on the cash and prestige thereby bestowed. This last factor is also noted by Mr. Bartlett, who describes the matter this way:

If the treaty is ratified and the government begins to draw the \$80 million per year which it anticipates in tolls and fees, the regime will have no further need to

consider democratization. The national guard, already badly corrupted in the top ranks, will be expanded to snuff out the last resistance to a left-wing dictatorship.

The great virtue of delay is that it will oblige Torrijos to show more of his hand. "I am one of the most radical of men," he has been saying in Europe. He has certainly been radical in visiting upon a small republic such authoritarian exotica as torture, forced expatriations and a blackout of free expression. Relentless greed is his only major shortcoming as a hardline Marxist.

Mr. Bartlett concludes with this thought:

A Marxist dictatorship would be a poor epitaph for the sage of America's role in Panama, and the best hope of avoiding it may be foot-dragging by the Senate.

Indeed, Mr. President, perpetuation of a Marxist, pro-Castro dictatorship in Panama is not a result many Members of the Senate, if any, would wish to see as our country's crowning achievement in the Isthmus of Panama, and I do, therefore, respectfully commend to my colleagues for active consideration Mr. Bartlett's thesis that prolonged delay—perhaps delay on the order of the Senate's wise and lengthy consideration of the genocide treaties—prolonged delay of that order might be the best method of stimulating Panama's political evolution toward freedom and might, additionally, be the best way of preserving the national security interests of the United States in this strategic and vital waterway.

Mr. President, I yield back the remainder of my time and I suggest the absence of a quorum.

Mr. ROBERT C. BYRD. Mr. President, will the Senator withhold his suggestion?

Mr. ALLEN. I am delighted to.

Mr. ROBERT C. BYRD. I believe the Senator from Wyoming is ready to proceed under his order.

Mr. HANSEN. Mr. President, first, let me compliment the distinguished Senator from Alabama for his very perceptive observations and comments this morning. I hope that Senators will take time to read in the Record what our good friend from Alabama has so succinctly observed this morning.

Mr. ALLEN. I thank the distinguished Senator.

FORMER PANAMANIAN PRESIDENT COMMENTS ON TREATIES

Mr. DOLE. Mr. President, a statement by former Panamanian President Arnulfo Arias, on the proposed Panama Canal Treaties, was recently brought to my attention. Dr. Arias, who now resides in exile in Florida, served as President of the Republic of Panama during 1940 to 1941, 1949 to 1951, and served 12 days of a third term before being ousted by Gen. Omar Torrijos in October 1968.

As one who had had a long and close association with both the domestic and foreign policies of Panama, Arnulfo Arias brings a unique perspective to the current treaty issue. His statement should be a part of the historical record on this matter. Mr. President, I ask unanimous consent that the text of the statement by Dr. Arias be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT FROM DR. ARNULFO ARIAS, LAST CONSTITUTIONAL PRESIDENT OF THE
REPUBLIC OF PANAMA

First: On September 7, 1977 two treaty proposals were signed in Washington, by representatives of Panama and the United States after negotiations have been held for several years. The proposed treaties and their implementations were negotiated and signed at a most difficult time in Panamanian history, when there had not been and there are not, genuine democratic institutions, nor freedom of expression, nor basic inalienable rights of the citizenry. In such a manner that none of the political parties which represent the vast majority of the whole electorate have been involved in anyway whatsoever, directly or indirectly, in the negotiations or the signature of the drafts.

Furthermore the proposed treaties have in themselves developed a quite large area of misunderstandings, doubts and double interpretations in Panama as well as in the U.S.A. which invalidates them and makes them inadequate by the precedent it sets, besides the planting of tragic seeds of discord for the future.

Second: The treaty drafts do not take into consideration the vital interests of Panama, the U.S.A., and Latin America, and should therefore be rescinded. Firmly established trends of opinion are backing such clear judgment. In this way we will avoid an internal confrontation in both countries as well as between both nations.

Third: It is up to Panama to first reestablish the democratic process, all public freedoms, guarantees to the citizenry, the return of all political exiles and the full enjoyment of all human rights, and furthermore to bring the house to fiscal and economic order.

Fourth: Later, within a climate of progress and public faith in our future, return again to the negotiating table to obtain a just and equitable treaty for both countries since we are not in discord with one another and a special relationship binds us together in our mutual aims to protect the rights and aspirations of our people. We have the desire for a dignified cooperation and the responsibility to guarantee by all means a maritime passage for all people of the world.

THE PANAMA CANAL TREATIES: ENHANCED BY INFORMATION

Mr. CRANSTON. Mr. President, a recent Gallup survey indicates that "the more Americans know about the Panama Canal Treaties, the more likely they are to favor Senate ratification of the pact." The survey also showed, however, "a serious lack of knowledge about the treaties."

For both these reasons, the Senate's decision to postpone final action on the treaties until next year was well advised. I believe the American public, and perhaps even Members of the Senate, will benefit from additional time to learn about and study the Panama Canal Treaties.

This survey also asked people what they regarded as the best arguments for and against the treaties. The argument that the treaties would "remove the stigma of colonialism" was considered the strongest argument for ratification. To me, this means that many Americans agree that we cannot continue to use the Canal Zone as an American colony. The few remaining colonies are anachronisms in a world which has long since rejected colonialism as an acceptable form of government. By attempting to continue our control of the canal itself as an adjunct to a Canal Zone colony, we unnecessarily weaken our ability to maintain our right to use the canal. Moreover, colonialism is totally inconsistent with our national traditions and principles. Our Nation was born in the first major successful revolt against colonialism.

How can the United States—of all countries—defend colonial ownership anywhere in the world?

We did not build the canal to establish a colony: We built it to guarantee open access to the United States and the rest of the world of a transit between the Atlantic and Pacific. And we have efficiently operated the canal that way. Ratification of the Panama Canal Treaties would give us the right to defend the canal and to guarantee future world access to it while recognizing legitimate Panamanian national interests.

Mr. President, my colleagues may find interesting the full report of this Gallup survey on the Panama Canal Treaties which appeared in the Washington Post on October 23, 1977. I ask unanimous consent that this report be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

CANAL TREATIES ARE ENHANCED BY INFORMATION

(By George Gallup)

PRINCETON, N.J.—The more Americans know about the Panama Canal treaties, the more likely they are to favor Senate ratification of the pact, lending support to President Carter's thesis.

When those surveyed who have not heard or read about the debate over the treaties (26 per cent) are given a brief description of the pact and are asked to vote on it, they vote it down by nearly a 2-to-1 ratio (39 to 23 percent with 38 per cent undecided).

However, when the results are limited to just those who have heard or read about the debate (74 per cent), opinion is more closely divided, with 48 per cent opposed, 40 per cent in favor, 12 per cent undecided.

Finally, the survey measured the views of the better informed. The informed are defined as those who can correctly answer three key questions about the pact: the year the canal is to be turned over to the Republic of Panama, whether or not the United States has the right to defend the canal against third-nation attacks and whether or not the biggest U.S. aircraft carriers and supertankers are able to use the canal.

The vote among this "better informed" group—the one person in 14 who can answer all three questions correctly—is 5 to 4 in favor of the treaties.

The survey reveals a serious lack of knowledge about the treaties, with about four in 10 Americans aware that the United States has the right to defend the canal, only about one in four aware that the canal is to be turned over in the year 2000 and only about one in seven aware that aircraft carriers and supertankers cannot use the canal.

The poll was taken between Sept. 30 and Oct. 3.

(Overall, the poll shows 36 per cent favoring the treaties, 46 per cent opposed and 19 per cent undecided, regardless of awareness of details of the treaties.)

(These results show a slight drop in approval from Gallup poll released in early September, when 39 per cent favored the treaties, 46 per cent were opposed and 15 per cent undecided. The earlier poll, however, was designed before the treaties were written and asked respondents their views based on a brief summary that stated, incorrectly, that the United States would "maintain control over the land and installations necessary to operate and defend the canal" after the turn of the century.)

Those who have heard or read about the debate were asked what they regard as the best arguments in favor of and against the treaties. Here are the responses, in order of frequency of mention:

BEST ARGUMENTS IN FAVOR

1. A good public relations move—remove stigma of colonialism.
2. Canal is not important to U.S. interests.
3. Maintaining canal is too expensive.
4. To avoid a conflict/prevent hostilities.
5. Not giving it totally away—we would be able to defend it against attack from third nation.
6. It belongs to the Panamanians—it's part of their land.

BEST ARGUMENTS AGAINST

1. U.S. has economic stake in canal.
2. U.S. should not pay them to take the canal.
3. Panama may not stick to terms of treaties.
4. They will soon keep us from using the canal at all.
5. Communists will take it over.
6. Canal is important to our national security.
7. We built and paid for it—we should keep it.

[From the Congressional Record—Senate, Nov. 1, 1977]

THE PANAMA CANAL TREATIES—NO. 22

Mr. ALLEN. I thank the chair. Mr. President, on October 19, 1977, the subject of my Panama Canal talk—and I might say that was my 21st talk on this subject—was the visit to the White House made recently by Panamanian Dictator Omar Torrijos. I discussed in detail the lack of clarity in the unsigned joint communique issued at the conclusion of the dictator's visit, and I pointed out its failure to resolve any of the many ambiguities in the proposed Panama Canal treaties.

Specifically, Dictator Torrijos and President Carter had discussed the right of the United States to intervene in Panama to defend the canal after 1999 and the right of U.S. naval vessels to priority passage. As I explained in my remarks at that time, the so-called agreement reached by the two leaders has done virtually nothing to clarify existing ambiguities in both areas and, in fact, would further cloud both issues by introducing additional conflict in the separate interpretations of these treaty provisions by the two governments.

Of course, Mr. President, former Ambassador Linowitz and other administration spokesmen have either asserted or implied that the United States does have the right to intervene in Panama to protect the neutrality of the canal and that U.S. warships do have the right of priority transit of the Isthmus of Panama.

These assertions have been made, Mr. President, notwithstanding the words of the treaties which seem certainly to indicate otherwise. In other words, Mr. President, former Ambassador Linowitz and other proponents of the treaties have insisted that the treaties have a meaning which would be viewed favorably here in the Senate and which might be acceptable to the people of the United States, but, Mr. President, unfortunately for proponents of these treaties, the Panamanians have refused to lie low while the documents are being sold up here in the United States. The Panamanians have been quite frank in stating their interpretations. In fact, Mr. President, starting back in August—in fact, on August 10, 1977, and again on August 24, 1977—Panama's chief treaty negotiator, Dr. Romulo Escobar Bethancourt, chose to publicize in Panama the exact limitations on the rights of the United States to take military action to protect the canal and to maintain its neutrality and on the rights of U.S. war vessels to priority passage. Fortunately, Dr. Escobar's remarks were subsequently made available to the Senate and have served to highlight the differing interpretations given to these very important defense provisions. Senators read with some amusement Dr. Escobar's rather indelicate comment:

If the gringos—

Referring to the United States—

If the gringos with their warships say, "I want to go through first," then that is their problem with the other ships.

Indicating that Dr. Escobar felt confident that we had no right of priority passage. That was not very diplomatic. Mr. President, but certainly clear in its meaning. Here we have expressed in no uncertain terms exactly how the Panamanians would view this so-

called right of expeditious passage which has been trumpeted by certain of our treaty negotiators as a great diplomatic achievement. Similarly, Mr. President, we learned from Dr. Escobar's remarks—as early as August 10, 1977, back before we had even been told what was in the treaties—that Panama agreed to United States intervention to defend the canal only in the event such intervention was directed against “third countries”—not against Panama. We were even more baffled when we learned that former Ambassador Linowitz on the same day refused to comment on or to correct Dr. Escobar's assertion.

So, Mr. President, these differing interpretations, if indeed they are differing interpretations, have been in the works for some time now; in fact, these differences were quite evident even preceding the signing of the two treaties on September 7, 1977. But, Mr. President, when it later became obvious that the Senate would not allow the matter to be hazed over or swept under the rug, the proponents of the two treaties apparently thought that it would be wise to seek some clarification to allay the concerns of many of us here in the Senate, to assuage our feeling that the two documents ought to be capable of reasonable interpretation by reasonable men, to come up with the same interpretation and to persuade the citizens of the United States that these ambiguities would, in subsequent years, not be resolved in favor of the Panamanian interpretation with consequent disadvantages to our own national security. The unsigned clarifying document, however—and Senators, of course, know that this so-called agreement between Dictator Torrijos and President Carter was not signed—caused more problems than it solved and has thrown us into even deeper confusion in our attempts here in the Senate to ascertain the actual meaning of these truly mystifying provisions.

I regret to say, Mr. President, that a new element of further confusion has been gratuitously thrown into the brew by Dictator Torrijos. Apparently, Mr. President, a few days ago on October 21, 1977, Dictator Torrijos—in addition to again threatening the Senate in veiled terms with an armed attack on the canal should the Senate fail to ratify these treaties—in addition to that frequently heard threat, Torrijos in Panama made the following interesting comment giving his interpretation of the just-announced, unsigned communique. I quote what Torrijos said:

I don't want the canal unprotected but I don't want them (the Americans) to overprotect us to the point of interfering with our lives. I want to establish a system where we press a button here and a bell rings there when the attack is greater than our ability to handle it. I wouldn't say it's a right the U.S. has—I'd say they are obligated to come to the defense of the canal.

On these terms, we understood one another. Then we drew up in two minutes exactly what we wanted: You don't interfere in our internal matters, and leave me a button I can press in Panama, and then I want a loudspeaker at strategic command that they will hear when I do press the button.

So, Mr. President, this does not sound like much of a right we have obtained here in these treaties or in this subsequent so-called clarifying document. This is not much of a right if we are unable to take any action until a petty Marxist dictator elects to “press a button” to put American troops into action to look after his needs as he sees them. Not much of a right indeed, Mr. President.

In fact, on close analysis I would call this particular interpretation given by Dictator Torrijos an interpretation which would in practice impose an obligation on the United States to shore up his dictatorial regime rather than an interpretation which would grant to the United States, as I believe the majority of the Senate desires, a right to guarantee the neutrality of the canal with such appropriate military action as the United States, in accordance with its constitutional process, might itself unilaterally decide.

So we still have the question as to who reaches the decision for military presence by the United States. Torrijos says he is the man that presses the button, and that we do not have any right to determine when it is necessary for us to take action.

It is my contention that the United States should be allowed, at such times as it feels the canal is in danger, to have the right to send troops in to protect the canal.

The last thing, Mr. President, that I trust any of us would like to see given to Dictator Torrijos is the ability to "push a button" to commit U.S. troops to battle, and certainly, Mr. President, this is indeed a curious concession made to Torrijos if he does secure by these treaties the right to demand the presence of U.S. forces as it may suit his own interest, while the United States must wait idly by for the dictator's summons when the vital interests of the United States are being sacrificed to some yet-undisclosed Marxist project endangering the operation of the canal.

In other words, Torrijos sees the treaty and the unsigned agreement between him and President Carter as giving him the sole right to decide when American troops can come in to defend the canal, but he might be the aggressor himself. The Panamanians might decide to nationalize the canal, to take it over, and exclude U.S. shipping, U.S. warships. Naturally, he would not press a button, as he called it, to summon U.S. troops.

So we do not have any meeting of the minds yet, no matter how highly trumpeted the unsigned agreement.

What is going to happen, of course, is to amend the treaty, which I will get to in a moment.

Finally, Mr. President, in my judgment, the Senate ought to take note of the fact that the Panamanian plebescite for ratification of these treaties has already occurred. Naturally, therefore, there can be no binding legal effect given now to any extraneous signed executive agreement incorporating, or perhaps further clarifying, as they say, the so-called clarifying document already issued. Simply stated, a new signed executive agreement purporting to lay this matter to rest could have no binding legal effect since it would not have been in existence at the time of the Panamanian plebescite and since, therefore, the Panamanian people could not have been aware of its terms prior to their favorable vote for ratification.

Mr. President, the only way these questions can be resolved properly is for the Senate to undertake the duty of amending these treaties with precise language which sets forth exactly the rights of the United States, both with respect to priority passage for war vessels and as regards intervention to defend canal neutrality. Only by amendment and by subsequent renegotiation with Panama can the present impasse be resolved in a legally binding manner.

and in a manner which can form the basis for decent future relations with Panama. We cannot rely on the theory that might makes right. Our future rights must be clearly expressed if we are to avoid criticism in some future age for exerting power in excess of our internationally recognized legal authority. Additionally, Mr. President, only by precise amendment of these two provisions and of the many other ambiguous provisions found throughout both treaties—only by this careful process of amendment can the Senate discharge its full responsibility to the people of the United States to insure the complete protection of our vital national security interest in the Panama Canal and in any other strategic waterway which might be constructed between the two seas.

REPORT FROM PANAMA

Mr. HANSEN. Mr. President, article XI of the Panama Canal Treaty provides that the Republic of Panama shall gain full jurisdiction over the Canal Zone as soon as the treaty enters into force. It further provides for a complete transfer of U.S. judicial, administrative, and regulatory authority within 30 months, even though the administration is emphasizing a 23-year period in which this will occur.

In my opinion, these provisions will not constitute an orderly transition. As I indicated in my statement recently before the Senate Foreign Relations Committee, I believe there are very few American citizens who will remain in the Canal Zone, knowing they will be under the jurisdiction of the Republic of Panama. Large numbers may return to the United States, leaving a void in the manpower support of the operations of the canal.

Mr. President, in a recent article by Mr. Egon Tausch of the U.S. Industrial Council, he notes there are about 34,000 U.S. citizens living in the zone, most of whom are directly connected with canal operations. Mr. Tausch further notes that since 1974, when former Secretary of State Kissinger announced the joint statement of principles, resignations of U.S. citizens have increased by 60 percent. In addition, according to an informal poll of U.S. citizens about their plans, 67.8 percent said they would not consider remaining if the zone is turned over to the Republic of Panama.

Mr. President, I believe the administration and the negotiators on both sides have failed to take into account the very real possibility that, should jurisdiction of all U.S. judicial, administrative, and regulatory authority be transferred within 30 months, as provided for under the treaty, there may, in fact, be very few left to operate the canal.

Mr. President, I ask unanimous consent that the full text of Mr. Tausch's article be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

REPORT FROM PANAMA: THE AMERICANS WHO OPERATE AMERICA'S CANAL

(By Egon Tausch)

(NOTE.—The author of this article is an author and attorney who spent his formative years in Latin America. Mr. Tausch served as an officer in Vietnam,

taught at West Point, and has published in *National Review* and other journals. He recently visited the Panama Canal Zone to gather material for this report.)

One factor in the Panama Canal controversy which has been deliberately ignored by both the State Department and the media is the problem of the Canal Zone residents, or "Zonians."

There are about 34,000 U.S. citizens living in the Zone, most of whom are directly connected with Canal operations. It is a remarkably stable population, made up for the most part of children, grandchildren, and great grandchildren of Canal workers. Many have married Panamanians and others are naturalized U.S. citizens themselves. There is no labor-management dissension, unemployment, welfare, race issue, or crime problem in the Zone.

The Zone is not a duty assignment for its residents; it is their home which they have quite rightly believed would always be part of the United States. For obvious reasons, the State Department would like to forget about them.

Much has been made of the fact that the Canal will be turned over to Panama gradually; the Panamanians will not have full control until the year 2000. This has obscured the fact that the Zone itself, as distinct from the Canal, will be turned over within 30 days after the treaty is ratified. The Zonians have lived next door to the Panamanian police state and do not relish the thought of living under it. Their attitudes must be taken into consideration before ratifying the treaties: Any timetable for the transition to Panamanian control of the Canal depends entirely upon the willingness of Zonian employees to stay and work after the Zone is under the jurisdiction of the Guardia Nacional. If they won't, the Canal will close down quickly and disastrously, regardless of any agreements to the contrary that U.S. and Panamanian negotiators might have made.

The Zonians have no intention of being ignored. They were the victims of the 1964 riots, sporadic violent incidents since then, including the bombings of American automobiles in November, 1976, and harassment by the Panamanian Guardia Nacional and secret police.

Now they find themselves an embarrassment to the U.S. Embassy in Panama, which has refused to permit the rights of these American citizens to strain relations with the Panamanian dictatorship.

"When we go into Panama to use their airport—we aren't allowed to use our own military field anymore—and get detained by the Guardia, we're all alone," says Mrs. James Fulton, president of the Pacific Civic Council in the Zone. Patrolman William Drummond adds, "If we get into any kind of trouble, we now know better than to call on our own embassy. We call the British. They don't have to pretend we don't exist."

Drummond, president of the Police Union and legislative chairman of the Central Labor Union and Metal Trades Council, had his two automobiles bombed in the terrorist attacks of 1976. The incident was attributed to the G-2, the intelligence arm of the Panamanian secret police. The U.S. Embassy in Panama speculated publicly that Drummond might have bombed his own cars to gain sympathy for the plight of the Zonians, a charge proven false when the other bombs went off and the terrorist notes were discovered. The Embassy never apologized to Drummond.

On February 11, 1977 Drummond was arrested by the G-2 at the Panama airport when he was on his way to testify in Washington on union business. He was detained and questioned in downtown Panama City for three hours. His release was obtained only because the arrest was reported by the protocol officer from the embassy, who had happened to witness it. The Ambassador decided not to make a point of such arrests for fear of endangering the treaties.

Shortly before the negotiators completed the treaties they authorized Gov. H. R. Parfitt of the Canal Zone to release a list of fifteen "assurances" to U.S. citizens in the Zone—points that were to be in any proposed treaty.

Among them was the following assurance concerning criminal justice: "In connection with offenses arising from acts of omission punishable under the laws of the Republic of Panama, United States Citizen employees and their dependents will be entitled to specific charges, cross-examination of witnesses and legal representation of choice."

Also, the State Department announced, a status-of-forces agreement would be included in the treaty, which would permit U.S. civilians to be tried by their own courts as is done by the military in other foreign countries. These assurances were repeated by every level of government and were even incorporated into a Department of Defense directive to the military.

In reality, the State Department negotiators were aware that Torrijos had consistently refused to consider any such assurances. These clauses had already been omitted from the early draft treaty at Torrijos' insistence.

The final treaty gives all authority over criminal justice—procedural and substantive, crimes of commission and crimes of omission—directly to Torrijos, with no safeguards for U.S. citizens, other than the right to serve their sentences in America if Panama agrees at a later date.

In the face of his repeated failure to get Panamanian agreement on these points, Ambassador Bunker continues to push the treaties by promising that a status-of-forces agreement will be forthcoming, somehow.

The residents of the Canal Zone feel a personal sense of betrayal by the U.S. government. They can vote only in presidential general elections, so their interests are centered on one issue—foreign policy. Secretary of State Henry Kissinger was profoundly disliked in the Zone, and the last television debate between Carter and Ford led the Zonians to believe that Dr. Kissinger's policies would be reversed by a Democratic administration. The Zone went solidly for Jimmy Carter. Now the President's representatives encounter only hurt hostility from the residents.

The Zonians have held rallies protesting the proposed treaties. More than 2,600 appeared at the last one before the treaties were signed. If any Zonians favor the treaties, they have yet to speak out. Despite their expert knowledge of Canal operations and of conditions in the Zone, the residents have not been interviewed by the major U.S. news media. The Canal Public Information Office complains that it gives a representative list of Zonians to every reporter who calls on the office, but none bother to visit the locals.

Some of the American reporters have resorted to denouncing the Zonians' stilt bungalows and commissaries-without-discounts as "unfair" luxurious living. Unlike other Americans, the Zonians are expected by the press to live a Spartan existence, in return for the privilege of working on the Canal.

In actuality, the architecture and scenery of the Zone differs from that of Panama only in that it is kept clean and in good repair. The attack on Zonians is reflected in Time Magazine's report of a Canal pilot who "refuses to work for a dictator." The quote is preceded by the magazine's categorical opinion: "The Zonians' basic objections to the treaty range from chauvinistic to sentimental to mercenary."

State Department officials counter Zonian opposition to the treaties by calling the U.S. citizens "colonialists" or "racists," a charge which labor leader Drummond refers to as the last ditch effort of desperate bureaucrats. He, like many Zonians, is married to a Panamanian national.

Speculation about the evacuation of the Zone continues, without evidence of U.S. concern for keeping the Canal going.

Federal District Clerk Doris McClellan feels protective of her courthouse in the Zone. The daughter of Sen. John McClellan (D-Ark.) knows her way around Washington. "What right," she asks, "does the State Department have to abolish or give a federal court over to a foreign jurisdiction? We're under the Justice Department, not Foggy Bottom!" A Southern lady of the traditional mold, she gets angry when she envisions the future of her beloved courthouse under the rule of Gen. Torrijos and his henchmen of the Guardia. Indeed, the general will have little use for a court of justice within a governmental system which recognizes no civil rights whatever.

Miss McClellan is taking no chances with the historical honesty of the future occupiers of the Zone—she is sending all the deed records which prove ownership of the land, north for safekeeping.

Washington seems in no hurry to appoint a new federal judge for the Canal, making do with visiting judges in an obvious ploy to prepare for the turnover in case the treaties are ratified.

"What do they think they'd do with us? Send us home? Where is our home, if not here?" asks William Benny, a control house operator on the Canal. He and his wife were born in the Zone, and have no ties with other parts of the U.S. Benny will have to make his own plans for his family, and they won't be based on a timetable prepared in Washington.

The Governor of the Canal Zone and President of the Panama Canal Company is an Army general on leave of absence. The Zone Government and the Canal Company both operate under the general supervision of the Secretary of the Army. After completing his term, Gov. Parfitt will return to active duty, with a promotion if he hasn't made waves. He is prevented by his office from voicing Zonian complaints about the State Department or taking any position in regard to the proposed treaties. Nevertheless, his testimony before Congress during earlier hearings must have been unwelcome to those among his superiors who favor a gradual Panamanian takeover of the Canal.

Gov. Parfitt is painfully aware that the Canal must be closed if there are not enough U.S. employees who are willing to remain at a temporary job in a place that

is no longer to be their home, under a repressive foreign regime, and with little or no support from their own embassy. The Governor testified that fear of the future was affecting the work force even before the treaty agreement was reached. Since the 1974 Kissinger announcement of the Joint Statement of Principles, resignations have increased by 60 percent.

"Although the number is not of such magnitude as to cause great concern, what we are concerned about is the trend—the fact that this could snowball and ultimately seriously affect our ability to perform the Canal's mission. * * * Prospective employees are wary in seeking employment with the Panama Canal when doubt exists as to the future security and tenure of their positions and the conditions which might prevail under a new treaty."

Even if other Americans were paid enough to induce them to move to Panama, they would require extensive training to become familiar with the 1910 technology of the Canal, simple as it is. And they would have to be integrated slowly into the regular workforce. If the treaties are ratified, there won't be a regular workforce to ease them in to.

The U.S. Civic Councils, organizations of Canal Zone community representatives, polled 285 U.S. citizens about their plans. 62.8% said that they would not consider remaining if the Zone is given to Panama. "Many of our people now tell us that 'the day that the Canal Zone Police go, we go,' and also, more alarmingly, 'when the U.S. workers see the day getting closer that jurisdiction will be handed to Panama, you can expect to see the Canal shut down.'"

The only labor trouble that the Canal ever faced was a "sick-out" in March of 1976, which was a response to rumors of a new Canal treaty. As the Civic Councils reported, "Morale at that time was extremely low; this year we have to say honestly that our people are so demoralized that they are ready to give up and quit—a shutdown of the Canal, if it occurs, will not happen over a labor issue. It will result from apprehensive employees, who in their fear for their physical security, will simply leave their jobsites, go home and pack their suitcase * * *"

"The trouble with the State Department," concludes Pat Fulton of the Pacific Civic Council, "is that they want a new treaty as a 'symbol'. But the Canal is a thing." Ideology and nationalism will not change the fact that if the Americans leave, the Canal will be dependent on Panamanian mechanical skills.

The Canal mechanism is simple, but it requires upkeep. There is no regular maintenance system in Panama. Pride is based on acquisition; maintenance is work performed for no visible result. The elaborate daily lake dredging and cleaning and lubricating procedures employed on the Canal are objects of amazement, and sometimes derision, among Panamanian visitors.

For years the United States has given preference in hiring, training, and promotion to Panamanian nationals. At the present time only two of the ship pilots are Panamanians, and not many others of that nationality have risen above menial labor positions. Far fewer than the quota provided for by the program apply for training; fewer still complete it.

Recently the United States acceded to Panamanian requests and gave up control of Bayano Dam, a source of energy and a necessary control valve on the lake which supplies the locks with water. The daily inspections of the dam ceased immediately after Panama took possession. Within a few months the dam became inoperable. Torrijos could find no Panamanians with the knowledge and skills to repair it and was forced to fly in a team of Yugoslavian engineers and mechanics. Since the repair of the dam, new cracks have appeared.

Panama has never conquered the problems of mechanical and administrative efficiency. The garbage collection system in Panama City is practically nonexistent; heaps of refuse rot in the tropical sun. Modern buildings have no hot water systems built in. Torrijos bought a new fleet of buses from Germany, but made no arrangements for mechanics or replacement parts. A year later, less than one-third of the buses were still running; the others were cannibalized for their parts and the bodies left abandoned along the streets.

The treaty negotiators could not entirely ignore the possibility of Zonian flight and the lack of skilled Panamanians to replace the American employees.

Consequently, the U.S. Embassy in Panama contracted the services of Mr. John L. Jackle to do a study of the impact of a new treaty on Canal Zone residents and how they might be convinced of its benefits. The political branch of the embassy worked with Mr. Jackle. The final report indicates that the methods of the Panamanian dictatorship are not completely alien to the State Department: "a lot of good press would be essential for success: in this situation we would make good use of the controlled press situation on the Isthmus. If it does not work, no propaganda will

sell it. But it can be given at least an initial breath of promise through skillful manipulations of the available media."

Later the report adds, " * * * we would have to work closely with the Government of Panama to insure that their share of the participation would be handled with our goals in mind. We would not want a Government of Panama speaker who is going to rant about how glorious Panama's demands are; we would want someone who could communicate on a low-key level and who would be very reassuring."

Even such sophisticated Madison Avenue techniques might not work with Bill McConaughy, Senior Control House Operator and a highly respected mechanic. McConaughy has worked on the Canal all his adult life, as have his two brothers, their father, their grandfather, and their great grandfather, who helped build the Canal and whose Theodore Roosevelt Medal the descendants treasure. Bill's pride in the Canal is second only to his pride in America for having created it.

"Short of working on the Moonshot there's nothing I'd be prouder to do than what I'm doing here. We feel that way, and it doesn't wear off with time." After thinking a moment, he adds, slowly, "As long as the Canal is American."

PANAMA CANAL TREATIES—NO. 23

Mr. ALLEN. Mr. President, having used most of my time, I ask unanimous consent that my 23d speech on the Panama Canal, 21 of the others having been delivered on the floor, and I believe 1 inserted in the Record—

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield at that point?

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. Mr. President, if the distinguished Senator from Alabama would like to have some additional time on his speech, I will be glad to yield to him on my time.

Mr. ALLEN. I thank the distinguished Senator. I do not believe it will be necessary.

I ask unanimous consent that my 23d speech be printed in the Record as if delivered on the floor, and I do call attention to the fact that 21 of these speeches have been delivered.

The ACTING PRESIDENT pro tempore. Without objection, the Senator's speech will be inserted in the Record.

Mr. ALLEN. Mr. President, on Thursday, October 13, 1977, I addressed the Senate on the subject of a report in the Washington Star that the Department of Justice had confirmed the existence of a sealed narcotics indictment in the eastern district of New York against Moises Torrijos, brother of the Panamanian dictator, Omar Torrijos. At that time, I went into some detail in describing the events in 1971 which appear to have led to the indictment of Moises Torrijos sometime during the year 1972, and I noted—as have others—the peculiar fact that Moises Torrijos found it inconvenient to come to the United States for the gala signing of the proposed Panama Canal treaties, notwithstanding his brother's position as Panamanian Chief of State or his own governmental positions as an Ambassador and as the current Panamanian information officer for the proposed canal treaties. More particularly, I expressed my own continuing concern that the U.S. Department of Justice may not be pursuing vigorously the prosecution of Moises Torrijos because of political considerations.

Now, Mr. President, the purpose of a sealed indictment is to keep secret from the person indicted the fact that he is under indictment until such time as the individual is within the jurisdiction of the State seeking his prosecution. But, Mr. President, once the existence of an indictment has become a matter of public knowledge and indeed once the person indicted is personally aware of the fact of his indictment, there is absolutely no good purpose served by continuing to cloak in a veil of secrecy the specifics of the offenses charged.

So, I would hope that the Attorney General will soon see fit to unseal this secret, sealed indictment against Moises Torrijos so that the American people can be made aware of the detailed charges made against him. The American people have very properly been made aware in great detail of the charges made against Tongsun Park, and certainly the same standards should apply in this particular case. So I would hope that the indictment against Moises Torrijos will be made public, either by the Department of

Justice or by the U.S. District Court for the Eastern District of New York, and I would hope that it would not be necessary for interested parties to petition the court for information on this subject which should be of great interest to the citizens of the United States.

Certainly, Mr. President, no claim could now be made that Moises Torrijos is unaware of his indictment inasmuch as that fact has been widely reported here in the United States and, I might add, Mr. President, because presumably Moises Torrijos has known of this indictment for some time—in fact, has probably known of this indictment from a time very soon after it was handed down by the grand jury there in the eastern district of New York. So, Moises Torrijos knows of this indictment and very probably knows of the details of this indictment. Yet, the American people have been kept in the dark. And I do feel that this is a subject about which the people of this country should be advised inasmuch as this subject does appear to touch on the conduct of high government officials of a government with which the United States would jointly operate and defend this vital national asset, the Panama Canal.

You know, Mr. President, the year following the negotiation of the Panama Canal Treaty of 1903, our Government took the prudent step of negotiating with Panama a document entitled "A Treaty for the Mutual Extradition of Criminals." This Extradition Treaty of 1904 provides the mechanism for the extradition of persons charged with or convicted of certain specific enumerated crimes.

Mr. President, we do not know the details of the charges against Moises Torrijos, so it is difficult to determine from reading the language of the Extradition Treaty of 1904 whether that treaty would provide for extradition of Moises Torrijos to the United States. But we do not have the same problem here that we have in the case of Tongsun Park because we do at least have an extradition treaty with Panama for the extradition of criminals, and we do not have a treaty with South Korea for that purpose.

But, Mr. President, the Department of Justice has not seen fit to exercise the rights of the United States under this treaty of 1904 to seek the extradition of Moises Torrijos. So it must follow that the crime or offense charged against him is not one of the crimes or offenses enumerated in the extradition treaty. And indeed, Mr. President, if you do examine the treaty of 1904 in detail, as I have done and as I am sure many other Members of the Senate have done since this case came to light, you will find that among the 13 categories of crimes enumerated in the extradition treaty, the treaty does not cover trafficking in drugs.

I suppose, Mr. President, that the reason for that omission is relatively simple. In 1904, the United States was not beset by the problems and the tragedies generated by and associated with the lives and activities of some 400,000 heroin addicts. In 1904, it was possible to walk the streets of Washington, D.C., or New York City late at night without fear of violent attack by a heroin addict desperate to obtain the means to support his deadly habit. In 1904 the suicide rate among teenagers was not escalating by a factor of 300 percent as it has done in the United States over the past

decade, nor in 1904 were significant numbers of soldiers and sailors in the Army and navy subverted and destroyed by addiction to hard narcotics. So in 1904 our negotiators did not give extradition for trafficking in drugs very high priority.

But this, Mr. President is not 1904; this is 1977, and our country continues to lose ground in its grim and unsuccessful struggle against the drug trade. This is 1977, Mr. President, and our country continues to see the fabric of its society rent by the venality of drug profiteers.

Some elitist leaders of oppressed foreign populations might assert that drug addiction is a problem confined to ghettos and, therefore, not a problem worthy of serious attention or significant moral concern. But, Mr. President, the horror of a death from addiction to heroin, the horror of drug-motivated violent crime cannot be dismissed on those false grounds by the people's representatives in the Congress of the United States. Our duty is to strike against this disease at every opportunity.

In 1971 and 1972, the Subcommittee on the Panama Canal of the House Committee on Merchant Marine and Fisheries conducted a careful investigation of drug trafficking in the Republic of Panama. A briefing at that time given to the subcommittee by the Bureau of Narcotics and Dangerous Drugs contained the following information:

Panama is one of the most significant countries for the transshipment of narcotic drugs to the United States. Its geographic location facilitates the illicit traffic because it is a terminus for air and sea transport. Additionally, domestic and international telecon facilities are well developed. The significance of Panama is evidenced by the fact that during the past twelve months, 641 pounds of heroin were seized in the United States which had transited through Panama. This 641 pounds consists of only four single seizures and does not include seizures of less than 100 pounds.

I regret to report, Mr. President, that my own study of this subject indicates to me that little, if anything, has changed since the time that information was provided. But to illustrate the magnitude of the problem, Mr. President, I should also quote the following passage from this same report of the Bureau of Narcotics and Dangerous Drugs:

It is clear that the Republic of Panama has not and is not paying sufficient attention to narcotic enforcement activities to achieve notable results. This may be due to high level apathy, ignorance *and/or collusion*.

So, Mr. President, this matter of the involvement of high Panamanian officials in trafficking in heroin has, therefore, been the subject of official concern for some time, and the Bureau of Narcotics and Dangerous Drugs, which is now the Drug Enforcement Administration, was seeking without much success as far back as 1971 to obtain the full cooperation of the Government of Panama in rooting out these wrongdoers who were and are creating such enormous suffering here in the United States.

As early as September of 1971, the Bureau of Narcotics and Dangerous Drugs was conducting narcotics information training for the members of the Panamanian Central Narcotics Unit, and before the end of 1971 the Bureau had extradition treaty to include drug violations. Unfortunately, Mr. President, that agreement to examine the feasibility of an extradition treaty for drug offenses

had about as much effect as would this agreement in these proposed treaties to examine the feasibility of a sea level canal. In other words, Mr. President, they agreed to study the feasibility of extraditing drug offenders, and they did not agree to anything else.

And now it is 1977, and in spite of intense diplomatic negotiations on every imaginable subject, we still have no treaty for the extradition of drug traffickers, not that anyone should be particularly surprised inasmuch as the brother of the Maximum Leader down there would presumably be one of the first to be extradited. So we are not surprised, Mr. President, but many of us are outraged because we in the United States still have the problem of 400,000 heroin addicts being fed on heroin funneled through Panama.

Mr. President, even though the negotiators for the United States do not seem to have given this subject a second thought, the negotiators for the Republic of Panama were concerned—very concerned—about treaty provisions affecting jurisdiction of offenses involving trafficking in drugs. In fact, Mr. President, the negotiators for the Republic of Panama were so concerned about the treatment of drug offenses and the jurisdiction of Panama over drug offenders that they insisted that Panama be given in the proposed Panama Canal Treaty primary jurisdiction for all crimes involving the trafficking of drugs even within what is now the Panama Canal Zone and even if the offender were a U.S. national.

This specific assertion of jurisdiction of offenses involving trafficking in drugs is set forth in article XIX of the executive agreement in implementation of article III of the Panama Canal treaty, and it is also set forth, with respect to military personnel, in article VI of the executive agreement in implementation of article IV of the treaty. In both cases, it is also clearly specified that an individual charged by U.S. authorities with trafficking in drugs must be handed over to Panamanian authorities upon their request.

I am sure all Senators share my hope that Panama is insisting on jurisdiction over crimes involving trafficking in drugs out of a genuine desire to suppress the drug trade rather than from the more base motives which might be inferred from some of the revelations of the past weeks and months, but the point is, Mr. President, no provision whatsoever in these proposed treaties is made for the extradition of drug offenders who are sought by the United States and who have obtained refuge in Panama. This omission has occurred notwithstanding the many thousands of Panamanians residing in the United States who travel frequently between the two countries, this omission has occurred notwithstanding also the many U.S. citizens with dual Panamanian citizenship, and this omission has occurred notwithstanding the fact that as far back as 1971 the Bureau of Narcotics and Dangerous Drugs obtained the agreement of the Government of Panama to examine the feasibility of obtaining drug offense extradition rights—notwithstanding all these factors, our negotiators have not provided in these proposed treaties for this important extradition provision.

As I have often noted, Mr. President, I can see virtually nothing in these treaties which accrues to the benefit of the United States. Why, at least, could we not have obtained the right to extradite drug offenders who are charged with violating our laws and who

are found in the Republic of Panama? After proposing to give to Panama one of our most valued national assets and after proposing to pay to Panama several billion dollars for taking the gift, I do find it more than passing strange that we could not even obtain an agreement from Panama that narcotics offenders could be extradited.

So, Mr. President, I hope we can rectify this shortcoming. I propose to amend the pending Panama Canal treaty to provide for the mutual extradition of persons charged with or convicted of trafficking in drugs. I have prepared this amendment as one of a series of amendments I intend to propose to correct the errors and omissions of our negotiators. Mr. President, I have prepared this amendment for introduction because I believe this amendment, when considered in the Senate, will bring into focus a problem of massive proportion which must be addressed and solved before any new agreement can be entered into with Panama in which it is provided that the United States and Panama will jointly operate and defend the vital Panama Canal.

The proposed amendment, along with the other amendments I intend to offer, will of course be referred to the Committee on Foreign Relations, chaired by my distinguished senior colleague, Senator John Sparkman. I know that the members of the Committee on Foreign Relations will give this amendment together with all others very serious and very careful consideration, and knowing that fact I respectfully suggest to the distinguished chairman of the committee that hearings on this amendment might aid in surfacing information for the committee to enable its members to assess accurately the need for its adoption. In my judgment, this amendment is clearly needed, other amendments are clearly needed, and I hope that these needed amendments will receive the full support and backing of Senators who recognize that the Senate must assume responsibility for putting into these treaties what the Department of State has left out and for taking from these treaties the many provisions negotiated by the Department of State which do violence to our national interest.

I thank the Chair, and yield back the remainder of my time.

THE PANAMA CANAL TREATIES: THE BEST ANSWER

Mr. CRANSTON. Mr. President, we originally built the Panama Canal to assure open access for the United States and the rest of the world to a passage between the Atlantic and Pacific. I support ratification of the treaties because I believe they represent the best method of protecting this open access which is so important to our economic interests and our national security.

I know many Americans, including Members of the Senate, are either opposed at this time to ratification, or remain undecided. To those who oppose the treaties or who are in serious doubt, I submit that there are at least three concerns which must be resolved in order to support the proposition that we not ratify the new Panama Canal treaties. These issues are of great concern to me because they each pertain to a serious threat to an assured free and open passage between the Atlantic and Pacific Oceans.

First, it appears that the chief opponents to the Panama Canal treaties outside the United States are Communists, Castroites, and leftwing radicals. This is particularly true in Panama, where the Castroites and leftwing radicals led the fight against the approval of the treaties in the Panamanian plebiscite. Does not the fact that the most strongly anti-U.S. elements in Panama are the most strongly opposed to the treaties suggest that the treaties are in our best interests?

Second, under the Panama Canal treaties the United States has the exclusive right to develop with Panama a sea-level canal anywhere in the country of Panama. The feasibility study on the question of a sea-level canal completed in 1970 found that the two most suitable routes for such a canal were both in Panama—one 10 miles from the present Canal and the other the canal itself. If the treaties are not ratified, what is to prevent the Japanese, with their engineering expertise, and the Arabs, with oil dollars, from joining hands to build a sea-level canal elsewhere in Panama to the exclusion of the United States? Or, what if the Soviet Union were to join in such an enterprise with the Panamanians? Under article XII of the treaties, the United States has the security of knowing that no foreign power, whether hostile or friendly, will build or control a sea-level canal in Panama.

Third, while the Panama Canal would not have been built without the ingenuity, leadership, and sweat of the United States, the Panamanians believe that Panama belongs to the Panamanians and that the canal is on Panamanian soil, or that, at the very least, the canal physically divides their country and that their country must be united. If the treaties are not ratified, this Panamanian nationalism may well result in efforts—not led by the Panamanian Government, but by antigovernment and Communist forces—to sabotage the canal in guerrilla activity which could escalate into a military conflict. Ratifying the treaties offers far greater assurances that we can avoid this result, while guaranteeing forever the right of the United States to defend the Canal. If the treaties are not ratified, how many American troops and how many American lives should be expended to defend the canal against what Panamanians deem to be Panamanian national self-interest?

It seems to me that to pose these three concerns is really to answer them.

First, it is in the best interests of the United States to ratify the treaties. The Castroites and left-wing radicals know this even if some of us feel bound by our historic past to the exclusion of recognizing our own present self-interest.

Second, the United States needs and must retain the exclusive right to develop with Panama a sea-level canal anywhere in that country.

Third, it is unrealistic to expect Panama to accept the physical division of its country. We would never accept such a presence by a foreign power bisecting the United States.

Thus how do we further our own best interests in a free and accessible Panama Canal while maintaining the right to defend the canal and our own right to preferential passage in time of emergency?

By agreeing with our opponents and enemies that the treaties should not be ratified? By abandoning to foreign powers the right to build a competitive sealevel canal? By committing American troops and lives to an effort to suppress Panamanian nationalism?

No, none of these.

I submit that the best answer at this time is ratification of the Panama Canal treaties, thereby guaranteeing forever a free and open Panama Canal under the protective umbrella of our Armed Forces. The treaties are the best available assurance of continued unfettered and fair access to the canal by the world and for the United States, while protecting and maintaining all the legitimate interests of the United States in the Panama Canal.

[From the Congressional Record—Senate, Nov. 3, 1977]

THE PANAMA CANAL GIVEAWAY

Mr. FORD. Mr. President, a distinguished Kentuckian and good friend of mine, Judge Guthrie Crowe, recently provided me with a long and thoughtful essay on why the United States should not relinquish control of the Panama Canal.

Judge Crowe recently completed a 25-year tenure as Federal district court judge for the Canal Zone, a position he had held since his appointment in July 1952 by President Harry Truman.

Judge Crowe is a native of LaGrange, Ky. He is a lawyer and a former member of the Kentucky House of Representatives. He was the first commander of the Kentucky State Police, a department which was organized under his direction.

I have the highest respect for Judge Crowe and feel that my colleagues would benefit from reading his views on the Panama Canal Treaties. I ask unanimous consent that this article by Judge Crowe be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

THE PANAMA CANAL GIVEAWAY

(By Guthrie Crowe)

OPENING

In my job as Judge, I had a ringside seat at the struggle by Panama for the Panama Canal. In fact, I had to try some cases and rule upon some matters that arose out of the problems between the U.S. and Panama.

A new treaty or treaties have been drafted as a result of the pressure from Panama, the U.S. Department of State, American banks and corporations like the 220 or more U.S. firms doing business in Latin America that have organized the Council of the Americas. Sympathy for the Third World also enters into the picture, for this is the era of the dissolution of the empires of the West and the U.S. position there has been stamped with the stench of colonialism.

The charge of colonialism is completely false, but it is like the communist lie: If you say it often enough, it will be believed.

The U.S. occupation of the Canal Zone is anything but colonialistic. There is no private ownership of real estate. The sole purpose to which the Zone is devoted is the operation of the canal. The U.S. citizens and all others who work there are required to leave the Zone upon retirement. The only private enterprise permitted has to do with shipping, except for a few limited services for the physical and spiritual welfare of the workers. There are churches, YMCA's, 3 or 4 dentists, tailors and shoe repairmen and private clubs, but nothing else. These services are strictly controlled by the C.Z. Government and have rental agreements or land leases that can be terminated by the Governor at will. Congress made one exception in that it granted to the Sojourners' Masonic Lodge in Cristobal, title to the land on which its lodge building stands.

The Zone was not acquired by invasion as was the wont of the governments that participated in empire building, but it was bought and paid for and our entry was at the behest of the people of Panama who looked upon the Americans as saviors who could wrest victory out of the French failure and would do as has been done—give to Panama a flood of gold, employment and success that she so desired.

Presently, the two-headed complex entitled the Canal Zone Government and the Panama Canal Company which own and operate the canal and the zone, employ about 3,500 Americans and about 12,000 Panamanians. The Panamanian employees receive excellent wages and are participants in U.S. retirement programs. It has been the policy for years for these entities to give preference to Panamanians in employment in all but certain security jobs, although most of the top jobs are held by Americans because of their technical expertise and seniority.

Careful studies show that millions of U.S. dollars flow into the economy of Panama annually from the relationship and the U.S. is a very benign and helpful

partner. Our military also spends millions of dollars there and employs many Panamanians in posts of responsibility and good pay. These employees are like all people in that they are organized and make additional demands for better pay and working conditions but, generally speaking, they are contented and know full well that when Panama gets control, they may lose their jobs and those that are retained will be kept at a lower wage and with the loss of other benefits.

Panama's money is backed by the U.S. and is kept on a parity with the U.S. dollar and she has over seventy banks in Panama City that deal in international exchange. Recently, there has been a great deal of construction and the faces of her cities have changed markedly and belie the assertion that Panama is the victim of U.S. colonialism and that we have appropriated from her her greatest asset.

Actually, the canal is no longer paying its own way. The tolls for years were kept at a minimum and it was the pride of the U.S. that ships went through the canal paying the same rate of tolls that they did at the time it was opened. These tolls remained unchanged for a period of 60 years, although there was a good deal of belt-tightening done to accomplish this. Canal Zone workers who had received many free benefits were forced to pay for them and overseas differentials to the U.S. workers were reduced.

In 1973, for the first time in history, the canal lost money and tolls were increased.

In 1963, in the Panamanian newspaper "El DIA", a prominent and much read columnist of Panama wrote that he took a dim view of the U.S. leaving the canal for Panamanian operation. He said he could not forget what happened to the U.S. base at Rio Hato in Panama after it was abandoned, at Panama's insistence. Everything was stripped from it and nothing left, despite plans and avowals to make use of the installation.

Gen. Omar Torrijos, the dictator, himself said from his hammock as reported by Washington Post correspondent, Marlise Simons, from Mexico City and carried in the Miami Herald on June 4, 1977, "There will be a vast political vacuum we will have to fill. I am thinking a lot about that. We will no longer have the gringos to blame." She reported further that while "international trade increased 10 percent last year, Panama's own gross national product registered no growth. This has brought new taxes, a total halt in the recently booming construction and high unemployment." She wrote, "The Government has been forced to cut back on deficit spending as commercial banks have become reluctant to increase the country's foreign debt."

The American Legion National Security and Foreign Relations Bulletin of July-August 1977 reported, "Banks and bankers have a way of influencing presidents and nations. United States and their foreign branches' banks have invested 2.77 billion in the Torrijos' Government. No one but Torrijos and his bookkeepers know the full extent of his Government's indebtedness to banks other than the U.S. Could the total indebtedness run to \$5 billion?"

SEPARATION OF POWERS

The U.S. House of Representatives has taken the position by resolution and there is strong concurrence by some members of the Senate, that the Canal Zone is territory of the United States and cannot be disposed of except with the concurrence of both Houses of the Congress. The provision of the Constitution relied upon in assuming this position is Article IV, Section 3, Clause 2 which states:

"The Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States."

I had the honor of testifying before a Sub-committee of the Senate Committee on the Judiciary in July with Senator James Allen of Alabama as Chairman, on the question of separation of powers and it was the sense of the testimony that this is the law.

I don't know exactly what would happen if the President and the Senate approve a new treaty and fail to seek a concurrence of the Lower House. Any attempt on the part of Congress to seek judicial relief would, of course, take place in our own Federal court system and any decision would be unilateral in its effect and would not in any sense be binding on Panama.

TITLE IN THE UNITED STATES?

Does the U.S. or Panama own the canal? This question has been bruited about by legal scholars and politicians so much that anything I say will, of course, be repetitious to some ears. I personally believe that the U.S. has a good title that

could be defended in any courts that base their thinking on the English laws of Real Property and its historical precedents.

We are bound by the intentions of our leaders at the time of the acquisition of the Canal Zone in 1903 and we should insist that the people of Panama be bound by the intent of their leaders and people at the time.

First, let us turn to the basic document that gave rise to the construction of the canal, the Act of Congress called the "Spooner Act" of June 28, 1902, 32 U.S. Stat., 481. Section 2 of the Act is in part as follows:

"That the President is hereby authorized to acquire from the Republic of Colombia, for and on behalf of the United States, upon such terms as he may deem reasonable, *perpetual* control of a strip of land, the territory of the Republic of Colombia, not less than six miles in width, extending from the Caribbean Sea to the Pacific Ocean, and the right to use and dispose of waters thereon, and to excavate, construct, and to maintain, operate, and protect thereon a canal, of such depth and capacity as will afford convenient passage of ships of the greatest tonnage and draft now in use, from the Caribbean Sea to the Pacific Ocean, which control shall include the right to *perpetually* maintain and operate the Panama railroad * * *"

The Act goes on to say in Section 4 that if the President is unable to obtain for the U.S. control of the necessary territory from Colombia, he should obtain "perpetual" control by treaty of the necessary territory from Costa Rica and Nicaragua.

It might be just as well at this point to recite what the United States did in payment for the Canal Zone.

(1) The Spooner Act provided that the U.S. should pay \$40,000,000 for all of the property "real, personal, and mixed, of every name and nature, owned by the New Panama Canal Company, of France, on the Isthmus of Panama * * * including all the capital stock of the Panama Railroad Company" and this was paid in full.

(2) Under Article 14 of the Hay-Bunau-Varilla Treaty of 1903 (which will be discussed more in detail later, the U.S. agreed to pay to the Republic of Panama \$10,000,000 in gold coin and also an annual payment of \$250,000 in gold coin beginning nine years after the date of ratification. This was paid and the \$250,000 payments were greatly increased during the administrations of Franklin D. Roosevelt and Dwight D. Eisenhower.

(3) Article 5 of the Treaty sets up a plan for a joint commission composed of people appointed by the "Governments of the United States and the Republic of Panama" to assess damages and appraise damages to private land holders in the area of the Canal Zone. This commission acted and titles to the private lands were acquired by the United States, which paid approximately \$5,000,000 for the deeds and bills of sale; and

(4) In view of Colombia's unhappiness with the situation and her claims of injury, a treaty between the U.S. and that country "for the settlement of their differences arising out of the events which took place on the Isthmus of Panama in November" was signed at Bogota on April 6, 1919 and ratified March 1, 1922. This treaty provided that the title to the interoceanic canal and the Panama Railway" is now vested entirely and absolutely in the United States of America, without any encumbrances whatever", and that the U.S. would pay to the Republic of Colombia at the city of Washington the sum of \$25,000,000 which was done.

Many who would espouse the demands of Panama have claimed that our position there is only a limited one; that we have merely a leasehold or what is known in English and American law as a defeasible fee; that nothing can be in perpetuity, therefore, the language "in perpetuity" is self-defeating. Legal scholars know this is just not so. The general warranty deed which expresses in no uncertain terms that the buyer of the land is to have and to hold the land forever with covenant of general warranty, is the commonest of transactions in the conveyance of real estate and in English and American law it means just what it says. Congress, in the Spooner Act, mandated the President to obtain the Canal Zone in perpetuity and the treaty of 1903 was drafted in compliance with that demand so it would be approved by the President and the Senate.

The disputed parts of the 1903 Treaty are Articles 2 and 3. The language of Article 2 that has caused so much controversy is the following:

"The Republic of Panama grants to the United States in *perpetuity* the use occupation and control" * * * of the area in dispute and further,

"The Republic of Panama further grants in like to the United States in *perpetuity* all islands within the limits of the zone * * *."

Article 3 states in full:

"The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article 2 of this agreement and within the limits of all auxiliary lands and waters mentioned and described in

the said Article 2 which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion by the Republic of Panama of any such sovereign rights, power or authority."

Those who support the position of Panama have placed great emphasis upon the language in Article 3 stating, "if it were sovereign", which they read to be a denial of the fact that it is sovereign and therefore the United States does not have title. In doing this, those interpreters ignore the subsequent language, "to the entire exclusion by the Republic of Panama of any such sovereign rights, power or authority." Language that is any more certain of divestiture can hardly be imagined.

Maybe the Treaty shouldn't have used the words, "which the United States would possess and exercise if it were the sovereign." It would only have deprived the Nationalists of Panama of a part of their ammunition for they claim that no matter what, we took advantage of Panama in a weak period and they want their canal "back", even though it means invasion of the Zone and loss of life by their people.

The only time that the Supreme Court of the United States has made any determination of the question of title to the Canal Zone was in the case of *Wilson v. Shaw*, Secretary of the Treasury, decided on January 7, 1907 and reported in 204 U.S. at Page 24. This was a suit to restrain the Secretary from paying out money in the purchase of property for the construction of a canal at Panama. The Court denied the relief sought and Mr. Justice Brewer wrote the opinion of the Court, and said:

"It is hypercritical to contend that the title of the United States is imperfect and that the territory described does not belong to this nation because of the omission of some of the technical terms used in ordinary conveyances of real estate.

"Further, it is said that the boundaries of the Zone are not described in the Treaty; but the description is sufficient for identification, and it has been practically identified by the concurrent action of the two nations alone interested in the matter. The fact that there may possibly be in the future some dispute as to the exact boundary on either side is immaterial, such disputes not infrequently attend conveyances of real estate or cessions of territory. Alaska was ceded to us forty years ago, but the boundary between it and the English possessions east was not settled until the last two or three years. Yet no one ever doubted the title of this Republic of Alaska."

This decision should have great influence on the attitude of our nation toward its ownership of the area but, strange to relate, our Department of State has consistently chosen to adhere to a policy of recognizing Panama as the "titular sovereign", whatever that means.

The 1903 treaty was ratified after it had been unanimously approved not only by the commissioners of Panama but by all of the municipalities and elective bodies of the Republic and by the votes of its citizens as well, as stated by Charles E. Hughes, Secretary of State to Ricardo J. Alfaro, Minister of Panama, at Washington on October 15, 1923. U.S. Foreign Relations (1923), Vol. II, pp. 648-675.

The statement by Gen. Torrijos that any new treaty will this time be submitted to the people carries with it the implication that the 1903 treaty was adopted without the voice of the people. This is merely a ploy to the ones ignorant of the true facts.

ATTITUDE OF PANAMA AT TIME OF 1903 TREATY NEGOTIATIONS

At the time of the revolution against Columbia, the governing authority in Panama was called the "La Junta Revolucionaria" or "Proceres de la Independencia." These gentlemen made a report in Spanish to the "Convencion Nacional Constituyente" on January 15, 1904 which was signed by J. A. Arango, Thomas Arias and Federico Boyd and translated is as follows:

"It is an essential condition of the Treaty, The obligation perpetual that the U.S. has accepted of guaranteeing the independence of our country. That agreement on a point of such vital importance since it is related with the very existence of the nation, that lacking such a guarantee would see itself exposed to external aggressions whose fear would maintain us obligated to remain in a constant state of defense, is evident proof of the good faith and of the spirit of justice that animate that friendly people that have extended to us a generous hand. The Treaty, appreciated with strict judgment, can seem unfavorable to us in certain aspects, but estimating it as are estimated the works calculated to change the face of nations, considering it at least as the seed of incalculable benefits that must favor the most remote posterity, the Treaty realizes very noble and elevated aspirations."

This statement, contemporary with the Treaty, far more truthfully reflects the feeling of the era in which it was drafted and signed than does the Monday morning quarterbacking of today's writers and diplomats.

The people of Panama had been bitterly disappointed by the French failure and their golden dreams had been shattered. The U.S. came along and offered them, not only rescue from defeat but protection from their powerful neighbor, Colombia, that had kept them under subjection for so many years. To say that the U.S. stole the Canal Zone is not only completely untrue but absurd.

Statues of the Junta Revolucionaria adorn certain parks in Panama for they were once in high repute, but in recent years it has not been unusual to learn that they have been damaged and to hear demagogues revile them in their speeches.

During the period that the U.S. has had the Canal Zone it has eliminated the dread yellow fever and malaria, creating a healthful, beautiful area. The people are industrious and keep their yards full of flowers and plants. The ships of all nations have gone through the canal like clockwork with a brief delay only once caused by labor problems between the pilots and management.

It is interesting to note at this time that very few Panamanians actually worked in the construction of the canal. The powerful physiques of the West Indian Black men formed the great bulk of the work force and the engineering and management was done by U.S. citizens. Panama had a population of only about 300,000 people at the time, so with half being women and the exclusion of the children and the old from the males, there was only a small force available. Many of those continued to work their farms and conduct their private businesses, so their contribution was minimal.

Hon. George Westerman, former Ambassador to the U.N. from Panama has written an excellent book on the subject and researched it exhaustively.

AMERICAN BUSINESSMEN AND SHIPPERS

It may surprise some that American shippers have not voiced opposition to a transfer of the canal as it would place their ships in transit, subject to the whims and vagaries of a one-man regime. These companies are in many instances properties of conglomerates who have wide interests in Central and South America and they are willing to take their chances with Panama rather than "rock the boat." They are also beneficiaries of government subsidies and do not wish to prejudice this by opposition. Any increased tolls can also be passed on to the consumer, American taxpayer, in the form of increased shipping charges.

The businessmen of Panama who receive the benefit of millions of dollars spent by the Canal Zone governmental agencies and the employees, are horrified by the possibility of the loss of this trade but they are afraid to speak out for fear of reprisals.

COMMUNIST DICTATOR IN CONTROL

Panama is a dictatorship with many communists holding prominent positions in her government. The Canal Zone Non-profit Public Information Corporation reports that Torrijos and every person in control of government offices today is identified with the Communist Party.

Recently Torrijos and several plane loads of his leaders spent a number of days with Castro in Cuba and there is a regular airline running between the two countries. The Embassy of Cuba in Panama City is large and luxurious and responsible people tell me that there are Cuban mercenaries in the interior.

In the "Miami Herald" of July 2, 1977 the UPI with Washington Dateline stated that four retired Chiefs of Naval Operations appealed to President Carter not to give up control of the Panama Canal. The four admirals "Thomas Moorer, Arleigh Burke, George Anderson and Robert Carney described the waterway as a 'vital portion' of U.S. naval assets and 'absolutely essential to free world security.'"

The admirals argued that the canal is increasingly important to the U.S. because of the reduced size of our fleet. The passage from the Atlantic to the Pacific permits quick repositioning of U.S. ships from one ocean to another, particularly in time of crisis.

A few aircraft carriers cannot transit the canal, but the day of the carrier is past. The nuclear submarine with its deadly missiles can pass through the canal with consummate ease. If Torrijos or a similar successor controls the canal, movements of U.S. warships would be subject to his dictates when requesting passage no matter what the treaties contain and Castro and his Soviet henchmen would have a strong voice in canal policies.

The oil from Alaska is of such chemical content that it cannot be refined in the refineries of the West Coast. This means that great quantities must transit the canal to the East Coast. If the Panamanian dictatorship can control this flow of energy that is vital to the commerce and welfare of the U.S., we will be placed in a position of beseeching alms from a person who has constantly rattled the saber in

his rambling speeches throughout Panama and Central America and has given evidence of harboring a deep grudge against us that would make reasonable dealings impossible. As the looters in the New York blackout, he would justify mistreatment of the U.S. by claiming that she was guilty of years of oppression and abuse toward Panama and it was therefore her day to retaliate toward the colossus of the North who had wrested from her her most valuable asset.

The present Panamanian government was established by a military coup when a democratically elected president, Arnulfo Arias, was ousted from office by the Guardia Nacional, Panama's army, because he planned to name a general of his own choosing as its head. There was no uprising of the people, and no anger against the existing government or its form. In fact, the people were happy with the election of their hero, who had been elected by them twice before.

The so-called "revolucion" was nothing but a power play by a group of men who had all of the guns and who just decided to take over the reigns of government and establish a dictatorship for their own benefit. Many of these men have become very rich and have unlimited power.

Just how President Carter can harmonize his advocacy of "Human Rights" by attempting a transfer of the canal to a government that has deprived its citizens of democratic rights, has eliminated freedom of the press, exiles native-born citizens and incarcerates its citizens without fair trials is beyond comprehension. I believe that he is the victim of a great deal of misinformation and is overpersuaded by his zeal to curry favor with the other southern countries and avoid conflict.

A recent report by Jack Anderson, political columnist is strongly indicative of the type of mentality that controls Panama's affairs. Anderson said, "There is disturbing evidence that Panama's strongman, Omar Torrijos, has struck a secret deal with Libya's wildman, Muammar Qaddafi, to give the Arab extremist a foothold in the Americas and to cooperate with the Arab boycott against the Jews. The erratic Kaddafi is regarded as one of the world's most irresponsible rulers.

He has armed radical terrorist groups, tried to purchase nuclear weapons, subsidized Uganda's zany Iddid Amin and engaged in various harum-scarum intrigues." The article dated June 6, 1977 said further that two months ago Torrijos and Qaddafi pledged allegiance to each other and recent antisemitism has been reported in Panama. All this because Torrijos is so badly in need of funds to run his government that he might turn against the Jews in return for Arab petrodollars.

CANAL NOT OBSOLETE

The tales indulged in by those who would surrender the canal are to the effect that it is obsolete and no good anymore for the world's ships are too large for it. Nothing could be further from the truth says David McCullough. In his recent best seller, "The Path Between the Seas," he wrote that the supertankers that can't go through represent a tiny fraction of the ships at sea. "If there is a problem with the canal, it's that too much traffic wants to go through it. There are 14,000 to 15,000 ships a year going through the canal today. Far more than ten years ago and less than will be ten years from now."

Canal Zone's Gov. Harold Parfitt said at a recent hearing of a subcommittee of the U.S. Senate, about 92% of the ships of the world can transit the canal. This certainly gives the lie to those who prate of the antiquity of the "big ditch."

SECURITY OF UNITED STATES

It is interesting to see that President Carter and his negotiators are stressing the fact that the new treaties will benefit the security of the U.S. This is one of the imponderables that the propagandists would thrust upon us.

We now have full control in perpetuity.

We have our troops there who can be armed, massed and used at our discretion. Our technicians, our engineers, our pilots and other U.S. citizens are there to insure the safe operation of the canal. Our police and our courts are in control of law enforcement. Lt. Gen. McAuliffe, Commanding General of the Southern Command in his testimony before the Senate Subcommittee July 22, 1977 said that with a few more men he could defend it.

As publicized, under the new treaties Panama will have much control in 3 years and she will have control of 70% of the land immediately. This land has long been considered vital to the operation of the canal and the safety and security of the people living in the Zone. Millions of dollars will be paid out to Panama as loans and grants and as a part of the tolls when the canal is already losing money.

How in the world can anybody in his right mind think that our security is insured with these changes and with a Communist-minded dictator in control of the government receiving these benefits.

The dictator has been rattling the saber in every speech he has made about the canal. He has constantly threatened the Zone with invasion and promised to lead this generation to take the canal by force. Now we would turn it over to him and pay him great sums of money in protection and our leadership talks of increased security.

Already certain Panamanian factions are disgruntled because the canal will not be completely surrendered immediately. They are grouching because our troops will be left in certain territories and there are words in the treaties that would let the U.S. perpetually protect the neutrality of the canal after Panama gets full control.

I was in Panama the time of the Remon-Eisenhower Treaty of 1955 and the ink was not dry before dissident factions were shouting against the U.S. and the same will happen this time. Our people apparently will never learn to cope with the communist-type mentality that is never satisfied and constantly clamors for more and more and more.

There is only one way to deal with people of this kind and it is not in the payment of protection money nor in the ceding of rights. The only way is by a strong position that will be respected. The constant assumption of guilt, the tearful cries that we have mistreated Panama over the years and admissions to false charges of colonialism that have been accepted by our State Department are not the methods to guarantee our security. We will not only endanger our position but we will lose the respect of the nations of the world. They know we bought it, built it, and should continue to operate it unhampered for our benefit and theirs.

COLONIALISM AND TREATY OUT OF DATE

Those sponsoring a new treaty with Panama label the opposition as red-necked chauvinists who are clinging to a relic of the colonial period of the U.S. and who would mistreat a friendly little country.

In the language of our liberal press, those who feel that a relinquishment of the canal would endanger the security and welfare of the U.S. are "jingoistic demagogues" who in some unknown but positively malicious and vicious manner hope to realize personal gain from their position. They write that the 1903 treaty is antiquated and that its provisions are archaic and a revision is long overdue.

Well, a few of those charged with chauvinism are the four retired chiefs of Naval Operations I have named, Admirals Moorer, Burke, Anderson and Carney. Another suffering the same charge is Herman Phleger, one of the most distinguished lawyers in the country, legal advisor to the Department of State under Eisenhower and architect of the far-reaching Antarctic Treaty. His position, well taken, that the U.S. operated under duress.

Those who would gain materially are not the little so-called "red necks" but the big American banks that have loaned millions to the dictator and need to be bailed out as he is on the verge of bankruptcy. The big businessmen that feel they stand to lose by being ejected from Panama and sympathetic countries, also view new treaties as opportunities to improve their positions.

For those bleeding hearts that say solemnly that the treaty "drafted in 1903 is badly outdated" have just failed to read their diplomatic history. Panama and the U.S. have been negotiating almost without interruption since the original treaty was signed.

A "Claims Convention" adjusting claims between the citizens of the two countries was celebrated in 1926 and modified in 1932.

Another Claims Convention was celebrated in 1950 and an arrangement for customs and space was celebrated in 1960 with an addendum in 1962.

In 1942 there was an agreement for the lease of defense sites which had to do with roads, airbases, lands, buildings, etc.

In 1904 there was a treaty for the mutual extradition of criminals which was amplified in 1906.

Also in 1904 there was a monetary agreement celebrated between the countries wherein the U.S. agreed to keep the monetary units of Panama at a parity with the U.S. dollar and that agreement was negotiated and amended in 1930, 1931, 1936, 1946, 1950, 1953 and 1962.

In 1936 a "General Treaty of Friendship and Cooperation" which was motivated by the "desire to strengthen further the bonds of friendship and cooperation between the two countries", was celebrated.

In 1942 they celebrated the "General Relations Agreement."

In 1955 with much ceremony and publicity was celebrated the "Treaty of Mutual Understanding and Cooperation" abrogating and changing many points of difference in the treaty of 1903.

After the riots and border incidents of January 9, 1964 the parties began another series of negotiations and in 1967 the negotiators had agreed. When this three-part treaty was made public there was a general roar of opposition voiced by the vocal elements in Panama and as a consequence it was never ratified.

TEDDY ROOSEVELT'S STATEMENT

Many who attack the U.S. control point to statements made by Teddy Roosevelt before Congress or in the heat of a political campaign when it was popular for us to have undertaken the tremendous effort to build the canal, when he was reputed to have said, "I took the Isthmus" or "I took Panama." They scornfully state that such statements were an indication of "big stick" tactics and that now we should humbly make reparations and apologize.

In Roosevelt's autobiography which describes the faithlessness of J. M. Marroquin, the dictator of Colombia at the time and the impossibility of completing a treaty with that country, he says,

"No one connected with the American Government had any part in preparing, inciting, or encouraging the revolution, and except for the reports of our military and naval officers, which I forwarded to Congress, no one connected with the government had any previous knowledge concerning the proposed revolution, except such as was accessible to any person who read the newspapers and kept abreast of the current questions and current affairs. By the unanimous action of its people and without the firing of a shot, the State of Panama declared themselves an independent Republic."

I choose to believe the autobiographic statement made in an atmosphere of reflection, as to what actually occurred rather than polemic declarations made during the violent discussions that were the order of the day when Teddy was running for office.

FRIENDLY NEGOTIATIONS?

We are told by the Department of State and the American negotiators that we should do justice to a friendly little country and that the proposed treaties have been negotiated in an atmosphere of friendly cooperation. We then learn that Sr. Romulo Escobar Bethancourt, chief negotiator for Panama, has said to a group of government officials in a speech since agreement has been declared, that if the U.S. Congress rejects the treaty the Panamanians will "take the road to violence" and he said further, "Omar Torrijos has tried to get the negotiations to work out because we did not want on our conscience the deaths of our youths." These are naked threats quite obviously made to incite the Panamanians and to frighten the U.S. Congress.

Panama is small with less than 2 million people but it has a well-armed, well-trained fighting force skilled in the arts of guerrilla warfare and sabotage. These threats are made by a group of ruthless opportunists who not only are demanding the surrender of U.S. property but have the monstrous gall to demand that the U.S. pay them to take it. It is reported that Castro urged Torrijos to scale down his demands and accept what the American negotiators offered. So much for our naivete.

The canal has always been vulnerable to sabotage but wrecking it would certainly not be to Panama's advantage. If attempts at sabotage are in mind, a treaty that delays full control to Panama for 20 or more years will not deter the radical saboteurs.

The dictator and his crew are engaging in psychological warfare when they threaten invasion and hoping that an America sickened by Vietnam will weaken to avoid a similar tragic mess. The obvious answer is that Panama has no such size or resources and no neighbors willing to support her.

Panama needs tourist trade and foreign investments and to develop a situation of guerrilla activity like in Ireland and other parts of the world would be most destructive to her and her people and would soon overthrow Torrijos and sue for peace.

UNITY OF CENTRAL AND SOUTH AMERICAN COUNTRIES IN SUPPORT OF PANAMA

Torrijos would have us believe that the Central and South American countries are united behind Panama in her demands and the U.S. negotiators hold over us the specter of loss of trade opportunities and rapport with those countries in the event we fail to cede. Nothing could be further from the truth. At a recent meeting in Colombia to express solidarity only five leaders were present: Colombia, Costa Rica, Venezuela, Panama and Mexico.

Anyone familiar with the history of Central and South American countries with their border wars and revolutions knows that all is not sweetness and light between them and their leaders will do exactly what they think is right for themselves. Unity between them is a myth that should be given no credence by responsible men.

Marilyn Guardabassi, who writes "A Woman's View" stated in her column of Aug. 22, 1977:

"Carter's insistence that Latin American countries are in favor of our relinquishing the canal or that such a move would enhance our image is false. Three quarters of all Latin American countries wholeheartedly support our maintaining our sovereignty, particularly those located on the Pacific Coast, for they realize that American control is their only guarantee that the canal will remain open to world shipping. This giveaway, and especially under duress from a two-bit dictator, makes us look ridiculous, not only in this hemisphere, but in the eyes of the world."

Dr. George W. Fontaine, Director of Latin American studies at Georgetown University in an article opposing the treaties written for the Wall Street Journal on Aug. 22 states:

"Yet even though no Latin American regime publicly supports the United States, the depth of pro-Panamanian feeling varies considerably from country to country. It is strongest in Venezuela, Colombia and possibly Mexico; it is weakest in the southern cone of South America. For example, Brazilians, heavy users of the canal, have privately expressed deep misgivings over Panamanian control."

Latin Americans are highly intelligent people. Many are internationalists, educated in Europe, the U.S. and other parts of the world. Each nation is separate and distinct, and proud of its own culture and traditions. Many customs have been handed down from the "Mother Country, Spain", but they have developed their own dances, music, art and literature. Some say that their national spirit is revolution.

They cannot be lumped together as they have different climates, ethnic groups and geography and they must be dealt with individually. Nicaragua is a great friend of the U.S. but I can remember when we sent Marines there to protect our interests and we were thoroughly hated. Costa Rica was a short time ago our great friend but now she has been weaned away and although she and Panama once had a border "war" she now sides with Panama against us.

Brazil was once against us and she is now a good friend, Chile and Peru were once our friends and now they are not nor are they friendly to each other.

All of the countries have their individual economic problems that are frequently competitive and they are looking for markets and opportunities. If they feel that the U.S. will serve them better in the Canal Zone they will be for U.S. retention although some of their demagogues and radical elements will give lip service to Panama.

I am reminded of the statement about Europe that the Italians hate the Germans and the Germans hate the Italians. The English hate the French and the French hate everybody. An analysis of the Central and South American countries would reveal a comparable situation.

CONCLUSION

Our President has been badly advised by a group of State Department officials and emissaries of banks and big business. He is desirous of forming a new relationship with the Central and South American countries and he believes that the proposed new treaties will effectuate an era of friendship and cooperation. He is to be commended for his desires as a great deal must be done in this hemisphere.

There was a time when American products led the way. Asiatic and European automobiles, appliances and products have captured the markets, not because of the canal problem but because they are cheaper, of good quality and are just outselling our products. There has never been any great love in Panama for the Asiatics but they are going great today.

Communist countries are constantly seeking footholds in the great South American continent with its tremendous natural resources and population explosion. If we lose the canal they will have acquired a great position of vital importance.

Weakness is not the answer and as publicized the present proposals are weak. They will only whet appetites for additional concessions tomorrow.

The talk of a sea level canal is smoke screen and the present treaties are not binding upon Panama to permit us preference that could be enforced except by some military intervention and it would be hard to imagine the U.S. going into Panama with an army to build a sea level canal.

Our country spent 17 million dollars exploring the possibility of constructing such a canal and suggested that it could be done in the rugged area of Panama near the Columbian border with nuclear devices but Panama was horrified at the thought.

Suggestions that such a canal could be built with conventional digging equipment were equally unwelcome as it would cause the death of the terminal cities of Panama City and Colon. The present lock canal provides those cities with great commerce from the ships that stop enroute through the locks and a sea level canal located anywhere would kill that trade.

The ecologists are up in arms about such a canal for the dangers to the great fishing industries. The present canal is a body of fresh water that successfully prevents mixing of the flora and fauna between the oceans. What would happen if a sluice way of salt water were to be opened between them is a matter of great concern to scientists and engineers.

The U.S. owns the canal and the surrounding lands. Why not keep them? Panama should probably receive additional benefits because of the overtures made by our government and our desire to retain her friendship but the people of the U.S. must recognize that as long as we have a presence there of any kind there will be outbreaks of hostilities. When she was part of Colombia Teddy Roosevelt recites that there were 53 revolutions in 57 years.

During my 25 years in office there were 2 strong attacks on the C.Z., 1959 and 1964, and there were many abortive attempts on the part of students and communists. Also, there were, of course, internal problems with the assassination of President Remon and the coup which put the present dictator in power.

We should not place the security and commerce of our nation in the hands of a hard drinking, meagerly educated, communist-leaning dictator who is threatening the U.S. with "give us the canal or else." This man lives by the sword and could die by the sword and a new leader could regard any treaty as just so much paper.

There is the possibility of bloodshed under the present arrangement as there is under any new arrangement. History has demonstrated that such is the way of life in Panama.

There is no honor in appeasement and blackmail leads only to violence.

THE CANAL TREATIES: OTHER CONSERVATIVE VIEWS AND VOICES

Mr. BAYH. Mr. President, as the Senate prepares to consider the Panama Canal Treaties, I think it is important to point out that many traditionally conservative spokesmen have expressed their approval for these pacts. Columnist William F. Buckley, Jr. and actor John Wayne have indicated their support of these treaties. I might also add that the editor of the Indianapolis news, Mr. Harvey Jacobs, wrote a column for his newspaper on August 27 discussing the disadvantages of continuing the present treaty relationship with Panama.

Mr. President, I ask unanimous consent that this material be printed in the Record. I think this is evidence that hard thinking Americans regardless of ideological persuasion realize that the Panama Canal Treaties serve our Nation's interest.

There being no objection, the material was ordered to be printed in the Record, as follows:

[From the Indianapolis News, Aug. 27, 1977]

CHOOSING UP SIDES ON PANAMA

(By Harvey Jacobs)

Take it from a military man who spent several years in Panama that the Americans who ran the Canal were a separate enclave who looked down their noses at the Panamanians.

He said it before the Canal treaty was even a gleam in Ellsworth Bunker's eye: "Sometime we'll pay the price of segregation in Panama, too."

This man left Panama several years ago; perhaps the attitude changed after his departure. But at least one man was not proud of our "ugly American" image in that place.

Now the chickens may be coming home to roost again. The Panamanians have risen up in rebellion on several occasions and Brig. Gen. Omar Torrijos Herrera, Panama's military leader, has threatened to let loose the force of Panama's terrorists if the Senate does not ratify the treaty negotiated for the Carter administration.

It is easy to fall in line and say we are "giving the Canal away," or "we're paying Panama to take it away from us." It's also a simple analysis to say that "we built it—we'll keep it" or "the Panamanians could sell us the Brooklyn bridge."

At the other end of the axis it is interesting to learn how the Panama negotiators are "selling" the new treaty to their people. Dr. Romulo Escobar Bethancourt, chief of the team, has been as busy as President Carter and Gerald Ford trying to reassure his constituency that he didn't "sell out" his homeland. He said candidly in one address, "the treaty is good for us in some basic aspects, bad in others and ugly in others still."

He said his government was too responsible to seek a bloody confrontation with the U.S. "The massacre of the best of our youth would bring more setbacks in the development of our country" was his answer to the extremists.

The Panama government is being attacked by both leftists and nationalists for yielding to Washington the right to intervene to make the Canal "neutral" after the new treaty expires in 2000 and for "legalizing" U.S. military bases already in Panama. These bases were not authorized by the famous treaty of 1903 under which the United States received control of the Canal "in perpetuity."

Therefore, there is a significant American gain in this new treaty over what was officially granted in 1903.

That treaty has become an international eyesore, exploited to the limit by communists around the world and especially in South America. It is common knowledge that President Theodore Roosevelt directed an "insurrection" in the Isthmus of Panama against the Republic of Colombia. U.S. warships at either end of what was to become the Canal Zone blocked Colombian forces while the local fire brigade in Panama City was designated as the Army of the new Republic of Panama.

Such actions were accepted in 1903 as a logical part of the Doctrine of Manifest Destiny. But the Doctrine does not help us build friendship today in any part of the world.

Reduced to pure self-interest, the Panama Canal is not worth very much. It's too small for supertankers or aircraft carriers. The Navy used it for warships only 17 times last year, 22 times in 1975 and 12 times in 1974. A small bomb in the hands of a terrorist could paralyze it for months. With all our power, we probably could not defend it against a determined terrorist.

What hurts most in the treaty is our pride. It is humiliating to negotiate with a terrorist, leftist dictator such as Torrijos and to dignify his regime as being sufficiently responsible to accept and operate what the American people have invested in for three-quarters of a century. It is distasteful business, too, to know that the long shadow of Fidel Castro is hovering over the table.

On the other hand, fear is not in our vocabulary—and the whole world knows this. We would gain some international stature if we demonstrated that the powerful can also be humble and truly a good neighbor. We would also blunt the most potent tool in the communist arsenal of the "hate America" campaign. The debate will go on, as it should, for there is substance in both sides of the argument.

[From the Washington Star, Aug. 16, 1977]

THE CASE FOR THE PANAMA TREATY

(By William F. Buckley Jr.)

Panama.—There seems to be only one substantive objection to the new treaty, and that is its provenance. Lobbyists for it particularly disdain Mr. Ronald Reagan because they view his arguments as amounting to nothing more than warmed-over chauvinism. In fact his objections are shared by critics whose turn of mind is not that of, say, the Veterans of Foreign Wars. The distinguished Mr. Herman Phleger, legal adviser to the Department of State under President Eisenhower, and architect of the far-seeing, far-reaching Antarctic Treaty, heatedly denounces the new Panama treaty—on the same ground as Reagan, namely: The United States negotiated under duress.

The other arguments against revising the treaty are frail. It is conceded by our military that the Panama Canal is simply not defensible against sabotage or missile-bombing. Protecting it against sabotage would take Panamanian cooperation and

even with it, a saboteur with an explosive in a cargo vessel could put the Canal out of action for a while.

Guarding sea and air approaches to the Canal is the only defense, if there is one at all. This we have done, this the Panamanian government is prepared in a separate protocol to charge us to continue to do; and this we can do under our own initiative after the turn of the century when the Canal is turned over fully to the Panamanians.

Respecting the economic point, the Panamanians undertake to guarantee passage to all shipping at nondiscriminatory rates. As to the subsidy, we commit ourselves to a flat 50 million dollars rental, which is reasonable, plus an unspecified jolt of economic aid to the new operators—which is not unreasonable.

Now to the Reagan-Phleger position: One's instinct is to resent bargaining under duress. Especially so in the current situation inasmuch as the Panamanians, rather than merely asking the United States kindly to reconsider arrangements entered into in 1903 with less than a scrupulous regard for the presumptions of nationhood, launched a sloppy, eristic campaign to discredit the plain fact that the United States exercises sovereign rights over the Panamanian Zone.

But the point (I have stressed it before) is that it is becoming to a mature and self-confident nation to waive, where it is appropriate to do so, such formal considerations. Besides, we can hardly be impatient with rioting youth in the fever swamps of Panama considering the number of rioting youth we indulged in the fever swamps of Berkeley and Columbia. Even if we grant (as I do), that our title to the Panama Canal is morally and historically secure, we should not fail to understand Panamanian resentment. Even if we had in our hand a record that showed that every Panamanian in 1903 had voted to grant the U.S. in perpetuity the rights we have enjoyed in the area, still there is the shifting perspective between what was permissible and even welcome in 1903, and what is permissible and welcome in 1977.

It is fashionable beyond the limits of common sense to deplore the colonialism of ages past. My own notion is that colonialism was far preferable to much that now goes on. But our colonial obligations in Panama haven't done very much for the people there. They live, for the most part unhappily, under a dictator who deals with dissidents by imprisoning them, exiling them, and confiscating their property. We do not even have the excuse, in Panama, that we have succeeded in keeping such as Torrijos from coming to power. No, we concern ourselves only with the Canal Zone.

But now that the military inform us that our presence in the zone is unnecessary to such security as is achievable, the reasons for staying reduce merely to the question: Are we going to satisfy our pride by rejecting anti-historical Panamanian demands?

That would not appear to make sense. It is as much United States policy to avoid involving itself unnecessarily in the affairs of other countries as at the turn of the century it was American policy to involve ourselves, in Wilsonian exuberance, in these matters. The Canal's military and economic importance to us is slight; its operation is a net economic drain; we have retained the right to deploy our military in such a way as to discharge responsibilities of primary interest to our Latin American neighbors. We should be large enough, as we were in the Philippines, to walk out, with true, self-confidence.

PANAMA CANAL TREATIES COMMENTARY

Mr. THURMOND. Mr. President, I ask unanimous consent that a column by the distinguished author, Anthony Harrigan be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

DEFENSE OF THE CANAL

(By Anthony Harrigan)

One of the principal arguments used by supporters of the Panama Canal treaties is that the United States will find itself embroiled in a guerrilla war if the canal and its zone aren't surrendered to Panama. The truth is that the tactical advantages are with the United States if it keeps the entire zone in American hands.

This point is made in a hard-hitting, first-hand report from Panama written by Egon Tausch, a writer who served with distinction as an Army officer in Vietnam and later taught at West Point.

In a study report prepared for the United States Industrial Council, Tausch says: "As long as the Zone is controlled by the U.S. few military men fear Panamanian guerrillas. Although large parts of Panama are jungle, the population is concentrated in the two major cities. Panama has never fought a war. The Guardia Nacional, which serves as both the army and the police of Panama, is 8,000 strong, but almost all of it is stationed in downtown Panama City, for political uses only. The Guardia doesn't like the jungle. The most committed fighters Gen. Torrijos has are the thousands of leftist professional students, and these do better in romantic street demonstrations than in individual acts of sabotage or concerted struggles. The 'martyrs' of the famous riots of 1964 were killed when a department store they were looting caved in."

The Tausch report continues:

"Panamanians could be trained to fight—the U.S. Army has been trying to do this in jungle warfare schools in the Zone for years—but the probability, if war broke out, would be that Cubans would do all the fighting. This is true whether the treaties are rejected, or are ratified with U.S. retention of military bases but without the Zone.

"The analogy with Vietnam is valid, but not the way treaty supporters think it is.

"The crippling difficulty faced by the U.S. military in Vietnam was that geographic territory was irrelevant in that war. Fortifying towns or hilltops, though easy, was pointless; Vietnam remained a war of movement because the U.S. and Saigon forces had to maintain the offensive tactically in order to maintain political control. In the few instances when American installations were assaulted directly, the Vietcong and North Vietnamese attackers were slaughtered.

"The Canal Zone, on the other hand, is only about fifty miles long and ten miles wide. Perimeters can be established and fortified. There are no foreign 'hearts and minds' to be won; only Americans live there. There are no Panamanian villages within the Zone to worry about, nor any reason why the frontier should not be cleared of vegetation for fields of fire. Gen. Torrijos knows all of this. Difficulties would arise if and when the Zone was abandoned before the Canal was surrendered, and this is precisely what the new treaties propose to do.

"Tausch notes in his report that the idea that the Canal itself, within an American Zone, is vulnerable to sabotage by dissidents or guerrillas is based on ignorance of the physical structure of the Canal and on underestimation of 1910 technology. 'The Canal,' he explains, 'is not a complex, delicate mechanism. It consists of two lakes, three sets of locks in two channels, and a few locomotives. The lakes are filled by run-off. The locks are merely chambers built of solid concrete, with holes in the bottom through which the water passes by gravity when the valves are open. No pumps are used; each chamber is adjusted by the release of water out of the chamber above it or into the one below. The gates are steel, pivoting on posts, and locking under the pressure of the water. Each chamber has duplicate gates for emergencies. Damaged sets can be removed by the floating crane, the largest in the world, without interrupting Canal operation. The machine parts are simple, solid steel and brass, and every piece is manufactured in workshops on the banks.'"

If the American people are acquainted with these facts, they will realize that defense of the Canal against land attack would be a simple matter. Nothing is more absurd than the notion that the Canal can be disabled by dropping a few hand grenades in a lock.

PANAMA PLEBISCITE: A DEMOCRATIC RATIFICATION AND A RATIFICATION OF THE DEMOCRATIC PROCESS

Mr. CRANSTON. Mr. President, the final results of the plebiscite in Panama on the new Panama Canal treaties were announced at an official ceremony on October 28, 1977. We had known from informal reports that Panamanians had voted 2-to-1 in favor of the treaties. The official tally, certified by the Provincial Polls Committee to the National Electoral Tribunal was 766,232 total votes cast; 506,805 "yes" votes and 245,117 "no" votes—better than 2-to-1 for the treaties. Of the total, 14,310 ballots were voided.

I was impressed with both the results of the plebiscite and with the successful exercise of the plebiscite itself as an instrument of the democratic process.

First, the Panamanian Government took active measures to inform Panamanian citizens about the treaties. Open and free debate on the treaties was permitted and encouraged. Thorough procedures for verifying the vote were followed. These factors combined give great credibility to the better than 2-to-1 vote in favor of the treaties by Panamanians.

Second, I am greatly encouraged that this democratic process was successfully carried out in Panama. I am confident that the United States will use its improved and renewed ties with Panama—the result of signing, and, hopefully, ratifying the new Panama Canal treaties—actively to encourage such democratic procedures and institutions in Panama. The fact that this vote was conducted in Panama is a constructive consequence of the effort of our country and theirs to work out a treaty beneficial to all concerned. The development and use of democratic practices and procedures in Panama will only enhance the recognition and protection of basic human rights in Panama.

Mr. President, the Panamanian plebiscite is the counterpart to our ratification procedure. But obviously, it is a different system and unfamiliar to many Americans. To provide a better understanding of the plebiscite system under Panamanian law, I ask unanimous consent that some questions and answers on the treaty plebiscite be printed in the Record. These questions and answers are based on information provided by the U.S. Embassy in Panama.

There being no objection, the material was ordered to be printed in the Record, as follows:

QUESTIONS AND ANSWERS ON THE PANAMA CANAL TREATIES PLEBISCITE

1. Who was eligible to vote in the plebiscite on October 23, 1977?

All Panamanian citizens who were at least 18 years of age and who had not lost citizenship rights (e.g. for conviction of a criminal offense) and who were in Panama on that day. The Panamanian Government announced that there were approximately 788,000 eligible voters. Voting is not compulsory.

2. What had the Panamanian Government done to ensure that voters were well informed about the treaties?

The Panamanian Government coordinated an information program regarding the significance of the treaties and detailing what changes the treaties would mean for Panama. Full texts of the treaties and the related documents were published as separate supplements by the Government and distributed with two daily morning newspapers and one afternoon daily. Also, members of the Panamanian negotiating team and other Government officials appeared at many public meetings in Panama to explain the treaties.

3. Were groups and individuals opposed to the treaties free to present their views to the public?

The Panamanian Government announced that public discussion of the treaties would be completely free. The Government appears to have fulfilled this pledge of open debate, even to the extent of assisting groups opposed to the treaties in publishing their message. Students organizations against the treaties and against the economic policies of the Panamanian Government received full-page donations in three Government daily newspapers. Their ads urged Panamanian voters to vote against and used strong language to condemn the treaties, and, by implication, the Government which negotiated them. The Government appeared not to have censored the content of these ads. Many newspaper columns criticized the terms of the treaties, and accounts of meetings by political and professional groups opposed to the treaties appeared frequently. However, in the last ten days before Plebiscite

day, groups opposed to the treaties complained of difficulty in obtaining radio and TV time and newspaper coverage.

4. What is the method of voting in a plebiscite?

The voter appears at the polling place, presents his or her national identity card to the Poll Committee, and signs his or her name and identity card number on a Precinct Register. The voter is then handed a plain manila envelope and then goes into a private voting booth. In the booth are two stacks of ballots: "yes" ballots are of one color and "no" ballots are of another color. On each ballot is printed either "yes" or "no" and the following words: "I am in agreement with the new Panama Canal treaty, the Treaty on Permanent Neutrality of the Canal and the Operation of the Canal, the Appended Agreements and Annexes Signed between the Government of Panama and the United States on 7 September 1977." The voter selects either a "yes" ballot or a "no" ballot, places it in the manila envelope leaves the booth and deposits the envelope, in a sealed ballot box. The box is on a table where the three members of the Poll Committee sit. The voter then puts a thumb print by his or her name on the voting register, and a voting official perforates the voter's national identity card to prevent multiple voting by the same person.

5. How are the ballots counted and what measures are taken to ensure an accurate count?

When the polls close, the sealed ballot boxes are publically opened and envelopes counted. The number of envelopes must not exceed the number of names on the list of persons who voted. If there are more envelopes than recorded voters, the difference is eliminated by discarding at random enough envelopes to equalize the number of envelopes and voters. The ballots are then removed from the envelopes and the number of "yes" and "no" votes tallied. A report of the vote result is sent to the National Electoral Commission as well as to a District Polls Committee. The District Committee also received all the voted ballots and is required to check the accuracy of the reports of the individual Precinct Poll Committees. Then the District Committee makes a report to the Provincial Polls Committee which further certified the vote results of the various Precincts in its Province and issues a final report to the National Electoral Tribunal.

6. What provisions were made for independent poll watchers?

Panamanian law authorizing the plebiscite does not specifically provide for independent poll watchers. But of the three members of each Precinct Committee, one is a citizen appointed by the National Electoral Tribunal from a list of names submitted by a local community board, and the second members are chosen by the Tribunal from lists of educators, students and professional, civic, cultural and religious groups. The third is selected by the Tribunal directly. The Panamanian Government also invited university rectors from North and South America to observe the plebiscite. Erik Suy, United Nations Undersecretary-General and legal counsel, represented the N.H. Secretary-General at the plebiscite. Additionally, many members of the international press were in Panama on Plebiscite Day to observe the voting process.

In conclusion, Mr. President, knowledge of the democratic plebiscite procedure gives me greater confidence that Panamanian sentiment on the treaties has been fairly measured after open and free debate. The plebiscite in Panama thus stands not only as a democratic ratification of the treaties, but I am hopeful that it is a large step in the ratification and adoption of the democratic process by the Government and for the people of Panama.

DEFENDING THE CANAL IN THE AGE OF TERRORISM

Mr. HUMPHREY. Mr. President, my support for the new Panama Canal treaties is predicated upon my belief in the need for the United States to make the necessary mature adjustments to the realities of the modern-day world. In other words, if our policies are such that they encourage cooperation, why risk the prospects for confrontation, particularly when such confrontation would involve high costs to this country?

The debate over the new Panama Canal treaties is fraught with considerable emotion and much misinformation. It is time we come

down to earth and realistically assess what these treaties give us and the potential costs we avoid by the Senate giving its advice and consent to ratification.

Therefore, it was with considerable interest that I read a column in the November 1 Baltimore Sun, written by Arthur S. Collins, Jr., a retired general whose last field assignment was as Deputy Commander in Chief, U.S. Army in Europe. General Collins also served a tour in Panama during his military career.

Entitled "Defending the Canal in the Age of Terrorism," the article by General Collins places the debate over the new treaties in its proper perspective. I think it is particularly relevant to note General Collins' following perception:

Consider how a few dozen terrorists confounded and tied up a strong, economically healthy West Germany; examine the cost to the British of trying to enforce a peace in Northern Ireland; recall the destruction in Lebanon when terrorists and guerrillas got out of control. From a military point of view, none of these situations compares to the problems the United States would encounter if it had to defend the Panama Canal unilaterally.

This is the era of the extremist, the terrorist, the guerrilla. Extremists with terrorist tendencies abound in the Free World and the Third World. Defeat of the treaty would provide the cause and the slogans they need to create conflict in Panama where there is a strong sense of nationalism. Guerrillas would be easy to recruit and the local populace would be sympathetic and provide sanctuary, support, and good intelligence * * *

General Collins goes on to point out what would be in store for the United States should we continue a presence in the Panama Canal Zone in the absence of acquiescence of the Government of Panama and the people of Panama.

If nothing else should have been learned from our experience in Indochina, it is that if one does not have the full support of the populace, disaster is inevitable.

Yet, the sloganeering surrounding the debate on the new treaties does not serve the best interests of the United States nor the taxpayer. Who will pay the price should the treaties fail in the Senate? It is the average American—the average taxpayer. It is the average American whose son could be called upon to serve in a senseless conflict that could have been avoided. And what will we accomplish by this measure of last resort? The end result could be the same as it was in Vietnam.

I urge my colleagues to give careful consideration to the analysis of General Collins. Is this the scenario we really want to bring home once again to the American people? Or do we avoid confrontation and in the process gain the cooperation of the Panamanian people to assist us in protecting an important asset?

Mr. President, I ask unanimous consent that the column be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

DEFENDING THE CANAL IN THE AGE OF TERRORISM

(By Arthur S. Collins, Jr.)

WASHINGTON.—Consider how a few dozen terrorists confounded and tied up a strong, economically healthy West Germany; examine the cost to the British of trying to enforce a peace in Northern Ireland; recall the destruction in Lebanon when terrorists and guerrillas got out of control. From a military point of view,

none of these situations compares to the problems the United States would encounter if it had to defend the Panama Canal unilaterally.

This is the era of the extremist, the terrorist, the guerrilla. Extremists with terrorists tendencies abound in the Free World and the Third World. Defeat of the treaty would provide the cause and the slogans they need to create conflict in Panama where there is a strong sense of nationalism. Guerrillas would be easy to recruit and the local populace would be sympathetic and provide sanctuary, support, and good intelligence. Cuba would almost surely offer these "democratic freedom fighters" training cadres and light weapons from Soviet arsenals.

The Canal Zone is 10 miles wide, about 51 miles long, and covers an area of 647 square miles. Defense of so small an area appears to be a minor problem for a world power. However, the realities of geography, international agreements, and today's world make it most difficult to defend this area and respect the rights of Panama. A dense jungle with triple canopy growth covers much of the Zone and makes surveillance of the open and unobstructed Canal Zone borders ineffective. Trails are few, and numerous streams and water obstacles make troop movement difficult. This is an ideal area for guerrilla activities. So much for the area of operations. How about the most likely enemy?

Small, lightly armed forces, operating from just outside the Zone, could suddenly emerge from the jungle to attack canal facilities or ships in the canal. From the Canal Zone borders to any target in the Zone—a set of locks, school, housing area, power plant, or whatever the target might be—is at most five miles. Hostile groups could strike from either side of the Zone so selection of targets and timing of attacks would be made easy for guerrillas operating from secure bases in Panama. Ammunition, arms, radios and other equipment could be hidden in the small villages that dot the borders of the Canal Zone.

Portable rockets and mortars would complement the small groups attacking U.S. installations. Locks and maintenance and support facilities would be key target areas and all are within range of these weapons; attacks would be frequent. A rocket hitting a school, fuel farm, or tanker could be devastating.

A determined terrorist organization would plan attacks on Madden Dam and Gatun Dam. Damage to these dams would create serious problems in maintaining enough water in Gatun Lake to permit passage of ocean-going ships, but they are difficult targets for ambush and booby traps.

Canal Zone installations can all be defended if enough manpower is assigned to the task; there are, however, so many historical examples of well defended facilities destroyed by small, well trained raiding parties, that any planned defense of the canal must recognize the reality. It is difficult and costly to be always on the defensive and always on the alert. The United States as a nation does not respond well to prolonged aggravating situations which are not quickly resolved. Day-in and day-out, U.S. troops and civilians will suffer a few casualties, and the numbers will mount.

In brief, a small well directed hostile group would have an enormous capacity for inflicting damage on U.S. citizens and embarrassing the United States. Their attacks would be disruptive, sometimes damaging, often deadly, and most difficult to stop.

Such a situation would be less likely to occur if the Panamanian government had a direct hand in the continued operation of the canal. They could stop these attacks far better than a "gringo intruder" from the north. In fact they would have to, because if the canal is closed Panama will lose the revenues from tolls provided for in the treaty, and many Panamanian citizens would be out of work. If the treaty is not ratified, however, the Panamanian government might not have much control, nor much interest.

Patriotism is not unique to the United States; emotions run strong in small nations too, and resentment of the United States is long standing. So it is not unlikely that the government of Panama would stand back; after all, it wouldn't be their property under attack.

This is the critical fact: Without the active support of the Panamanian people and government, the only way guerrilla and rocket attacks could be curtailed—curtailed, never eliminated—would be for U.S. Forces to invade Panama's territory to drive guerrillas away from the zonal borders and thereby make them less effective. The resulting military venture would be a nasty chore for which the American people are not suited by temperament or inclination.

Various estimates have been made on the size of U.S. forces required to protect the canal if the treaty is not ratified. These estimates are dependent on the degree of support the United States could expect from Panama. Realistically, we should

assume that if the treaty is not approved, the United States can expect little support from Panama or its people.

If hostilities erupt, the most likely scenario would be a series of small attacks continuing over a period of several years, with the unpleasant duty of defending the canal falling on U.S. troops. Under these conditions, the *smallest* number of troops for a minimally effective defense of the zone would be 100,000. If Panama were invaded it would take a lot more.

There is no need to belabor the point. The canal could be defended, but its continued operation could not be assured. The jungle is not a healthy place to be and for troops always on the defensive, not knowing friend from foe, it is a corrosive and frustrating environment. U.S. troops will suffer casualties and world opinion will be against them.

Like Vietnam there will be no heroes. Both the nation and the armed forces, especially those on the ground, will pay a bill that will include large, hidden economic and psychological future payments.

Even were the treaty ratified, terrorists could still commit acts of terrorism. However, in that case, the Panamanian government would use its police, security agencies, and armed forces to oppose the terrorists. The Panamanian people would not long have sympathy for those who have put them out of work by closing their canal.

If Panama asked for U.S. military help it would be gladly given and gratefully received. If the canal were closed by hostile action, world opinion almost certainly would be on the side of the Panamanian government. These are all important advantages that flow from Panama's active involvement in defense of the canal.

It is time those determined to "save" the canal set aside their emotion, study the treaty, consider the alternatives, and decide from whom and for what they are "saving" the canal.

[From the Congressional Record—Senate, Nov. 4, 1977]

TESTIMONY OF PROFESSOR RAOUL BERGER BEFORE SUBCOMMITTEE ON SEPARATION OF POWERS OF JUDICIARY COMMITTEE ON CONSTITUTIONAL ISSUES CONCERNING PANAMA CANAL TREATIES

Mr. ALLEN, Mr. President, on November 3, 1977, the Subcommittee on Separation of Powers of the Committee on the Judiciary convened to receive the testimony of Raoul Berger in connection with the subcommittee's investigation of certain constitutional issues associated with the Panama Canal Treaties. Professor Berger is the foremost legal authority on the U.S. Constitution and is the author of the recently published best seller, "Government by Judiciary." He is best remembered for his work, "Executive Privilege," which had tremendous impact on the course of history during the Watergate controversy.

His testimony before the subcommittee yesterday was highly significant in that he stated very forcefully the view that no property belonging to the United States in the Isthmus of Panama can be transferred to Panama by treaty alone, but that authorization by the Congress is specifically required by article IV, section 3(2) of the U.S. Constitution. Professor Berger expressed the further opinion that any treaty purporting to transfer such property, even if ratified by the Senate, would be void.

Inasmuch as the subcommittee has received overwhelming requests for copies of Professor Berger's testimony, I ask unanimous consent that his statement be printed in the Record, so that it will be easily available to Members of Congress and interested members of the public.

There being no objection, the testimony was ordered to be printed in the Record, as follows:

STATEMENT BY PROFESSOR RAOUL BERGER BEFORE THE SENATE SUBCOMMITTEE ON SEPARATION OF POWERS HEARINGS ON THE PANAMA CANAL TREATIES

You have invited me to comment on the relation between the Article IV, Section 3 (2) power of Congress to dispose of property of the United States and the treaty power, in light of the statements respecting the relation by Herbert J. Hansell, Legal Advisor, Department of State,¹ and Ralph E. Erickson, Deputy Assistant Attorney General.² Although I am in favor of the Panama Canal Treaty, I share your solicitude for the preservation of constitutional boundaries and your concern lest the function committed to Congress by diminished. I have long held the conviction that all agents of the United States, be they Justices, members of Congress, or the President, must respect these boundaries. No agent of the people may overleap the bounds of delegated power. That is the essence of constitutional government and of our democratic system.

Long experience has led me to be skeptical of arguments by representatives of the Executive branch when they testify with respect to a dispute between Congress and the President, for they are then merely attorneys for a client, the President. It was for this reason that Justice Jackson dismissed his own prior statements in the capacity of Attorney General as mere advocacy, saying, a "judge cannot accept self-serving press statements for one of the interested parties as authority in answering a constitutional question, even if the advocate was himself."³ The Hansell-Erickson testimony did not serve to diminish my skepticism.

The effect of these hearings ranges beyond the Panama treaty. The Panama cession will constitute a landmark which, should the State Department prevail, will be cited down the years for "concurrent jurisdiction" of the President in the disposition of United States property. Acquiescence in such claims spells progressive attrition of Congressional powers; it emboldens the Executive to make ever more extravagant claims. I would remind you that Congressional acquiescence encourages solo

Presidential adventures such as plunged us into the Korean and Vietnam wars. Congressional apathy fostered the expansion of executive secrecy. Then as now the State Department invoked flimsy "precedents," for example, the pursuit of cattle rustlers across the Mexican border, to justify presidential launching of a full scale war.⁴ If Congress slumbers in the face of such claims it may awaken the Samson shorn of his locks.

Earlier judicial statements that this or the other executive practice has been sealed by long-continued Congressional acquiescence⁵ need to be reexamined in light of more recent judicial opinions, more conformable to the Constitution, that Congress may not abdicate its powers,⁶ and a fortiori, it cannot lose them by disuse,⁷ that usurpation can not be legitimated by repetition.⁸ Senatorial insistence on respect for constitutional boundaries will warn the Executive against encroachments on Congress' powers; it will alert foreign nations to the fact that treaties for the cession of United States property must be subject to the consent of the full Congress.

Mr. Erickson, addressing himself to the question whether Article IV, Section 2 (3), "pursuant to which Congress has the power to dispose of property of the United States is an exclusive grant of legislative power to the Congress or whether the Congress and the President and the Senate, through the treaty power, share that authority," handsomely states "the answer to this question is not simple and although free from doubt."⁹ That doubt counsels against encroachment on a power explicitly conferred on Congress; a clear case for establishment of "concurrent jurisdiction" is needed in the teeth of that express grant.

In support of the claim that the President and Senate enjoy "concurrent power" to dispose of United States property. Messrs. Hansell and Erickson invoke a melange of dicta, without weighing even stronger statements that Congress' disposal power is "exclusive." Thus the Supreme Court declared that Article IV "implies an exclusion of all other authority over the property which could interfere with this right or obstruct its exercise."¹⁰ Echoing such judicial statements, an opinion of the Attorney General stated in 1899 that "The power to dispose permanently of the public lands and public property in Puerto Rico rests in Congress, and in the absence of a statute conferring such power, can not be exercised by the Executive Department of the Government."¹¹

Such statements respond to two cardinal rules of construction. First there is the rule that express mention signifies implied exclusion, which the Supreme Court has employed again and again: "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode."¹² The rule was invoked by the Founders; for example, Egbert Benson said in the First Congress, in which sat many Framers and Ratifiers, that "it cannot be rationally intended that all offices should be held during good behaviour, because the Constitution has declared [only] one office to be held by this tenure."¹³ The fact, emphasized by Hansell, that "The property clause contains no language excluding concurrent jurisdiction of the treaty power" is therefore of no moment. Having given Congress the power to dispose of public property, it follows that the President and Senate were "impliedly excluded" therefrom. Second there is the settled rule that the specific governs the general:

where there is in an act a specific provision relating to a particular subject, that provision must govern in respect to that subject as against general provisions in other parts of the act, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates.¹⁴

In terms of the present issue, the specific power of disposition governs the general treaty provision.

Under these rules it is of no avail that, according to Hansell, "there is no restraint expressed in respect to dispositions" in the treaty power itself. For this Mr. Hansell relies on *Geofroy v. Riggs*:

The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the . . . departments. . . .¹⁵

Only the treaty power is "expressed"; Geofroy does not call for express restraints—it suffices that they can be found in the Constitution. The "implied exclusion" is "found" in the Constitution by virtue of the express grant of disposal power to Congress under the rule of express mention, and of the fact that the general treaty power is limited by the special Congressional power of disposition. These principles are reflected in the Supreme Court's statement in *Sioux Tribe of Indians v. United States*:

Since the Constitution places the authority to dispose of public lands exclusively in Congress, the Executive's power to convey any interest in the lands must be traced

to Congressional delegation of its authority.¹⁶ To this the State Department responds that Sioux Tribe "did not deal with the relation between the treaty power and the Congressional power under Article IV, Section 3, cl. 2," Hansell labelled it "dicta."¹⁷ By this test the Hansell-Erickson collection of dicta falls to the ground, for almost all were not uttered in the context of that relation.

The Executive branch employs a double standard—what is dictum when the language is unfavorable to it becomes Holy Writ when the dictum reads in its favor. Erickson, for example, tells us that—

"Jones against Meehan is cited as an example by reason of the quote and the language there, which it seems to me is of significance, irrespective of the particular facts involved."¹⁸

Messrs. Erickson and Hansell can not have it both ways. In truth, dicta carry little weight when a particular issue has not been decided. Chief Justice Marshall dismissed his own dicta in *Marbury v. Madison* when they were pressed upon him in *Cohens v. Virginia*, 19 U.S. 264, 399 (1821), on the ground that dicta do not receive the careful consideration accorded to the question "actually before the court." The statements here quoted respecting "exclusivity" carry weight because they reflect traditional canons of construction. The foregoing considerations should suffice to dispose of a number of other Hansell-Erickson arguments for "concurrent jurisdiction," but I shall consider them for the sake of completeness.

To escape from the exclusivity of Congress disposal power Mr. Erickson argues: "To begin with, Article IV, Section 3, clause 2, uses the same terminology, 'Congress shall have power,' as Article I, Section 8, which in our opinion, permits treaty provisions relating to such matters to be self-executing [i.e., without Congressional action], at least to the extent that the inherent character of the power or other constitutional provisions do not make the power exclusive to Congress."¹⁹

Erickson's qualification is a concession that some Article I powers can not be concurrently exercised by the President. The Department of State concedes that "treaties may [not] impose taxes."²⁰ Why is that power more "inherently" exclusive than such other Article I, Section 8 powers as the power to establish post offices, to provide and maintain a navy, to declare war, to coin money, etc., all of which manifestly can not be exercised by treaty. Erickson proves too much.

Second, he urges:

"Article IV, Section 3, clause 2, is included in a portion of the Constitution which deals with the distribution of authority between the Federal and State governments. It does not purport to allocate powers exercisable by Congress or pursuant to treaty."²¹

But Section 3 (2) unmistakably does "allocate powers exercisable by Congress": "The Congress shall have power to dispose of . . . property belonging to the United States." Hansell argues that the placement of the property article in clause 4 . . . provides strong evidence that the property clause does not restrict the treaty power."²² That the "placement of a power in one or another Article is without significance for its scope is readily demonstrable: (a) "Congress shall have power to declare the punishment of treason" is located in the Judiciary Article III; (b) Congress' powers to make "exceptions and regulations" respecting the Supreme Court's appellate jurisdiction is lodged in Article III, Section 2; (c) The provision that "Congress may determine the time of choosing the electors" is placed in the Executive Article II, Section 1 (4). Does this authorize the President by treaty to declare the punishment of treason, to regulate the Court's appellate jurisdiction, or to interpose in the choice of electors? Whether located in Article I or Article IV, "Congress shall have power" means on and the same thing—the power resides in Congress, not in the President. It needs constantly to be borne in mind that the President has circumvented Senate participation in treaty-making by affixing the label "Executive Agreements" to treaties, without constitutional warrant,²³ so that claims made on behalf of the Senate and the President can be turned to his own advantage.

Mr. Hansell also attaches significance to the close linkage between the Article IV "power to dispose" and "the power to make all needful rules and regulations" respecting the Territory or other property belonging to the United States, and cites *Geofrey v. Riggs* for the proposition that "the treaty power can be used to make rules and regulations governing the territory belonging to the United States, even in the District of Columbia."²⁴ Geofrey presented the question whether a citizen of France could take land in the District of Columbia by descent from a citizen of the United States. Local law withheld the right, but in keeping with national solicitude for protection of citizens abroad, a treaty provided for reciprocal rights of inheritance in such circumstances for citizens of both signatories. In consequence the treaty overrode the local provision; but this hardly stretches to the "making of rules

and regulations" by treaty for the District of Columbia. Were this true, the President could by treaty take over the governance of the District of Columbia, in spite of the Article I, Section 8 (17) provision that "The Congress shall have power to exercise exclusive jurisdiction in all cases whatever over such district." Assume notwithstanding that the treaty power does indeed comprehend the "making of rules and regulations governing the * * * District of Columbia," does the "close" linkage with the "power to dispose" comprehend a disposition of the White House by treaty? Such arguments verge on absurdity.

Messrs. Hansell and Erickson have cited a string of cases in support of "The power to dispose of public land * * * by treaty."²⁵ Some, such as *Holden v. Joy*, 84 U.S. 211 (1872), and *Jones v. Meehan*, 175 U.S. 1 (1899), have frequently been cited in your hearings. Let me begin with Hansell's citation of *Missouri v. Holland*, 252 U.S. 416 (1920), for it quickly illustrates how farfetched are the State Department's interpretations. *Missouri v. Holland* arose out of a State challenge to the treaty with Great Britain for the protection of migratory birds which annually traversed parts of the United States and of Canada. Justice Holmes, addressing the argument that the treaty infringed powers reserved to the States by the Tenth Amendment, stated:

"Wild birds are not in the possession of any one, and possession is the beginning of ownership. The whole foundation of the State's rights is the presence within their jurisdiction of birds that yesterday had not arrived, tomorrow may be in another State, and in a week a thousand miles away."²⁶

Consequently the State could assert no "title" in migratory birds. By the same token, the United States could lay no claims to "ownership" of the birds, and *Missouri v. Holland* is therefore wholly irrelevant to the power by treaty to dispose of property belonging to the United States.

Holden v. Joy and *Jones v. Meehan* will repay close analysis because they involve Indian treaties which constitute one of the pillars of the argument, to quote Erickson, that "the United States can convey its title by way of self-executing treaty and that no implementing legislation is necessary."²⁷ To begin with Jones, both Hansell and Erickson quote: "It is well settled that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States."²⁸ The treaty had "set apart from the tract hereby ceded [by the tribe] a reservation of six hundred and forty acres * * *" for an individual Indian; and the issue was what kind of title did he take. The Court quoted from an opinion of Attorney General Roger Taney, destined before long to succeed Chief Justice Marshall:

"These reservations are excepted out of the grant made by the treaty, and did not therefore pass with it; consequently the title remains as it was before the treaty; that is to say, the lands reserved are still held under the original Indian title."²⁹

The Court held that "the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant of a complete title in fee simple."³⁰ That explanation presumably responded to the fact that tribal lands were generally held in common; individual titles were all but unknown, so that such title had to be secured through the machinery of the treaty. But that is far from a disposition of government land because, as Taney explained, the "reserved" title remained in the Indians. Many, if not most, of the cases of Indian treaties involve just such "reserve" provisions.³¹

The quotation from *Holden v. Joy*, Erickson acknowledges, is dictum; notwithstanding Hansell relies on it as "a clear statement of the law."³²

"It is insisted that the President and the Senate, in concluding such a treaty, could not lawfully covenant that a patent should be issued to convey lands which belonged to the United States without the consent of Congress, which cannot be admitted. On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political."³³

What bearing the last clause has on Congress' "power to dispose" of public lands escapes me; this Delphic utterance surely does not overcome the clear terms of Article IV. As to the "many authorities," the Court's citation could hardly be farther afield. To avoid cluttering this statement with a minute analysis of each case cited by the Court for the assertion that "a treaty may convey to a grantee a good title * * * without an act of Congress," I have abstracted them in an appendix attached hereto, so that you may see for yourself that half of the cases thus cited are altogether irrelevant, and that the rest concern "reserves" under which, as Taney observed, no title had passed to the United States but remained in the given

Indiana. In considering such dicta, it is well to bear in mind Chief Justice Taney's statement that the Court's opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should hereafter depend altogether on the force of the reasoning by which it is supported.³⁴

By that standard the *Holden* dictum is no authority at all. The inappositeness of *Holden* is underscored by the facts. In May, 1828, and February, 1833, "the United States agreed to possess the Cherokees of seven million acres of land west of the Mississippi." It "was the policy of the United States to induce Indians . . . to surrender their lands and possessions to the United States and emigrate and settle in the territory provided for them in the treaties," so an exchange of land was provided. But a third treaty, that of December, 1835, proved necessary, whereby the Indians ceded their lands to the United States in consideration of \$5,000,000 to be invested in the manner stipulated. The Indians considered that the prior treaties, confirmed by the new, did not contain a sufficient quantity of land, so the United States agreed to convey an additional tract in consideration of \$500,000 to be deducted from the \$5,000,000.³⁵ This may be viewed either as a purchase and sale or an exchange: "the Cherokees were competent to make the sale to the United States and to purchase the lands agreed to be conveyed to them . . ." And the transaction was authorized by the Act of 1830, which empowered the President to set aside land west of the Mississippi for the reception of such tribes as chose to emigrate, and to "exchange" such lands with any tribe.³⁶ The 1830 act served to ratify the Act of 1828, and "ratification is equivalent to original authority."³⁷ "It is well settled that Congress may . . . 'ratify . . . acts which it might have authorized' . . . and give the force of law to official action unauthorized when taken."³⁸ Although the subsequent 1833 and 1835 treaties differed in some particulars from the authorization, the purpose was the same—"to induce the Indians . . . to emigrate and settle in the country long before set apart for that purpose."³⁹ When, therefore, the Court, speaking to the contention that the President and the Senate "could not lawfully covenant that a patent should issue to convey lands which belonged to the United States without the consent of Congress," stated that "a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it," it was making a statement that was unnecessary to the decision, because Congress had authorized the conveyance.

As to other treaties, Hansell tells us, "the precedents look two ways." Some have been "contingent upon congressional authorization." The "precedents supporting the power to dispose of property by treaty alone," he states, "can be found in the boundary treaties with neighboring powers, especially in the treaties between the United States and Great Britain of 1842 and 1846 for the location of our northeast and northwest boundaries . . ." "Settlement of boundary disputes are not really cessions of United States property. The Oregon boundary dispute proceeded from an inflated claim: 'Fifty-Four Forty or Fight'; the British, on the other hand, claimed land down to the forty-second parallel. Only when the dispute was settled by treaty—at 49 degrees—could either party confidently assert that it had title."⁴¹ Consequently, as Samuel Crandall, a respected commentator, stated, "A treaty for the determination of a disputed line operates not as a treaty of cession, but of recognition."⁴²

Among other examples of alleged treaty transfers of property, Hansell instances the return to Japan of the Ryukyu Islands.⁴³ By Article III of the 1951 Treaty of Peace with Japan, the United States received the right to exercise "all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of those islands. . . ." While Japan renounced in Article II, "all right, title and claim" to various territories, it made no similar renunciation with respect to the Ryukyus.⁴⁴ Quoting the Legal Advisor of the State Department, that "sovereignty over the Ryukyu Islands . . . remains in Japan . . .", a District Court stated that "Sovereignty over a territory may be transferred by an agreement of cession," but it concluded that there had been no cession.⁴⁵ The Fourth Circuit Court of Appeals quoted a statement by Ambassador John Foster Dulles, a delegate to the Japanese Peace Conference, that the aim was "to permit Japan to retain residual sovereignty," and held that the treaty did not make "the island a part of the United States, and it remains a foreign country for purposes of" the Federal Tort Claims Act.⁴⁶

"In the history of transfers of property to Panama," Hansell tells us, "we have had a mixed practice."⁴⁷ By the 1903 Panama Convention, Panama granted to the United States "all the rights, power and authority within the Zone . . . which the United States would possess if it were the sovereign of the territory . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign

rights, power, or authority * * *⁴⁸ The words "if it were sovereign" signal an intent to stop short of a cession of sovereignty. That is confirmed by an Opinion of the Attorney General. Considering the Tariff Act levy of duties on articles imported "into the United States or into any of its possessions," he stated that "the Canal Zone is not one of the possessions of the United States within the meaning of that term as used by Congress in the tariff act, but rather is a place subject to the use, occupation, and control of the United States for a particular purpose."⁴⁹ In *Luckenbach S.S. Co. v. United States*, Chief Justice Taft stated, "Whether the grant in the treaty amounts to a complete cession of territory and dominion to the United States or is so limited as to leave titular sovereignty in the Republic of Panama, is a question which has been the subject of diverging opinions," which he found it unnecessary to decide,⁵⁰ and is therefore still open. Instead he relied on a "long continued course of legislation and administrative action [that] has operated to require that the ports in the Canal Zone are to be regarded as foreign ports within the meaning" of the Act governing the transport of "mail between the United States and any foreign port,"⁵¹ itself a hint that the Panama Treaty is no more a cession than the Japanese Treaty respecting the Ryukyus.

It does not follow, however, that the interests of the United States do not constitute "property of the United States." The grant of "use and occupation * * * in perpetuity" constitutes "property" no less than the familiar lease of realty for 99 years. Then there are the installations that cost billions of dollars. Disposition of these no less requires the consent of Congress than does that of territory. In 1942, the President by Executive Agreement promised to transfer certain installations to Panama subject, however, to Congressional approval.⁵² A similar provision is to be found in the Treaty of 1955.⁵³ These are executive constructions that speak against Messrs. Hansell and Erickson.

In sum, Messrs. Hansell and Erickson have failed to make out a case for "concurrent jurisdiction" with Congress in the disposition of United States property. If the President is to fly in the face of the express "power of Congress to dispose" it must be on a sounder basis than the arguments they have advanced. In my judgment, the Panama Treaty should contain a provision making it subject to approval of the Congress.

FOOTNOTES

¹ Hearings on the Panama Canal Treaty before the Senate Subcommittee on Separation of powers (95th Cong. 1st Sess.) Part II, p. 3 (July 29, 1977), hereafter cited as Hansell.

² Hearings before the House Subcommittee on the Panama Canal on "Treaties Affecting the Operations of the Panama Canal," (92 Cong. 2d Sess.) p. 95 (December 2, 1971), hereafter cited as Erickson.

³ *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 647 (1952), concurring opinion.

⁴ R. Berger, *Executive Privilege: A Constitutional Myth* 75-88 (1974).

⁵ Congress "uniformly and repeatedly acquiesced in the practice." "It may be argued that while the facts and rulings prove a usage they do not establish its validity. But government is a practical affair intended for practical men. Both officers, law-makers and citizens naturally adjust themselves to any long continued action of the Executive Department—on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice." *United States v. Midwest Oil Co.*, 236 U.S. 459, 471 (1915). But as Justice Frankfurter later declared, "Deeply embedded traditional ways of conducting a government cannot supplant the Constitution or legislation * * *." *Youngstown Sheet*, supra, n. 3 at 610, concurring opinion.

⁶ *Panama Refining Co. v. Ryan*, 293 U.S. 388, 421 (1935).

⁷ *United States v. Morton Salt Co.*, 338 U.S. 632, 647 (1950).

⁸ "That an unconstitutional action has been taken before surely does not render that same action less unconstitutional at a later date," *Powell v. McCormack*, 395 U.S. 486, 546-547 (1969). *Zweibon v. Mitchell*, 516 F.2d 594, 616 & D.C. Cir. 1975; "there can be no doubt that an unconstitutional practice, no matter how inveterate, cannot be condoned by the judiciary." *United States v. Morton Salt Co.*, 338, U.S. 632, 647 (1950); "non-existent powers can [not] be prescribed by an unchallenged exercise * * *."

⁹ Erickson 97.

¹⁰ *Wisconsin Cent. R.R. Co. v. Price County*, 133 U.S. 496, 504 (1890); see also *Swiss Nat. Ins. Co. v. Miles*, 289 Fed. 571, 574 (App. D.C. 1923).

¹¹ 22 Op. Atty. Gen., 544, 545 (1899); 2 J. Story, *Commentaries on the Constitution of the United States*, Section 1328, p. 200 (4th ed. 1873): "The power of Congress over the public territory is clearly exclusive and universal * * *." Cf. *Osborne v. United States*, 145 F.2d 892, 896 (9th Cir. 1944).

¹² *Botany Worsted Mills v. United States*, 278 U.S. 282, 289 (1929); *T.I.M.E. v. United States*, 359 U.S. 464, 471 (1959): "we find it impossible to impute to Congress an intention to give such a right to shippers under the Motor Carrier Act when the very sections which established that right in Part I [for railroads] were wholly omitted in the Motor Carrier Act."

¹³ 1 *Annals of Cong.* 505 (2d ed. 1936) (print bearing running head "History of Congress"); and see Alexander White, id. 517.

¹⁴ *Swiss Nat. Ins. Co. v. Miller*, 289 Fed. 570, 574, (App. D.C. 1923). *Ginsberg & Son v. Poplin*,

285 U.S. 204, 208 (1932): "General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment." *Buffum v. Chase Nat. Bank*, 192 F.2d 58, 61 (7th Cir. 1951). In this light, the fact, stressed by Hansell, that the Framers contemplated that a treaty could affect "territorial" rights, Hansel 5, is not decisive, for the treaty would yet be subject to the special Congress "power to dispose." There is no evidence in the records of the Convention that the Framers intended in any way to curtail that power, or to give the President a share in it. Were the matter less clear, we should yet "prefer a construction which leaves to each element of the statute a function in some way different from the others" to one which causes one section to overlap another. *United States v. Dinerstein*, 362 F.2d 852, 855-856 (2d Cir. 1966).

¹⁵ Hansell 4; 133 U.S. 258, 267 (1890), emphasis added. One might with equal force argue that no limitation on Congress' "power to dispose" is "expressed" in Article IV.

¹⁶ 316 U.S. 317, 326 (1942). *Turner v. American Baptist Missionary Union*, 24 Fed. Cas. (No. 14, 251) 344, 346 (C. Ct. Mich. 1852): "Without a law the president is not authorized to sell the public lands. * * * The [Indian] treaty, in fact appropriated the above tract of 160 acres for a particular purpose, but, to effectuate that purpose, an act of Congress was passed."

¹⁷ Hansell 27, 22.

¹⁸ Erickson 105.

¹⁹ Id. 97.

²⁰ Hansell 25.

²¹ Erickson 97.

²² Hansell 4-5, emphasis added.

²³ Berger, supra n. 4 at 140-162.

²⁴ Hansell 5.

²⁵ Id.; Erickson 97.

²⁶ 252 U.S. at 434.

²⁷ Erickson 97.

²⁸ Hansell 6; Erickson 97.

²⁹ 175 U.S. at 12, emphasis added.

³⁰ Id. 21.

³¹ See infra Appendix.

³² Erickson 97; Hansell 22.

³³ Quoted by Hansell 5-6; 84 U.S. at 247.

³⁴ The Passenger Cases, 48 U.S. (7 How.) 283, 470 (1849), dissenting opinion.

³⁵ 84 U.S. at 237, 238, 241.

³⁶ Id. 245, 238-239.

³⁷ *Wilson v. Shaw*, 204 U.S. 24, 32 (1907).

³⁸ *Swayne & Hoyt, Ltd. v. United States*, 300 U.S. 297, 301-302 (1937).

³⁹ 84 U.S. at 240.

⁴⁰ Hansell 6.

⁴¹ S. E. Morison, *Oxford History of the American People*, 538, 546-547 (1965).

⁴² S. Crandall, *Treaties, Their Making and Enforcement*, 226 (2d ed. 1916).

⁴³ Hansell 6.

⁴⁴ 3 U.S.T. 3169, 3172, 3173.

⁴⁵ *United States v. Ushi Shiroma*, 123 F. Supp. 145, 149, 148 (D. Hawaii, 1954).

⁴⁶ *Burna v. United States*, 240 F. 2d 720, 721 (4th Cir. 1957).

⁴⁷ Hansell 7.

⁴⁸ Quoted Hearings, supra n. 1, Part I, p. 5, emphasis added.

⁴⁹ 27 Op. Atty. Gen. 594, 595 (1909).

⁵⁰ 280 U.S. 173, 177-178 (1930).

⁵¹ Id. 178.

⁵² "When the authority of the Congress * * * shall have been obtained therefore * * *"
Agreement of May 18, 1942, 59 Stat. (Pt. 2) 1289.

⁵³ Agreement of January 25, 1955, 6 U.S.T. 2273, 2278.

APPENDIX

i

Holden v. Joy: its citations for treaty power to dispose of property.

A. "Reserve" cases (title remains in Indians)

(1) *United States v. Brooks*, 51 U.S. (10 How.) 442 (1850).

Indian cession to United States; supplement to treaty provided that Grappe's representatives "shall have their right to the said four leagues of land reserved to them * * *" (450, 451). Held: treaty "gave to the Grappes a fee simple title to all the rights the [Indians] had in these lands * * *" (460).

(2) *Doe v. Wilson*, 64 U.S. (23 How.) 457 (1859). Indian treaty ceded land to United States, making reservations to individual Indians. "As to these, the Indian title remained as it stood before the treaty was made; and to complete the title to the reserved lands, the United States agreed that they would issue patents to the respective owners." (461-462).

(3) *Crews v. Burcham*, 66 U.S. (1 Black) 352 (1861). Cession by Indians with reserves (355). "The main and controlling questions involved in this case were before this court in the case of *Doe v. Wilson*, 23 How. 457 * * *" (356).

(4) *Mitchel v. United States*, 34 U.S. (9 Pet.) 711 (1835). Prior to the Spanish cession of Florida to the United States, the Indians had made a cession to Spain, "reserving to themselves full right and property" in certain lands. (749). Held: "by the treaty with Spain the United States acquired no lands in Florida to which any person had lawfully obtained" title. (734, 756). Issue: title of purchaser from Indians to reserved lands.

(5) *The Kansas Indians*, 72 U.S. (5 Wall.) 737 (1866). Treaty exchange of lands; Indians reserved lands for each individual (739, 741). Issue: was such land taxable by Kansas.

B. Irrelevant Cases:

(1) *Meigs v. McClung*, 13 U.S. (9 Cranch) 11 (1815). Held: land claimed from defendants did not lie within territory ceded to the United States by the Indians. (17).

(2) *Wilson v. Wall*, 73 U.S. (6 Wall.) 83 (1967). Treaty provided that certain Indians would be entitled to 640 acres for self, and additional acres, roughly speaking, for each child. (84). Issue: whether an Indian held land governed by the latter clause in trust for his children. (86). Court said "Congress has no constitutional power to settle the rights under treaties except in cases purely political," (89) the clause quoted in *Holden v. Joy*. The reason, it explained, was that "The Construction of them is the peculiar province of the judiciary * * *". id. In other words, interpretations of treaties is for the courts.

(3) *American Insurance Co. v. Canter*, 26 U.S. (1Pet.) 511 (1828). Insurer brought a libel in the District Court, South Carolina, to obtain restitution of 356 bales of cotton carried by ship that was wrecked on the Florida coast. A Florida territorial court had earlier awarded 76 percent salvage to salvors, who sold the Canter. (540). Issue: did the territorial court have jurisdiction. No mention of grant by United States.

(4) *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832). Worcester, a white missionary was convicted of residing within Indian territory without a State license. The treaty with the Indians placed them under the protection of the United States, gave it the sole right of "managing all their affairs." Held: the Georgia act can have no force in the Indian territory. (561).

(5) *Foster v. Neilson*, 27 U.S. (2 Pet.) 253 (1829). Re grants made in the ceded territory by Spain prior to January 24, 1815, the article provides "that those grants shall be ratified and confirmed like Indian "reserves * * * the ratification and confirmation which are promised must be by the Act of the Legislature," i.e. Congress. (314-315).

ii

Some additional Hansell citations for power to dispose by treaty.

(1) *Reid v. Covert*, 354 U.S. 1 (1957). Military Code provided for trial by court martial of "all persons * * * accompanying the armed forces" of the United States in foreign countries. Wife of Army Sergeant convicted by court martial in England of his murder. Held: Bill of Rights requires jury trial after indictment.

(2) *Asakura v. Seattle*, 265 U.S. 322 (1924). Seattle ordinance restricted pawnshop license to United States citizen. (339-340). Japanese attacks as violation of treaty provision: citizens or subjects of each signatory "shall have liberty * * * to carry on trade, wholesale and retail * * * upon the same terms as native citizens or subjects * * *" (340). Held: can't deny the Japanese equal opportunity. (342).

(3) *Santovincenza v. Egan*, 284 U.S. (1931). Italian subject dies in New York, leaving no heirs or next of kin. (351). Italian consul claims under "most favored nation" treaty clause. Held: The treaty-making power is broad enough" to cover "the disposition of the property of aliens dying within the territory of the respective parties * * *". Any "conflicting law of the State must yield." (40)

iii

Some additional Erickson citations for self-executing treaty conveyances.

(1) *Francis v. Francis*, 203 U.S. 233 (1906). Indian treaty ceded land to United States, but reserved certain tracts for use of named persons. (237). Quotes *Jones v. Meehan*; when treaty makes "a reservation of a specified number of sections of land * * * the treaty itself converts the reserved sections into individual property * * *" (238). It was in these circumstances that the Court said, "a title in fee may pass by treaty without the aid of an act of Congress, and without a patent," (241-241) the reason being that title to the reserved land remained in the Indians.

(2) *Best v. Polk*, 85 U.S. (18 Wall.) 112 (1873). By Indian treaty "reservation of a limited quantity [of land] were conceded to them. (113). One section "had been

located to an Indian." (113, 116). Thereafter, the United States issued a patent to James Brown. Held (117), "the Indian reservee was held to have a preference over the subsequent patentee."

ADDENDUM TO STATEMENT BY RAOUL BERGER BEFORE THE SUBCOMMITTEE ON SEPARATION OF POWERS OF THE COMMITTEE ON THE JUDICIARY

The statement by Attorney General Griffin B. Bell (hereafter cited as A.G.) before the Senate Foreign Relations Committee, September 29, 1977, reached me on Saturday afternoon, October 29, 1977, too late for inclusion of my comments in the body of my statement. Only three points made by the Attorney General seem to me to call for additional comment, and of these I shall speak in turn.

i

The Percheman Case

The Attorney General cites *United States v. Percheman*, 32 U.S. (7 Pet.) 511, 88-89 (1833) to prove that "the Court held self-executing certain clauses of the Florida Treaty with Spain which related to the regulation of property rights in newly acquired territory." A. G. at p. 10. At the cited pages it appears that Article 8 of the treaty provided:

"All the grants of land made before the 24th of January, 1818, by his Catholic Majesty * * * in the said territory ceded by his Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands * * *

This Article, Chief Justice Marshall remarked, "must be intended to stipulate expressly for that security of private property which the laws and usages of nations would, without express stipulation, have conferred * * * Without it (Article 8), the title of individuals would remain as valid under the new government as they were under the old * * * the security of (pre-existing) private property was intended by the parties * * *

In short, the treaty provided that prior Spanish grants to *private* persons should be ratified and confirmed, a provision far removed from presidential "regulation" of public territory. Moreover, *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314-315 (1829), a case cited by the Attorney General (A.G. at p. 3), held with respect to the self-same provision that "the ratification and confirmation which are promised must be by the Act of the Legislature," i.e. Congress. The citation to Percheman illustrates why I approach an Attorney General's statement with something less than awe.

ii

Remarks in the Legislative History of the Constitution

(1) The Attorney General asserts that "the members of the Convention were fully aware of the possibility that a treaty might dispose of the territory or property of the United States," (A.G. at p. 5). He begins with the remark of George Mason in the Constitutional Convention: "The Senate by means of a treaty might alienate territory etc. without legislative sanction." A.G. at p. 6; 2 Farrand 297. This was during a debate on a resolution that "Each House shall possess the right of originating bills," when Mason seconded Strong's motion to "except bills for raising money for the purposes of revenue, or for appropriating the same." The Senate, said Mason, "could already sell the whole Country by means of Treaties," plainly an extravagant overstatement, made at a time when the treaty was not under discussion. His "alienate territory" remark may merely represent a strategic retreat from his untenable "sell the whole country" remark.

There follow a group of utterances that have reference to boundary disputes, i.e. conflicting claims to ownership to be settled by treaties of peace.

(2) When the treaty power was under discussion, Williamson and Spaight moved "that no Treaty of Peace affecting territorial rights should be made without concurrence of two thirds of the [members of the Senate present]." A.G. at p. 6; 2 Farrand 543. Similarly, Gerry, speaking for a greater proportion of votes on "treaties of peace," said that here:

"The dearest interests will be at stake, as the fisheries, territories, etc. In treaties of peace also there is more danger to the extremities of the Continent" has reference to boundary disputes which do not really involve territory owned by the United States.

(3) "Sherman and Morris proposed but did not formally move," the Attorney General states, "the following proviso:

"But no treaty (of peace) shall be made without the concurrence of the House of Representatives, by which the territorial boundaries of the United States may be contracted * * *"

A.G. at p. 6; 4 Farrand 58. Farrand adds that "The subject was then debated, but the motion does not appear to have been made." Id. Why was the motion not made after debate? Presumably, the matter was postponed for consideration with Article IV. Section 3(2) would come up for discussion. During this subsequent discussion of "The Legislature shall have power to dispose of * * * the territory * * *", it is singular that no mention was made of an exception for disposition under the treaty power. 2 Farrand 466. Non-mention is the more remarkable because such an exception would carve out an area of undefined magnitude from the power conferred, a matter which would affront the democratically minded who placed their faith in the House. It seems more reasonable to infer from the history that Article IV, Section 3(2) was designed to set at rest the fears that territory might be ceded without the concurrence of the House.

(4) The Attorney General cites an amendment proposed by the Virginia Ratification Convention as exhibiting the "awareness of the Founding Fathers that the Constitution authorizes self-executing treaties disposing of the territory and property of the United States":

"No commercial treaty shall be ratified without the concurrence of the members of the Senate [not merely of those present]; and no treaty ceding, contracting * * * the territorial rights or claims of the United States * * * shall be made, but in cases of extreme necessity; nor shall any such treaty be ratified without the concurrence of three-fourths of the whole number of the members of both Houses respectively."

A.G. at p. 7; 3 Elliot. Debates on the Federal Constitution 660. The Attorney General's reading paradoxically transforms Virginia's anxiety to have greater safeguards, i.e., three-fourths of both Houses rather than the bare majority that satisfies Article IV, into an argument for excluding the House altogether. Like the earlier remarks, the Virginia proposal testifies to the importance that the Founders attached to the disposition of territory—no cession except "in cases of extreme necessity"—and it counsels against reading the equivocal "treaty-making" to encroach upon the "power to dispose" that requires the vote of both Houses, not merely the Senate. In any event, it may be asked, should the post-Convention view of one State be permitted to override the plain terms of Article IV.

(5) Hugh Williamson, a delegate to the Convention, wrote to Madison some nine months after its close, to recall to him "a Proviso in the new Sistem which was inserted for the express purpose of preventing a majority of the Senate * * * from giving up the Mississippi. It is provided that two-thirds of the members present in the Senate shall be required in making treaties. * * *"

A.G. at p. 7-8; 3 Farrand 306-307. The Mississippi presented a gnawing boundary question which threatened the expansion of the West and was only settled by the Louisiana Purchase. Boundary treaties do not really involve the disposition of territory or property of the United States but the adjustment of conflicting claims, even when some believe their claims to be more valid than those of the opposing party.

To my mind, the history is at best inconclusive; the remarks quoted by the Attorney General are confined to adjustment of boundary disputes, with one exception, by treaties of peace. Treaties of peace present special problems, and such citations do not add up to general concurrent jurisdiction over the disposition of government territory or property. To go beyond such territorial adjustments collides with the rationale of *Pierson v. Ray*, 386 U.S. 547, 554-555 (1967). With respect to the common law immunity of judges from suit for acts performed in their official capacity, the Court declared:

"We do not believe that this settled principle was abolished by Section 1983, which makes liable 'every person' who under color of law deprives another of his civil rights * * * we presume that Congress would have specifically so provided had it wished to abolish the doctrine."

Thus, the all-inclusive "every person" was held not to curtail an existing common law immunity in the absence of a specific provision. The more equivocal treaty-making power demands an even more exacting standard. Before it be concluded that it in any way diminishes the explicit grant to Congress of "power to dispose" of territory, a clearly expressed intention to do so is required. That requirement is not satisfied by the random remarks collected by the Attorney General.

The Attorney General concedes that:

"The specific power granted to the House of Representatives and Congress in fiscal matters (Article I, Section 7, clause 1 and Article I, Section 9, clause 7, money

bills and appropriations power) preclude making treaties self-executing to the extent that they involve the raising of revenue or the expenditure of funds. Were it otherwise, President and Senate could bypass the power of Congress and in particular of the House of Representatives over the pursestrings."

A. G. at p. 4-5. Now, sections nine and seven are couched in quite dissimilar terms. One, Section 9(7), is framed in terms of flat prohibition: "No money shall be withdrawn from the Treasury but in consequence of appropriations made by law. * * *" Section 7 (1), on the other hand, merely provides that "All bills for raising revenue shall originate in the House." Yet, the Attorney General reads Section 7(1) to preclude the President and Senate from "bypass[ing] the power of Congress and in particular of the House of Representatives over the pursestrings." What is there that distinguishes "All bills * * * shall originate in the House" from "The Congress shall have power to dispose. * * *"? The impalpability of the distinction is underlined by the State Department's concession that "treaties may [not] impose taxes." Nothing in this Article I, Section 8(1) "The Congress shall have power to lay and collect taxes" distinguishes it from the Article IV "The Congress shall have power to dispose. * * *"

If the President may not by treaty "bypass" the power of the House to originate revenue-raising bills, or the power of Congress to tax, no more may he "bypass" its "power to dispose" of the territory and property of the United States.

FORMER SECRETARY OF JOINT UNITED STATES-PANAMA LAND COMMISSION SPEAKS ON U.S. TITLE TO LANDS IN CANAL ZONE

Mr. HELMS. Mr. President, many people have been trying to perpetrate the myth that the United States somehow "stole" the Canal Zone or did not pay the fair value for it. The truth of the matter is that we paid Panama \$10 million in gold, and we paid France \$40 million for the improvements France had erected in its bankrupt failure to build a canal. We also paid all individual property owners in the Canal Zone for their individual rights.

Nor did we simply pay property owners who held authentic titles in the sense of Anglo Saxon law. We bent over backwards to insure that even squatters were paid for their improvements.

Mr. President, I know this is a fact because one of my constituents, Mr. J. C. Luitweiler of Tryon, N.C., now 87 years of age, was the secretary of the Joint Land Commission by means of which property owners in the Canal Zone were compensated.

He has written me an extremely interesting and important letter testifying to his firsthand knowledge of what transpired in this situation. The letter in itself is an historical document that contributes to our knowledge of those events.

I want to thank Mr. Luitweiler for taking the time to share with me his intimate knowledge of those historical facts.

I might also add, Mr. President, that every one of the titles thus transferred is registered in the U.S. district court in Balboa and is available there for inspection by any interested parties. I understand that duplicates are also in Archives in the United States. Let no one then say that we seized the territory and did not pay just compensation. The facts are otherwise.

Mr. President, I ask unanimous consent that the letter sent to me by Mr. Luitweiler be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

Hon. JESSE HELMS,
Washington, D.C.

DEAR MR. HELMS: I listened recently to your and Senator Thurmond's interview on Station 4 on the Panama Canal proposed treaty. There is so much published about this matter which is grossly inaccurate, that I'm glad you had this interview.

We didn't take or buy the Canal Zone from the Republic of Panama. By treaty with Panama we agreed to pay Panama \$25 million for the right to continue the construction of the Canal the French had started. In addition we made a deal with the French to acquire whatever rights they had. Ownership by our government of the land of the Canal Zone came about much later by reason of the terms of the treaty with Panama, which gave us the right to acquire by expropriation whatever land and property the United States considered necessary for the construction, maintenance and defense of the Canal. It wasn't until 1913 that Col. Goethals, the builder of the Canal, asked President Taft to invoke this provision of the treaty to acquire all of the Canal Zone land. The Canal Zone was flanked by an almost impenetrable jungle. Col. Goethals had the idea that allowing the Canal Zone itself to return to its original jungle state would be the best defense the Canal could have against outside attack.

So, again according to this treaty with Panama, a joint commission was set up, consisting of two Americans and two Panamanians, a judicial body to evaluate the value of the land and property expropriated. It was a procedure similar to the well-known right of eminent domain whereby an American state condemns land and pays the owners for it when it desires to put through a superhighway. There was nothing high-handed about this. In fact it had the whole hearted approval of the then government of Panama. The President of Panama appointed two outstanding Panamanians (incidentally who had been at one time presidential candidates) to be members of this Joint Land Commission. As a clear indication that it had the full approval of the government of Panama at that time, the President of Panama offered the Commission the use, without payment, of the legislative assembly hall for its court hearings, and additional quarters in the Panamanian government palace for the judges' chambers and offices for the Secretariat of the Commission. The writer of this letter was appointed by the two American and Panamanian members as the Secretary of the Commission. As Secretary he sat in all the court proceedings and attended the deliberations in the Commission's chambers and signed the many orders of payments "By order of the Commission". At the age of 87 I am perhaps the only one alive who has personal knowledge of these happenings.

Col. Goethals, in the building of the Canal, had virtually autocratic powers on the Canal Zone. When the American Commissioners first arrived from the North, he offered to provide the Commission quarters at his headquarters on the Zone. He had fully expected that the Commission would be under his thumb and would follow his dictates as did everyone else working in the Canal Zone. This was countered by Dr. L. S. Rowe, the first president named by the Commission, who told Col. Goethals that the Commission was a judicial body and in no sense under his direction. So the relations between Col. Goethals and the Commission from the outset were strained and became stormy as the year passed.

The first and underlying issue that arose was the question whether the Commission would apply the laws of the United States or the Spanish Civil Law which was the law of Panama. Col. Goethals had been advised by his attorney, Judge Feuille, that the thousands of squatters scattered over the Canal Zone had no title to their homes they had established and could be evicted at will by the Canal Zone authorities. Under American law squatters do not acquire title except after 30 years of adverse possession. Thousands of negroes from the Caribbean islands had come to work first for the French and had continued to work for the Americans. But there were few indeed who had been on the Zone for 30 years. In contrast, under the Civil Law of Panama squatters cannot be evicted except upon payment of the value of their improvements.

The Commission debated for a month or more this question whether they would apply the American law or the Spanish Civil law. The Panamanian members of the Commission were very able men. They spread before the two American Commissioners (both of whom spoke Spanish) law books to make their point that the Spanish Civil law should govern. The Americans finally accepted the Panamanians' views and it was announced that anyone living on the Canal Zone should be paid fully for what they owned before eviction. Moreover, once the Americans conceded the point, they went along with the Panamanians that the payments should be generous and also that humanitarian considerations should enter into the fixing of the award.

I can recall as though it were yesterday the rules they laid down. A mud thatch hut which can be erected almost overnight, should be given a value of \$50. Small

plantings of an orchard of a few banana and other fruit trees should be paid for with another \$50. If there was a wife and children, another \$50 should be added for each of them. And finally, if the squatter was a Panamanian citizen, the award should be doubled. To avoid cluttering the court's calendar with the testimony of thousands of small claimants, the application of this formula was delegated to the Secretary. After he had established the facts, the Secretary would present to the Commission the names of the claimants and the schedule of payments due him, which would be approved by the full Commission and the awards would be published: "By order of the Commission—J. C. Luitweiler, Secretary".

When the decision of the Commission first became known to the Zone authorities it aroused the wrath of Col. Goethals. Agents were sent out all over the Zone to evict squatters and burn down their homes. Another measure was taken, applied especially to small towns that had sprung up, to have the occupants of buildings sign leases that gave the lessor, the Canal Zone authorities, the right to evict tenants on short notice.

To counter these actions by the Zone authorities, the Commission's Secretary was authorized to employ agents of the Commission to canvas the Zone, taking the names of occupants of buildings and the primitive huts, note the number in the family and list their possessions. Most of the reports that came back to the Secretariat were very simple: Name and number of occupants and mud, thatch hut and a few banana trees.

There was of course the hullabaloo over this, but the Panamanian populace loudly acclaimed the Commission for its generous treatment of the evictees. Payments of the claims were duly and promptly honored the very day they were presented to the Zone's Disbursing Office. In total amount these small claims probably amounted to hundreds of thousands of dollars, but this was a pittance compared with the cost of the Canal project costing hundreds of millions.

Of course, the American members of the Commission and its Secretary soon became persona non grata to Col. Goethals. At the end of the year the Secretary, stricken with a severe case of malaria, was invalidated home. The two American members of the Commission resigned in disgust and went home also. The work of the Commission was still far from finished. So Col. Goethals had two other Americans named in replacement, men more of his own persuasion! The Secretary wasn't invited back! When this new Commission reconvened, there were some large cases on the calendar, such as a large cocoa plantation owned by an English firm, which the old Commission had had before it and had considered the amount of the claim exorbitant.

The new Commission quickly deadlocked. Pursuant to the provision of the treaty in such case the Spanish government was authorized to appoint an arbiter, which was done, naming a Spanish Admiral who had faced the Americans in the Cuban war. I do not know precisely what was the final outcome, but I'm sure it wasn't favorable to the Americans.

It should be clear from this recital that all the property on the Zone was expropriated and paid for by the U.S. Government. There was no "high-handed taking" of the Canal Zone. At the time the Canal was opened (1914), the Panamanians were very happy with the outcome. In subsequent years when I passed through Panama en route to South America on several trips I never heard any complaints that the Americans had mistreated Panama or its people. In fact, the Panamanians were the chief beneficiaries of the building of the Canal and the resulting commerce.

Cordially yours,

J. C. LUITWEILER.

OUR CONSTITUENTS ORGANIZE FOR THE CANAL TREATIES

Mr. CRANSTON. Mr. President, the breadth of the experience and political philosophies of supporters of the Panama Canal Treaties is very impressive. The membership of the recently organized Committee of Americans for the Canal Treaties, Inc. reflects this diversity among those who believe that ratification of the new treaties is in the best interests of the United States. Of the 157 committee members to date, just those currently or formerly of my State of California bears out this observation: Serving on the committee are

former President Gerald Ford, who currently resides in California; Los Angeles Mayor Tom Bradley; former Secretary of the Treasury George P. Shultz; the Honorable Shirley Temple Black; Lew Wasserman, president of MCA; businessmen and philanthropists Armand Hammer and Norton Simon; the Honorable William S. Mailliard, former U.S. Congressman from San Francisco and Marin County; and John Calhoun of Mill Valley.

I welcome the establishment of this committee and I am proud of the participation in it by Californians. This Committee of Americans not only demonstrates broad bipartisan support for the treaties, but will work actively to educate the American public about the treaties and their implications for the United States and Panama. A continuing educational effort is necessary, I believe, because a recent Gallup survey, reported in the Washington Post on October 23, 1977, revealed "a serious lack of knowledge about the treaties, with about 4 in 10 Americans aware that the United States has the right to defend the canal, only about one in four aware that the canal is to be turned over in the year 2000, and only about one in seven aware that aircraft carriers and supertankers cannot use the canal."

I am certain every Member of the Senate is aware of the tremendous interest in and need for information about this issue from the great number of requests from constituents for copies of the treaties and answers to specific questions about them. The first advertisement by the Committee of Americans for the Canal Treaties, Inc. begins this educational process by pointing out that, from Harry Truman and Dwight Eisenhower to Gerald Ford and Jimmy Carter, American Presidents have seen the need for a new Panama Canal Treaty:

Thirteen years ago, President Lyndon Johnson conferred with ex-Presidents Harry Truman and Dwight Eisenhower. They all agreed that a new treaty was needed to insure our country's interests in the Panama Canal as a secure passage-way from ocean-to-ocean.

Every President since—Republican and Democrat—has actively pursued this goal.

Our Presidents knew that a new Panama treaty would be in the best interests of every American and would make for a stronger America.

Ratification of the new treaties will prove a dramatic step forward in U.S.-Latin American relations, and enhance U.S. prestige around the world—while protecting our nation's real interests.

The treaties, now before the Senate, provide for continuous U.S. operation of the Canal—through a U.S. agency—until the end of the century. We will keep all the military bases we need to defend the Canal. And, starting with the year 2000, our permanent right to protect the Canal will continue.

Secretary of Defense Harold Brown, a vigorous advocate of a strong national defense, summed up his support this way:

"These treaties fully serve and greatly promote our national security interests. The Joint Chiefs of Staff share that view. These treaties deal with today's realities; and, they provide the security we need for the future."

Yes, the U.S. permanently retains the right to defend the Canal * * * and, the U.S. Navy will always go to the head of the line to pass through the Canal in time of emergency.

Like any nation today, Panama expects to exercise its sovereignty over all its territory. The new treaties meet Panama's just aspirations—while guaranteeing America's right to protect our real interests in an open, safe, and efficient Canal. The treaties will give Panama greater economic benefits from the operation of the Canal—but these benefits will come from Canal tolls and revenues, not from the U.S. taxpayer.

These are some of the reasons why the new treaties are supported by people throughout the country—from all walks of life and of different political philosophies. People like John Wayne, George Meany, General Matthew Ridgway, Wil-

liam F. Buckley, Jr., Vernon Jordan, Shirley Temple Black, Margaret Truman Daniel, General Maxwell Taylor, Governor Jerry Apodaca, James J. Kilpatrick, and Shana Alexander.

Mr. President, the broad and bipartisan membership of the Committee of Americans for the Canal Treaties, Inc., should be of interest to my colleagues. I ask unanimous consent that the list of members from the committee's advertisement be printed in the Record. I note that additional people join the committee daily.

There being no objection, the list was ordered to be printed in the Record, as follows:

COMMITTEE OF AMERICANS FOR THE CANAL TREATIES, INC.

Elie Abel
Amb. Charles Adair
Hoyt Ammidon
Hon. Robert B. Anderson
Robert O. Anderson
Gov. Jerry Apodaca
Gov. Reuben Askew
Hon. George Ball
Robert S. Benjamin
David Berger
Judge Harold Berger
Archbishop Joseph L. Bernardin
Bert Bernhard
Barry Bingham, Sr.
Hon. Eugene Black
Amb. Shirley Temple Black
William McC. Blair, Jr.
William Boeschstein
Mayor Tom Bradley
Edgar Bronfman
John W. Brooks
Hon. Philip W. Buchen
John Calhoun
Amb. Henry E. Catto, Jr.
Howard L. Clark
David Cohen
*Hon. William T. Coleman, Jr.
*Sen. John Sherman Cooper
*Gardner Cowles
Jan Cowles
Donald E. Creamer
J. Dewey Daane
*Margaret Truman Daniel
Richard Debs
Hon. C. Douglas Dillon
Peter Duchin
Henry A. Dudley
Amb. Angier Biddle Duke
James H. Evans
Amb. George Feldman
Hon. Thomas K. Finletter
Max Fisher
Peter Flanagan
Maj. Gen. Robert Fleming
President Gerald R. Ford
Michael V. Forrestal
Hon. Henry H. Fowler
Douglas Fraser
J. Wayne Fredericks
Gov. Orville Freeman
Hon. Peter H. B. Frelinghuysen
Richard M. Furlaud

David Ginsburg
Guido Goldman
William Gorog
Barry M. Greenberg
W. L. Hadley Griffin
Armand Hammer
*Gov. Averell Harriman
Pamela Harriman
Alexander Heard
Dorothy Height
Ben Heineman
*Andrew Heiskell
Jerold C. Hoffberger
Hon. Anna Rosenberg Hoffman
"Peatsy" Hollings
Maj. Gen. Jeanne M. Holm
William Hutton
Franklin A. Jacobs
Philip Jessup
Hon. Jed Johnson, Jr.
Vernon Jordan
Bishop Thomas C. Kelly
Bobbie Greene Kilberg
*Lane Kirkland
Nancy Maginnes Kissinger
S. Lee Kling
Hon. Philip Klutznick
John A. Knebel
Robert H. Knight
*Arthur B. Krim
Mayor Moon Landrieu
Lewis Lapham
R. Heath Larry
Mary Lasker
Harding W. Lawrence
Sen. Henry Cabot Lodge
John Loeb
Peter Loeb
Hon. Katie Louchheim
Hon. William S. Maillard
Hon. John McCloy
C. Peter McColough
Hon. Leonard H. Marks
Hon. John O. Marsh, Jr.
Burke Marshall
Dr. Benjamin Mays
George Meany
Helen Meyer
G. William Miller
J. Irwin Miller
Seymour Millstein
Clarence Mitchell
David A. Morse
Hon. Paul Nitze

Gen. Lauris Norstad
Paul O'Neill
*Hon. Peter G. Peterson
Jane Cahill Pfeiffer
Ralph A. Pfeiffer, Jr.
Rabbi Stanley Rabinowitz
Mary Louise Reid
Hon. Ogden Reid
David Reynolds
Gen. Matthew Ridgway
David Rockefeller
Hon. Nelson Rockefeller
Hon. William D. Rogers
Robert Roosa
Hon. Franklin D. Roosevelt, Jr.
Theodore Roosevelt, IV
Elspeth Rostow
Walt W. Rostow
James Rouse
Dean Francis Sayre, Jr.
Dore Schary
Arthur Schlesinger, Jr.
Benno Schmidt
*Sen. Hugh Scott
Gen. Brent Scowcroft
Irving Shapiro
George P. Shultz
Simon Simon
Jean Head Sisco
Joseph Sisco
Peter Solbert
Theodore Sorensen
Elizabeth Stevens
George Stevens
Roger L. Stevens
Ellen Sulzberger Straus
Hon. James W. Symington
*Sen. Stuart Symington
Arthur Taylor
*Gen. Maxwell Taylor
Walter Thayer
*Hon. Alexander Trowbridge
Martin Ward
Lew Wasserman
Thomas Watson
Glenn Watts
James Wilcock
Jerry Wurf
Mayor Coleman Young
Adm. Elmo Zumwalt

[From the Congressional Record—Senate, Nov. 8, 1977]

THE PANAMA CANAL TREATIES—NO. 24

Mr. ALLEN. Mr. President, in paragraph 6 of article IV of the Executive Agreement in Implementation of Article IV of the Panama Canal Treaty, the following language appears:

Since the Republic of Panama is a signatory to the Latin American Denuclearization Treaty (Tlatelolco), the United States shall emplace no type of nuclear armament on Panamanian territory.

In my judgment, Mr. President, this provision could have very great adverse effect on the strategic defense posture of the United States, yet this provision has been carefully salted away by our negotiators in this little-known clause in one of the many executive agreements, annexes to executive agreements, annexes to annexes, agreed minutes, protocols, exchanges of letters, and unsigned understandings which in sum contain the real meat of the Panama Canal Treaty rather than the provisions of the treaty itself. So, buried in this obscure executive agreement, which I doubt that more than a handful of people in the country have actually had an opportunity to examine—we find buried in this executive agreement a major military provision directly affecting the strategic defense both of the Panama Canal and of the United States.

Now, I am reasonably sure that the administration, and certainly the Department of State, would assert that this provision buried away here in this lengthy executive agreement could have no adverse effect on the defense of the United States or of the canal and, in fact, I have little doubt that representatives from the Department of Defense might readily parrot the same point of view. Certainly, the leadership down at the Department of Defense has shown no reluctance to follow precisely the lead of the Department of State; but, Mr. President, the Senate of the United States is entrusted with the duty of making an independent judgment with respect to all aspects of these proposed treaties, notwithstanding the various advocacy positions adopted by certain of the departments in the executive branch.

So we have a duty in the Senate to make an independent judgment, based on all of the information available to us, on the effect and on the potential effect of this peculiar and highly significant prohibition hidden away in this executive agreement of some 53 pages—longer than both treaties combined, Mr. President—and I am not even including in that page count this 53-page executive agreement. Sharp eyes, Mr. President, are required for this job, I can assure you, but there it is buried away in this executive agreement that the Latin American Denuclearization Treaty would prohibit the United States from having at any time any nuclear weapons in Panama or what is now the U.S. Canal Zone.

On October 31, 1977, this Monday just past, Mr. President, Egyptian authorities refused to allow the British nuclear submarine HMS *Dreadnought* to pass through the Suez Canal. This British nuclear submarine was on its way through the Suez Canal on an official voyage to visit Iran. The *Dreadnought* was part of a task force on this official visit of state.

You know, Mr. President, if you leave Great Britain by sea and you wish to go to Iran, the best route, rather obviously, is through Gibraltar, through the Mediterranean, through the Suez Canal, and on into the Red Sea and the Indian Ocean. You do not have to be much of a navigator to figure that out. But, Mr. President, the British nuclear submarine *Dreadnought* is not going to take that route because the Egyptians have let the British know that the canal is not open to the nuclear submarine *Dreadnought*. So, Mr. President, if the *Dreadnought* is still proceeding to Iran, then the *Dreadnought* is going around Africa, and Africa, Mr. President, is a right large land mass. Perhaps we here in the Senate could mark the progress of the *Dreadnought* if we could obtain that information. It might be interesting for us to follow her majestic voyage past the Canary Islands, around the Gold Coast, down into the Bight of Biafra, on around past the Congo, past Angola, past South West Africa, past Capetown, back up around Mozambique, past Madagascar and four or five other countries along the way, past Somalia, and back again where she would have been several weeks or months before at the entrance to the Red Sea—at the other entrance, Mr. President, to the Suez Canal.

So the *Dreadnought*, Mr. President, has got quite a voyage ahead of her—those nuclear reactors in the *Dreadnought* are sure going to work overtime, Mr. President—if she indeed wishes to represent the United Kingdom on this official visit to Iran. I would venture the guess, Mr. President, that the *Dreadnought* may find it impossible—nuclear reactor or not—to make her rendezvous there at the entrance to the Red Sea with the other ships of the Royal Navy in this task force en route to Iran. The *Dreadnought* is going to have to be a very amazing vessel to catch up with those other non-nuclear-powered ships that the Egyptians did permit to pass through the canal.

Now, Mr. President, I regret as much as anyone the embarrassment which must have been suffered by our good ally, the Government of the United Kingdom. I regret very much that HMS *Dreadnought* was forced to wait at the northern end of the Suez Canal for a period of several days while the rest of the Royal Navy Task Force she accompanied was allowed through the canal to complete this official visit to Iran. But, Mr. President, there is a lesson to be learned here for the United States. The lesson is a very clear lesson, and the lesson taught should be heard loud and clear.

Perhaps, therefore, Mr. President, it would be helpful to examine the position in this incident asserted by the Government of Egypt. Egypt, Mr. President, simply told the British that passage of nuclear vessels through the Suez Canal would be barred until the signing of an international agreement on safety measures and security guarantees for such vessels. That was it, Mr. President. That was, at least, the reason the Egyptians gave to the press. No prediction was made about when such an agreement might be signed nor about the number of nations which would be required to sign it. But one thing is sure, Mr. President, and that is that the *Dreadnought* did not proceed through the Suez Canal.

I would like to remind the Senate of the voyage of another vessel, the recollection of which I believe should be of value. I refer to the voyage of the battleship *Oregon* from the west coast of the

United States around the Horn of South America and on into the Atlantic and then the Caribbean where the *Oregon* played a vital role in the victory of the United States in the Spanish American War. There was no Panama Canal then, Mr. President, and every American was caught up in the excitement of the journey of this great warship as she progressed around the entire land mass of South America in an effort to reach the Caribbean in time to affect the outcome of battle in favor of our country. The cruise of the *Oregon* lasted 70 days, Mr. President, and while I am sure the *Dreadnought* is faster than the old *Oregon* and while I recognize that a different continent is involved, the principles are identical and the distances are equally overwhelming.

How long would it be, Mr. President, before the pro-Marxist dictatorship in Panama decided—should these proposed treaties be ratified—how long would it be before the Panamanian dictator decided that it would be convenient to interpret this executive agreement provision I have quoted so as to justify the prohibition of the passage of a U.S. nuclear-powered or nuclear-armed warship? The provision reads this way—and I quote it again because I believe this is an important point which cannot be overlooked, and I might say that I am going to make sure that it is not overlooked because it is a very important point—this provision reads as follows:

The United States shall emplace no type of nuclear armament on Panamanian territory.

How long would it be before the Panamanian dictatorship interprets the Spanish text of this provision as a prohibition on the passage of U.S. nuclear war vessels? How long would it be before this pro-Communist government in Panama decides that its adherence to the Latin American Denuclearization Treaty makes it imperative to divert all U.S. nuclear warships seeking to transmit the Isthmus of Panama? How long would it be, Mr. President, before this avowed ally of Communist Cuba determines, as have the Egyptians in the case of the British, that U.S. nuclear vessels may not pass through the canal until sufficient numbers of nations have signed some obscure international protocol on even more obscure alleged safety measures and so-called security guarantees respecting the passage of such ships?

On Saturday, Mr. President, I was honored to be the principal speaker at the launching of the nuclear submarine *Birmingham* (SSN 695). At that time, I expressed the hope that the *Birmingham* would be a symbol of our determination to resist tyranny and a symbol of the will and might of our good country. I addressed the distinguished guests, Mr. President, but I spoke to the workers in the shipyard when I said, "You have taken cold steel and made it live." I shared their pride in their great accomplishment, and I would share also their sorrow should they see the day when this magnificent vessel they constructed was turned away from her course by a petty gangster dictator who had obtained, through the ineptness and folly of our diplomats, a deathhold on our canal.

This is my final speech in a series of 24 speeches in this session of the 95th Congress, and I thank Senators for the attention they have given my remarks.

Mr. President, I ask unanimous consent that a wire service report under date of October 31, relating to the *Dreadnought* be printed in the Record, together with an article published in the San Diego Evening Tribune entitled "Admiral Opposes Canal Treaties."

There being no objection, the material was ordered to be printed in the Record, as follows:

CAIRO, Oct. 31.—Suez Canal authorities have refused to allow the British nuclear submarine *Dreadnought* through the canal at the request of the Egyptian Atomic Energy Commission, the semi-official newspaper Al-Ahram said today.

The report followed a statement yesterday by Egyptian harbor authorities denying any knowledge of the incident.

Al-Ahram quoted a senior Suez canal official as saying transit permission for the 3,588-ton *Dreadnought* had been refused because maritime regulations required ample prior notice and the request came at short notice.

The newspaper said Foreign Minister Mohammed Riad would explain the Egyptian position to the British ambassador in Cairo today.

It said Egypt had told all naval powers since 1974 that passage of all nuclear vessels through the canal would be barred until signing of an international agreement on safety measures and security guarantees for such ships.

The British defense ministry said yesterday that the *Dreadnought* has been at the northern end of the canal since Thursday when the rest of a royal navy task force en route to Iran for an official visit was allowed through the canal.

[From the San Diego Evening Tribune, October 1977]

ADMIRAL OPPOSES CANAL TREATIES

(By Adm. Horacio Rivero)

The central issue can be narrowed to two questions.

Is the Panama Canal important to the security of the United States?

Will the security requirements be satisfied if the U.S. cedes the canal and zone to Panama?

Some proponents of the new Panama Canal treaties have deemphasized the strategic and commercial importance of the canal and its current value to our Navy.

The President, for instance, stated to the press: "Any large ship, an aircraft carrier, for instance, can no longer pass through it" and "In the last 12 months only four or five Naval vessels" have transited the canal.

Ambassador Sol Linowitz, one of the treaty negotiators, in his speech before the American Legion convention August 19, 1977, stated: "It is no longer vital, clearly no longer as useful as it once was for the shifting of combat forces."

The President was obviously misinformed. For it is not "any large ship" but only the 12 attack aircraft carriers, out of a naval inventory of almost 500 ships, that cannot use the canal, and it is not its utilization in normal peacetime that is important to the Navy, but the availability of the canal for redeployment of naval vessels in time of war or in time of crisis or in anticipation of war, as the international situation may demand.

In time of need some of the attack carriers can be redeployed around South America at high speed, taking advantage of their high endurance; those powered by oil might be accompanied by a fast replenishment ship (AOE) to insure their arrival with a full fuel load, while the three nuclearpowered ones could proceed on their own at an even higher speed. It is for the other types of naval vessels—the cruisers, destroyers, submarines, frigates, amphibious and mine warfare ships and logistic support ships which constitute the bulk of the Navy and do not have the great endurance at high speeds possessed by the attack carriers that the canal provides the greatest benefits. Of course it would be desirable for the attack carriers to be able to use the canal also; this can be made possible in the future by enlarging the canal locks or constructing additional, wider locks alongside the present ones, a project of reasonable magnitude. A sea level canal is not only not required, but would represent a fabulously expensive solution which would result in a canal infinitely more vulnerable than the present one.

A Navy like ours, which has been reduced in size to the point that it cannot be described as a two-ocean Navy, must have one means for quick and timely transfer

of its ships from one ocean to the other, as demanded by strategic and operational needs. This is obviously important in wartime but equally important in periods of crisis or of international tension. The strategic mobility which is a characteristic of naval vessels and the ability to utilize this quality that we currently obtain from possession of the Panama Canal balance to a degree the risks inherent in the naval force level deficiencies. Without unquestionable assurance that the canal will be available under all and any circumstances, these risks would loom much larger.

The importance of the canal for "the shifting of combat forces" was well demonstrated in World War II and in the Korean and Vietnam conflicts. It has also been shown in time of crisis.

For instance, during the Cuban missile crisis, when military operations to remove the missiles by force were at one point imminent, it was possible to reinforce rapidly the Atlantic Fleet with a brigade of Marines from the Pacific, with their armament, ammunition, and full equipment, providing a most valuable addition to the Atlantic Fleet forces. If the canal had been in the hands of a government under Cuban or Soviet influence, or sympathetic to those countries, could the safe and timely passage of the ships have been assured in those circumstances?

To the opinion of Ambassador Linowitz is opposed that of four former chiefs of naval operations, one of whom had previously commanded the Atlantic and the Pacific fleets and later became chairman of the Joint Chiefs of Staff.

In their words: "Contrary to what we read about the declining strategic and economic value of the canal, the truth is that this interoceanic waterway is as important, if not more so, to the United States than ever." It is doubtful if any knowledgeable naval officer would dispute their view.

The commercial importance to the canal is also great but it is secondary to the military aspect. Ships with beam of slightly more than 100 feet cannot use the locks, but they constitute but a small fraction of the merchant vessels of the world. In any event, the passage of both merchant and war vessels in normal time of peace is a matter of convenience, in that it permits the saving of time and money. It is a different matter in time of war, or in preparation for war operations.

The question remains whether the security requirement can be equally well satisfied by a regime of control and occupation different from the existing one—that is if the canal is neutralized and placed under the control of another country and the U.S. military presence is removed, which are the stated objectives of the new treaties.

The proposed Panama Canal Treaty provides for assumption of sovereignty over the Canal Zone by Panama six months after final ratification, but until Dec. 31, 1999, the U.S. will have primary responsibility for the security and defense of the canal and is authorized to maintain forces in the Republic of Panama for this purpose. During that period the U.S. will be in a position to enforce its rights of passage, even if the current for a future Panamanian government should choose to interfere with them, although our ability to prevent or thwart violent action against our personnel and property and against the canal will be substantially reduced because of the absence of the protection of a U.S.-occupied and owned zone. Thereafter only Panamanian military forces would protect the Canal.

The Canal Neutrality Treaty would become effective concurrently with the Canal Treaty and provides that the canal shall be open, both in peace and war, to the war vessels of all nations without distinction, including those of nations at war with the U.S.

From that date the U.S. would not be able legally to deny passage to vessels that may pose a threat to the U.S. and after 1999 it would have neither the legal right nor the in-place military capacity to do so.

It is argued by the proponents of the treaties that their ratification, the elimination of the Canal Zone and the phasing out of the U.S. military presence would enhance the security of the canal and the assurance of its availability to all. In the words of Ambassador Linowitz before the House Committee on Merchant Marine and Fisheries: "The greatest danger to our security interest in the canal would be an effort to maintain and continue the present status." The implication is that it is the U.S. presence which gives rise to the security threats to the canal and that these threats would be reduced if the U.S. military presence were removed, and the canal neutralized.

The argument rests on the fear of sabotage and plots which might result from anti-American feeling generated by our continued presence in the Isthmus of Panama. Removal of our forces may reduce the causes of anti-American feeling, but will not necessarily remove the possibility of sabotage, either by disaffected Panamanians intent on changing their regime or by Soviet-inspired or other anti-American groups desiring to cause damage to the United States at a time of international

crisis or in time of war, or would it remove the external threat. Rather, it would increase the probability that any sabotage attempted or any external attack would be successful.

There is also in the argument the underlying assumption that the security interests of the U.S. would be served by permanent neutralization of the canal. It is clear that the security interests of the U.S. demand that the availability of the canal for its own ships be assured and that it be denied to its enemies.

This in turn demands differentiation between use by the U.S. and use by its enemies or potential enemies whenever, in the sole judgment of the U.S. government, the security of the U.S. requires it. Such differentiation is incompatible with the principle of neutrality, would be made illegal by the Neutrality Treaty and after 1999 would be impracticable for the U.S. to effect.

It is argued that in time of war, through rersort to "force majeure," the U.S. could denounce or ignore the provisions of the treaty and effectively deny passage to enemy vessels, with or without Panamanian acquiescence or concurrence. (No one has suggested that this might be done in time of tension or in advance of hostilities, to prevent redeployment of potentially hostile ships.) If Panamanian agreement is obtained and as long as U.S. military forces remain within Panamanian territory this would be readily possible. After 1999 it would be necessary to reintroduce military forces, not into U.S. territory where they now are, but into the territory of the Republic of Panama under Panamanian terms and after inevitable delays.

A more likely scenario is one in which Panama would not agree to abrogation or violation of the treaty either in time of war or in periods of international tension which might or might not lead to war but which would demand the taking of prudent measures of increased security, including the denial of passage to potentially hostile ships. This scenario is assured if Panama should be under a Communist, Communist-oriented or neutralist government, and may occur even with a nominally friendly government in power which may wish to demonstrate its independence of dictation by the U.S.

In such circumstances the U.S. would be forced to take military measures against Panama in Panamanian territory in clear violation of that country's sovereignty, under conditions where our forces stationed there would be at a decided disadvantage.

After 1999 a full-scale invasion would be required which would undoubtedly succeed but might well result in the canal being rendered unusable for a protracted period, since Panama would be in position to damage or destroy key installations, including the locks and Gatun Dam, if it should choose to do so, before U.S. forces could be introduced to provide protection.

It has been maintained by proponents of the treaties that the U.S. will retain the right to intervene at any time to protect the canal. A careful reading of the treaties will disclose that they contain no provision whatsoever for intervention. Article IV of the Neutrality Treaty contains the following wording:

"The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the canal shall remain permanently neutral * * *"

Even if this wording were to be stretched to imply a U.S. right to intervene, it could only be claimed to enforced neutrality—since Panama will be the sovereign, and in actual possession of the canal after a certain date, a request for intervention would have to originate with Panama.

[From the Congressional Record—Senate, Nov. 15, 1977]

PANAMA CANAL TESTIMONY

Mr. ALLEN. Mr. President, on October 28, 1977, the Subcommittee on Separation of Powers received the testimony of Mr. Karl Bendetsen on the subject of the Panama Canal Treaties. Mr. Bendetsen is well-known to many Senators, but I might mention that he was Under Secretary of the Army during the administration of President Truman and was for a period of many years Chairman of the Board of the Panama Canal Company. Mr. Bendetsen, after his service in Government, returned to private industry where he became chairman of the board and director of Champion International Corp., a company with facilities in many States and a company employing many thousands of American citizens. Mr. Bendetsen is both a lawyer and an engineer, and his life typifies the best in public service and private initiative.

Mr. Bendetsen's testimony before the Subcommittee on Separation of Powers is, in my judgment, the best existing statement of all of the facts which ought to be considered in assessing the Panama Canal Treaties. The study he has given to this topic is truly remarkable, and the contribution he is making to the public discussion of this issue is invaluable.

Accordingly, Mr. President, I ask unanimous consent that the statement of Mr. Karl Bendetsen be printed in the Record so that it will be easily available to the Congress and to interested members of the public.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT RE PROPOSED CANAL ZONE TREATIES

(By Karl R. Bendetsen)

I. INTRODUCTION

By way of introduction, between 1948 and 1952, I served as Under Secretary of the Army. Among my many duties was that of Chairman of the Panama Canal Company. By delegation from The President of the United States to the Secretary of the Army and from him to me, I was made the responsible agent for supervising the reorganization of the Canal Zone and its activities pursuant to an Act of Congress, Public Law 841, 81st Congress, 2nd Session (64 Stat. 1038) approved September 26, 1950. This Act, adopted under the leadership of former Congressman Clark W. Thompson of Texas, constituted the first basic change in the permanent Canal operating organization from that originally established in 1914 pursuant to the Panama Canal Act of 1912.

Under the Act of 1912, in time of peace, the Canal was operated on an appropriations basis, under a single civilian agency as an interoceanic public utility headed by a governor. In war, that Act placed the Canal Zone and all of its functions under the supreme control of the Commanding General of the U.S. Army on the Isthmus.

The concept of the Act of 1950 was significantly different from that of the Act of 1912. A new corporation was chartered by the Congress known as the Panama Canal Company. The Panama Railroad Company, a New York corporation, was merged into the Panama Canal Company. The new company was placed under the control of a Board of Directors under a Chairman. The President of the Company became the general manager of business operations on the Isthmus. The Governor of the Canal Zone serves ex-officio, as President of the Canal Company.

The Panama Canal Company was charged with the operation of all of the transit, tollmaking, navigational and commercial activities on a self-sustaining basis. It became the sole taxpayer and was required under the Act to fund all governmental

functions in the Zone which were strictly separated from the public utility functions.

Following my resignation as Under Secretary of the Army in the late fall of 1952, I was requested to remain as Chairman. This request was repeated by President Eisenhower in 1953 and I remained as Chairman until the end of that year when the pressure of my other obligations and those associated with the chairmanship of the Canal Company came into conflict, simply because of the unavailability of adequate time to do both.

I will first set forth briefly some important highlights bearing upon the historical background which culminated in the Isthmian Canal Convention between the United States of America and the Republic of Panama signed at Washington November 8, 1903. Having briefly described the streams of influence which converged in that Convention, I will then arrange a series of observations and comments relative to the pending Panama Canal Treaties.

Immediately upon ratification, and wholly without any consideration whatever, these treaties would:

- (a) Extinguish United States jurisdiction in the Canal Zone;
- (b) Terminate its juridical, legal and national presence there;
- (c) Terminate the all-inherent rights of the United States under the 1903 Convention;
- (d) Place all U.S. citizens there resident, including members of the Armed Forces of the United States and their dependents, under Panamanian jurisdiction;
- (e) Convey all U.S. right, title and interest in all of the land and all of the fixed installations and property there except for certain temporarily excluded properties; and
- (f) In thirty months, terminate all police power and all vestiges of governance, both executive and judicial.

II. HISTORICAL BACKGROUND

A. The treaty of 1846 with Colombia (New Granada)

On December 12, 1846 at Bogota, a new American chargé d'affaires, Benjamin Allen Bidlack of Wilkes Barre, Pennsylvania, acting entirely without instructions of any kind, on his own initiative, negotiated and signed a treaty. This treaty which he negotiated with the President of New Granada, Sr. Tomas Cipriano de Mosquera, proved to be critical and important. Its vital section was Article XXXV. Under the provisions of this Article, New Granada guaranteed to the United States the exclusive right of transit across the Isthmus of Panama (the State of Panama, a province of New Granada) "upon any modes of communication that now exist, or that may be hereafter constructed." In exchange, the United States guaranteed "positively and efficaciously" the "perfect neutrality" of the Isthmus and New Granada's rights of sovereignty there. It was this agreement by which the Panama Railroad was to be made possible.

The United States Senate did not act on ratification for a year and a half and then only when a new and special envoy was sent to Washington, the very able Pedro Alcantara Herran to lobby for the agreement. The Bidlack Treaty, as it has been commonly called, was Bidlack's only diplomatic triumph. He died seven months after the treaty was ratified. Prior to Bidlack's appointment as an envoy to Bogota, he had served briefly as a member of Congress.

B. The Discovery of gold in California and the war with Spain

Although there were dreams and visions of a waterway connecting the Atlantic and Pacific Oceans through some pathway across the Isthmus connecting North and South America, Central America nevertheless remained a backwater until January of 1848, when gold was discovered in California at Sutter's Mill.

There were only three routes to California. They were the Plains across, the Horn around, or the Isthmus over. Thousands chose the "Isthmus over." It was a bruising experience. Many never made it at all—neither the men nor the mules. Uncounted men died of snakebite, cholera, yellow fever and malaria, and of a thousand hardships and miseries. But on they came. After all, it was 13,000 miles around the Horn from New York to San Francisco. It was 5,000 miles by way of the Isthmus. Those who went from New Orleans to San Francisco across the Isthmus were to save 9,000 miles.

So it was the discovery of gold in California that first heightened intensively the interest of the United States in a route across the Isthmus. Ultimately, however, it

was not gold; it was the war with Spain and the dramatic voyage of the battleship *Oregon* from the west coast of the United States around the Horn. Our first true battleship, the *Oregon*, was in San Francisco when the *Maine* blew up in Havana harbor and victory in the Caribbean was said to depend on her. Every American was caught up in the excitement. She was a fine vessel and she got there in time to play a part in the Battle of Santiago Bay, but it took her almost seventy days. This was the great catalyst. But much was yet to happen.

C. The Panama Railroad

It was a man named John Lloyd Stephens who visited Nicaragua and the State of Panama. He became convinced that Panama was where the future lay. He organized the Panama Railroad Company, a New York corporation. The railroad was begun in 1850. It was finished five years later at a cost of \$8 million, six times beyond anyone's estimate. It was the world's first transcontinental railroad, the most expensive line on earth. A one-way ticket at that time was \$25 in gold. It was a bonanza.

Panama had been known as a pesthole since its earliest Spanish settlement. Horror stories came out of Panama as the railroad was pushed ahead. Probably more than 6,000 or maybe even twice that number died in the effort to build it. They died of cholera, dysentery, yellow fever, malaria, smallpox. There was then no cure known for any of them.

Thanks to Benjamin Bidlack and Article XXXV of his treaty, to U.S. initiative, the Isthmus at Panama was spanned. And the United States was obliged, as well as privileged, under the treaty to keep the railroad open and to protect it against all comers, by force of arms if need be. U.S. naval vessels customarily stood off at Colon and Panama City.

D. President Grant

Surprisingly to many who may still think that President Grant had no initiative, it was he who directed a series of practical investigations seeking to find the most advantageous route for an interoceanic canal. He considered such a canal absolutely essential to the future of the United States and of great benefit to the whole world. Grant authorized and directed under the leadership of Admiral Ammen (a friend since boyhood) seven expeditions to Central America between the years 1870 and 1875. Throughout the nineteenth century there had been many theoretical and conjectural claimants to knowledge about where a canal should be built but none of them really knew what he was talking about. Remarkably however, as early as 1552, a Spanish priest designated Panama, Nicaragua, Darien and Tehuantepec as providing the best choices. Among these, he thought Panama and Nicaragua to be favored. The Grant expeditions were carefully done. President Grant commended to the people of the United States "An American Canal, on American soil."

E. The French effort

Much has been written about the French effort led by Ferdinand de Lesseps. He was the hero of Suez, a sea-level canal bearing no real relationship to the gigantic problems at Panama. He organized an International Congress which met in Paris in 1879 to consider an Interoceanic Canal. The Congress wrestled with the problems of which route and whether it should be a sea-level or a lock canal. However, de Lesseps "railroaded" through a decision for a sea-level canal, despite the fact that a French engineer, Adolphe Godin de Lepinay, presented a plan for a lock canal which turned out to be almost exactly the precise canal which the United States ultimately built. It was his plan that was eventually adopted in 1906 by John F. Stevens, the Chief Engineer of the Isthmian Canal Commission appointed by President Theodore Roosevelt. Congress by an Act approved June 29, 1906 formally approved the recommendations of John Stevens after protracted and lively debate on the merits of Lepinay's concept.

The French effort collapsed in 1889 and the Panamanian Isthmus returned to the jungle.

F. The canal at Panama was second choice

In 1899, the United States established the Isthmian Canal Commission for exploration purposes. Rear Admiral John G. Walker was President of the Commission.

The objective was to recommend a route somewhere across the Isthmus as well as the type of canal to be built.

Nicaragua was recommended. It had popular support across the United States and very strong support in the Congress, particularly in the Senate under the leadership of then Senator Morgan.

G. The Spooner Act

A period of intensive struggle known as the Battle of the Routes was waged. Finally, however, Congress on June 28, 1902 passed the Spooner Act to provide for the construction of a canal connecting the waters of the Atlantic and Pacific Oceans. This Act favored the route across the Province of Panama.

The President of the United States was directed to acquire from the Republic of Colombia "perpetual control of a strip of land" not less than six miles in width from the Caribbean Sea to the Pacific Ocean and thereupon to excavate, construct and "perpetually maintain, operate and protect thereon a canal," which would afford convenient passage of ships of the greatest tonnage and draft then in use. The President was also directed to provide for the perpetual maintenance and operation of the Panama Railroad and to have "jurisdiction over said strip and the ports at the ends thereof to make such police and sanitary rules and regulations as may be necessary to preserve order and preserve the public health thereon and to establish judicial tribunals as may be agreed upon thereon as may be necessary to enforce such rules and regulations."

When the French effort collapsed, a new French company was created by the French to obtain what might be salvaged out of the wreckage of the French effort. The name of this company was the New Panama Canal Company (*Compagnie Nouvelle*). The Spooner Act provided in Section 3, that when the President had acquired the necessary territory for the United States from the Republic of Colombia, he was authorized to pay the French company \$40 million for its rights and equipment and "to the Republic of Colombia such sum as shall have been agreed upon."

It is important to recall however that Section 4 of the Spooner Act provided for an alternative. If the President proved to be unable to obtain for the United States "control of the necessary territory of the Republic of Colombia" he, *the President*, was authorized to obtain control by treaty of the necessary territory from Costa Rica and Nicaragua for the construction and the perpetual maintenance, operation and protection of a canal via the Nicaraguan route.

There followed the adoption of the Spooner Act, after months of arduous negotiation between then Secretary of State Hay and Tomas Herran, *charge d'affaires*, a very favorable canal treaty for the United States. The treaty was concluded and signed January 22, 1903 and ratified by the United States Senate on March 17 of that year. Colombia did not act.

Communications between Washington, D.C. and Bogota were difficult at best. It took three arduous weeks to reach Bogota over land and the cable connection was intermittent. The Colombian Senate was called into session on June 20, 1903 to consider ratification of the treaty. However, things did not go smoothly and the Colombian Senate ultimately declined to ratify the treaty. One of the reasons not generally understood was because the rights of the New Panama Canal Company (*Compagnie Nouvelle*) were due to expire in the course of several months and the Colombians naturally had in mind that upon the expiration of those rights, Colombia would be eligible to receive the \$40 million payment scheduled to go to the French company in addition to the \$10 million specified in the pending treaty.

It is important to underscore here clearly that the treaty called for a payment of \$10 million and an annuity of \$250,000. Many people have called this annuity rent and many members of the State Department have currently so described the annual annuity as rent. It is not. The \$250,000 payment was to be made in lieu of the annual annuity paid to Colombia by the Panama Railroad Company which was itself to be acquired by the United States. It is this same \$250,000 annuity, later increased to \$2,300,000 which has been paid to Panama.

There were a number of unfortunate misunderstandings between Colombia and the United States which also contributed to the rejection of the treaty. Herran so devoted himself to bringing the ill-fated Colombia treaty to a successful conclusion that sheer exhaustion cost him his life.

H. Was the Panama Canal Treaty forced upon Panama?

A great body of outrageous propaganda has been fabricated and a web of falsehoods has been spun by the Department of State and loudly declaimed by Panama's dictator, all designed to generate false impressions—impressions which many people erroneously entertain.

These false notions are that the Canal Zone was wrested from the Panamanians under duress; that the U.S. Naval forces were brought to bear to obtain the treaty with Panama by which she ceded the Canal Zone in perpetuity. The State (or Province) of Panama seceded from Colombia eagerly and avidly. The leaders knew what they were doing. They sought their own enrichment and the vast benefits they knew would accrue to the new nation by selling and ceding the Zone in perpetuity. They were zealous in their efforts to dissuade the United States from dealing with Nicaragua and Costa Rica to acquire a Canal Zone and construct a canal across the Isthmus there. She seceded. The United States recognized the Republic of Panama. The United States sheltered and defended the fledgling Republic from Colombia after secession.

It is errant nonsense to contend that force was used against the State of Panama soon to become the Republic of Panama to secede from Colombia. It is total fabrication to assert that the Panamanians did not want the treaty.

It is true that Dr. Manuel Amador and Sr. Federico Boyd raised initial objections; it is true that Secretary of State Hay observed that there are provisions to which some Panamanians might object and it is also true that on behalf of Panama the treaty was not signed by a Panamanian. What treaty between nations has ever been unanimously hailed? Very few. This one was unanimously ratified by the Panamanian Parliament before the United States Senate did—Amador and Boyd joined.

I. Was Panama under duress?

Eight men made the Republic of Panama. They were Joé Augustin Arango, Dr. Manuel Amador, Federico Boyd, Nicanor de Obarrio, Carlos C. Arosemena, Manuel S. Espinosa, Tomás Arias, and Ricardo Arias. They knew that following the rejection by the Colombian Senate of the Treaty which had been negotiated with Colombia, the United States would switch rapidly and inexorably to the favored Nicaraguan route.

These men, all citizens of Colombia, resident in the State of Panama, desired for themselves and their associates the enormous and continuing benefits to be derived from the United States, from the payments that would be made, the mighty undertaking of construction and the successful operation of the canal. The first meeting of the movement to secede was held July 25, 1903. Following this, Arango, Amador and Arosemena became the nucleus of the conspiracy against Colombia. The people of Panama had a low regard for the government in Bogota.

It should be remembered that under the treaty with Colombia of 1846, pursuant to Article XXXV, the United States had a duty to guard the neutrality of the Panama Railroad. The conspirators never had direct word from any agent of the United States that if they conducted a revolution and seceded from Colombia they would be protected from an attack from Colombian troops, but they believed that this would be the case, as indeed it was.

On November 2, 1903, Commander Hubbard, the Captain of the U.S.S. Nashville, received secret and confidential orders via the American Consul at Colon to:

"Maintain free and uninterrupted transit. If interruption threatens by armed force, occupy the line of the railroad. Prevent landing of any armed force with hostile intent, either government or insurgent, either in Colon, Portobello or other point. Send copy of instructions to the senior officer present at Panama on arrival of U.S.S. Boston. Have sent copy of instruction and have telegraphed Dixie to proceed with all possible dispatch from Kingston to Colon. Government force reported approaching Colon in vessels. Prevent their landing if in your judgment this would precipitate a conflict. Acknowledgment is required."

The uprising occurred at 6 p.m. on the evening of November 3, 1903. The presence of the ships of the United States standing off Panama and Colon prevented Colombia from retaking the Province of Panama. The Panamanians had seceded in order to obtain the Canal and the beneficence of the United States. No pressure had been applied to them at any time. No United States troops were landed. Some Colombian troops joined the rebels. The others voluntarily withdrew. There was no engagement. No shots were exchanged or fired. 30The conspirators now having formed a provisional government designated Philippe Bunau-Varilla as their "*Envoy Extraordinary and Minister Plenipotentiary near the Government of the United States of*

America." By November 8, 1903, he was installed in Washington ready to negotiate. The conspirators had designated Bunau-Varilla because they felt he was in a position to secure their objective. They were entirely correct. He served them well. They and he had a mutual interest in the outcome and so a pervasive understanding.

At the signing ceremonies of September 7, 1977, Torrijos observed of the 1903 treaty: "It was never signed by a Panamanian."—another blatant effort to generate false impressions and erroneous inference.

The treaty was signed by Secretary of State Hay and Bunau-Varilla November 18, 1903. Its text was cabled to the provisional government and also sent by ship. On November 26, 1903, the provisional government stated that the treaty would be ratified. It was unanimously approved by the provisional government of the New Republic of Panama on December 2, 1903, even though Amador and Boyd had previously and only temporarily been opposed to it for reasons which are not clear. The United States Senate ratified the treaty on February 23, 1904, by a vote of 66 to 14.

J. The treaty

The United States was empowered to construct a canal through a zone ten miles in width. Colon and Panama City were not to be a part of the zone. However, sanitation, sewerage, water supply and maintenance of public order in these terminal cities were placed under United States control. Four little islands in the Bay of Panama—Perico, Naos, Culebra, and Flamenco—were granted to the United States. In addition, the United States had the right to expropriate any additional land or water areas "necessary and convenient" for the construction, operation, sanitation or defense of the Canal. In return, the United States guaranteed the independence of Panama. The treaty granted to the United States "*all the rights, power and authority * * * which the United States would possess and exercise if it were the sovereign of the territory * * * to the exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.*" The State Department contends that this did not put the United States in the place of the sovereign. This amounts to stating that no nation—neither the Republic of Panama nor the United States is sovereign.

The questions of sovereignty and title were presented squarely before the United States Supreme Court in the case of *Wilson vs. Shaw*, 204 U.S. 24 when it ruled on these questions. In its opinion, the Court stated *inter alia*: "*It is hypercritical to contend that the title of the United States is imperfect and that the territory described does not belong to this nation * * **" The territory whereby the Canal Zone was ceded to the United States was ratified by an Act of Congress (33 Stat. 2234).

The Panama Republic had been born under the protection of the United States. It brought the conspirators what they most wanted not only for themselves but for all the people of Panama. Manuel Amador, its first president, inaugurated February 20, 1904, presided over what he described as boom times and an end to centuries of plague. A new nation had been born free of debt. It was a nation with an endowment in the form of \$10 million in gold. The government set aside \$750,000 for working capital; \$2 million for public works. Six million was invested profitably in first mortgages on New York City real estate, the income from which provided adequate revenues for the Republic.

III. THE PENDING TREATIES—THE PANAMA GOVERNMENT AND DEFENSE

A. What would be their immediate effect?

The American people thus far, to the extent that they have been informed at all, have been given the impression that the treaties would be gradual in application. In what amounts to the most important respect of all, in my opinion, this is not so.

If the Panama Canal Treaties were to be ratified by the United States Senate, chief among the immediate results would be:

(1) Article I would provide that the Isthmian Canal Convention between the United States of America and the Republic of Panama signed in Washington November 18, 1903 would be immediately terminated and totally superseded. Whatever rights in and to the Canal Zone which the United States would have following the effective force of the treaty would rest entirely upon new and limited grants made by Panama to the United States.

Clearly there is no moral basis on which to predicate Panama's demand for surrender of the Canal Zone and termination of the 1903 Treaty. Let us now turn to the practical aspects.

(2) The United States would acknowledge the Republic of Panama as sovereign over the territory of what is now the Canal Zone.

(3) The Canal Zone would cease to exist.

(4) United States citizens in the former Canal Zone (employees, military personnel and their dependents) would no longer be under United States jurisdiction. All of them would be under the civil and criminal jurisdiction of Panama. Unless waived by Panama, offenses by any of them would be tried and upon conviction sentenced by Panama.

(5) The United States would cease to have police power in the former Canal Zone.

(6) All police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection in the former Canal Zone will be provided by Panama. (United States pays ten million dollars per year for this, adjusted upward for inflation in Panama.)

(7) Defense of the Canal becomes joint under a combined Board of senior military officers of equal numbers of Panamanian and U.S. officers.

(8) The Panama Railroad and all other land and fixed properties (not specifically otherwise delineated in the implementary agreements for the life of the new treaty) become the absolute property of Panama at once. 30(9) Article III provides that the Republic of Panama, as territorial sovereign, grants to the United States the rights to manage, operate and maintain the Panama Canal in accordance with the terms of the Panama Canal Treaty and its related agreements.

(10) Article XI provides that upon the coming into force of the treaty:

"The Republic of Panama shall resume plenary jurisdiction over the former Canal Zone."

During a 30-month transition period, Panama would *permit* the authorities of the United States to have the primary right to exercise criminal jurisdiction over United States citizen employees of the Panama Canal Commission and their employees and over members of the United States forces and civilian components and their dependents:

(i) for an offense committed during the 30 months within the former Canal Zone and (ii) for any offense committed prior to the effectiveness of the treaty. For the 30-month transition period, the United States shall retain police authority and maintain a police force in the former Canal Zone. The courts may continue to function during the 30-month period except that such courts may not take any new civil cases but may only dispose of pending civil cases."

B. What about the transfer of property?

Article XIII provides that upon termination of the new treaty "The United States of America transfers, without charge, to the Republic of Panama, all right, title and interest the United States of America may have with respect to all real property including nonremovable improvements thereon, not already so transferred when the new treaty becomes effective."

The United States not only receives no compensation, it pays the Republic of Panama for having created the Canal. The treaty states that during the period the new treaty is in force, the United States will provide Panama with a "just and equitable return on the national resources which it has dedicated to the operation, maintenance, protection and defense of the Panama Canal." These payments from revenues require 30 cents per net ton adjusted upward for any increases in tolls over the years. This would amount to from \$50 to \$60 million per year. In addition, a fixed annuity of \$10 million which will constitute a fixed expense of the Panama Canal Commission—over and beyond this, an annual amount of \$10 million additional to the extent that operating revenues exceed the expenditures of the Panama Canal Commission. If in any year the expenses do exceed the revenues, this unpaid additional \$10 million or any unpaid portion thereof is cumulative, and so that in any year when the operating surpluses exist, such surplus shall be applied to the cumulative backlog. What Panamanian resources?

C. What about defense?

Article IV—Protection and Defense appears to stipulate that the United States during the life of the treaty has the primary responsibility to protect and defend the Canal. As stated above, defense is to be joint. It will NOT be as it is now.

The rights of the United States to station, train and move military forces within the Republic of Panama are very specifically limited by another agreement. This agreement is entitled *"Agreement and Implementation of Article IV of the Panama Canal Treaty."* This collateral agreement which is not called a treaty but which

nevertheless would be carried into force by the treaty defines the legal status of our armed forces, the use of areas and installations and the movement of our forces.

With respect to our armed forces, Article VI of this collateral agreement provides *inter alia* the authorities of the Republic of Panama shall have criminal jurisdiction over the members of the Forces (U.S. Armed Forces), the civilian component thereof and their dependents. Within the perimeter of a defense site, offenses committed by such personnel which are criminal acts according to the United States law are by permission of the Republic of Panama subject to the United States. In other cases, Panama also would agree to waive, subject to review, criminal jurisdiction when an act committed off the base is solely against the property or security of the United States.

Acts committed off the base arising out of an official act or an omission in the course of an official act are subject to Panamanian criminal jurisdiction unless waived. The joint committee will review a certificate of the United States that such an offense was committed in line of duty but there is no provision as to what happens if the joint committee does not agree. Quite obviously, the offense would be subject to Panamanian criminal jurisdiction.

The agreement and implementation of Article IV with certain exceptions is not unlike agreements entered into by the United States governing "Status of Forces" with nations in which we have stationed our forces on bases in a host country, such as for example the Philippines or the Federal Republic of Germany, Italy or Spain, and to some extent the agreement with Japan. Such agreements can work only if the host country so wishes and so desires. In reading this long supplemental agreement of XXII Articles, it would require an exceptional abundance of goodwill on the part of Panamanians to work at all.

Some provisions such as Article XVIII are somewhat ludicrous, for example. It provides that the United States may furnish educational, sanitary and medical services to the members of its armed forces, their civilian components and dependents. For the most part, it is we who have undertaken to teach sanitation to the Panamanians and it is quite difficult to understand why on a military base for the duration of the main treaty it must be by permission. I do not think this is the case in other Status of Forces treaties, some of which in the past I have negotiated myself for the United States.

D. Other defense aspects of importance

Of the fourteen military bases now in the Canal Zone, only four will remain available to the United States and these will be under direct Panamanian civil and political jurisdiction. As previously noted, Article IV of the agreement and implementation of Article IV of the treaty indicates that whereas the U.S. forces have responsibility for control of entry to defense sites, the Republic of Panama may share in the exercise of this control in a manner to be agreed upon in the Joint Committee. Any signs which delineate the existence of a defense site used by the United States are to be in English and Spanish and on each sign it will be necessary to say and state in both languages that "The sign is erected under the authority of the Republic of Panama."

The emplacement of any type of nuclear armament whatsoever is prohibited to the United States under paragraph 6 of Article IV of the agreement and implementation of Article IV of the treaty.

Even within defense sites, the Panamanian flag occupies the position of honor and is flown on each of them. Flying the flag of the United States is permitted but the joint committee will determine the manner of displaying the flags. *At the entrance to a defense site, only the flag of Panama will be flown.*

E. There is no right to intervene after treaty expiration

Much has been said by the State Department and by The President concerning longterm defenses. It has been unequivocally asserted that even following the expiration of the proposed new treaty, the United States will have the right to defend and protect the neutrality of the Canal.

It is alleged that a grant of right to the United States to this effect is contained in the auxiliary agreement entitled "Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal." *No such right is granted and no such right would exist authorizing the United States to intervene for the defense or the neutrality of the Canal after the pending treaty expires.* All it says in this regard is found in Article IV: "The United States of America and the Republic of Panama agree to

maintain the regime of neutrality established in this treaty, which shall be maintained in order that the Canal shall remain permanently neutral * * *."

F. What about enemy ships in time of war?

Whereas now in time of war, as in the past, the United States could deny entry and passage of the vessels of any nations with whom we might be in a state of war, once this treaty and its collateral and subordinate agreements have been ratified, no such right will exist. The proposed agreements specifically authorize the passage of the vessels of war and auxiliary vessels of any and all nations in peace or war.

Dr. Romulo Escobar Bethancourt declares that the United States has no right to deny passage to an enemy vessel. He denies that the United States has any right to guarantee the neutrality of the Canal. He denies that the United States may say when the neutrality of the Canal has been violated. He stated publicly:

"We did not want that with the excuse of neutrality, the United States would maintain a guarantee over the State of Panama. This was another cause of discussion that kept the negotiations detained until the United States gave up on the idea of having a guarantee of neutrality over the Canal."

United States officials say that we have some sort of an "understanding" with the Panamanians that Article IV means that the United States does have a "right." Dr. Escobar, the chief negotiator, and the real center of power in Panama says this is not so.

It will be recalled by many that Mr. Kissinger said that he had an understanding with the Soviets as to the meaning of a certain critical provision of the SALT I Treaty. It developed, however, that the Soviets denied that there was any such understanding and certainly did not restrain themselves from action respecting strategic weapons and missile sites that would have been a direct violation of the alleged "understanding."

G. Does this treaty generate friendly relations with Panama?

If we have opened up a new era of cordial relations with Panama, how is it that Dr. Escobar continues to defame and slander the United States before his own people in Panama at every conceivable opportunity? With combustible rhetoric he continually incites the students into confrontation and does so with regard to the period after the treaties take effect. He characterizes the United States as a reluctant and imperialist nation. On August 12, 1977, he advised these students that if they are disenchanted with what he described as some of the "ugly features" of the new treaties, they should strike out on their own. In this enlightening address, Dr. Escobar said to the students:

*"In the past when we set bombs against our oligarchy (in Panama), when we challenged the regimes established in our country we never asked anyone for permission, you have never asked anyone for permission * * *. When one wants confrontation, one puts his knapsack on his back, his bomb at his waist and goes to stage the confrontation."*

The United States personnel (military, civilian and dependents) will be totally subject to the sovereign power and jurisdiction of the Republic of Panama. Fixed installations and the property not temporarily and specifically otherwise designated will be immediately theirs.

There is nothing in any of the treaties that could possibly prevent the Panamanians from nationalizing the entire operation whenever it chose as did Egypt, contrary to its obligation in the case of Suez. When Britain, France and Israel undertook to enforce the commitments of Egypt, it was the United States that prevented these nations from so doing. We thus laid the foundation not only for what is happening to us now but for that which will lie ahead whenever the Panamanians consider it in their special interest to do so. The Panamanians largely despise the United States. They remember the precedent of Suez.

As noted, the treaty provides for joint defense under a joint Board composed of equal numbers of Panamanian and U.S. officers. No one is in command. As in all such cases, the host country which will also be the sovereign possesses the absolute power of decision. This would seem to place a high premium on friendly relations, shared objectives and philosophies, and an abundance of goodwill. Is it there? Consider the following:

At Fort Cimmaron, there is a Panama National Guard Training Center. The soldiers in training have a chant. Perhaps for them, it is similar, for example, to the chant of U.S. Army Airborne units: "Airborne, Airborne All the Way." It is different, however, in Panama. It goes like this:

"Que Muera Gringo
Gringo Abajo
Gringo Al Paredon"

translated into English, this means:

"Death to the gringo
Down with the Gringo
Gringo to the wall"

Mutual trust? Joint defense: A friendly climate with an abundance of goodwill? When Torrijos was returning from the treaty signing ceremonies convened with such fanfare, he had something else on his mind other than a feeling of warmth and cooperative friendship with the United States. The English translation of a message sent to Castro as reported by the Spanish news agency on September 10, 1977 follows:

"In returning to my country and flying over the sky of Cuba, I salute you with my everlasting friendship; I wish that the Cuban people under your well-aimed direction will continue its forward march towards progress. In Latin America, your name is associated with the sentiments of dignity that is channeled to the termination of all forms of shameful colonialism."

The friendly words of the head of the Panamanian government? Friendly to the United States, that is?

IV. OTHER VITAL CONSIDERATIONS

A. We are assured that the canal is or soon will be obsolete—not so

We are soothingly assured that the Canal in reality is obsolete and really is not important to our security or our economy. It is true that our thirteen largest aircraft carriers cannot transit the Canal. All the rest of our surface and undersea naval ships can do so and plans for future construction of frigates, cruisers and destroyers will all remain canal-configured.

The Canal is one of the four vital choke points of the world. The Canal as a U.S. waterway which we are free to use and deny to our enemies in wartime gives the United States a striking, strategic advantage that Russia can never have. Geography dictates that the Soviets divide their navy into four separate fleets incapable of mutual support or reinforcement. Only between the Indian Ocean and the Mediterranean via the Suez Canal can the Soviets shift warships as they frequently do.

We have relied heavily on the Panama Canal in every serious military crisis of the century as a means of concentrating our fleet in areas of greatest danger. We need the anchorage facilities there that we now have. We need the airfields there.

I have heard it argued that it is obsolete because supertankers cannot transit the Canal. Supertankers? No supertanker can even enter any port of the United States. Supertankers were designed expressly to go around the Cape of Good Hope. If we were relegated to Drake Passage around Cape Horn or through the Straights of Magellan through the Tierra del Fuego, a very hazardous route, our defense would be impaired as would our sealane life lines. Our Alaskan oil will go through the Panama Canal. Very large tankers, in fact most of the tankers afloat in the world, can transit the Canal. The first Alaskan oil cargo will shortly transit the Canal.

B. What do the Soviets say about the canal?

I quote from the edition of the Weekly Review of the Intelligence Digest of August 24, 1977 published by Intelligence International Ltd., 17 Rodney Road, Cheltenham, Gloucestershire, England:

"Perhaps the most revealing insight into Communist strategy involving the Panama Canal has come from a Soviet Army officer, a Major Sergel Yuworov, writing in the official Soviet military organ Red Star. As reproduced in the Cuban magazine Bohemia, Major Yuworov wrote: 'Due to its privileged location as the juncture between South America and the rest of the continent, including the Canal that permits United States warships to operate simultaneously in the Atlantic and Pacific, it—the Canal Zone—must be considered by the Soviet Union as a priority Zone. A second zone (from which to attack Panama) is the Central American Isthmus, located to the north of Panama. The Canal itself can be attacked as well from Colombia.' As a third choice, Yuworov points to 'converting Cuba, and implicitly Puerto Rico, into bases from which Moscow's plan can be consummated.'"

Quite a mouthful from a Soviet officer writing in the Red Army's official journal!

On the question of defense, it is absurd to say that by ceding the Canal to the Panamians, our capacity for defending the Canal and guaranteeing its security will be increased. With the property in the hands of an irresponsible government or a government dominated by Marxists as Panama's government is, it could decide to close the Canal to our ships of war, to our navy, and where would we be then? The proposed treaty as already stated specifically permits the ships of a nation in a state of war with the United States to transit the Canal.

C. Will the new treaty protect from or expose canal to sabotage?

One of the forcefully repeated arguments made by The President and the State Department is that if we do not surrender the Canal through this treaty, Panamanians will sabotage the Canal, whereas the new treaty will eliminate this hazard. Well, this type of reasoning should expose itself to real question. Sabotage by whom? There are far left radical students in Panama today who object to the proposed treaty and there was a crazed Panamanian in Stockholm who immolated himself simply because the treaty gives to the United States the right to manage it and underwrite the costs until 1999 and provides for a limited U.S. presence there. It is very difficult now to sabotage the Canal. It will not be difficult after the pending treaty is ratified and the Zone ceases to exist. It is almost impossible now. It will be easy if the treaty is ratified. Certainly after the treaty is approved, they would have a far better opportunity to sabotage the Canal than now when we give up substantially all of our police power in the Zone because there will be no Zone—it will all be Panama.

If Panamanians with or without the tacit approval of its Marxist-dominated government were to sabotage the Canal, it would cut off about 25% of Panama's gross national product. The indirect benefits flowing to Panama now are at this level. The Panamanians know that their livelihood depends upon the continued operation of the Canal as it stands now. Attempts at sabotage in the past have been thwarted by our own police and security forces which under this treaty we will no longer be able to maintain. So, in fact, for those radical students who consider the United States an imperialist power, as does Dr. Escobar, this treaty increases the opportunity for sabotage and surrenders a vital, strategic and tactical defense instrumentality of the United States which we cannot afford to surrender.

The Panamanians themselves have enjoyed nearly the highest standard of living on the average of any other nation in Latin or Central America due to the beneficence of the United States, and they know it. Most Panamanians who are fearful to speak out—they are afraid of their dictatorship—know that their government could not effectively operate the Canal anyway, but their lips are sealed by their fear.

D. Who is Omar Torrijos and how did he come to power?

Omar Torrijos did not seize power from the old oligarchy nine years ago. That coup was led by Majors Boris Martinez, a subordinate of Torrijos, who was kept innocent of the coup because of his excessive drinking problem. Major Martinez was an active, determined Communist.

When the Communist party of Panama, however, headed by Romulo Escobar Bethancourt, Juan Materno Vasquez and Marcellino Jaén decided on March 6, 1969 to purge Martinez, Jaén, who is married to Torrijos' sister Toya, persuaded Bethancourt and Vasquez to make Torrijos the head of the national guard, and later in 1972 the chief of government. Martinez was purged because he wanted to move too fast, faster than Bethancourt, the brains of the Communist party in Panama, thought they should move. He felt they could obtain much more by moving more slowly and not risk a countercoup.

Torrijos has been frequently described as the son of rural schoolteachers. This is correct. Both his mother, Joaquina, and his father, José have been identified as founders of a Communist cell in Veraguas Province. It is now the most powerful and influential cell in Panama.

Omar Torrijos was a member of the Marxist organization of "Young Veraguas" when he attended the normal school of the Province of Veraguas. Drew Pearson on November 19, 1968 later identified him as a member of the Communist party of Panama. During July 1977, a Soviet economic mission to Panama confirmed a treaty establishing a free zone for the Soviet Union in Panama. A discussion took place at that meeting in which the Soviets stated they would consider financing and constructing a new sea-level canal for Panama across the Isthmus.

E. What about a sea-level canal? Is one needed for defense?

Immediately after World War II, the idea of a sea-level canal was thought to have great urgency from a defense standpoint during the immediate reaction to the atomic bomb. Many studies since then have established that both a lock canal and a sea-level canal are obviously equally vulnerable to atomic attack and that both require extensive protection with air cover and sea forces, anti-submarine, surface and submarine. For all of this, we need the air fields in the Zone and we need the bases there over which we are surrendering control.

A sea-level canal across the Isthmus would be a foolhardy undertaking because of the geology of the Isthmus, let alone the nature of the Panama government. The uniquely intractable geologic formations were primarily the cause of the French collapse. It was only because of the superior capabilities and resources of the United States that we were able successfully to excavate the main channel known as the Culebra (Gaillard) cut. Not only that, it would be foolhardy to undertake it after this treaty goes into effect, if it does go into effect, given the characteristics of the Panamanian Marxist dictatorship with its axes with Moscow and Havana.

F. We should not agree to refrain from negotiating for and creating a new canal in Nicaragua

What is even more foolhardy about the treaty if it is ratified is that *we commit ourselves not to construct another canal between the oceans anywhere else during the life of the treaty. We also agree not to negotiate with any third state for a new route in the western hemisphere (Article XII).*

If the United States were to undertake to establish a canal which would accommodate vessels of deeper draft and broader beam, it should be created in Nicaragua, not Panama. The geology is different and though the distance from shore to shore is longer, the land bridge is no longer than the narrow neck of the Panamanian Isthmus. In Nicaragua, either a sea-level or a lock canal could be built.

Because of the Pacific sea snake and other marine life indigenous to the Pacific Ocean, a sea-level canal might well imperil the important food fisheries of the Atlantic. There is no mixing of the seas now.

G. Would this usher in a new era of cordial and friendly relations with all of the nations of Latin America?

The President, Secretary Vance, negotiators Bunker and Linowitz and other spokesmen endlessly repeat the theme that the proposed treaties would establish an era of good feeling, of friendly, cordial and constructive relations with all of the nations of the western hemisphere. There is no doubt that this is in fact NOT so.

These assertions have been made because of the presence in Washington for the signing ceremonies of most of the heads of government or chiefs of state of Latin America at President Carter's invitation extended through the Secretary General of the Organization of American States to attend the signing ceremony? Their presence is not evidence which supports these extravagant claims. Only four Latin American states have supported Panama's demand for this treaty. Torrijos knows it too. He has so stated.

In May of 1977, very likely around May 15, twenty Mexican women journalists visited Panama and were received by Torrijos. Among these journalists was one, Marlise Simons, a Dutch journalist now living in Mexico City. Ms. Marlise Simons was once on the staff of the Washington Post.

On May 19, 1977, the Washington Post printed a byline article by Marlise Simons with regard to the mentioned interview with Torrijos. *In it she quoted Torrijos as having stated to the twenty Mexican women journalists that he was supported by only four Latin American nations in his quest for the Panama Canal. He named them as Venezuela, Colombia, Costa Rica and Mexico.*

The news stories of these twenty journalists were widely reported in the Latin American press.

It is well known that the chiefs of state and heads of government of our Latin American neighbors do not feel themselves in a position to have declined the President's invitation regardless of their feelings regarding the proposed treaty. To my knowledge, to my certain personal knowledge, there are several Latin American states, the governments of which are against these treaties. They can hardly bring themselves to believe that the United States government could bring itself to do this. They consider that it will foster an increase and not a decrease in terrorist and subversive activities in their own states. They consider that Panama and Cuba form an axis with Moscow. They consider that their own security will be diminished by

these actions. I wish I could quote which nations, but it should be evident that I am not in a position to do so. I should add that they consider that these treaties will be followed by an insistent demand on the part of Fidel Castro that the United States abandon its naval base in Guantanamo. When one has in mind the Soviet view of the Caribbean Sea, the Panama Canal, the entire Isthmus, we would do well to avoid any action which would increase the pressure on the United States to abandon Guantanamo.

They cite an article in the Washington Evening Star of twenty years ago in May of 1957 which carried a story that the Soviet Union had launched a propaganda offensive against the United States and Central America to incite Panama into demanding control of the Panama Canal. It worked.

They wonder why Linowitz was appointed as a negotiator in view of his general reputation as favoring unilateral disarmament by the United States.

When Bunker and Linowitz returned from Panama in triumph to be received by President Carter on a Sunday, it was later learned that the treaties had not yet been drafted, and that there were great complexities and difficulties with language translation that would take many days before the general agreements which had been initiated could be put into treaty language. Yet within a few days after their return, it was announced that The President had read every word of the treaties and stated that he was well satisfied. *How could The President have read every word of nonexistent treaties?*

According to the World Bank, Panama's external debt is in excess of \$1,600 million. The rank and file of Panamanians have not benefited. Where has the money gone? Who are the principal lenders? And who did benefit?

In any event, Panama is close to bankruptcy. The proposal is that we yield to unjustified demands wholly devoid of any moral basis by a nearly bankrupt, Marxist-oriented, Communist-affiliated, Yankee-hating nation.

H. To whom is it proposed we surrender?

Is the Senate of the United States familiar with the recent statement of Marcelino Jaén, a Marxist and a member of the ruling Marxist triumvirate who installed Omar Torrijos? He is, as it will be recalled from the foregoing, a brother-in-law of Omar Torrijos. On July 19, 1977 when Panama signed an economic pact with the Soviet Union, he stated publicly and I quote:

"With the signing of this document that constitutes the final draft of an agreement in which the governments of the U.S.S.R. and Panama have participated, is an event of deep historic significance, not only for our country but for the American continent as well, who are always facing strong forces that represent a philosophy that is contrary to the destiny of Latin America."

Let us remember, it is not really Omar Torrijos, a man with a heavy drinking problem with whom we are dealing—it is Romulo Bethancourt Escobar, Marcellino Jaén and the Lenninist-Marxist party of Panama supported by Cuban agents of Fidel Castro with whom we are dealing. *It should also be noted that it was reported that during the negotiations with U.S.S.R. completed on July 19, 1977 as stated above, that there was an extended discussion on July 16, 1977 not only for the financing and construction for Panama of a new sea-level canal by the U.S.S.R. but also for the establishment of a Soviet naval base in Panama. In Article XII of the proposed treaty, it will be recalled, the United States may not negotiate with any other state to create a new canal. Panama undertakes NO reciprocal obligations.*

We are frequently admonished that we must appease the Panamanian demands or face violence. *In 1974, the then Ambassador of Panama to the United States said that if Panama is unsuccessful in its demand for the Canal and the Zone, "three will be no canal for anybody, not for us, not for the United States, not for the world."*

Is it not clear that we propose to surrender in order to appease? In so doing, we do not enhance our security and defense—we critically impair both. And we would create conditions wherein sabotage would be easy, whereas it is difficult—next to impossible now except by a transiting vessel.

I. What about Colombia?

There are those who say that if any nation has a reason to be critical of the United States it is Colombia by reason of the events of 1903. What should be realized is that in 1922 the United States and Colombia amicably settled their differences in a treaty negotiated during the Wilson Administration. Under it, Colombia obtained certain transit rights through the Canal and it referred to the Canal Zone *"title to which is now vested entirely and absolutely in the United*

States." Under that treaty, the United States paid Colombia \$25 million in five annual installments as an indemnity for the loss of Panama in return for Colombia's agreement to recognize the independence of Panama. The \$25 million was paid and accepted. Any legal question about our acquisition in 1903 was put permanently at rest. So also was any moral question.

J. Do we pay rent to Panama? Absolutely not

Members of the State Department and other government officials seeking to push the American people into a misunderstanding, hopefully to obtain ratification, cite as "proof" of the fact that the Canal Zone does not belong to the United States that the United States has always paid rent to Panama. The fact is—the United States is not and never has been obligated to pay rent. The \$250,000 per year required by the original treaty of 1903 was in lieu of the \$250,000 per year annuity which had been agreed to be paid to Colombia in the Hay-Herran treaty, in consideration of the grant by Colombia to the United States of the right forever to operate the Panama Railroad. Inasmuch as the Panamanian conspirators who seceded from Colombia were aware of this, they expected and received not only the \$10 million payment which Colombia would have received but also the \$250,000 railroad operating annuity which Colombia would have received. The annuity over the years has been increased but it is not and never has been at any time rent. It is now \$2.3 million.

K. What about the watershed which is essential to the operation of the lock system of the canal?

The canal lock system cannot operate without a constant and abundant supply of huge quantities of fresh water. These water sources are Madden, Miraflores and Gatun Lakes and the Chagres River. Protection of the watershed unquestionable and certain is indispensable to the future operations of the Canal. Without such assured protection, the requisite availability of vast amounts of flowing fresh water would vanish. Approximately two-thirds of this vital watershed lies in the Canal Zone itself. As you know, upon the coming into force of this pending treaty, the Canal Zone would wholly cease to exist and would become Panamanian property under its sovereignty and jurisdiction with small parts by permission of Panama set aside for use and occupancy by the United States in carrying out its "management contract" to operate the Canal until the year 2000 at the sole cost and expense of the United States.

The contiguous land area portion of this watershed lies outside the Zone in Panama. This important one-third portion of the watershed which lies outside of the Zone boundary has been virtually destroyed by a relentless assault on the flora. By whom? By Panamanian peasants and farmers living in these areas. The Government of Panama knows about this and does nothing about it. When the Canal Zone ceases to exist as it will, these assaults may well continue and be carried forward into the remaining two-thirds of the watershed. In that case, and there is nothing in the treaty to prohibit this, the jungle will disappear as it has in the other thirds and the Zonian two-thirds of this irreplaceable watershed will progressively become desertized as the contiguous one-third is becoming.

While Article VI entitled *Protection of the Environment* provides for a joint commission on the environment to be established with equal representation from both sides, the Commission only concerns itself with the implementation of certain provisions of the treaty and does not concern itself with that which would then be going on within Panama (in what was formerly the Canal Zone) as the implementation of the treaty by the parties relates only to those areas temporarily reserved for the use and occupancy of the United States for housing, for military bases, some training and for canal operations. This Article has no application specifically to the protection of the watershed, all of which will lie in Panama and none of which would come under the active care of either party once the treaty goes into force. These lakes and the river now in the Zone—those portions now in the Zone—would survive by themselves if left alone, but will not survive at all if they are treated in the same way as the portions of the watershed which have always been in Panama have been treated during the years since the Canal commenced operation. So the treaty has no protective environmental provisions in this regard—certainly no enforceable ones—and Article VI by its plain language clearly does not have this subject in mind.

L. What about the allegations of the vulnerability of the Panama Canal to sabotage or the threats of sabotage if the proposed treaty is not ratified?

On September 12, 1977, General Omar Torrijos said that the Canal "is as indefensible as a newborn baby." Is this true? The answer is "No, it is not true." Since 1942, the Canal has been provided with protective and with emergency devices capable of putting ships through the Canal even if every gate and every lock were to be destroyed. A bomb, a conventional bomb, that is, could not disrupt Canal traffic for an extended period of time. Neither could a ship which exploded within the locks stop traffic for extended periods. The dams also have special protection from outside attack. So long as the Canal Zone continues to exist, sabotage of the lock system is next to impossible in such a manner as to put the Canal out of commission for an extended period. When the Canal Zone ceases to exist, which it will upon the coming into force of this treaty, these protective devices will themselves become vulnerable. Present jurisdiction plus the included police power and the protective shield of the ten-mile wide zone are essential.

The treaty makes no provision for the continuation of the Zone in order to assure or more particularly to avoid the creation of a vulnerable situation which will arise when both the Zone and U.S. police power become extinct. The treaty, if approved, will extinguish both. This is a fatal flaw. Contrary to the contentions of the proponents, the continued existence of the Canal Zone and our jurisdiction assure the security of the Canal. The treaty will strip away that security and render the Canal vulnerable to the attack of saboteurs and terrorists.

M. The Protocol of 1914 to the 1903 treaty

If the proposed treaty is confirmed by the Senate, the United States will no longer have a treaty right to deny passage to belligerent ships. To the contrary, the United States will be obligated to allow such vessels to transit the Canal if they can reach its approaches. The United States now possesses that right and always until now considered it to be a valuable right. Soviet naval power is multiplying and over the last 25 years ours has been steadily diminishing both relatively and absolutely. Why would we then agree to forego this valuable treaty right?

On October 10, 1914, an agreement between Panama and the United States was signed whereby belligerent ships could be denied the use of Panamanian waters and Canal Zone waters. Ships using Panamanian waters would be denied the use of Canal Zone ninety days. This would make more attractive to such belligerent vessels to sail around the Horn.

This agreement indirectly had the effect of modifying the neutrality provisions of the 1903 treaty and I am told with the tacit consent to Britain with whom in 1901 the second Hay-Pauncefote Treaty superseded the first treaty upon assurance to Britain who surrendered her rights to construct a canal in return for a promise that ours would be neutral and open. *I might add, by the way, that the words of neutrality in the 1901 Hay-Pauncefote Treaty with Britain are not dissimilar from those incorporated in the neutrality treaty which the Administration contends gives the U.S. the right to intervene in defense of the Canal after the year 2000.* I have never heard anyone contend that the Hay-Pauncefote neutrality treaty with Britain in 1901 gave Britain the right to intervene in the Canal Zone which is U.S. territory. In an agreed minute to the principal pending treaty which minute has reference to paragraph 1 (c) of Article I (covering abrogation of prior treaties and the establishment of a new relationship) this 1914 agreement would cease to exist. It would be expressly abrogated and the United States would lose its existing treaty rights whereby belligerent vessels can be denied the use both of Panamanian and Canal Zone waters. This is a very important treaty right which should be preserved and carried forward perpetually.

N. The transfers of property and the payments to Panama

The proposed treaties would cede and surrender and transfer to Panama without consideration vast properties outright, including the Panama Railroad. This would be done immediately upon the coming into force of the principal treaty, if it is confirmed by the Senate. The Railroad is vital to Canal operations, maintenance and Canal emergencies. Also included in the immediate transfer to Panama and its sovereign jurisdiction to the exclusion of the United States would be all of the land areas of the Zone. These land areas which were ceded to the United States are U.S. territory subject to the exclusive right of the United States to exercise sovereignty over them. Not only that—lands within the Zone which was ceded by the 1903

treaty in perpetuity were later purchased by the United States from the individual Panamanian owners who owned land within the ten-mile wide Zone.

Between the coming into force of the treaty and the year 2000 and perpetually thereafter, all of these lands will belong to Panama from the beginning. The United States will have the use and occupancy, not the title, and no jurisdiction of limited small areas for housing and Canal transit operations in order to carry out "the management contract" which the United States undertakes in the form of this treaty—at its own sole cost and expense. The transfer of title is not delayed until the year 2000.

The Canal Zone immediately ceases to exist. We cede it lock, stock and barrel immediately. These valuable properties become Panama's free, including the important Panama Railroad which the United States should continue to operate so long as the United States has the obligation to operate. Certainly the Canal Zone as is in all respects, including U.S. jurisdiction, should remain intact until the year 2000.

Not only are lands an extensive operating asset given forthwith without any consideration whatsoever, but also under paragraph 4 of Article XIII, the United States is committed to pay annually over the 22-year period to Panama \$60 million or more out of revenues and \$10 million a year for the municipal services Panama will undertake to provide. *This latter \$10 million per year is indexed to the rate of Panamanian inflation!* This paragraph goes on to say that all of this is "a just and equitable return."

These payments which could aggregate \$1.6 billion over the 22-year period are in accordance with the treaties stated to be in addition to all of the other transfers of property which in and of themselves are made wholly without consideration to provide in accordance with paragraph 4 of Article XIII "a just and equitable return on the national resources which it [Panama] has dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal * * *". What management? What operation? What maintenance? What protection and defense? It should be borne in mind that these required payments which are cumulative may not be generated from tolls because in the year 1976 after increases in tolls between 1974 and 1976 of approximately 50 percent, the operations were in deficit. Unless tolls are increased still further by substantial percentages, which would not seem to be justifiable, and the tolls do not generate the payments that Panama expects and the treaty provides, the deficit will be paid nevertheless by the U.S. Treasury.

This means, of course, it will be paid by U.S. taxpayers; by your constituents out there—in the south, in the midwest, in the mountain states, in the far west, in the northeast. These people already have to be either very rich or very poor even to be sick or to help send their sons and daughters to college today. Not only that, of course the investment of the United States in the Canal Zone, presently between \$5 and \$6 billion, will also be on the backs of the U.S. taxpayers—never to be recovered as was intended by Congress and promised to the American citizens by the Act of 1950.

Traffic through the Canal is estimated to grow at 3 percent to 3½ percent per year. This percentage is very probably substantially below the rate of inflation which the United States will endure by reason of the monetization of the Federal deficits and therefore without substantial increases in toll rates, a growth of 3½ percent per year in the volume of traffic would not ever overcome the current deficit which will be further increased by these cumulative payments which over time would aggregate \$70 million per year. The treaty imposes upon the United States all of the burdens and accords none of the benefits. At the same time, it gravely impairs the security of the Canal, rendering it highly vulnerable to acts of sabotage whenever these seem to be in the interest of radical students of terrorists or of unstated Marxist reasons approved by Moscow.

There are no provisions to insure any sort of good faith performance upon the part of Panama. There are no adequate provisions to protect the operations there and adequately to secure the Canal during the 22-year period when the United States bears the burden at its own sole cost and expense under conditions wherein the United States assumes great responsibility but surrenders to Panama all of its authority. Panama becomes the exclusive sovereign over the entire area. It becomes the host country, the host nation. The United States has a management contract responsibilities without commensurate authority which cannot be successfully discharged.

O. What about the assertions that if this treaty is not ratified, the United States will face another Vietnam?

There have been repeated allegations from official sources in the Administration that the United States will face another Vietnam in Panama if the proposed treaty is not ratified. The President has stated that if the treaty is not ratified, he will defend the Canal Zone even if it requires 100,000 troops. At a later time, this figure was raised to a higher number. It was said that the Canal would be defended even if it requires 200,000 troops. Is there any validity to such allegation?

Panama is a relatively small country of approximately 1.5 million people. Its resources are limited. A major guerrilla war comparable to Vietnam is wholly beyond her resources. She could not mount such an operation unless she were to be substantially and continuously supplied with vast quantities of ammunition, weapon systems, communications equipment, an elaborate guerrilla command structure and huge numbers of personnel. These would have to be provided by another nation. Do the proponents of this treaty seriously assert that a major offensive of this nature would be launched against the U.S. Canal Zone, that is to say, against U.S. territory with the direct support of another nation or nations? By whom?

It is not clear that if some other nation or nations provided the support for such a major attack upon U.S. territory that it would risk the beginning of World War III? Does it not seem that it is an imposition upon the citizens of the United States to induce them to support the Senate of the U.S. in ratifying the proposed treaty by suggesting that the United States will face another "Vietnam War" in Panama if it is not ratified?

P. The proposed treaty cannot be considered in isolation from our past defeat in Vietnam and from other aspects of U.S. credibility

If we are induced to approve this treaty by a Marxist-dominated government, this would be another building block in the structure which the Soviets have been successfully and relentlessly erecting to fence in the United States and subject her to Soviet will. As every Russian knows, and as every member of the Politburo and Soviet Aparatchik believes devoutly, all non-Marxist social and governmental systems are anathema to the Soviet Union and the United States is the enemy. Somehow there are many people in the United States and seemingly within the government of the United States who apparently do not understand this. *They do not understand or appreciate that we are at the mid-stage of a shift in relative power and influence to the Soviet Union that is of historic proportions, and which promises, unless arrested severely, to have enduring significance.* The rise in Soviet standing in the world can be traced almost exclusively to the increase in relative Soviet military capabilities. *She has projected her power through Cuba to Panama.*

There are many other ways of dealing fairly and equitably with Panama as a neighboring state short of immediately surrendering the U.S. territory embodied in the Canal Zone and simultaneously terminating our jurisdiction there.

If we are induced by the will-o'-the-wisp of wishful thinking that Marxists can ever be appeased by the proposed treaty or by anything less than our surrender to their will, we will have crossed the Hubicon and will expose the Canal to whatever may be the Marxist design. Whether ratification is approved or refused will make no difference in Marxist objectives and designs. However, it will make a *quantum* favorable difference in the capacity of the United States to retain its independence if ratification is declined. The United States will have the respect of most of the nations in the western hemisphere and of western Europe and of our allies in the far east if we otherwise deal fairly and equitably with Panama while declining absolutely to surrender our territory as proposed by the pending treaties in reliance upon Marxist promises.

The proposed treaty is wholly against our national interest. The consequences will be wholly adverse. There is no such thing as world opinion. On the other hand we are being closely watched by our remaining friends and allies. To them the proposed treaty cannot be brewed in isolation. If confirmed, it will be viewed by friends, neutrals and foes alike as yet another U.S. surrender. No observer will regard it as an act of noble purpose and of magnanimity.

Q. If the canal is to be transferred to Panama on December 31, 1999 certain amendments are essential

If the Senate in its wisdom ultimately decides that the Canal should be nevertheless transferred to Panama at the end of 1999, then these considerations are vital: First, that the watershed be protected;

Second, the necessity for providing protection of the Canal from sabotage and acts of terrorism;

Third, the maintenance of the right to deny passage to belligerent ships;

Fourth, the necessity that the United States be free to negotiate for and build a canal elsewhere on the Isthmus;

Fifth, the requirement that the United States have authority commensurate with its responsibility between now and the end of 1999 which in turn requires that the Canal Zone and U.S. protection continue to exist until then. Neither the Canal Zone nor any of the fixed or operating properties should be given to Panama until the end of the 20th century.

Meanwhile, progressive measures would be taken to train and employ Panamanians so that at the end of the century Panama would man all positions and be in a position to take over. At that time, U.S. protection would come to an end. The Zone would be extinguished. All properties would be conveyed. Thereafter, the United States should be prepared to accept the Canal at risk and whatever other consequences might ensue. With these considerations in mind, the treaties should be amended as follows:

1. No transfers of jurisdiction, authority or property should occur until December 31, 1999 and the Canal Zone should remain intact, with all and in full the properties and the facilities, under the authority of the United States to the exclusion of the exercise of jurisdictional authority by Panama during the 22-year transitional period.

2. During this period and until December 31, 1999, the 1903 treaty as amended by amendatory treaties, minutes, notes, understandings and executive agreements prior to the signing of the proposed treaties and their minutes, notes and subordinate agreements would remain in full force and effect.

3. The treaties should be amended further to provide that Panama agrees that she will not grant or accord to any other nation any military, naval or air bases in Panama or in Panamanian waters and that she will not permit the stationing of naval, air or military forces or of quasi or paramilitary forces of any other nation in Panama or of such individuals or units, other than individual diplomatic personnel, except as agreed to by the United States during the transition period ending December 31, 1999.

4. Article XII, paragraph 2(b) should be deleted. The United States should be free to negotiate for and build an Isthmian Canal if it so desires outside of Panama.

5. The neutrality treaty should be amended to make clear that the United States may take such measures as it believes necessary for the defense of the Canal at any time after the year 2000 and to this end as in the case with other friendly countries, Panama should in the mutual defense interest of the parties, provide after the year 2000 air, naval and military bases in order to give meaning to the defense of the Canal following its surrender at the start of the year 2000.

6. The treaties should be further amended for the payment of an increased annuity to Panama during the transition period but no other payments should be made. Accordingly, Article XIII, paragraph 4, should be deleted. 307. Specifically, the protocol of 1914 which provides the United States with treaty rights to deny belligerent ships of any class or nature, whether warships supporting logistic ships, maintenance ships, fleet trains, etc. the use of the waters of Panama and of the Canal, should remain in full force and effect. To this end, the treaty should be amended so as to strike the provisions by amending Article I, paragraph 1, as follows:

Strike the words "Upon its entry into force," substitute therefor "On January 1, 2000."

Strike Articles III, IV, V, VII, VIII, IX.

Amend Article X by striking paragraph 1 thereof and substituting therefor the following: "During the transition period ending December 31, 1999, the United States agrees to provide for an orderly phasing-in to all positions of Panamanians so that as of January 1, 2000 all operations will be conducted by Panama and by Panamanian employees or other personnel hired by Panama. To this end, the United States will progressively establish during the transition period employment and labor regulations which will contain terms, conditions and prerequisites for all categories of employees of the Panama Canal Company whose positions will be fully absorbed when the Panama Canal Company ceases to exist on January 1, 2000.

The foregoing amendments necessitate in addition that the following additional amendments be made in order that all remaining provisions be compatible with each other:

Strike Paragraph 8 of Article X.

Strike from Paragraph 9 of Article X the words "Panama Canal Commission" wherever it appears therein or elsewhere in the treaty and substitute "Panama Canal Company."

Strike Article XI.

Strike Article XII.

Strike Article XIII.

8. Add an additional Article providing that all minutes, executive agreements, implementation agreements, letters of understanding and all other understandings associated with the pending treaties, including the agreements and implementation of Article III and Article IV are to be set forth in detail as an attachment to the proposed treaties and incorporated by reference in the Panama Canal Treaty so that any and all amendments to any of the foregoing will require the advice and consent of the Senate of the United States of America.

V. RECAPITULATION

A. While the treaty of 1903 was not signed by a Panamanian as Torrijos stated during the signing ceremonies in the Pan American Union on September 7, 1977, it was signed by a duly appointed *Minister Extraordinary and Plenipotentiary* designated by the government of the New Republic of Panama, namely Philippe Bunau-Varilla. The Panamanian government ratified the treaty December 2, 1903. The United States Senate did not ratify it until February 23, 1904.

B. Thereafter, Tomas Arias, the Secretary of the new government of Panama sent a note to the United States government:

"The Government of the Republic of Panama considers that upon the exchange of ratifications on February 26, 1904 of the treaty for opening an interoceanic canal across the Isthmus of Panama, its jurisdiction ceased over the Zone."

C. As cited above, in 1907 the U.S. Supreme Court ruled that the Canal Zone was "ceded" and that the United States owned it absolutely.

D. The presence of the U.S. Naval forces off of Colon and Panama City were to prevent the landing of Colombian troops. No United States troops were landed. Panama was neither under duress nor coerced. It sought independence and avidly sought the treaty. In fact, some Colombian troops joined the Panamanians.

E. In 1936 and 1955, the 1903 treaty was expressly reaffirmed in further treaties which made certain minor adjustments to the treaty of 1903. The amendatory treaties were duly ratified.

F. One expects remarks from Torrijos such as he made during the September signing ceremonies that "United States recognized the need to correct an error instead of prolonging for an eternity an injustice and to correct an historical mistake." This is the kind of language he uses to fire up his people.

What error? What injustice? What historical mistake?

Where would Panama be today were it not for the events of 1903? Probably still a part of Colombia. If thinking Panamanians were really aware of their history, they would feel gratitude toward the United States. Both Panama and Colombia have derived tremendous benefits from the Canal. So has the rest of the world.

G. Shortly after the Wilson Treaty with Colombia mentioned above which was not ratified until 1922, and sometime during 1923, Charles Evans Hughes, then Secretary of State, said

"It is an absolute futility for the Panamanian government to expect any American administration, no matter what it is, any President, or any Secretary of State, ever to surrender any part of these rights which the United States has acquired under the treaty of 1903."

H. CLOSING SUMMARY

Congress in 1902 in the Spooner Act empowered President Roosevelt to acquire from Colombia land across the Isthmus of Panama for a ship canal if Colombia would grant perpetual control.

A treaty for a 10-mile wide zone was negotiated by the plenipotentiaries of Colombia and the United States but the Colombian Senate rejected the treaty in August of 1903 for several reasons cited heretofore. Later on, when it was too late, Colombia wanted to accept it.

On November 3, 1903, Panama, a restless province of Colombia, started a revolution, wholly bloodless as it turned out. President Roosevelt, to protect the Panama Railroad and to protect American citizens from imminent violence, kept Colombian troops at a distance with a nearby show of gunboats and marines. No United States forces were landed. Some Colombian troops joined the revolution.

A new Panamanian government was formed on November 4, 1903. Two days later, on November 6, 1903, Secretary of State John Hay officially recognized the

Republic of Panama. No pressure whatsoever or of any kind had been put upon Panama by the United States.

On November 18, 1903, Secretary Hay concluded and signed a treaty with the Panamanian Minister Extraordinary and Plenipotentiary in Washington, D.C. on substantially the same terms and on identical money terms previously offered Colombia. It guaranteed the independence of Panama.

The treaty was unanimously ratified by the new Panamanian government on December 3, 1903; the U.S. Senate gave its advice and consent to the treaty on February 23, 1904.

The United States under the treaty paid \$10 million for the 10-mile wide zone across the Isthmus and an annuity for the right to operate the Panama Railroad (as explained heretofore—not in any sense rent) of \$250,000. This annuity was increased in a 1955 treaty to \$2,300,000. The treaty describes the zone as “lands granted” to the United States. Panama has repeatedly stated that the zone was “ceded.”

The U.S. Supreme Court in 1907 ruled the Canal Zone was ceded and that the United States had perfect title.

Under Articles VI and XV of the 1903 treaty through a Joint Commission, the United States bought the land from the owners of the land within the Zone and acquired title in all cases in fee simple. Substantial amounts of money were paid to these owners.

Having first rendered the disease-infected Canal Zone habitable by a three-year sanitation program that conquered both the death-dealing yellow fever and malaria (largely) the United States completed the Canal in 1914 at a then cost of \$366,650,000. The first ship passed on August 3, 1915. The United States has an investment there now of approximately \$6 billion.

In 1922, Colombia, the nation that felt aggrieved by the events of 1903, made a complete settlement fully adjusting all differences in a treaty negotiated during the Wilson administration and ratified in 1922 for which the United States paid Colombia \$25 million.

Before closing, I comment on the report concerning the alleged bugging of the Panamanian negotiations. There was no finding that such did NOT occur. If it did and if pressure was applied by the Panamanians to Bunker and Linowitz upon discovery of the bugging by the Panamanians, who could be naive enough to suppose that either Bunker or Linowitz would reveal that they have been blackmailed into proposing the pending treaties and implementing agreements in their present form? Incidentally, the latter can be freely amended so as to modify the treaties themselves once the treaties are ratified.

During his 1976 campaign, President, then candidate, Jimmy Carter, stated unequivocally:

“I would never give up complete control or practical control of the Panama Canal Zone.”

The proposed treaties would immediately extinguish all U.S. control, practical or other. Panama would forthwith become the sovereign, exercising all sovereign power and control. Sovereign power and control are inseparable. If we surrender power as the treaty provides, we lose control.

In effect, we have a management contract at our expense for the next 22 years with the same responsibilities we now have for canal operations but with no control or authority. The latter would be vested in the host country—Panama—as it always is. Over that period, we have the privilege of disbursing to them somewhere between \$70 and \$80 million per year while underwriting all costs of operation, maintenance, repair and rehabilitation. Over and beyond these amounts, collateral agreements not covered by the treaties for economic aid and other purposes could, over the 22-year span, aggregate as much as \$2.2 billion. Panama's population is 1.5 million. This aggregate would approximate nearly \$1467 per capita for each Panamanian. On a per capita basis for the United States, this would be the equivalent of a payment of \$322 billion.

Arguments that technically the United States is not the sovereign, notwithstanding that it now possesses in perpetuity the exclusive right to exercise sovereign power (to the exclusion of the exercise of such power by Panama) are meaningless and border on the absurd. These arguments are neither germane nor sensible. *Unless the present power of the United States over the Canal Zone (and therefore over the Canal itself) remains undiminished, the government of the United States would place itself in the untenable position of accepting responsibility without authority.* This we must not do. There can be no compromise here. It would not work. It never has whenever it is required to work.

The proponents contend that the language in the neutrality treaty which states that the parties will maintain “the regime of neutrality” gives the United States

the right of intervention if necessary. These words are similar to those of the Hay Pauncefort Treaty of 1901 between Great Britain and the United States. No one has ever contended that this gave rise to any British intervention rights. And as noted hereinbefore, Dr. Escobar flatly denies that the words confer on the United States any such rights and he also *flatly denies that the United States may decide what would constitute a breach of neutrality*. In the premises, the word "neutrality" in Panamanian eyes would apply to everybody as the treaty itself states. So that the Soviets or their proxies, the Cubans, can be provided with naval base facilities at Colon or Panama City or both, and Panama undertakes no obligation not to be "neutral" in favor of Cuba and the U.S.S.R. Soviet naval facilities in Panama were discussed as recently as July 16, 1977 as hereinbefore mentioned, while the Soviet delegation was in Panama to conclude an economic treaty with Panama—naval facilities *and* a sea-level canal.

The real issue, the real choice, is whether we should stay or leave altogether. The answer should be clear. We cannot leave. We cannot surrender in the face of threats and duress even if there were an explosion if the treaties are not confirmed. But there will also be violence if the treaties are confirmed. The Panamanian radicals, encouraged by Escobar, promise this already. United States influence in this vital area is seriously impaired by the extension of Communist power and influence outward from Cuba and by our past defeats and retreats. The western world and our allies in the far east already doubt our resolve and will to defend ourselves. And so too, perhaps, do the Soviets.

There is ample room to deal fairly and equitably with other but much less important problems on the Isthmus without these treaties.

U.S. BANKS' INVESTMENT IN PANAMA

Mr. PROXMIRE. Mr. President, on October 25 I brought to the attention of my colleagues in the Senate information on the exposure of U.S. banks in Panama. That information was based on replies by the Federal Reserve Board and the Comptroller of the Currency to my request for the following data:

First. Total claims of U.S. banks—national banks only, in the case of the Comptroller's Office—including their foreign branches and subsidiaries, on Panamanian residents, broken down by maturity;

Second. The proportion of such claims which represent claims of U.S. and foreign bank branches in Panama, that is, excluding Panamanian banks and other Panamanian residents;

Third. For each of the 20 largest U.S. banks—national banks only, in the case of the Comptroller's Office—the percentage of total U.S.—or national—bank claims on Panamanian residents and the percentage of total U.S.—or national—bank claims on non-Panamanian banks in Panama, for each bank, but with the name, size and other identifying characteristics of the banks deleted;

Fourth. For each of the 20 largest U.S. national banks, total claims on Panamanian residents with more than 1 year remaining to maturity, as a percentage of total capital, but with the name, size and other identifying characteristics of the banks deleted.

Mr. President, I learned later that the data provided by the two agencies were not comparable. The Federal Reserve and the Comptroller's Office used completely different definitions of "total claims" on Panamanian residents in their responses to my request, despite the fact that both agencies were aware of my requests to each and collaborated in compiling the data used in their responses. The inability of the two principal Federal bank regulatory agencies to coordinate their replies and apply a common definition to a simple request for information is symptomatic of the confusion and inconsistency inherent in our fragmented Federal bank regulatory system. This incident points to the wisdom, and urgent need for adoption of S. 684, which would consolidate the bank regulatory functions of the existing agencies—the Federal Reserve, the Comptroller's Office and the FDIC—into a single Federal Bank Commission. I hope we will move promptly in the next session of Congress to adopt this critical reform measure before the three separate, uncoordinated agencies fumble more seriously their responsibilities relating to our banking system.

Mr. President, I regret any inconvenience to my colleagues and the public which may have been caused by misleading and erroneous material inserted in the Record on October 25 at pages S17730 and S17731. I ask unanimous consent that the new and corrected material received from the Federal Reserve Board and the Comptroller's Office, including tables, be printed in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

BOARD OF GOVERNORS,
FEDERAL RESERVE SYSTEM,
Washington, D.C. November 2, 1977.

Mr. ROBERT W. RUSSELL,
Counsel, Committee of Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. RUSSELL: Enclosed is the information you requested to supplement Chairman Burn's letter of October 11, 1977, to the Committee. The supplementary information shows the distribution among 20 large banks (11 National banks and 9 State member banks) of external claims on Panama, external claims being defined as all claims other than claims on Panamanian residents held by a U.S. bank's Panamanian office and payable in Panamanian Balboas.

Column 1 gives the percentage distribution of these claims showing how much is accounted for by the three banks having the largest amount of external claims, the next 3, etc. Column 2 shows what proportion of external claims on one group of borrowers, Panamanian offices of non-Panamanian banks are accounted for by each group.

As Table 1 of the October 11 letter shows, external claims on Panamanian offices of non-Panamanian banks represent \$463 million of the \$1,433 million in total external claims. Of the \$1,433 million in total external claims, \$802 million is held by national banks and \$631 million by State member banks.

It should be noted that the three banks having the largest amount of external claims are not the same banks as those having the largest amount of total claims, due to the varying amount of local office business conducted by banks. Therefore, the individual banks included in each three bank aggregate in this table are not necessarily the same banks included in each grouping in Table 3 of the October 11 letter.

Also enclosed is the listing of foreign branches of member banks which you requested.

Sincerely,

MICHAEL G. MARTINSON,
Foreign Banking Analyst.

Attachments.

TABLE 5.—EXTERNAL CLAIMS ¹

Banks	Total external claims (percent)	External claims on Panamanian offices of non- Panamanian banks (percent)
1, 2, 3	38	33
4, 5, 6	28	36
7, 8, 9	16	12
10, 11, 12	8	8
13, 14, 15	5	6
16, 17, 18, 19, 20	4	5

¹ External claims are defined as all claims on Panamanian residents other than claims that are payable in Panamanian Balboas and are held by a bank's office in Panama.

FEDERAL RESERVE SYSTEM,
Washington, D.C., October 11, 1977.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing and Urban Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I am pleased to respond to your letter of September 19 requesting information about U.S. bank claims on Panamanian residents.

Enclosed are four tables prepared by our staff which provide the information in question. These tables are derived from several different sources. Table 1 was prepared from data collected by the Federal Reserve as of year end 1976 from a group of approximately eighty U.S. banks; these data were published in a press release issued on June 3, 1977.

Tables 2, 3 and 4 were prepared from data as of mid-1977 collected in a new survey on bank exposure conducted by the Federal Reserve in cooperation with other bank supervisory authorities. Twenty large U.S. banks reported total claims

on Panama amounting to \$2.2 billion in this survey, compared with \$2.8 billion of claims on Panama reported in the earlier survey noted above for a larger group of banks. Data collected in the new survey are still being processed by our staff and may be subject to further revision. If significant revisions should occur later in the course of the editing process, I will provide you with a revised set of tables.

Data in Table 3 have been combined into groups of three banks in order to preserve the confidentiality of data for individual banks.

I hope this information will be useful to your Committee. Please let me know if I can be of further assistance.

Sincerely yours,

ARTHUR F. BURNS.

Enclosures.

U.S. BANK CLAIMS ON PANAMA

TABLE 1.—*Total U.S. head office, foreign branch, and foreign subsidiary claims on Panamanian Residents, December 31, 1976.*

[Millions of dollars]	
Total claims	\$2,831
One year or less	1,514
Over 1 year to 2 years	90
Over 2 years	323
Unallocated	904

Source: FR 2029. Report filed by approximately 80 banks.

TABLE 2.—*Claims on Panama of 20 large U.S. Banks, June 30, 1977*

[Millions of dollars]	
Claims on banks	\$589
Claims on banks with head offices in other countries (including branches or affiliates of U.S. banks)	463
Claims on private nonbanks	583
Claims on official institutions	261
Claims on private nonbank and official institutions externally guaranteed	314
Claims on Panama at local offices	¹ 729
Total claims on Panama	2,162

¹ From the regular 502S statistical report, it is estimated that branches of U.S. banks in Panama had liabilities of \$367 million to local residents as of June 1977.

Source: Federal Reserve and Comptroller of the Currency Foreign Exposure Reports.

TABLE 3.—SHARES OF INDIVIDUAL BANKS IN LARGE U.S. BANKS' TOTAL CLAIMS OF PANAMANIAN RESIDENTS AND IN THEIR TOTAL CLAIMS ON PANAMANIAN OFFICES OF NONPANAMANIAN BANKS, JUNE 30, 1977

Bank	Shares of individual banks in total claims on Panama of 20 large banks	Shares of individual banks in total claims on Panamanian offices of non-Panamanian banks of 20 large U.S. banks
1.....		
2.....	50.0	34.9
3.....		
4.....		
5.....	25.1	26.6
6.....		
7.....		
8.....	13.3	9.3
9.....		
10.....		
11.....	5.6	8.0
12.....		
13.....		
14.....	3.4	6.5
15.....		
16.....		
17.....	2.6	5.2
18.....		
19.....		
20.....		

Source: Federal Reserve and Comptroller of the Currency foreign exposure reports.

TABLE 4.—Claims on Panamanian residents with more than 1 year remaining to maturity as a percentage of capital for 20 large U.S. banks, June 30, 1977

Bank:	¹ Percent
1.....	13.2
2.....	10.4
3.....	8.6
4.....	4.0
5.....	3.3
6.....	3.0
7.....	3.0
8.....	2.8
9.....	1.1
10.....	1.0
11.....	1.0
12.....	.8
13.....	.5
14.....	.5
15.....	.5
16.....	.4
17.....	0
18.....	0
19.....	0
20.....	0

¹ Included in these percentages are claims that carry the guarantee of a party outside Panama. The amounts of such guaranteed claims cannot be precisely calculated for loans with more than one year to maturity. However, the total of nonguaranteed loans over one year to maturity does not exceed 4 per cent of capital for any bank on the list.

Source: Federal Reserve and Comptroller of the Currency Foreign Exposure Reports and FR 416.

COMPTROLLER OF THE CURRENCY,
Washington, D.C., November 1, 1977.

Hon. WILLIAM PROXMIRE,
Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is an amended response to your letter of September 28, 1977, in which you requested information regarding the commitments of United States national banks in Panama. In our original response, dated October 12, 1977, our staff had misinterpreted the intent of several of your questions and thus, after further discussions with your staff, the following amended information is provided.

1. As of June 30, 1977, total claims, including foreign branches and subsidiaries, on Panamanian residents aggregated \$1.692 billion, including \$709 million in local currency claims. Maturity distribution of the foreign currency claims is: \$607 million matures in less than one year; \$289 million matures in over one year but less than five years; and \$87 million matures over five years. No maturity breakdown is available for the local currency claims.

2. On June 30, 1977, the proportion of such claims which represented claims on United States and foreign bank branches in Panama, that is, excluding Panamanian banks and other Panamanian residents, totaled \$295 million.

3. For each of the twenty largest United States National Banks, claims on Panamanian residents, as a percentage of total national bank claims on Panamanian residents, were:

Bank	Amount ¹	Percent ²
A.....	\$7	0.41
B.....	0	0
C.....	0	0
D.....	11	.65
E.....	22	1.30
F.....	1	0
G.....	215	12.71
H.....	14	.82
I.....	25	1.48
J.....	1	0
K.....	478	28.25
L.....	350	20.69
M.....	3	.18
N.....	14	.82
O.....	12	.71
P.....	253	14.95
Q.....	36	2.13
R.....	25	1.48
S.....	34	2.01
T.....	10	.59
Total.....	1,511	89.18

¹ In millions of U.S. dollars.

² Percentage of total claims on Panamanian residents.

For each of the 20 largest United States national banks, claims on non-Panamanian banks, as a percentage of total national bank claims on non-Panamanian banks and residents, were:

Bank	Amount ¹	Percent ²
A	0	0
B	\$1	.34
C	0	0
D	6	2.03
E	0	0
F	37	12.54
G	0	0
H	0	0
I	36	12.20
J	0	0
K	0	0
L	20	6.78
M	0	0
N	0	0
O	6	2.03
P	0	0
Q	76	25.76
R	0	0
S	33	11.19
T	0	0
Total	215	72.87

¹ In millions of U.S. dollars.

² Percentage of total claims on non-Panamanian banks and residents.

For each of the 20 largest U.S. national banks, claims (1) on Panamanian residents with more than 1 year remaining to maturity, as a percentage of each bank's total capital, were:

Bank:	(2)
A	.46
B	0
C	0
D	1.10
E	0
F	0
G	1.83
H	0
I	8.38
J	1.45
K	0
L	2.85
M	0
N	.74
O	.31
P	1.03
Q	.41
R	2.89
S	2.51
T	.74

(1) Does not include local currency claims for which no maturity breakdown is available.

(2) Percentage of capital of total foreign currency claims on Panamanian residents with more than one year remaining.

We hope this has been responsive to your inquiries.

Sincerely,

JOHN O. HEIMANN,
Comptroller of the Currency.

COMPTROLLER OF THE CURRENCY,
Washington, D.C., October 12, 1977.

Hon. William Proxmire,
Chairman, Committee on Banking, Housing, and Urban Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in response to your letter dated September 28, 1977 requesting information regarding the commitments of U.S. national banks in Panama, including foreign branches and subsidiaries.

1. As of June 30, 1977, total claims on Panamanian residents aggregated \$773 million with \$403 million due in one year and under, \$288 million maturing over one to five years, and \$82 million due in five years and over.

2. On June 30, 1977, the proportion of such claims which represented claims on United States and foreign bank branches in Panama, that is excluding Panamanian banks and other Panamanian residents, totaled \$279 million.

3. For each of the twenty largest United States national banks, claims on Panamanian residents as a percentage of total national bank claims on Panamanian residents, were:

Bank	Amount (in millions of U.S. dollars)	Percentage of total claims on Panamanian residents (percent)
A.....	7	0.90
B.....	None	None
C.....	None	None
D.....	None	None
E.....	22	2.84
F.....	1	.13
G.....	163	21.08
H.....	None	None
I.....	5	.65
J.....	None	None
K.....	137	17.72
L.....	44	5.69
M.....	1	.13
N.....	87	11.25
O.....	12	1.55
P.....	94	12.16
Q.....	3	.38
R.....	25	3.23
S.....	34	4.39
T.....	4	.51
Total	639	82.61

FOR EACH OF THE 20 LARGEST U.S. NATIONAL BANKS, CLAIMS ON NON-PANAMANIAN BANKS AS A PERCENTAGE OF TOTAL NATIONAL BANK CLAIMS ON NON-PANAMANIAN BANKS AND RESIDENTS

Bank	Amount (in millions of U.S. dollars)	Percentage of total claims on non-Panamanian banks and residents (percent)
A	None	None
B	1	0.36
C	None	None
D	None	None
E	None	None
F	37	13.26
G	None	None
H	None	None
I	36	12.90
J	None	None
K	None	None
L	20	7.16
M	None	None
N	None	None
O	6	2.15
P	None	None
Q	76	27.24
R	None	None
S	33	11.82
T	None	None
Total	209	74.89

4. For each of the twenty largest United States national banks, claims on Panamanian residents with more than one year remaining to maturity, as a percentage of each bank's total capital, were:

Bank:	Total
A	0.46
B	None
C	None
D	1.10
E	None
F	None
G	1.83
H	None
I	8.38
J	1.45
K	None
L	2.85
M	None
N	0.74
O	0.31
P	1.03
Q	0.41
R	2.89
S	2.51
T	0.74

We hope this has been responsive to your inquiries.
Sincerely,

JOHN G. HEIMANN,
Comptroller of the Currency.

Mr. PROXMIRE. Mr. President, the data initially supplied by the Comptroller concerning the claims of U.S. nationally chartered banks on Panamanian residents did not include claims denominated in the local Panamanian currency, the balboa. I do not know the Comptroller's reasons for excluding these claims. They are significant, amounting to \$709 million as of June 30, 1977, and, because

the balboa is by treaty permanently fixed at par with the dollar, claims in the two currencies are largely interchangeable.

Once local currency claims are included and the data on foreign currency revised the Comptroller reports that U.S. national banks had \$1.7 billion in claims on Panamanian residents as of June 30; \$1 billion of the total was in foreign currency claims, principally in dollars, with the remaining \$700 million denominated in balboas. The 20 largest national banks held \$1.5 billion, 89 percent, of the claims.

The revised data provided by the Comptroller make it clear that the U.S. banks most involved in Panama are nationally chartered banks not State-chartered banks as previously reported. The Federal Reserve Board reported that the 20 U.S. banks with the largest claims in Panama—which includes a few large State-chartered banks as well as the largest nationally chartered banks—had \$2.162 billion in total claims as of June 30. Of the total, \$1.432 billion was in foreign currency claims—principally dollars—and \$730 million in local currency claims—balboas. By comparison the 20 largest U.S. national banks had \$1.5 billion in claims on Panama, \$802 million in foreign currency claims, and \$709 million in local currency claims.

Mr. President, the revised submissions from the Comptroller's Office and the Federal Reserve Board contain few surprises. A few U.S. banks do most of the business done in Panama by U.S. banks. U.S. banks use Panama largely for short-term, interbank transactions and to book loans throughout Central America. When the maturities of the claims are considered no bank appears to have inordinate exposure in Panama. That conclusion must be tempered in the case of national banks, however, because the Comptroller does not collect data on the maturity structure of local currency claims, which are held principally by three or four large nationally chartered U.S. banks. It would behoove the Comptroller to collect data on the maturity structure of those claims.

THE PANAMA CANAL ISSUE

Mr. CURTIS. Mr. President, the Senate Republican policy committee, under the able leadership of the senior Senator from Texas, John Tower, has been very active during this session of the 95th Congress.

Under the chairmanship of the Senator from Texas, the policy committee and staff have reviewed and analyzed numerous public policy issues including the economy, energy, tax policy, election reform, welfare reform, and foreign policy and national security. The studies addressed by Senator Tower and the committee staff to date have all been important national issues. Without exception, these studies have made a significant contribution to the debate on the issue, both in the Senate and in the Nation.

As chairman of the Republican conference I am most grateful to Senator Tower for his effective and farsighted leadership and for the excellent work of the policy committee. The Republican conference and the policy committee have enjoyed a close and effective working relationship during this Congress.

Recognizing that the Panama Canal treaties are a major issue facing the Senate and the American people, Senator Tower directed the policy committee staff to do a detailed analysis of the "Panama Canal Treaty" and the "Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal." The study is one of the best analyses I have seen on the issue of the Panama Canal. It is balanced and fair. It carefully considers the arguments of the major articles in both treaties pro and con.

I commend Senator Tower and the committee staff for this excellent analysis. I feel it would be helpful to all Members of Congress and, therefore, ask unanimous consent that the study entitled "The Panama Canal Issue" be printed in the Record.

There being no objection, the study was ordered to be printed in the Record, as follows:

THE PANAMA CANAL TREATY

PREAMBLE

Analysis: The long disputed issue of whether the United States or Panama is sovereign over the Panama Canal and the present Canal Zone is dealt with quickly and simply in the Preamble. The United States, "Acknowledging the Republic of Panama's sovereignty over its territory," agrees with Panama to establish a new relationship. This provision is intended to resolve permanently the confusion over which nation holds sovereignty stemming from Article III of the 1903 Treaty between the United States and Panama. It reads as follows:

"The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority."

Pro: Recognition by the United States of Panama's sovereignty is timely and long overdue. The colonial era ended years ago, and the continued exercise of sovereign rights in the Canal Zone by the United States is a vestige of a bygone era. Testifying before the Senate Foreign Relations Commission on September 27, 1977, General George Brown, Chairman of the Joint Chiefs of Staff, emphasized the need to end American colonialism in Panama:

"I would say as a factor one of the elements that leads to our support of these new treaties is the impact, the favorable impact, ratification would have on all Latin America and the acceptance of the United States as living by the moral principles that we espouse in divesting ourselves of this last appearance of colonialism in Panama."

No one can honestly dispute the circumstances under which the United States acquired its "sovereign rights" under the 1903 treaty. It was gunboat diplomacy at its finest. Panama was in no position to resist the granting of those rights in 1903, but times have changed. It is now time for the United States to redress that infamous page in our history and restore to Panama its full sovereignty over the Canal Zone.

This is a time when foreign control and dominance by great powers is no longer tolerated by even the smallest nations. The Panama Canal Zone is the territory of Panama and should be turned over to the people and Government of that country. In today's world, what nation would accept a foreign presence that dominates its economy, cuts its territory in half and renders untold damage to its national pride. The United States wouldn't tolerate it for one day. As the colonial era has faded into history, the U.S. has shown great sensitivity to other nations where it held substantial treaty rights. These include, Japan, Okinawa, the Marianas, Spain, Libya, Greece and the Philippines. Why not in Panama?

Con: The 1903 Convention between the United States and Panama gave the U.S. sovereign rights over the Panama Canal and the Canal Zone "in perpetuity". The United States may well have conducted some gunboat diplomacy, but it was that very diplomacy which created the nation of Panama. Without it Panama would still be a province of Colombia today. It is difficult to measure all the benefits which came to Panama as a result of American involvement. The private French Company was bankrupt and incapable of completing the project. Only with American financing, engineering and resources was it possible to build the Canal. Since 1903 the United States has largely eradicated malaria and other serious health problems in the Isthmus. From the time the Canal opened the United States has operated it fairly, efficiently and without serious financial loss. Since it opened the Canal has returned approximately \$642 million to the U.S. Treasury in interest on the original debt which has never been amortized. The American Government and the American taxpayer paid roughly \$387 million in 1904-1914 to build the Panama Canal. The building, financing and operation of the Canal is something Panama or any other government could never have accomplished.

Panama has benefited financially from the Canal. For example, it is estimated that Panama is now receiving, directly or indirectly \$250 million per year from Canal and Canal related operations. Since 1963 these benefits total \$1.8 billion.

There is some question that the Canal will continue to be operated efficiently and fairly if Panama gains control of it. Since General Torrijos came to power in 1968 he has increased the national debt of Panama from \$167 million to \$1.5 billion. Certainly the economy of Panama is not strong enough to maintain the Canal should it become a big money loser.

The left-wing bias of certain Panamanian Government officials and the dismal human rights record of General Torrijos should be a warning to the United States Senate that the future of the Panama Canal is questionable at best.

In testimony before the Subcommittee on Separation of Powers of the Committee on the Judiciary Harold Parfitt, the Governor of the Panama Canal Zone, stated:

"I believe the general consensus is that the Panamanian Government itself is not Communist-leaning, but advisers in various places within the Government are in fact Communists."

In the field of human rights Panama is practically a total failure. In the view of Freedom House, an internationally respected organization which deals with human rights worldwide, Panama has a record worse than Argentina, Chile and even Cuba. In fact their record is the worst in all of Latin America.

The rights of sovereignty must be maintained by the United States if the Canal itself is to remain free, open and efficiently operated.

Several Supreme Court decisions including *Wilson v. Shaw* [204 U.S. 24 (1907)], lower court decisions and ruling of Federal agencies show that the Canal belongs to the United States. The 1903 Treaty is a valid binding document under international law. It grants to the United States the full rights of sovereignty and precludes the exercise of those rights by Panama. To replace the 1903 Treaty with a new one turning the Canal over to Panama will prove to be a serious mistake by the United States.

Article I: Abrogation of prior treaties and establishment of a new relationship

Analysis: Paragraph 1 of Article I stipulates that upon ratification, the new Panama Canal Treaty terminates and supersedes the following treaties:

(a) The Isthmian Canal Convention between the United States of America and the Republic of Panama, November 8, 1903.

(b) The Treaty of Friendship and Mutual Understanding and Cooperation, March 2, 1936.

(c) Memorandum of Understanding reached between the United States and Panama, January 25, 1955.

(d) All other treaties, conventions and exchange of notes between the two countries and all provisions covering the Panama Canal which appear in other treaties unless specifically retained by other provisions of this Treaty.

Under paragraph 2, Panama as the territorial sovereign grants to the United States "the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the Canal." This authority is probably sufficient for the United States to operate, maintain and defend the Canal, although it is far from the total authority now held by the United States.

Paragraph 3 states that Panama "shall participate increasingly in the management and protection and defense of the Canal . . ."

Pro: The abrogation of previous treaties is necessary if a new relationship between the United States and Panama is to be established. The previous treaties, especially the 1903 Treaty, were unequal and unfair to Panama. There has been conflicting interpretation by the signatories over the sovereignty issue. It is timely and fitting that the old treaties be terminated. It is a long overdue magnanimous act by the United States.

Paragraph 2 of Article I adequately protects the rights of the United States to operate and defend the Canal through 1999 when the Treaty expires.

Under Paragraph 3 a good working relationship is established between the U.S. and Panama that will prepare Panama to operate the Canal after December 1999.

Con: Abrogation of the 1903, 1936, and 1955 Treaties by Article I is a mistake. The United States under this article gives up one of its most important economic and strategic assets. Furthermore, it terminates the American position in Panama without any compensation to the United States Treasury.

Paragraph 2 once again recognizes the sovereignty of Panama over the Canal and the Canal Zone. Since Panama is the grantor of the rights to the United States, the position of the U.S. is not unlike our position in other countries where the sovereign from time to time has chosen to terminate the grant of rights prematurely.

The joint relationship established under Paragraph 3 may well prove to be a source of friction between the signatories, especially in light of Panama's growing nationalism and deep-seated resentment about the American role in Panama.

Article II: Ratification, entry into force, and termination

Analysis: This treaty shall be ratified in accordance with the constitutional procedures of the signatories. Instruments of ratification shall be exchanged in Panama at the same time the Treaty concerning the Permanent Neutrality and Operation of the Panama Canal is ratified.

The Panama Canal Treaty goes into force six calendar months from the date when the instruments of ratification are exchanged.

Paragraph 2 stipulates that this Treaty terminates at noon Panama time, December 31, 1999.

Pro: This article meets the requirement under Article II Section 2 of the United States Constitution requiring that all treaties be approved in the U.S. Senate by 2/3 majority of all Senators present and voting.

There is no requirement for this treaty to be approved by the House of Representatives. The Supreme Court rulings on this subject have all applied to Federal-State relations. The Court has never addressed the question of this power as a limitation on the treaty making powers of the President and the Senate. There are many precedents, both legislative and legal that clearly show the President may dispose of Federal property by treaty and by action of executive agencies. To cite one of many examples, the U.S. ceded the Ryukyu and Daito Islands to Japan in 1972 by treaty without House of Representative approval of the transfer.

Con: The wisdom of the founding fathers in giving the Senate the constitutional responsibility of approving treaties is vindicated once again by the treaties on the Panama Canal. The major responsibility of the Senate in this case is to determine if American interests regarding the Panama Canal have been adequately protected in

the two treaties submitted by the Carter Administration. Clearly the treaties are inadequate, and it falls to the United States Senate to bring these inadequacies to the attention of the American people.

A major constitutional requirement that the Carter Administration is attempting to ignore is Article IV, section 3, clause 2, which grants to Congress the power to dispose of Federal property:

"The Congress shall have power to dispose of and make all rules and regulations respecting the territory or other property belonging to the United States . . ."

There is no question that the United States holds and owns property in the Panama Canal Zone. While the Carter Administration has chosen to ignore this constitutional requirement, it should be remembered that the House of Representatives has not. Recently 50 members of the House filed suit in the Supreme Court to protect the constitutional right of the House to vote on the disposal of U.S. property. Once this right is asserted by the House, it cannot be constitutionally denied. In a treatise on the treaty and property disposal power of Congress published August 4, 1977 the Congressional Research Service of the Library of Congress said:

"* * * the Supreme Court has constantly ruled that Congress' power to dispose of federal territory and property is exclusive."

Whatever power the President has to convey property by treaty is delegated by Congress and is not exclusive to the treaty making power. Such authority can be withdrawn by the Congress. Finally as the Congressional Research Service points out, transfers of property to Panama have occurred in the past and almost without exception, these transfers have been approved by the House of Representatives.

Article III: Canal operation and management

Analysis: Paragraph 1 restates the rights granted to the United States by Panama whereby the U.S. will manage, operate and maintain the Panama Canal and the subsidiary works, installations and equipment. The U.S. agrees to exercise these rights in accordance with this Treaty and related agreements.

Paragraph 2 allows the United States to exercise the following key powers:

- (a) Use all the necessary installations and areas without cost except as provided in this Treaty, to carry out its responsibilities in operating and maintaining the Canal.
- (b) Make such improvements and alterations as it deems appropriate.
- (c) Make and enforce all rules pertaining to the passage of vessels through the Canal and other rules respecting navigation and maritime matters. Panama may lend its cooperation when necessary to enforce these rules.
- (d) The U.S. has the right to establish, modify, collect and retain tolls for use of the Panama Canal.

Paragraph 3 creates a new governing body, the Panama Canal Commission to operate the Canal through 1999. The Commission shall be a United States Government Agency:

(a) The Panama Canal Commission is to be supervised by a 9 member board, five of whom shall be U.S. nationals and 4 of whom shall be Panamanian nationals nominated by the Government of Panama for appointment to the Board by the United States.

(b) Under subparagraph (b) the Republic of Panama may request the removal of a Panamanian member from the Commission and the United States is obligated to honor the request. If the U.S. wishes to remove a Panamanian member, the two signatories will consult in advance to reach agreement covering the removal.

(c) From the time the Treaty goes into force until December 31, 1989, the Administrator of the Panama Canal Commission shall be an American, with a Panamanian serving as Deputy Administrator. From January 1, 1990 until December 31, 1999 the Administrator shall be a Panamanian and the Deputy shall be an American. Panama shall propose the above Panamanian nationals to the United States for appointment by the U.S.

(d) Should the United States remove the Panamanian from his position as Administrator or Deputy Administrator, Panama shall propose another of its nationals for appointment by the U.S.

Paragraph 5. The Panama Canal Commission shall reimburse the Republic of Panama for costs incurred by that Government in providing the following public services which are currently provided by the Canal Zone Government: police and fire protection, street maintenance, traffic management and garbage collection. The Commission shall pay \$10 million annually for the above services. Every three years during the life of the Treaty this sum shall be reexamined by the signatories to determine if readjustments are required.

Paragraph 6 reserves to Panama the responsibility to provide customs, immigration, postal, court and licensing services.

Paragraph 7 requires the U.S. and Panama to establish a Panama Canal Consultative Committee composed of an equal number of high-level representatives from each country. This committee shall advise the U.S. and Panama on matters of policy affecting the Canal's operation including general tolls, employment and training programs to increase the participation of Panamanians in the operation of the Canal.

Paragraph 8 requires that there shall be growing participation of Panamanian nationals at all levels to prepare, in an orderly and efficient way, for the assumption of full operating control of the Canal by Panama upon the termination of this Treaty.

Paragraph 10 stipulates that upon entry into force of this Treaty the Panama Canal Company and the U.S. Canal Zone Government shall cease to operate within the Republic of Panama territory that formerly constituted the Canal Zone.

Pro: Paragraph 2 gives to the United States all the necessary power to operate the Canal as well as the necessary use of installations and facilities. Under subparagraph (b) the U.S. is free to make the necessary improvements or alterations for efficient management of the Canal. Subparagraph (c) is an important grant in that the United States is empowered to make and enforce all rules pertaining to passage of vessels and the rules of navigation. This power gives the United States the dominant role in operating the Canal. Under subparagraph (d) the U.S. is given near exclusive control over the setting, modification and collection of tolls which will protect American shipping from unwarranted fare increases for the duration of the Treaty. This is a critical right and properly protects U.S. interests through the end of the century.

Paragraph 3 which creates the Panama Canal Commission establishes a balanced workable relationship between the two signatories. The U.S. maintains a voting edge, with 5 members compared to 4 for Panama. No Panamanian can be appointed to the Commission without U.S. approval. The role of Administrator and Deputy Administrator is balanced and will go far in preparing key Panamanian nationals to administer and operate the Canal after December 31, 1999. Again the U.S. is protected because it has final approval authority over the appointment Panamanians to both positions for the duration of the Treaty.

Paragraph 5, in keeping with the Treaty's recognition of Panama's sovereignty over the Canal, properly transfers to the Government of Panama the responsibility to provide police and fire protection and to operate the legal system under which the Commission and its employees will operate. The \$10 million annual payment for the services appears to be reasonable and fair.

Paragraph 7 gives to Panama a joint consultative role in determining the policy governing operation of the Canal and the setting of tolls. This will be a useful learning experience for the Panamanians.

Paragraph 10. The termination of the Panama Canal Zone and the Canal Zone Government heralds the end of a bygone era. This action will be applauded by all Panamanians, by the nations of Latin America and by the third world. It will signal the beginning of a new and more trusting relationship between the United States and Panama.

Con: Article III contains several contradictions.

Paragraph 1 appears to give the United States a unilateral right to manage, operate and maintain the Canal for the duration of the Treaty.

Subparagraphs (c), (d) and (g) of Paragraph 2 appear to reinforce the sole right of the United States to (c) "Make and enforce *all* rules pertaining to passage of vessels through the Canal and other rules with respect to navigation and maritime matters * * *" Likewise the U.S. is empowered to (d) "Establish, modify, collect and retain tolls for the use of the Panama Canal * * *"

Paragraph 3 and subsequent paragraphs then proceed to dilute and reduce the powers granted the United States in Paragraph 1 and 2. Among these are:

(a) Creation of a Panama Canal Commission governed by a Board of 9 members, 4 of whom shall be Panamanians, apparently with full voting rights.

(b) The United States must "reach agreement" with Panama before it can remove a Panamanian board member.

Paragraph 5 and 6 give to the Government of Panama control over the police, courts, immigration and customs. Regardless of what powers are granted to the United States under the Treaty, other more critical powers granted to and reserved to Panama could be used at some future time to harass U.S. operations and presence in the Canal Zone. Advocates of the Treaty will say that interference of this kind is prohibited under the various articles in the Treaty. Such idealistic pronouncements are quite meaningless should Panama choose to negatively exercise

these newly acquired powers. Who holds the *police* and *judicial* powers is more critical than treaty provisions describing their use.

Paragraph 7 sets up a Consultative Committee of high ranking representatives from both sides which "*shall*" advise the signatories "on matters of policy affecting the Canal's operations" and "on matters such as general tolls policy * * *". This Committee, unlike the Board that governs the Commission, has "*equal*" representation. Its advice is not described as something that *may* be given, but something that "*shall*" be given. Thus, what first appears to be a unilateral right of the U.S. to operate and manage the Canal and set and collect tolls for the duration of the Treaty is modified by giving Panama a significant role in the entire scheme of things. Treaty advocates will undoubtedly argue that this special relationship will work, and one hopes it will. However, it must be recognized that Panama now has legal standing as part of the machinery of Canal operation and government. Under certain political circumstances, that status, combined with the newly acquired police and legal powers, could be used very effectively against the United States. Finally, in a dispute over toll policy the U.S. can point to paragraphs 1 and 2 as the source of its authority, but Panama can point to paragraph 7 claiming that it has a role in toll policy as well. As in most other provisions of the Treaty, the language is imprecise, unclear and quite contradictory.

Article IV: Protection and defense

Analysis: Paragraph 1 commits both the U.S. and Panama "to protect and defend the Panama Canal". Such action shall be pursuant to each nation's constitutional process and covers "the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it."

This appears to be a general and blanket right for both parties to take whatever actions necessary to defend the Canal.

Paragraph 2 specifies that "For the duration of this Treaty, the United States of America shall have *primary* responsibility to protect and defend the Canal."

Paragraph 3, "In order to facilitate the participation and cooperation of the armed forces of both parties in the protection and defense of the Canal * * *." The Treaty establishes a Combined Board "comprised of an *equal* number of senior military representatives of each Party."

"The Combined Board *shall* provide for coordination and cooperation concerning such matters as:

- (a) The preparation of contingency plans for the protection and defense of the Canal based upon the cooperative efforts of the armed forces of both Parties;
- (b) The planning and conduct of combined military exercises; and
- (c) The *conduct* of the United States and Panamanian military operations with respect to the protection and defense of the Canal."

This provision of subparagraph (c) appears to give Panama through the Combined Board, the right and the responsibility to jointly and equally participate in the "*conduct*" of military operations carried out for the purpose of protecting the Canal.

Pro: Article IV is designed to give Panama a role in protecting and defending the Canal while reserving to the United States the "*primary*" defense role through December 1999. It would be unrealistic to exclude Panama from any defense role for the duration of the Treaty. Panama has an equal interest, perhaps a greater interest than the U.S. in keeping the Canal free, open and operating efficiently. Directly related to that interest is Panama's desire to protect the Canal from any kind of attack either foreign or domestic. By agreeing to give the Government of Panama a direct role and specified treaty rights under paragraphs 1 and 3, the United States has done more to protect the Canal against internal attack and subversion than any other defense arrangement could provide. Conversely, if Panama were completely excluded from any defense role, the domestic frustration and damaged pride of the Panamanian people would undoubtedly lead to internal attacks and sabotage against U.S. personnel in Panama or the Canal itself.

The role of the Combined Board is a workable and cooperative arrangement that will involve Panama in all aspects of defending and protecting the Canal.

Con: Like so many other provisions of the treaty Article IV is contradictory. Paragraph 1 gives the United States and Panama an equal role in defending and protecting the Canal. This shall be done according to the constitutional processes of both countries. Suffice it to say, the constitutional process of a left-wing dictator is considerably more flexible than it is for the United States.

The "primary responsibility" to defend and protect the Canal granted to the U.S. in paragraph 2 runs head-on into the "*equal*" role given Panama in Paragraphs 1 and 3. The membership of the Combined Board is equal. It does not favor the United States numerically nor is the U.S. given removal powers over the Panama-

nian members of the board. Furthermore, subparagraph (c) gives Panama through the Combined Board an equal role in the "conduct" of all military operations. The potential for mischief by Panama under these conflicting arrangements is enormous. It is not unthinkable that Mr. Castro may someday activate or support a guerilla movement in the Isthmus. He has, after all, done that in several Latin American countries and in Africa. The object of attack could be the Canal itself. With the defense arrangement under Article IV, Panama is in a position to thwart and sabotage any defense effort of the United States. Should Panama oppose a U.S. defense strategy or action, it will probably solidify Panamanian public opinion against the United States and make that defense effort very difficult and perhaps impossible.

Paragraph 2 which gives the U.S. "primary responsibility" is mere window dressing. Article IV, when read in its entirety, makes the defense and protection of the Panama Canal an equal and joint responsibility for the two signatories. To claim that the U.S. has the major or primary responsibility, as does the Carter Administration is simply not supported by the facts.

Paragraph 5 requires the U.S. to maintain its forces in "normal times" at a level not to exceed the number in the Canal Zone immediately prior to the time when this Treaty goes into force.

The Joint Chiefs of Staff told the Senate Armed Services Committee that the two signatories have not decided what the U.S. force level shall be after the treaties are ratified. The word "normal" is not defined and may well become a serious conflict after ratification.

Article VIII: Privileges and immunities

Analysis: Paragraph 1 stipulates that installations, instrumentalities, archives and documents owned or used by the United States Government in Panama "shall be inviolable". "The two Parties shall agree on procedures to be followed in the conduct of any criminal investigation at such locations by the Republic of Panama."

Paragraph 2 states that the agencies and instrumentalities of the U.S. Government operating in Panama pursuant to this Treaty "shall be immune from the jurisdiction of the Republic of Panama." Paragraph 3 allows the U.S. to designate 20 officials of the Panama Canal Commission who with their dependents shall enjoy diplomatic immunity under international law and practice.

Pro: Article VIII protects the United States during its remaining 23 year tenure in Panama. Paragraphs 1 and 2 provide that U.S. installations, instrumentalities, archives and documents "shall be inviolable" and "immune from the jurisdiction of the Republic of Panama."

This provides adequate protection for the United States and its personnel who will continue to reside and work in Panama.

Since the United States has recognized the sovereignty of Panama over all its territory, including the Canal and the present Canal Zone, it would be inconsistent not to define the legal status of U.S. instrumentalities and agencies in Panama.

Con: The enunciation that U.S. installations, instrumentalities, archives and documents will be "inviolable" and "immune from Panamanian jurisdiction" is welcome. However, Article VIII does not exempt U.S. personnel from Panamanian jurisdiction for the duration of the treaty. Although Article XI provides that United States personnel shall be subject concurrently to U.S. and Panamanian law during the 30 month transition period, at the conclusion thereof Americans working in Panama become subject to Panamanian law, police and courts. The inviolability and immunity of U.S. agencies, instrumentalities and installations should have been applied as well to U.S. personnel. With Panama's sorry human rights record American personnel will undoubtedly be subjected to police harassment and a judicial process that will fall far short in protecting their U.S. constitutional rights.

Article IX: Applicable laws and law enforcement

Analysis: Paragraph 1 states, "In accordance with the provisions of this Treaty and related agreements, the law of the Republic of Panama shall apply in the areas made available for the use of the United States of America pursuant to this Treaty."

The question arises as to whether this is a general application of Panamanian law to the areas under U.S. control and whether it conflicts with paragraphs 1 and 2 of Article VIII which make all U.S. instrumentalities "inviolable" and "immune" from Panamanian jurisdiction.

Pro: This provisions is a blanket application of Panamanian law to U.S. operations and facilities. Paragraph 1 is qualified by the phrase "In accordance with the

provisions of this treaty and related agreements * * * "What appears to be a conflict with paragraphs 1 and 2 of Article VIII does not follow because of the qualifier. The inviolability and immunity of U.S. operations and facilities from Panamanian law is thus protected by the qualifier.

Con: Again the draftmanship is unclear and imprecise. Obviously the United States wanted complete inviolability and immunity from all Panamanian law, while Panama hoped during the negotiating process to subject all U.S. operations, facilities and personnel to Panamanian jurisdiction. Consequently the language was compromised and purposely obscured. What should not be forgotten is that both powers will interpret the provisions of Articles VIII and IX to serve their own interests. Paragraph 2 of Article VIII should read that the U.S. shall be immune from the jurisdiction of the Republic of Panama notwithstanding any other provision of this treaty, but it doesn't. Article IX, paragraph 1 should specify that U.S. operations and agencies shall be inviolable and immune from Panamanian jurisdiction regardless of the general coverage listed in the paragraph, but it doesn't. The contradiction and imprecise drafting could well prove to be a serious source of contention at some future date.

Article XII: A sea-level canal or a third lane of locks

Analysis: Paragraph 1 commits both parties "to study jointly the feasibility of a sea-level canal in the Republic of Panama * * *"

Paragraph 2(a) stipulates that no new interoceanic canal shall be built in the Republic of Panama during the lifetime of this treaty, except in accordance with the provisions of this treaty or "as the two parties may otherwise agree * * *"

Paragraph 2(b) provides that the United States "shall not negotiate with third states for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two parties may otherwise agree."

In paragraph 3 the Republic of Panama grants to the United States the right to add a third lane to the existing Canal at any time during the lifetime of the treaty. The only requirement is for the U.S. to provide copies of the plans to Panama. There is no provision for meeting the cost of building the third lane of locks.

Paragraph 5 prevents the United States from using nuclear excavating techniques to build the third lane of locks or a new sea-level canal.

Pro: A new sea-level canal may one day be necessary to meet the shipping needs of world commerce and to accommodate super tankers and giant ore ships. In 1970 the Atlantic-Pacific Interoceanic Canal Study Commission concluded that the most feasible site for a new sea-level canal would be Route 10 through the Republic of Panama. Thus, the prospect of building a sea-level canal in a third country is not very high. If such a Canal is built in Panama, it is only proper that Panama be a party to the process. Furthermore if a new sea-level canal is built, the U.S. under Article XII is given the right through 1999 to build it jointly with Panama. No other nation, such as Russia can be part of this process without U.S. approval.

Paragraph 5 stands on its own merits. No nation can allow another power to use nuclear devices within its borders without its consent.

Con: The real mistake and unwarranted concession in Article XII is the agreement by the United States for the duration of the treaty, not to negotiate with third states for the right to construct a new sea-level canal elsewhere in the Western Hemisphere without the approval of Panama.

This provision unduly binds the U.S. The Panama Canal may become obsolete and very unprofitable much sooner than expected. The Panamanians may try to nationalize the Canal, leaving the U.S. the option of invading Panama or doing nothing. The U.S. has no assurance that Panama will give its approval for a new Canal within its territory.

Should the United States attempt to get Panama's approval for a sea-level canal outside of Panama, one must assume that approval will not be forthcoming. Why should Panama approve a competitive canal when it can retain a monopoly as long as the new canal is not built?

Finally, the longer the U.S. waits, the less likely that a sea-level canal will be built. If Panama withholds its approval, the U.S. cannot even start negotiations until the 21st Century begins. Such a delay will probably make the cost prohibitive.

Article XIII

Analysis: Paragraph 1. Upon termination of the Panama Canal Treaty Panama assumes total responsibility for management, operation and maintenance of the Canal. It must be turned over by the United States, in operating condition and free of liens and debts.

Under paragraph 2, "The United States of America transfers, without charge, to the Republic of Panama all rights, title and interest the United States of America may have with respect to *all* real property, including non-removable improvements thereon" This transfer takes place generally at the time the treaty goes into force. Under subparagraph (d), certain other properties to be used by the United States pursuant to the provisions of this Treaty and for its duration are transferred at the time the Panama Canal Treaty is terminated.

Paragraph 4 states that Panama shall receive from the Panama Canal Commission "a just and equitable return on the national resources which it has dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal"

Subparagraph (a) requires the Commission to pay Panama \$0.30 (based on U.S. dollar) per net Panama Canal ton for each vessel transiting the Canal once the Treaty goes into effect. This shall be adjusted periodically to reflect changes in the U.S. wholesale price index. Subparagraph (b) requires a fixed annuity of \$10 million (U.S. dollars) to be paid to Panama out of Canal operating revenues. This figure shall be a fixed expense of the Panama Canal Commission.

Subparagraph (c) requires an additional payment of \$10 million (U.S. dollars) to Panama to be paid out of Canal operating revenues to the extent such revenues exceed expenditures of the Commission. Should such revenue surpluses not be available in any given year, "the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed."

Pro: Paragraphs 1 and 2 of Article XIII are the heart of this Treaty. Panamanian control of its own territory and its greatest single national asset and resource will be realized by this article. Panama's long occupation by a foreign power will begin to terminate when the Treaty goes into effect. It should be remembered, however, that Panama must wait 22-23 more years before it acquires complete control over its own territory. In the words of General Torrijos, "Panama must walk for 23 more years with a stone in its shoe in order to remove the dagger from its heart."

Panama has been extremely patient particularly during the post-war era. When compared with past sacrifices made by Panama, the financial payments going to that government under this treaty are not excessive.

Some have argued that the United States should receive compensation for transferring to Panama the Canal, the Canal Zone and associated properties. While the worth of the overall investment is indeed significant, it should not be forgotten that the United States has realized tremendous economic benefits from the Canal since it was opened. The savings in shipping costs alone are probably incalculable. Likewise, until 1975 the Canal produced a revenue surplus, most of which has been reinvested in the Canal.

It should not be forgotten that the U.S. is transferring to Panama a Canal with a questionable economic future. Now that the Canal is losing money and incapable of handling an increasing percentage of ocean going vessels, it may well turn out to be an economic liability for Panama especially if the U.S. and or Panama are forced to raise tolls to the point where alternative systems of transportation become more competitive.

Con: Article XIII specifically and the Panama Canal Treaty generally constitute one of the biggest giveaways in American history. The book value of the total American investment in the Panama Canal is \$561 million, while the replacement cost of the Canal and its facility in today's dollars would be \$9.8 billion. All this is turned over to Panama without reimbursement to the United States Treasury and the American taxpayer.

On top of the property transfer, the U.S. has agreed to pay Panama up to \$20 million per year out of Panama Canal Commission revenues plus the \$.30 per each Panama Canal ton transiting the Canal. Since the Canal is now losing money, one would hope that the \$10 million to be paid to Panama as a fixed cost of the Commission can be raised from an increase in tolls. If not, will the United States Congress be required to appropriate this money as an operating expense of the Commission or under a treaty obligation which has become the law of the land?

Article XIII, paragraphs 1 and 2, transfer U.S. assets and property to the Government of Panama in an outright violation of Article IV, Section 3, paragraph 2, of the U.S. Constitution which reads as follows:

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States."

The argument by the Carter Administration that this transfer of U.S. property can take place through the treaty process alone is a clear case of ignoring the Constitution of the United States.

THE TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

Article I

Analysis: "The Republic of Panama declares that the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty."

The declaration of neutrality is made unilaterally by the Republic of Panama and excludes the United States.

Pro: Panama is the only nation which can declare the neutrality of the Canal. It is exclusively in Panamanian territory and under the Panama Canal Treaty the undisputed sovereignty of Panama over the Canal is fully recognized by the United States. Thus the U.S. as a foreign power has no role in the neutrality declaration.

Con: The United States should have been a joint partner in the neutrality declaration contained in Article I. The Canal is designated as an international waterway. The United States has a major role in the defense of the Canal under the Panama Canal Treaty and, one would hope, a responsibility to maintain its neutrality beginning January 1, 2000. Panama, as a small weak nation, is not in a position to effectively protect the neutrality of the Canal against larger nations. As the builder, long-time operator, primary defender and the guarantor (the role of primary defender and guarantor is quite unclear, however) of the Canal's neutrality, the United States should have been a party of the declaration of neutrality.

Article II

Analysis: "The Republic of Panama declares the neutrality of the Canal in order that both in time of peace and in time of war it shall remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality . . ."

The purpose of Article II is to keep the Canal open to all nations, belligerents and non-belligerents alike in time of peace and in time of war.

Pro: The only way to protect the Canal from attack, reprisals or sabotage in time of war is to assure that it will be completely neutral. To do otherwise would invite attack upon it by belligerents or nations which are denied neutral passage through the Canal.

As an international waterway, the Canal must be open, freely and equitably, to all nations of all political persuasion in times of peace and war. As a practical matter, the United States would not need to violate the Neutrality Treaty to keep Soviet vessels from going through the Canal in time of war. Soviet vessels trying to transit the Canal would be sitting ducks for the U.S. Navy which could sit outside the entrances of the Canal in international waters and block their passage or sink them if they tried to enter the Canal. Also in a time of hostilities with the U.S. it is unrealistic to assume that the Soviets would even attempt to transit the Canal.

Con: The guise of neutrality in time of war ignores the lessons of history. During World War II the United States effectively closed the Canal to Japanese and German shipping and the Suez Canal was closed to German shipping by the British. In a drawout worldwide conflagration involving the United States and the Soviet Union, the Panama Canal would be a very critical choke point. Natural resources going to American ports would transit the Canal in much greater quantity than at present. Naval warfare between the two super powers could be very intense as the Soviets tried to stop the flow of raw material to the United States. The U.S. Navy has a lot of eggs in a few baskets (aircraft carriers) which may require considerable movement of non-carrier naval forces from ocean to ocean. If the naval battle becomes critical, the United States may find it necessary to close the Canal to all Soviet vessels. Under such conditions the United States would find itself in violation of the Treaty. From a strategic point of view, no one in his right mind would advocate that the U.S. politely stand aside while Soviet men-of-war transit the Canal during a naval war on the high seas involving the world's two super powers.

It is argued that the U.S. Navy could station itself beyond the territorial waters of Panama and in effect prevent the Soviet Navy from using the Canal during hostilities between the two super powers. This argument has two glaring flaws. First, nothing will prevent the Soviet Union from doing the same thing to the U.S. Navy. Secondly, as the Soviet Navy grows, its ability to engage the U.S. Navy in its own backyard will also increase. To assume that the U.S. Navy could station itself near the Canal's entrances and block or destroy Soviet ships attempting to transit the Canal without facing a major naval battle is terribly naive.

Article III

Analysis: The key provision of Article III is subparagraph (e) of paragraph 1. "Vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the Canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected, as a condition of transit, to inspection, search or surveillance."

Subparagraph (e) apparently does the following:

1. Naval and auxiliary vessels of all nations shall be permitted to transit the Canal at all times including wartime.

2. No naval or auxiliary vessel of any nation shall be subject to inspection, search or surveillance at any time.

3. The transit of nuclear powered vessels through the Canal whether they be war vessels, auxiliaries, or merchantmen, is protected by the phrase "irrespective of their internal operation, means of propulsion. . . ."

4. The transit of nuclear armed naval vessels through the Canal is protected by the phrase "irrespective of their * * * armament * * *."

Pro: Article III, paragraph 1, subparagraph (e), further establishes the neutrality of the Panama Canal. If the Canal is to be completely neutral, transit through the Canal by war and auxiliary vessels during hostilities is absolutely necessary. Anything less would destroy the neutrality of the Canal.

Vital transit interests of the United States Navy are protected by subparagraph (e) as follows:

1. All U.S. naval vessels are permitted to transit the Canal in time of war and peace without inspection, search or surveillance.

2. U.S. nuclear powered and nuclear armed ships are also permitted to transit the Canal without inspection, search or surveillance.

Con: There may come a time when the national security interests of the United States require that the Panama Canal be closed to the naval vessels of the Soviet Union or other nations. History has shown that in time of war or belligerency, neutrality declarations are breached almost as frequently as they are respected. The Panama Canal is vital to the security of the United States. In times past, the U.S. closed it to enemy shipping. Under subparagraph (e) the U.S. no longer has that right.

Article IV

Analysis: Article IV is the heart of the controversy over whether or not the U.S. has the right to intervene in Panama for the purpose of defending and protecting the Canal. It reads as follows:

"The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties."

Unfortunately the above language is ambiguous, imprecise and confusing. Circumstances surrounding it clearly point to the fact that it was deliberately drafted this way because of the serious differences which the negotiators had concerning the defense role of the United States after the year 1999. It is very important to note, therefore, what the article says and what it does not say.

1. It says that the United States and Panama "agree to maintain the regime of neutrality established in this Treaty." From this language it is clear that the United States does have some kind of role in maintaining the neutrality of the Canal.

2. It does not say how this neutrality is to be maintained.

3. It does not say which of the two parties shall determine how and when the neutrality of the Panama Canal is violated.

4. It does not say what mechanism, procedure, policy or action can or shall be taken to protect the Canal's neutrality.

Pro: The regime of neutrality will be properly maintained by the United States and Panama. This was a crucial issue in the negotiations but it has been satisfactorily resolved.

Mr. Sol Linowitz, the former U.S. Chief Negotiator during the Panama Canal Talks, clarified the U.S. position before the Senate Foreign Relations Committee on September 27, 1977:

"Under the Treaty, the United States is in a position to assure that the Canal's permanent neutrality is maintained, and there is not, as Secretary Vance has said, any limitation on our ability to take such action as we may deem necessary in the event the Canal's neutrality is threatened or violated from any source * * *."

"Thus, the Treaty provides for the United States maximum freedom to determine how to carry out its responsibility for Canal neutrality. We are under no obligation

to consult with or seek approval from any other nation or international body before acting to maintain the neutrality of the Canal nor does the Treaty in any other way limit our ability to act."

Also in his testimony Mr. Linowitz put to rest some of the confusion coming from the Panamanian negotiators who on occasion have given differing interpretations of Article IV from that given by U.S. officials. He stated:

"In signing the treaties at the Pan American Union here in Washington on September 7, 1977, General Torrijos told the people of Panama, the people of the Hemisphere and the people of the world; 'We have agreed upon a neutrality treaty that places us under the protective umbrella of the Pentagon. This pact could, if not administered judiciously by future generations, become an instrument of permanent intervention'."

Secretary Vance likewise takes the position that under Article IV the U.S. has unlimited freedom of action. In his testimony before the Senate Foreign Relations Committee on September 27, he said:

"This means there is no limit under the treaties on the freedom of the United States to assure permanently the canal's neutrality."

If there was any question about what right the United States has to defend the Panama Canal under Article IV, it was resolved on October 15, 1977 by Mr. Carter and General Torrijos:

"Under the treaty concerning the permanent neutrality and operation of the Panama Canal (The Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective Constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

"This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any United States action will be reerected at insuring that the Canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

"The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall be so interpreted to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly."

Thus the various clarifications have settled the issue.

As General Maxwell Taylor has pointed out, this was a very hotly contested issue between the two parties; the language in Article IV is the best obtainable and to meddle with it now could very well doom the Treaty to defeat.

Con: The basic problem with Article IV is that both the United States and Panama have been unwilling to give up their respective positions regarding the right of intervention by the United States.

Consequently, the language is deliberately ambiguous. This might be necessary for political reasons in the United States and Panama, but the ambiguity and confusion must also be considered in a long-range context. Should the time ever come when the U.S. finds it necessary to intervene to protect the Canal for whatever reason, it will not be the intent of negotiators, or their interpretations that will count. It will be the language of Article IV. If Panama is unwilling to concede this right today, it is certain the Panamanians will oppose American intervention in the future under any circumstance which they do not support or approve. And they can point to the language of Article IV and accurately say the right of American intervention is not specified.

The interpretations given by key Panamanian officials show this to be true. It is not necessary to list all their pronouncements, but a few will clearly show that they do not concede the right of intervention to the United States.

In a speech before the Panamanian National assembly on August 19, 1977, Dr. Romula Bethancourt the Chief Panamanian negotiator said:

"They said that they wanted the Panama Canal to be neutral and we said we entirely agreed with them. Differences then arose only in what they understood by neutrality and what we understood by neutrality. They proposed that Panama and the United States declare that the Canal was neutral and that the United States would guarantee that neutrality. Panama was opposed to this concept, explaining that we did not want the United States to maintain a guarantee over the State of

Panama, using the neutrality issue as an excuse. This was another source of debate that kept the negotiations stalled until the United States gave up the idea of its guaranteeing the Canal's neutrality.

The criticism made of it—some that you have heard or have read—indicate that we give the United States the right to intervene in our country after the year 2000. These critics think that rights of intervention are granted in the treaty. To the great powers, no one gives the right of intervention; they intervene whenever they feel like it with or without a treaty. When they (the Americans) landed in Santo Domingo, they had no military treaty with Santo Domingo, nor had any right of intervention in Santo Domingo, and they landed anyway. But there are people here who think that it is in the articles of a code (law code) that tell a country if it has the right to intervene or not, and they don't know that it is the bayonets, the guns, and the atomic bomb that gives a country the strength to intervene. And so a country like the United States can land in Panama whenever it feels like it after the year 2000 with or without a neutrality pact. But it cannot land, for example, in Russia, even if Russia tells it to land. Those are the facts of the matter so that with the neutrality pact, we are not giving the United States the right of intervention. What we are giving is an assurance that the Canal will be permanently neutral, that we are not going to close the Canal so that their ships or this ship or that ship cannot go through. Why this neutrality pact? Because they are thinking, By the year 2000 this country (Panama) may have gone socialist and become our (U.S.) enemy and we now want to make sure that even if they become socialist, they cannot close our passage.”

On August 22, 1977, Dr. Bethancourt held a news conference wherein he said: “The Neutrality Pact does not provide what the United States will say when neutrality is violated * * * That is not provided here. There is an article which reads that Panama and the United States will maintain the neutrality pact with the purpose that the Canal remain open peacefully for all ships of all flags of the world. That is all it says. It does not say that it falls to the United States to decide when neutrality is violated or not.” [Quoted by Senator Howard Baker in the Senate Foreign Relations Committee Hearings on the Panama Canal Treaty, September 26, 1977]

Let us turn now to the Carter-Torrijos statement issued October 15, 1977 after their meeting at the White House. The first two paragraphs are critical:

“Under the treaty concerning the permanent neutrality and operation of the Panama Canal (The Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective Constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

“This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at assuring that the Canal will remain open, secure and accessible and it shall never be directed against the territorial integrity or political independence of Panama.”

Supporters of the Treaty will point to the first paragraph of the Carter-Torrijos statement and argue that the U.S. does have “the right to act against any aggression or threat directed against the Canal * * *”

Whatever rights, if any, that are granted to the United States in the first paragraph of the Carter-Torrijos statement are negated and destroyed by the second paragraph, which states: “This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any United States action * * * shall never be directed against the territorial integrity or independence of Panama.”

After December 31, 1999, the United States must get out of Panama lock, stock, and barrel. There are no base rights, no military rights and no presence except the regular Embassy and consular representation. The only right is Article IV of the Neutrality treaty which, in reality, is no right at all. For the United States to protect the Canal after the year 2000, it must intervene in an internal affair of Panama. Nothing in that country after 1999 will be more “internal” than the Panama Canal. Secondly, there is no way the U.S. can move into Panama to protect the Canal without violating Panama's territorial integrity especially if Panama does not agree to the intervention.

The Carter-Torrijos statement runs true to form—Now you see it now you don't. Yes, the United States has the right of intervention to protect the Canal. No, the United States does not have the right to intervene.

General Torrijos could no more agree to the right of intervention that Mr. Carter could agree to give it up. Consequently, when General Torrijos arrived back in Panama after his White House meeting, he held a short press conference reported in the Washington Post on October 16:

"Omar Torrijos, fresh from a meeting with President Carter on the Panama Canal treaties; has denied reports here that he signed a pact giving the United States the right to military intervention in the canal.

"I haven't even signed an autograph," Torrijos said yesterday when his flight from Washington landed at the Rio Hato air force base, near his beach house. He said he was too tired to make further comments."

It should be pointed out that the Carter-Torrijos statement was not signed by either principal. It has no binding effect upon the two parties under international or constitutional law since it is not part of the treaty.

The most obvious circumstance requiring U.S. intervention would be closure of the Canal by Panama for economic reasons. It should be remembered that the Canal has lost money since 1975; that Panama is a poor nation which could not sustain a Canal deficit for any length of time; that the administrative skills of the Panamanians remain unproven; and that Panama refused during the negotiations to commit itself to keep the Canal open should it become unprofitable. Dr. Bethancourt explained the position of his government very explicitly in his August 19, 1977, address to the Panama General Assembly:

"The third possibility was that the Canal could become unprofitable for Panama; in such a situation, Panama could not be tied down to keeping open a canal which was not earning revenue. They (United States negotiators) accepted the first two reasons—natural causes and temporary disruptions—but they did not accept the third reason, lack of profits. This, too kept the negotiations stalled for a long time.

They argued that if the Canal was not profitable, Panama could obtain money from the United States or other countries that use the Canal to keep it open. We told them that when the new treaty with the United States ended, we did not want Panama to be under either direct or indirect obligation to turn to the United States or any other country to request money to keep the Canal open. Our respective positions remained unchanged until we reached the agreement I am about to describe. They said, we can't present to our Congress an article that states you will close the Canal because of insufficient revenues. And we said we could not present an article committing us to operating the Canal permanently when we have no way of knowing if the Canal someday will yield no profit. We finally agreed to eliminate that article, and so Panama was freed of the obligation to maintain the Canal open permanently."

Thus, two things are clear. The most logical circumstance requiring U.S. intervention to protect the Canal would be closure of the Canal by Panama for economic reasons. This prospect is more probable than most treaty advocates care to admit. The second factor is that if and when this occurs, the United States does not have the clear right to step in and operate the Canal.

Article VII

Analysis: "The United States of America and the Republic of Panama shall jointly sponsor a resolution in the Organization of American States opening to accession by all States of the world the Protocol to this Treaty whereby all the signatories will adhere to the objectives of this Treaty, agreeing to respect the regime of neutrality set forth herein."

This article will allow all nations of the world to become a party to the Treaty through the protocol. The protocol itself consists of the three articles which do the following:

1. Article I, "The contracting Parties hereby acknowledge the regime of permanent neutrality for the Canal established in the Treaty * * *" and " * * * associate themselves with its objective."

2. Article II, "The Contracting Parties agree to observe and respect the regime of permanent neutrality of the Canal in time of war and peace * * *"

3. Article III, states that "This Protocol shall be open to accession by all states of the world * * *"

Pro: This article will strengthen the neutrality of the Canal. It is hoped that most nations of the World, especially the maritime nations and the great powers, will accede to the treaty, thus binding them to respect the neutrality of the Canal in time of war and peace. Should the Soviet Union accede to the treaty, it will prevent

that nation from meddling or interfering in the internal affairs of Panama or the administration of the Canal, especially after 1999.

Con: Should the Soviet Union or other Communist Bloc nations accede to the Treaty, they become a party to it and will then be in a legal position to challenge as signatories the actions of any other signatory, especially the United States. If the United States ever finds it necessary to intervene to protect and defend the Canal, the Protocol of accession will open it up to challenges by other signatories before the United Nations, international courts, and the world press, where America has not fared well in recent years.

DOES THE UNITED STATES POSSESS FULL SOVEREIGNTY OVER THE PANAMA CANAL AND THE CANAL ZONE?

Article III of the 1903 Convention between the United States and Panama addressed the sovereignty issue as follows:

Article III

"The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise *if it were* the sovereign of the territory within which said lands and waters are located *to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.*"

The above article has been the subject of intense debate over the past several years and is the major source of divided opinion concerning which nation is sovereign over the Panama Canal.

Those who say the U.S. is not the full sovereign point to the phrase in Article III "if it were the sovereign of the territory" arguing that the words "if it were" qualify the grant to the United States. The words "if it were" can only mean that in fact the U.S. is not the sovereign. Those who argue that the U.S. is the full sovereign point to the words "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority". This phrase they argue denies sovereignty to Panama and when taken in the context of the entire article (III) proves that the U.S. is the sovereign in the Canal Zone.

Chief Justice Taft noted these diverging opinions in his opinion in *Luckenbach S.S. v. United States*, decided in 1930:

"Whether the grant in the Treaty amounts to a complete cession of the territory and dominion to the United States or is so limited that it leaves at least titular sovereignty in the Republic of Panama, is a question which has been the subject of diverging opinions. * * * [280 U.S. 173, 177 (1930).]

No: "Sovereignty is perhaps the major issue raised by opponents of a new treaty. It is clear that under law we do not have sovereignty in Panama. The Treaty of 1903 did not confer sovereignty, but speaks of rights the United States would exercise as 'if it were the sovereign.' From as early as 1905, United States officials have acknowledged repeatedly that Panama retains at least titular sovereignty over the Zone." [Ellsworth Bunker, U.S. Ambassador-at-Large, Address before World Affairs Council, Los Angeles, December 2, 1975. Quoted in Congressional Digest, April 7, 1976, p. 119.]

Yes: "The executive and judicial branches of the Government of the United States have always exercised, and are now exercising, the powers and rights of sovereignty within the Canal Zone. * * *

"There can be no question that the Canal Zone was acquired and is held by the United States under a perpetual grant which, for all practical purposes, conferred upon and vested in the United States all the rights, powers, and authority of a sovereign, and that the United States has exercised full sovereign rights over the Canal Zone ever since the strip of land was acquired." [Arguments for the United States by Assistant Attorney General Sisson and Solicitor General Hughes in *Luckenbach S.S. Co. v. U.S.* 280 U.S. 173, 174-175 (1930).]

No: " * * * the one question of the flag has never been specifically placed before me, no decision has ever been made about it; but I do in some form or other believe we should have visual evidence that Panama does have titular sovereignty over the region." [The President's News Conference, December 2, 1959, Public Papers of the President, Dwight D. Eisenhower, 1959, p. 794.]

Yes: "To such an extent, indeed, are we sovereign in the Canal Zone that Panama has been granted special commercial rights only by express and formal concession, and this Court has reviewed the history of the acquisition and concluded that the

title of the United States is complete and perfect [Justice Jackson dissenting, *Vermilya-Brown and Co. Inc. et al. v. Connell et al.*, 335 U.S. 377, 402 (1948).]

No: "It does not depend upon sovereignty in the political or any sense over the territory. So the administrator of the Wage-Hour Division has issued a statement of general policy or interpretation that directs all officers and agencies of his division to apply this Act to the Canal Zone, admittedly territory over which we do not have sovereignty." [Mr. Justice Reed in delivering the opinion of the Supreme Court in *Vermilya-Brown and Co. Inc. et al. v. Connell et al.*, 335 U.S. 377, 381 (1948).]

Yes: "The Government would never recede from the position which it had taken in the note of Secretary Hay in 1904. This Government could not and would not enter into any discussion affecting its full right to deal with the Canal Zone under Article III of the Treaty of 1903 as if it were the sovereign of the Canal Zone and to the exclusion of any sovereign rights or authority on the part of Panama. * * * This must be regarded as ending the discussion of that matter" [Memorandum of Conversation, Secretary of State Charles Evans Hughes, *Foreign Relations*, 1923, Vol. II, p. 684.]

IS THE PANAMA CANAL ZONE, INCLUDING THE CANAL, A POSSESSION OR TERRITORY OF THE UNITED STATES?

Yes: "We should end those negotiations and tell the General: We bought it, we paid for it, we built it and we intend to keep it." [Governor Ronald Reagan, *Wall Street Journal*, April 29, 1976.]

No: "But let us look at the truth about ownership and sovereignty. The United States does not own the Panama Canal Zone. Contrary to the belief of many Americans, the United States did not purchase the Canal Zone for \$10 million in 1903. Rather, the money we gave Panama then was in return for the rights which Panama granted us by Treaty. We bought Louisiana; we bought Alaska. In Panama we bought not territory, but rights." [Ellsworth Bunker, U.S. Ambassador-at-Large, Address before World Affairs Council, Los Angeles, California, December 2, 1975. Quoted in *Congressional Digest*, April 7, 1976, p. 119.]

No: "It is proper to remark that the Zone has not been sold, transferred, or alienated by the Republic of Panama to the United States in full ownership. That which was ceded is the use, occupation, and control of the Zone for the specific needs of the construction, conservation, operation sanitation, and protection of the Canal. If the Canal were abandoned by the United States, the United States would have no legal ground for occupying the Zone, title to which it has not acquired either by purchase, transfer, or conquest. Further, the Canal Zone has not been even leased to the United States because the annual payment of two hundred and fifty thousand dollars which it undertook to make under the Canal Treaty was not stipulated as a fee for the use of the Zone." [Letter from Panamanian Minister Alfara to Secretary of State Hughes, January 3, 1923 cited in Whiteman, Marjorie, *Digest of International Law*, Volume 3, 1964, Department of State, p. 1143.]

Yes: "Ever since it was acquired, the Canal Zone has been considered and treated by the legislative branch of the Government as a possession of the United States and not as a foreign country." [Argument for the United States by Assistant Attorney General Sisson and Solicitor General Hughes in *Luckenbach S.S. v. United States*, 280 US 173, 175 (1930).]

No: " * * * on September 8, 1909, 27 Op. Atty. Gen. 594, the Attorney General, in an opinion given to the Secretary of War, held that the Canal Zone was not a possession of the United States within the meaning of the Tariff Act of August 5, 1909 * * * " [Opinion of the Court delivered by Mr. Chief Justice Taft in *Luckenbach S.S. Co. v. United States*, 280 U.S. 173, 178 (1930).]

Yes: "It is hypocritical to contend that the title of the United States is imperfect, and that the territory described [the Panama Canal Zone] does not belong to this Nation, because of the omission of some of the technical terms used in ordinary conveyances of real estate." [Mr. Justice Brewer delivering the opinion of the Supreme Court in *Wilson v. Shaw*, 204 U.S. 24, 33 (1907).]

No: "I would never give up complete control or practical control of the Panama Canal Zone, but I would continue to negotiate with the Panamanians * * * " [Governor Jimmy Carter in Presidential Debate on Foreign Policy, October 6, 1976, in San Francisco, California.]

Yes: "Acknowledging the Republic of Panama's sovereignty over its territory * * * " [Preamble of the Panama Canal Treaty signed September 7, 1977 by President Jimmy Carter and General Omar Torrijos in Washington, D.C.]

Unclear: "A cursory examination of legal sources indicates that the words 'Canal Zone' have received various interpretations for United States legislative purposes. For purposes of extradition, it is considered an organized territory (37 Stat. 569, 48

U.S.C. 1330); for purposes of customs duties, it is treated as foreign territory (33 Stat. 843, 19 U.S.C.); as to transportation of mail, its ports are considered foreign ports (*Luckenbach Co. v. U.S.*, 280 U.S. 173); as to the authority of the Government to engage in (*Wilson v. Shaw*, 204 U.S. 24) * * * [Assistant Legal Adviser Snow to John R. Kelly, letter, June 19, 1950, MS. Department of State, file 611.1913/6-1550. Cited in Whiteman, Marjorie, *Digest of International Law*, Volume 3, 1964, Department of State, p. 1171.]

IS THE PANAMA CANAL CRITICAL TO U.S. NATIONAL SECURITY?

Yes. Every ship in the U.S. Navy except the 13 aircraft carriers can transit the Canal. This includes American nuclear submarines. Also, the trend in naval shipbuilding is toward smaller ships, most of which will be able to transit the Canal by the turn of the century. The United States in reality does not have a two ocean navy. With only 476 ships in the active fleet, America at best has only a one and a half ocean navy. The ability to move units of the fleet between the Atlantic and the Pacific will be critical to the United States for decades to come.

In a June 6, 1977 letter addressed to Mr. Carter, former U.S. Navy Admirals Arleigh Burke, Robert B. Carney, George Anderson and Thomas H. Moorer, explained the strategic importance of the Panama Canal:

"Our experience has been that as each crisis developed during our active service—World War II, Korea, Vietnam and the Cuban missile crisis—the value of the Canal was forcefully emphasized by emergency transits of our naval units and massive logistic support for the Armed Forces. The Canal provided operational flexibility and rapid mobility. In addition, there are the psychological advantages of this power potential. As Commander-in-Chief, you will find the ownership and sovereign control of the Canal indispensable during periods of tension and conflict."

During America's involvement in Southeast Asia, 1/3 of all U.S. sea-going cargo destined for that part of the world passed through the Canal. Japan continues to rely upon the United States for its primary defense and for this reason alone we must remain a Pacific Power.

The importance of Latin American natural resources to the United States economy is increasing with the Western Hemisphere becoming more economically inter-related each year. Much of this trade transits the Panama Canal in at least one direction.

The United States has critical strategic, defense and energy interests in the Caribbean area. We are a major buyer of Venezuela oil. Soviet influence in Cuba and Peru is not diminishing. Panama itself may well be a target of Soviet influence and probing. The Panama Canal Zone is the headquarters of the U.S. Southern Command. It provides the best available facilities anywhere in the world for jungle warfare training. It gives the U.S. a presence in a part of the world which has always been important to the United States and this importance is growing.

Finally, the United States must stop its long series of foreign policy defeats and setbacks. From the Bay of Pigs to Angola the U.S. has retreated around the world and to give up the Panama Canal which is critical to U.S. economic and national security interests would cause serious political ramifications for the U.S. and its key allies. It could further convince America's adversaries that we have lost our will and are no longer willing to stand up for our vital national interests.

No: The Canal has lost its strategic and military importance to the United States. Aircraft carriers are the heart of the U.S. fleet. Most other Navy ships serve as part of the Carrier Task forces. The carriers cannot transit the Panama Canal. Thus the ability of the smaller ships attached to a carrier task force to do so is quite meaningless. For U.S. Navy attack or missile launching submarines to pass through the Canal requires surfacing, which in time of war would be a decided threat to any sub doing so. American military presence in Panama is a lasting and irritating vestige of colonialism. It is not needed to protect U.S. interests because the presence does more damage than it does good. It is a bone of contention to most of Latin America.

The real interest of the United States is to maintain open and unhindered passage through the Panama Canal for the naval and commercial vessels of all nations. With the Canal such an emotional issue in Panama, the best way to achieve this free passage is through a new arrangement between the U.S. and Panama.

While the United States can presumably protect the Canal from most foreign attacks (a sea or air launched missile attack against the Canal would undoubtedly be impossible to stop in its entirety and would close the Canal for a long period of time), the real military threat to the continued operation of the Canal comes from sabotage and guerrilla type operations within Panama. The best assurance against

such attacks would be a new arrangement with Panama giving that nation a dominating interest in keeping the Canal open and free from internal attack.

With jungle terrain more difficult to fight in than Viet Nam, the U.S. would have to send 100,000 troops into Panama to put down a domestic or guerrilla attack on the Canal. Such military action would undoubtedly last for many months, causing serious domestic disruptions among the American people.

IS THE PANAMA CANAL IMPORTANT TO THE ECONOMY OF THE UNITED STATES?

Yes: The Canal shortens the sea route from New York to San Francisco by 8,000 miles and 30 days and from New York to Yokohama, Japan, by 3,000 miles. Japan, America's second largest trading partner after Canada sends approximately one-third of its sea borne commerce through the Canal. According to the White House fact sheet on the Treaties, 7% of all foreign trade going in and out of U.S. seaports passed through the Panama Canal in 1976. The Library of Congress estimates this to be 12%. In FY 1976 12,280 ocean going vessels transited the Canal. Also, 96% of the U.S. merchant fleet can go through the Canal.

The energy needs of the United States are becoming increasingly linked to the Panama Canal. Although super tankers cannot use it, the United States is soon expected to be sending 200,000 barrels or 29,000 long tons of Alaskan crude oil through the Canal daily. This figure is expected to reach 70,000 long tons by 1980. For the period FY 1973 to FY 1976 42,494,000 long tons of petroleum shipments passed through the Canal going to or from U.S. ports according to testimony of Howard Casey, Deputy Assistant Secretary of Commerce for Maritime Affairs, before the House Subcommittee on the Panama Canal on July 25-27, 1977.

No: The Panama Canal is losing its economic importance to the United States. The overall percentage of U.S. import and export sea-going tonnage is declining, and the 7% of U.S. tonnage going through the Canal is minimal. In FY 1975 total transits of the Canal numbered 14,735. In FY 1976 this figure had fallen to 12,280. Ships exceeding 950 feet in length, 106 feet in width and having a draft of more than 40 feet cannot use the Canal. This eliminates super tankers and giant ore ships which are moving an increasing percentage of U.S. produced goods or purchased raw materials on the high seas. Alternative means of shipping goods between the East and West Coasts of the United States, like the combined sea-railway system, have become more competitive with the cost of shipping through Panama. Since 1975, the Canal has lost money. The lock system is over 50 years old, and maintenance costs will continue to go up. If the United States retains control of the Canal, it faces the prospect of much higher maintenance costs and declining revenues. This difference can only be made up by higher tolls, which will make the Canal less competitive as a means of transportation, or by congressional appropriations. The Canal is becoming an economic liability for the United States. Under these conditions, it makes sense to transfer it to the Government of Panama, which wants it very badly.

PANAMA CANAL TREATY

Mr. BAKER. Mr. President, I ask unanimous consent to have printed in the Record a statement by the distinguished Senator from Arizona (Mr. Goldwater), and the material attached thereto.

The PRESIDING OFFICER. Without objection, it is so ordered.

STATEMENT BY SENATOR GOLDWATER

It was my distinct pleasure on Friday of last week to have been able to discuss the Panama Treaty with Ambassador Sol Linowitz with former Secretary of State Dean Rusk as the moderator, before the State Bar of Georgia in Atlanta. It was a very revealing discussion, particularly because once again in a large American city I gathered the distinct impression that the American people are not going to buy the present Panama treaties. I disagree wholeheartedly with the majority leader of the Senate, Senator Robert Byrd, when he feels or says that a treaty can be ratified next year. I think a treaty could be acted on, but it is going to take some changes and the changes are incorporated in the joint statement of understanding agreed to by both President Carter and Dictator Omar Torrijos indicating that the United States would have the ability to interfere at any time in Panama should the future and safety of the canal be threatened. The word "intervention" does not appear anywhere in either treaty and it was deleted in capitulation to Panama's demands.

The statement was made by the Ambassador, and I believe it is true, that if we change the wording of the present treaty in any way it would require a plebiscite to be held in Panama, and because of the seeming powerful objection to the word "intervention," it would never pass. Now I hold that this is not important to the United States. If the canal is to remain a viable means of access between the two oceans and if it is to remain—as the treaty implies but does not clearly spell out—our responsibility, along with that of other hemispheric countries, to provide protection, then we must have the right of intervention. I am going to propose language to be added to the present treaty indicating that it is the consensus of the Senate that these words are part of the treaty whether in it or not, but I believe that even that would require a vote by the people of Panama. But, again, that is not important. The main thrust of my remarks I would like to have made a matter of record.

The national security aspects of the Panama Canal issue, not in relation to the defense of the Canal as such, but as regards the continuation of a U.S. military presence in Panama, is the very essence of the national security interest that requires the modification of the proposed new treaties.

One can quibble endlessly over the defensibility of the Canal as a waterway—just as one can quibble endlessly, in this day and age, over the defensibility of almost any defense facility, anywhere. But U.S. operational control of the Canal and the attendant U.S. military presence in Panama to assure the continuation of that control have become the foundation of the security of both the United States and the Western Hemisphere against a Communist takeover of Latin America.

This is true from a military as well as a political and psychological standpoint.

Panama, because of its geographical location at the crossroads of Atlantic-Pacific transportation, because of its dominant position in relation to the Caribbean, and because of the existence of the Canal, is at once, both symbolically and practically, the key to hemispheric defense. It is also the Achilles heel of that defense. If we were, as proposed in the new treaties, to create a power vacuum by giving up our right to maintain a military presence in Panama after 1999, it seems inevitable that the Soviets, not directly but through the Cuban surrogacy, would move in quickly to fill it.

The continuation of the U.S. military presence in Panama is, therefore, the all-important factor. As long as we have an adequate force in Panama to "hold the fort" until reinforcements, if needed, can be sent in, there seems to be little likelihood that "defense" of the Canal will ever become necessary. It is almost inconceivable that, in the face of that military presence, any nation, unless it were bent on precipitating World War III, would launch a significant effort to wrest control of the Canal from the United States.

Defense from within is a far different thing from defense from without. It is the latter that the new treaties would require the United States, and the Western Hemisphere, to rely on.

From a military standpoint, in the absence of a preliminary holding capability, any attacking or infiltrating forces would become speedily entrenched in all strategic locations and the task of dislodging them from without would be a major, costly and highly destructive one, as compared with that of repelling such forces at the outset.

And from a political standpoint there is also a vast difference between, on the one hand, augmenting military forces already legitimately positioned within a country, and, on the other, introducing forces into a country where there are none, no matter how firm the legal right to do so may be. The latter would be the case after 1999 under the proposed new treaties. Even if it were quite clear that the United States had the right to send force into Panama to "defend" the Canal—and the proposed new treaties are wholly unclear on this point—the cries of "imperialist aggression" and "imperialist intervention" would be so orchestrated internationally as to effectively deter any such action on the part of the United States, woefully sensitive as we Americans seem to be to "world opinion," even when rightful defense of lives and property are involved.

Not much less important than the military considerations regarding a continuing U.S. military presence in Panama are the psychological ones.

Southcom has become to most Latin American military leaders, and therefore to most Latin American governments, the energizing center of their Latin American defense system. They feel possessive about it, proud of it. This has come about by virtue of Southcom's military assistance and representative functions throughout Latin America, all headquartered in Latin America. The very fact that the United States deems Latin America of such strategic importance as to maintain the hub of its operations in defense of the area in Panama is a matter of considerable significance to Latin American leaders. That significance is appreciably enhanced by the

additional fact that the commander of Southcom has consistently been a U.S. general officer of a rank substantially higher than the size of the forces under his command would ordinarily call for.

If the functions and responsibilities of Southcom were to be transferred to a command headquartered within the continental United States, as the proposed new treaties would, in effect, require, U.S. military rapport with Latin America, and hence U.S. diplomatic rapport with Latin American governments, would diminish greatly. A tendency would inevitably be generated for the Latin American nations to look elsewhere for military assistance and cooperation. The basic nexus of current U.S.-Latin American relations would be destroyed. The recognition of this fact is, of course, anathema to those who view foreign relations only in terms of universal sweetness and light. Nevertheless, it is a reality—and a transcendent one.

One of the major contributing factors to the development of this situation—the close military bonds between the U.S. and the Latin American nations—has been the various military schools operated by Southcom in Panama for the benefit of all Latin American military establishments. Many of these schools are staffed to a substantial degree by their own Latin American honor graduates. The “alumni” body of these institutions, spread throughout Latin America, now numbers close to 50,000.

To cite just one example of the effectiveness of these military education facilities, the counter-insurgency curriculum conducted over the years in one of the schools, the prestigious School of the Americas, has played a leading role in thwarting the Latin American Communist insurgency program instituted by Fidel Castro as far back as the sixties.

To give all this up—to place ourselves in a position of being unable to resist a takeover of the Panama Canal by the Soviets, to place Panama in the position of a sitting duck, and to destroy our close military, and hence governmental, ties with Latin America—to me would be the height of national folly. The proposed new treaties are a blueprint for just such a course of action.

Mr. GOLDWATER. I brought up these questions during the course of the discussion. Where does the trilateral commission fit into this treaty? How much money is owed by Panama to the large banking institutions whose officers in most cases are members of this commission? How much money is owed by Third World countries to these same banks? In other words, the question I put and tried to put in a way that would not step on the toes of friends of mine in the banking business, was: Is it going to become the job of the Congress of the United States to bail out the banking business of this country when they have made poor loans to foreign countries? This question has not been answered, but I have asked the chairman of the Foreign Relations Committee to conduct an investigation into it, and I hope he will.

IN SUPPORT OF THE PANAMA CANAL TREATIES

Mr. KENNEDY. Mr. President, on November 11 Deputy Secretary of State Warren Christopher delivered an excellent speech in support of the Panama Canal treaties, before the Florida Council of 100 in Palm Beach. In his speech, Mr. Christopher reviews the important history of these treaties, and details the reasons why they are in our strong national interest. Those Members who remain skeptical about the treaties should carefully consider the strong security, economic, and political arguments so ably presented by Mr. Christopher. It is my hope that the future Panama Canal debate in this country will proceed along these rational lines, rather than descending to the emotional jingoism which has characterized some of the early attacks on the treaties.

I ask unanimous consent, Mr. President, that Mr. Christopher's speech be printed in the Record.

There being no objection, the speech was ordered to be printed in the Record, as follows:

SPEECH BY THE HONORABLE WARREN CHRISTOPHER

I am delighted to be here today to meet with such a distinguished group of business leaders.

I would like to talk with you this morning about an issue that is being debated, not only in the halls of Congress, but across America—the Panama Canal Treaties.

The new treaties have aroused strong emotional feelings among many Americans. Since it was built, the canal has been more so to us than simply another waterway for our ships. It was built at a time when America was just emerging on the world scene. We were able to conquer this monumental engineering problem where others had failed. Even today, it is impressive to see how ingenious the canal system really is. Indeed, the canal came to symbolize the resourcefulness and ingenuity of the American people—qualities that we all believe to be among our greatest assets as a nation.

This sentiment, this symbolism, is the first reaction of many Americans when they think about the prospect of these new treaties. In fact, as you probably recall, President Carter has said that his first reaction was to be against the idea of a new treaty.

At the same time, we all recognize that the Panama Canal is important to our national defense and commerce. It is not a monument that sits there simply to be visited and to remind us of the past. It is an important navigational link. As such, our first concern must be to assure that it will always remain open, secure, and efficiently operated.

It is that concern which led President Johnson—after consulting with former Presidents Truman and Eisenhower—to open negotiations for a new treaty in 1964. It is that concern which has convinced every succeeding President of the necessity of a new treaty. And, it was that concern for the future which convinced President Carter that his initial reaction against changing the current arrangement had to be weighed against our national interest in assuring that the canal remains open and secure to both our commercial and naval vessels.

As the Senate vote approaches and the debate over the treaties accelerates, I think most Americans are going to ask themselves several basic questions:

Which course is best from a military standpoint?

From an economic standpoint?

Are these treaties "right," both in terms of what we, as a nation, stand for and, in terms of our self-interest?

I would like to spend a few moments this morning addressing those questions. I want to tell you what these treaties do and I want to answer some of the questions that come to mind as we consider the treaties.

The treaties that were signed by President Carter in September are the product of fourteen years of negotiations. They would replace a treaty that was arranged seventy-four years ago. The first of the two new treaties provides for the operation and defense of the canal through December 31, 1999. The second treaty provides for the permanent neutrality of the canal and has no termination date.

Under the terms of the first treaty, the United States will continue to operate the canal until the year 2000. That operation will be conducted through a U.S. Government agency, to be known as the Panama Canal Commission. The Commission will operate in accordance with U.S. law, which will govern such matters as the setting of tolls and the regulation of employment policies. Five members of the Commission's nine-member board will be Americans. During this period, American troops will remain in Panama and the United States will have primary responsibility for defending the canal.

Starting with the year 2000, operation of the canal will be the responsibility of the Panamanians. At present, nearly seventy-five percent of the canal work-force is Panamanians and, by the year 2000, Panamanians will have moved into all levels of management and will be in charge of running the canal. But, after the year 2000, the second treaty—the neutrality treaty—will remain in effect.

The neutrality treaty commits both the United States and Panama to protect the openness, security, and neutrality of the canal for the indefinite future. Under that treaty, as it has been interpreted, both by the United States and Panama, each country will have the right to act against any threat directed against the canal or against the peaceful transit of ships through the canal. The treaty does not give us the right to intervene or meddle in the internal affairs of Panama. That is not a

right we sought. It does, however, give us the right to take action directed at ensuring that the canal remains open, secure, and accessible.

Moreover, the neutrality treaty assures us that United States warships will be able to go through the canal as quickly as possible, without any impediment, and in case of need or emergency that they will be able to go to the head of the line—ahead of other ships waiting to transit the canal.

It should be noted that both the United States and Panama are agreed on the interpretation of these rights. This was recently confirmed by the statement of understanding that was issued in Washington on October 14 following a meeting between President Carter and General Torrijos.

The treaties also contain additional significant provisions. For example, the basic treaty contains a provision relating to the construction of a sea-level canal. Under this provision, both the United States and Panama agree to study the feasibility of building a new canal in Panama which could accommodate some of the new and larger tankers. Based on our studies, which show that Panama is the most feasible place to build such a canal, we agreed, until the end of this century, not to construct such a canal, outside of Panama. In exchange, Panama agreed that, during this same period, it would not allow any other nation to build an inter-oceanic canal in Panama without our approval. Finally, the treaties also provide privileges and protections for the Americans who will be working in Panama in connection with the canal during this 23-year transition period.

This is the basic arrangement. But what about the questions that have been raised? Are there good answers to the many questions which have been raised regarding the treaties? I think there are.

Can we defend the canal under these treaties? Do they protect our military interest? In my judgment, the first place to look for an answer to that question is to our Joint Chiefs of Staff. These are the men who have the initial responsibility for our defense. The fact is that the Joint Chiefs are active proponents of these treaties. They worked closely with our negotiators on a regular basis and the treaties reflect their judgment on what we need to defend the canal.

According to the Joint Chiefs, these treaties are not only as good as the existing arrangement in terms of our national security interests, they are far better. They afford us all the rights we need to step in against any military threat to the canal. In the judgment of the Joint Chiefs, they also decrease the problems that would be presented if we continued to operate the canal under the existing arrangement in the face of growing opposition from the Panamanian people.

We must understand that, just as the canal is a symbol for us, it is a symbol to the Panamanian people as well—indeed, one that is far stronger to them than it is to us. For them, it is a constant reminder that their nation is divided. Early this year, when the new treaties were just coming under discussion, my high school son asked, how would we feel if another country had a canal through Florida? That is a simple metaphor, but it helps me understand the hostility that the Panamanian feel.

These treaties—in a way that is fully consistent with our own interests—will eliminate the major causes of that hostility. For the Panamanian people, they mean that their country will no longer be divided in two by an American enclave. They mean that a Panamanian visiting a relative on the other side of his country will not have to pass through American jurisdiction. They mean that the people of Panama will begin to receive a fair share of the revenue from the canal, which is, after all, a major national resource. In short, they give the Panamanian people a legitimate stake in the canal which makes them our partners rather than adversaries in the canal enterprise. And in so doing, they make us real partners in assuring that the canal remains open to all ships and is defended against all threats.

Unlike the existing arrangement, the new treaties have the support of the Panamanian people. In their recent national referendum, two-thirds of the Panamanian voters approved the new treaties. The national debate which preceded the referendum was lively, free and fair. Much of the opposition to the treaty in Panama was, in many ways, a mirror image of the opposition here—many Panamanians thought that their government had conceded too much to the Americans. But the overwhelming majority of Panamanians accepted the new treaty terms, assuring us that under the new treaties the canal will be operated with the energetic support of the people of Panama.

From a military standpoint, then, these treaties protect our right to defend the canal, if necessary, and they make it less likely that an American life will ever be lost defending it.

What about our commercial interests? What effect will the treaties have on American trade and American business? The first concern of those who use the

canal in their trade is to assure that it remains open and efficiently operated, that tolls remain reasonable, and that ships passing through the canal are secure. In addition, companies that use the canal also want certainty about the future; they want a stable situation for the canal so that they can plan effectively. The new treaties address these concerns and promote our interests.

As I have noted, we will continue to be responsible for operating the canal through the end of this century. During this period, we will be training Panamanians in the management of the canal so that they will be able to operate it effectively after the year 2000. Both before and after the year 2000, we will be able to defend the canal if it is threatened.

The practical facts of life are just as important as the legal rights we have under these treaties. By resolving the cause of bitterness and resentment, and enhancing the stake of the Panamanian people in the canal enterprise, we are taking the most effective action possible to assure the smooth operation of the canal in the future.

In this regard, it is important to recognize that Panama derives 12 percent of its gross domestic product and 18 percent of its foreign exchange earnings from canal-related activities. Moreover, unlike the present arrangement, what Panama will earn from the canal enterprise under the new treaties will be directly related to the level of traffic that moves through the canal. If traffic were suddenly shut off by the closing of the canal, or diverted because of inefficient operation, the biggest loser would be Panama.

As a result of our insistence that payments to Panama for its contribution to the canal enterprise be drawn entirely from canal revenues, there will be toll increases in the future. Although our current study of the subject is not yet completed, it appears that such an increase will be on the order of 30 percent.

Is such an increase justified and what will it mean for American consumers and exporters? Over the last 40 years, tolls have only increased from 90¢ per canal ton to \$1.29 today. Can you think of any other product or service which has increased so little in 40 years?

Panama's toll levels are far below those for the Suez Canal. An increase of 30 percent would mean that for a Japanese car enroute to an Atlantic or Gulf port, for example, the increased transportation cost will be \$3.00, less than one-tenth of one percent of the total purchase price.

If I may, I would like to add one other word about the commercial aspect of the canal and these treaties. We consider our commercial interest in the canal to be important. The port of Tampa, for example, shipped over two million tons of phosphates to Asian markets through the canal in 1976. And, Florida's citrus exports through the canal to Asia were worth approximately \$20 million in 1976.

Thus, while the canal is less important to our overall commerce than it once was—only 7 percent of all our waterborne foreign trade passed through the canal in fiscal year 1976—it remains important to the economy of this state and the nation. That is one important reason why ratification of these treaties is essential. They substantially increase the likelihood of a stable, long-term partnership with Panama, which will ensure an open and efficient canal in the future.

What about the cost of these treaties to the American taxpayer? Are we paying Panama to take it away, as some have claimed? The answer is no.

We insisted during the negotiations that payments to Panama for its contribution to the canal enterprise be drawn entirely from the canal's earnings. Panama initially sought much larger payments which far exceeded what could be financed from the canal's earnings. Our view prevailed. Under the treaties, Panama will receive payments that more nearly reflect the fact that it is making available its major national resource—its territory. But the treaties will not require any appropriations from the American taxpayer.

In addition, we have agreed, outside the treaty, to seek certain arrangements which will assist the general economic development of Panama and enhance its stability. These are loans, guarantees and credits. And, they will be used largely to help Panama finance U.S. trade and U.S. investment.

Finally, what about our image as a world leader? Are these treaties a sign of retreat? Will they create a power vacuum in the Caribbean that can be exploited by Cuba or the Soviet Union? The fact is that these treaties will have just the opposite effect. They will increase our influence in this hemisphere. It is the status quo which can be exploited by others. The treaties lessen this danger by removing a major source of anti-American feeling throughout Latin America.

It is the widely shared conviction of the Latin American nations that the original treaty needs to be changed. Some of our closest friends in this hemisphere—including Venezuela, Costa Rica, Mexico, and Colombia—issued a joint communique in August urging the United States and Panama to conclude the new treaties.

Indeed, through all the years of these negotiations, the people of Latin America have looked forward to the peaceful resolution of this troublesome issue.

The treaties do not settle the other important issues on the agenda of the United States and the nations of Latin America—issues involving trade and development, regional peace and human rights. Nevertheless, they will enable us to approach these issues with a fresh spirit of cooperation, unencumbered by the suspicion and resentment that accompany the existing canal arrangement.

To all nations in the world, the treaties demonstrate that we will use our power in a manner that not only takes full account of our own security interests, but also our firm belief in reducing global tensions and in dealing with other nations on the basis of mutual respect.

Thus, the very same resourcefulness and ingenuity that enabled us to build a canal where others had failed now leads us to build a new relationship with the people of Panama that reflects present-day realities and that provides for the future.

We are a nation that has always been able to change with changing times.

We have never rested on our laurels; we have always seized the opportunity to make things better.

And we are a nation that wants to use our great strength and power, not to prove that we are powerful, but to lessen the dangers of violence and conflict around the world.

These new treaties serve America's interests. I hope that, after you listen to the treaty arguments, and consider them carefully, you will conclude that they should be approved by the United States Senate.

[From the Congressional Record—Senate, Dec. 7, 1977]

PANAMA CANAL

MR. MCCLURE. Mr. President, our distinguished colleague from Kansas (Senate Dole) has played an important role in the consideration of the Panama Canal Treaties now before this body. In these past months he has issued perceptive analyses of provisions written in his usual articulate style, and proposed a number of modifications to the treaty language which would go far toward correcting these problems.

Recently, in response to an article in *Forbes* magazine dismissing the possibility of severe economic hardships in the event of a Panama Canal closure, Senator Dole wrote the publication, pointing out the flaws in its argument. It is evident to many of us in this body, and certainly to the American citizens whose livelihood would be directly affected by a canal closure, that the unavailability of the canal shipping route would severely impact on our economy, and have a disastrous effect on those segments of the market most dependent on it.

I salute my distinguished friend for eloquently articulating the situation in his letter to *Forbes*, which he has kindly agreed to have placed in the Record by me for the benefit of all our colleagues.

Mr. President, I ask unanimous consent to print in the Record the text of Senator Dole's letter to *Forbes* in response to its November 15 article, "The Canal Without Rhetoric."

There being no objection, the letter was ordered to be printed in the Record as follows:

U.S. SENATE,
Washington, D.C., December 5, 1977.

FORBES MAGAZINE,
New York, N.Y.

DEAR EDITOR: In its November 15 article, "The Canal Without Rhetoric," *Forbes* seems to contradict itself. It asserts that "from a practical economic point of view" the U.S. "almost certainly" does not need the Panama Canal. Yet in its analysis of the impact of a canal closure, it describes several sectors of the nation for whom the consequences would be disastrous.

Admitting that certain "shifts in trade" would occur, the article comments that one-fifth of all U.S. farm exports travel through the Canal to the Far East. If the canal were closed, it adds, these grain producers "could pay the highest price" as a result of "increased competition for foreign producers."

Since the article concludes, however, that economically the Canal is "more symbol than substance," I assume that *Forbes* editors regard the economic chaos this would produce in our farm states as a point significant enough to mention but not important enough to worry about.

In an effort to protect the economic interests of the United States, I have proposed Amendments to the pending Canal Treaties. To protect commercial shippers from unreasonable increases in Canal tolls, I want to cut in half the proposed payments of \$60 million a year to Panama from toll revenues. And to protect our short-cut route to Asian markets, I would eliminate the provision now in the Treaties that prevents the United States from constructing a new Canal in any other country if the one in Panama is ever closed. These modifications in the pending Treaties are vital to American agriculture and commerce.

The United States Department of Agriculture has provided statistics on the magnitude of our commercial use of the Canal in shipping of agricultural goods. One-fifth of all corn exports, one-fourth of soybean exports, almost half of our sorghum production and much of the hard red winter wheat from the Great Plains goes through the Canal on its way to foreign ports. Much of this grain goes to Japan, which is now the single largest country market for U.S. farm products. The

total trade is worth about \$8 billion, and its disruption could plainly cause financial ruin for thousands of farmers.

I sincerely believe that the best way out of the current cost-price squeeze in which so many American farmers are caught is through expanded exports. For that reason, an accessible and inexpensive Canal shipping lane is imperative to U.S. agricultural producers.

Other dislocations are cited in the article. *Forbes* admits that "the Canal . . . is the only avenue for shipping Alaskan North Slope oil to the U.S. East Coast" and that at present there is no contingency proposal for bringing the fuel to the East. The article also indicates that "without the Panama Canal the East Coast ports are sure to suffer." These words translate into hundreds or thousands of workers shifting from productive work onto public assistance, and into an increased strain on the already fragile urban economies of the East. While according to the article business in West Coast ports would increase, this is not likely to be of great comfort to the unemployed dock workers of New York or Baltimore, for whom moving would be a significant financial hardship.

Finally, the article suggests that we would be affected far less than a number of other nations, and lists Ecuador, Peru and Colombia as examples of countries who would feel a Canal closure intensely. This brings to mind that one of the reasons given in support of the Treaties is the improvement of relations with Latin America; according to this argument, ratification of the documents will help persuade Latin America to reciprocate our feeling of friendship.

The article suggests that "without the Canal, the U.S. East Coast market for Ecuadorian bananas and Colombian coffee would disappear. But there is plenty of coffee elsewhere." I suggest that this type of attitude on our part will hardly enhance U.S.-Latin American relations.

It is clear from this review that a Canal closure, or even a substantial increase in tolls, would involve far more than what *Forbes* surprisingly describes as "shifts in trade." Although some segments of the economy may benefit slightly from the situation and some will remain untouched by the change, for other sectors the closing of the Canal would signal wholesale unemployment and widespread bankruptcy. The Panama Canal may be an economic "symbol," as *Forbes* maintains, but the problems its closing would cause are substantive.

Sincerely yours,

BOB DOLE,
U.S. Senator.

[From the Congressional Record—Senate, Dec. 15, 1977]

THE AMERICAN LEGION SPEAKS ON THE PANAMA CANAL ISSUE

Mr. SCOTT. Mr. President, within a few months after the Senate reconvenes we will probably be called upon to pass upon the treaties negotiated between the executive departments of our government and the Government of Panama. In this connection, the National Commander of the American Legion, in the December issue of the American Legion magazine, has again expressed his opposition to ratification. As some Senators may not have read the national commander's statement, I ask unanimous consent that it be printed in the Record for the information of the Senate.

There being no objection, the statement was ordered to be printed in the Record as follows:

WE HAVE AGAIN STUDIED THE TREATY; WE STILL SAY "No"

Why is The American Legion so vehement in its opposition to the Panama Canal Treaty? Does it want to alienate all of Latin America? Does it want to invite sabotage against the canal? Does it really believe the canal is still vital to U.S. security?

The questions have dogged me in my first months as your national commander. I believe I should use this forum to reply so every American Legion member understands our position before Senate debate.

First, our opposition is directed at the treaty, not at the people of Panama. The American Legion has consistently supported fair and equitable payments to Panama for the canal, generous social and material assistance for its people and constant modernization of the canal for the economic and military well-being of the entire Western Hemisphere.

Debaters avoid these economic and security factors.

Isn't it disturbing that although this treaty has been negotiated by four U.S. administrations, the text was not made public until the eve of the gala signing ceremony at the White House? We were treated to a spectacle in which virtually every hemisphere chief of state signed a protocol for a treaty they had not read!

Subsequently, it became apparent that Washington and Panama City did not even agree what the text meant. Worse, the controversy has centered on circumstances under which the United States could exercise its military might to protect the canal and the hemisphere. President Carter and President Torrijos finally met and announced that they agreed on the interpretation of the treaty's vague language—but they did not clarify the language in the treaty.

An "understanding" between two heads of state is fine, but it lacks the force of law. What happens when Mr. Carter and or Gen. Torrijos have left office? The American Legion does not believe such questions should rest on a reed called "understanding."

In 1975 alone, 14,000 ships transited the canal. Forty-five percent of these voyages originated in the United States. These ships were loaded with the agricultural and manufactured exports vital to our balance of trade and payments. Any increase in tolls by Panama could have devastating effect on the world market position of the American farmer, laborer, businessman. The Mississippi Valley, Plains States and the east coast are vulnerable.

Should the canal ever be closed to U.S. ships, the Commerce Department estimates a \$932 million jump in the price of U.S. exports, a \$583 million jump in the price of imports. The impact would be chaotic.

On military issues there have been honest differences of opinion between highly qualified men who have debated the importance of the canal, but none has denied that loss of the canal in a time of emergency could be disastrous. Yet the very provisions of the treaty that are supposed to guarantee our right of intervention are those that cause anguish among left-wing Panamanians.

It's true that our biggest aircraft carriers cannot transit the canal. But 95 percent of U.S. fighting ships can, including powerful nuclear forces. There's a lot more to the Navy than its giant flattops.

And what about Panama, this government headed by Gen. Torrijos?

His friendship for Castro is disquieting. His henchmen and propagandists have flayed the United States for years with phoney "colonialism" charges. Yet who has advertised the human rights survey of Panama by the respected Freedom House? That survey ranks Panama as the most dictatorial regime in the Hemisphere.

When Torrijos seized power in Panama in 1968, the country had a debt of \$167 million. Today it owes over \$1.5 billion and there has been precious little improvement in the lot of the average Panamanian. Under the treaty, the United States—in addition to huge annual payments to Panama—would encourage banks to loan Torrijos another \$300 million.

Faced with all this, we are asked to endorse:

1. Surrender of control over a vital waterway built by American ingenuity and American money on land fairly purchased by the United States.

2. Surrender of all defense rights within 22 years, sooner should Panama exercise full sovereignty.

3. Surrender of U.S. sovereignty over the canal and the Canal Zone and the exposure of the human rights of U.S. citizens to Torrijos' law.

4. Granting veto power to Panama over any potential U.S. plan to build another Atlantic-Pacific canal anywhere in Central America.

5. Acceptance of nebulous language—backed by imprecise personal agreements—that U.S. warships would have priority use of the canal during any emergency.

The American Legion cannot endorse such a treaty. We pray that the Senate shares our fears.

SENATE NEEDS EARLY OAS REPORT OF HUMAN RIGHTS CONDITIONS IN PANAMA

Mr. STONE. Mr. President, at hearings on October 13 of Senate Foreign Relations Committee on the proposed new Panama Canal treaties, my colleague, Senator Case (pages 9-45 to 9-46) said:

I am disappointed in the reports so far from the Secretary of State in regard to the condition of human rights in Panama. It does not seem to me to meet the requirements of the statute or the Congressional intent with which it was passed. I intend to pursue that myself.

That date's hearing summary pointed out that Senator Case asked the Department of State to give the Foreign Relations Committee an updated report on human rights conditions in Panama.

On October 11, 1977, before the House International Relations Committee, the respected and prestigious civil rights attorney, David Carliner, expressed concern about that day's statement by William P. Stedman, Deputy Assistant Secretary of State for Inter-American Affairs, who said:

It is gratifying that on September 13 the Panamanian government invited the Inter-American Human Rights Commission to visit Panama to investigate the various charges of human rights violations which have been made and to report its findings. Torrijos promised that if any political prisoners were found, they would be released.

Mr. Carliner commented:

Incidentally, although the Inter-American Human Rights Commission has completed its visit, its report is not likely to be published for a few months, and even then, only if Panama or the Council of the Organization of American States authorizes publication.

Mr. Carliner is a board member and associate treasurer of the International League for Human Rights. That organization includes such present and past honorary president and vice presidents as Roger N. Baldwin, Rene Casin, Gunner Myrdal, Fenner Brockway, Jan Papanek, and Andrei D. Sakharov. On November 28, the Law-

yers Committee of the International League for Human Rights wrote to the Organization of American States as follows:

NOVEMBER 28, 1977.

Re Panama.

MR. CHARLES MOYER,
Inter-American Commission on Human Rights,
Organization of American States, Washington, D.C.

DEAR MR. MOYER: I am an attorney at law and a member of the Lawyers Committee of International Human Rights. I am sending this letter on behalf of the International League for Human Rights.

We have reviewed a considerable amount of material and have conferred with several individuals who are familiar with the human rights situation in Panama. Based upon the foregoing, we have reason to believe that there are violations of human rights in Panama which warrant investigation by the mission which your organization will be sending to Panama. What follows is a brief summary of those alleged violations, together with copies of several supporting documents and references to other printed materials which are not annexed but which can be furnished at your request.

On the island of Coiba it is reported that there exists a penal colony where prisoners are allegedly subjected to inhumane treatment.

In Panama City is Carcelo Modelo, where prisoners are detained after arrest. Conditions there are reportedly brutal. Torture is reported to be practiced there as a matter of routine, particularly upon political prisoners.

The National Guard appears to be beyond the reach of the law. Arbitrary arrest, torture and illegal detention by the National Guard appear to prevail throughout the country.

Political prisoners can be held without trial for a period of 15 years.

With the exception of the recent debates preceding the plebiscite which ratified the Treaty, public assembly has been severely curtailed. Political parties and professional and labor organizations which oppose the government are prohibited. New dissemination is subject to government approval, and in some instances broadcasts have been interrupted and newspapers closed down for presenting anti-government views.

Many political opponents of the government have been exiled. Some have reportedly been assassinated; others have disappeared without explanation.

The constitution adopted in 1972 guarantees most basic freedoms and due process of law. In practice, none of the constitutional guarantees applies to political prisoners.

Article 277 of the constitution establishes General Torrijos as the "maximum leader" giving him full power for six years to make all major executive, judicial and military appointments.

Three cabinet decrees promulgated in 1969 are applied independently of the constitution. Decree 341 prohibits public meetings in Panama City and Colon. Decree 342 authorizes detention without trial for 15 years. In a recent statement made on November 12, 1977, the President of Panama publicly admitted that this practice is "not right." (New York Times 11/13/77). Decree 343 imposes self-censorship upon all forms of media.

In support of the foregoing, I have annexed copies of the following documents which should be studied carefully for factual details not fully set forth in this letter:

1. Manuscript of Leopoldo Aragon describing conditions at Colba.
2. Statement of Leopoldo Aragon of his intention to immolate himself in protest against violations of human rights in Panama.
3. Letter dated 9/20/77 from Rose M. Aragon.
4. Letter (undated) from the Panamanian Committee for Human Rights to Amnesty International.
5. Statement of Antonio Poore dated September 15, 1976.
6. Resolution of the Inter-American Press Association (dated October 1977) and Report of its Committee on Freedom of the Press and Information concerning Panama.

7. Excerpt from New York Times article (11/13/77, p. 1) containing an admission by General Torrijos that holding political prisoners without trial is "not right."

Reference is made to Volumes I and II published by the Panamanian Committee for Human Rights in 1976, particularly Chapters 1 and 5.

Reference is also made to the testimony of Rose Marie Aragon and Winston Robles before the Senate Foreign Relations Committee on October 12, 1977, and the testimony of Winston Robles and Eusebio Marchosky before the House Subcommittee

tee on Foreign Operations of the Committee on Appropriations on March 30, 1977. This testimony is quite detailed and informative as to alleged human rights violations which have occurred and reportedly continue.

We are still endeavoring to obtain further relevant information. If successful, we will forward such information to you.

It is respectfully requested that the onsite investigation to be conducted in Panama be directed to the reported violations referred to herein.

Very truly yours,

RICHARD NADELMAN,
Lawyers Committee.

Mr. President, as a member of the Senate Foreign Relations Committee, I, too, have found the representatives of the State Department less than candid on human rights abuses in Panama. I take this occasion to call upon the Organization of American States to send us their report on their November 29 to December 7 fact-finding mission to Panama as early as possible.

PANAMANIAN INVOLVEMENT IN INTERNATIONAL DRUG TRAFFICKING?

Mr. DOLE. Mr. President, I feel the time has come to comment on the lack of cooperation I have received in my efforts to secure information on the possible involvement of Panamanian General Omar Torrijos in drug-trafficking operations. My efforts to gain copies of U.S. Drug Enforcement Administration files on this matter, through legitimate and customary channels, have met with delay and excuse at every turn. It is one of the best examples of "stonewalling" that I have had the misfortune to experience.

It has now been a full 2 months since I first filed a "freedom of information" request for copies of specific DEA files. To date, not so much as a single paragraph from those files has been provided to me by DEA officials, despite their repeated verbal promises that my request could and would be complied with. Let me briefly review the events surrounding this case.

EFFORTS TO SECURE INFORMATION

Mr. President, the Members of this body will recall that, on October 13 of this year, I advised the U.S. Senate of certain allegations I had received of direct involvement by Gen. Omar Torrijos and other members of his regime in drug trafficking in the United States and elsewhere. I suggested that these charges, if true, could prove relevant to the Panama Canal treaty issue. Certainly, the credibility and the personal integrity of General Torrijos and his colleagues would bear upon their reliability as Panama's guarantors of the new treaty; and, since ratification of these treaties would definitely strengthen the political and financial status of the Torrijos regime, it is important for us to know in advance if we will be bolstering a corrupt government which facilitates the transport of illegal drugs to our own shores. For that reason, I stated that the Justice Department should make its findings on this matter known immediately to Congress, prior to consideration of the treaties.

The following day, October 14, I filed a "freedom of information" request with the Drug Enforcement Administration, requesting access to 45 specific files which allegedly contain information on

Torrijos' involvement with the drug-trafficking operations. At the request of the Administrator, I did not release those 45 file codes to the public media.

One week later, on October 21, I sent a second letter to DEA Administrator Bensinger containing excerpts from documents that were represented to me as copies of documents in DEA files. Those excerpts made specific reference to Omar Torrijos as being involved with narcotics and contraband traffic. I asked the Administrator to confirm the authenticity of those documents, and to advise me in writing as to whether the reports on Torrijos had been verified or disproven by DEA investigators. I have never received a response to that letter.

On October 26, I met with DEA Administrator Peter Bensinger on this matter. He advised me that some of the files in question had been turned over to the Senate Intelligence Committee. Mr. Bensinger further advised me that before any of the files could be turned over to me, they would have to be screened for removal of any information which might endanger national security or violate personal privacy rights. I acknowledged this, and reaffirmed my "freedom of information" request for those documents.

A phone call to my office on November 8 from the DEA Administrator's office advised me that I could expect to receive approved documents during the week of November 13. A week later, another phone call from the Administrator's office informed me that the documents would not be forthcoming as promised. This was attributed to special difficulties in securing all of the information I had requested. At that time, the Administrator's office was unable to advise just when I might receive the first delivery of some of the files I had requested.

Consequently, in accordance with established procedures under the Freedom of Information Act, I filed a formal appeal with the U.S. Attorney General on November 18. I advised the Attorney General at that time that I considered the information I had requested from the DEA clearly releasable under the Freedom of Information Act, and requested his review of the case. I also requested a written response from the Attorney General within 20 working days. Those 20 days have now elapsed without an official response to that appeal.

I also want to emphasize that it has been a full 2 months since my initial "Freedom of Information" request was submitted.

WHY THE DELAY?

Mr. President, it seems totally unreasonable that, at the end of 2 months, the U.S. Drug Enforcement Administration has not even been able to provide me with sanitized versions of the files which they agree I am entitled to under the Freedom of Information Act. And I think their delay and uncooperativeness on the matter can only fuel public suspicion about what those documents may say about the involvement of Panamanian General Omar Torrijos and his colleagues in illegal operations.

As a member of the U.S. Senate who is being asked to pass judgment on proposed Panama Canal treaties, I think I am at least entitled to a direct denial of my request if these files are not to be

provided to me. Instead, the administration seems determined to extinguish the matter through procrastination and excuses. If this is their strategy, then they must accept the consequences of public opinion and Senate reaction.

Mr. President, I hope that the U.S. Drug Enforcement Administration, and the Department of Justice, may yet see fit to cooperate and comply with my legitimate request for access to files containing information on General Torrijos' involvement with drug-trafficking operations. But I have yet to see any evidence of an earnest effort on their part to facilitate my investigation of the matter.

DELETION OF DR. JOHN H. GRIMM FROM OCTOBER 26, 1977 CONGRESSIONAL RECORD LISTING OF MILITARY PERSON- NEL OPPOSING THE PANAMA CANAL TREATY

Mr. TOWER. Mr. President, on October 26, 1977, there was a list of flag officers opposing the Panama Canal treaty inserted into the Congressional Record. The name of a resident of Houston, Tex., Dr. John H. Grimm, brigadier general, U.S. Air Force Reserve, was inadvertently included in that list provided by the Reserve Officers Association. Dr. Grimm's name should be deleted from that list.

EVALUATING THE ARGUMENTS AGAINST THE NEW PANAMA CANAL TREATIES—II

Mr. HUMPHREY. Mr. President, in a previous statement to the Senate, designed to correct some misperceptions, I evaluated some of the arguments raised against the Panama Canal Treaties.

Today, I would like to continue this process, by responding to a number of additional concerns which have been expressed in the Congressional Record over the past 3 months.

PANAMA AND CUBA

On September 23, Representative Robert K. Dornan of California, in an Extension of Remarks, criticized the State Department for asserting that Gen. Omar Torrijos of Panama is not really closely aligned with Cuba's Fidel Castro. The distinguished Representative invited the Department to "explain away" a recent exchange of telegrams between the two Latin leaders.

It is correct that, while returning to Panama from the United States after having signed the treaties, General Torrijos sent Castro, by radio, a message of greeting and appreciation for Cuba's support for Panama on the canal issue. However, Panama's relations with Cuba at the present time might best be described as "correct," without being particularly cordial or close. The staff of the Cuban Embassy in Panama now totals 25 to 30, a substantial reduction from the 1975-76 figure of 40 to 50. Despite allegations that Cuba has provided arms, training, and assistance to the Panamanian National Guard, there is no evidence that such is the case. When General Torrijos visited Cuba in January 1976, he expressed admiration for Cuba's material accomplishments under Castro but added, "Cuba has found its road to socialism but that road is not Panama's." I might add that numerous groups of American busi-

nessmen who have traveled to Cuba have also expressed admiration for a number of social accomplishments of the government of Fidel Castro.

During the canal treaty negotiations, General Torrijos consulted frequently with the Presidents of Venezuela, Colombia, Costa Rica, and Mexico. He met with them together on August 5 and 6, for a final consultation before reaching agreement in principle with the United States on August 10. These countries—not Cuba—are the ones with which General Torrijos has maintained the closest contact on the negotiations in recent years.

SOVIET INFLUENCE

On September 20, Representative Larry McDonald of Georgia inserted in the Congressional Record a column by Otto S. Scott that had appeared in the San Diego Union. Entitled "The Parallel Between Two Canals," the column referred to the alleged demand by the Soviet Union in 1919 for the internationalization of the Suez and Panama Canals and argued that—

Transfer of the [Panama] canal will open the gate to Soviet expansion and usher scenes of disorder and intrigue to this hemisphere virtually unknown since it achieved continental solidarity and ended its Civil War.

The neutrality treaty includes a provision which specifies that after Panama assumes responsibility for the canal at the end of the century, no foreign nation will be allowed to operate the canal or to station troops or maintain military bases in Panama. Panama has thus formally committed itself not to invite in another foreign power to "replace" the United States, nor does it have any reason to do so. Panama's goal for decades has been to achieve greater control over its own destiny, not to trade U.S. influence for some other foreign influence. As regards the fear that an unfriendly power might nevertheless push its way into Panama, it should be noted that the United States would be in a position under the neutrality treaty to act to maintain canal neutrality which includes the prohibition against foreign operation or bases. Moreover, the United States and Panama are allies under the Rio Pact, so the impression that Panama would be a defenseless target for foreign intrigue and expansion is wholly unwarranted.

This argument, moreover, is based on unwarranted assumptions regarding the present Panamanian regime headed by General Torrijos. He has made it clear that he wants Panama to develop in accordance with its own needs and traditions and not in accordance with any foreign model. Panama's relations with Cuba and the Communist countries are not close; neither the Soviet Union nor Communist China maintains an embassy in Panama. On the other hand, ever since achieving independence, Panama has had very close political and economic ties with the United States and is an ally of ours under the Rio Pact. United States-Panamanian ties will be even closer under the new treaties, since the two countries will be working in long-term partnership to operate and protect that canal. The danger of Communist or other unfriendly influence in Panama would be far greater if we attempted to maintain the status quo. Moreover, not only in Panama but also in other countries sympathetic to Panamanian aspirations, such an attempt

would provide grist for Communist mills and strengthen the position of anti-American forces.

PAYMENTS TO PANAMA

On September 21, Representative Robert J. Lagomarsino of California inserted in the Congressional Record an editorial from the Camarillo, Calif., Daily News entitled "Pay To Be Kicked?" The editorial argues that the Senate should reject the treaties because "we are being blackmailed by a two-bit dictator" and asks why we should pay \$50 to \$60 million annually until the year 2000 "for the privilege of being kicked out?"

In negotiating the treaties, the United States did not respond to pressure, but recognized that changing circumstances required basic changes in our treaty relations with Panama. We are acting, instead, to preserve and protect our continued use of the canal. We tried to reconcile the fundamental interests of the two parties: our interest in continued access to the canal, and the strong desire of the Panamanian people to have control over all their country's territory. The alternative—maintenance of the status quo—would be the unilateral assertion of American power, unnecessary for our objective, continued access to the canal, and without regard to the legitimate concerns of the Panamanians. Adopting such an alternative would seriously weaken our moral position in the world and would not be the best measure of assuring our security interest in the canal for the future. Given the vulnerability of the canal to sabotage, adhering to the status quo could well result in the defeat of our primary objective of an open and efficiently functioning canal.

In response to the charge that we are paying the Panamanians to take the canal, Secretary Vance pointed out on September 26:

Under the treaties, Panama will receive payments which more fairly reflect the fact that it is making available its major natural resource, its territory, but the treaties require no new appropriations, nor do they add to the burdens of the American taxpayer.

The payments are to come out of the revenues generated by the operation of the canal. Acceptance of the principle that they should be established on such a basis was a major concession to our point of view by the Panamanian negotiators who had sought, on the other hand, payments far higher than could be supported from canal revenues.

TREATY APPROVAL PROCESS

On September 21, Representative Robert J. Lagomarsino inserted in the Congressional Record an editorial from the Ventura County, Calif., Star-Free Press entitled "Why the Rush?" The editorial asked why President Carter had given precedence of a Panama Canal Treaty over other items demanding his attention; why the signing ceremony had been held so soon; why approval of the treaties should not be subject to an "election"—presumably, a popular referendum is meant—in the United States; and whether, in the event of a civil war in Panama, the United States would be obliged to send in troops to save General Torrijos "in order to save the canal?"

As the editorial correctly points out, negotiations had been going on for 14 years. It is difficult to see how our interests would have been served by their further prolongation, once mutual agreement was reached on the basic points at issue. Certainly, we would have been accused of bad faith had we attempted to draw them out for an additional period.

Though it is now apparent that the Senate will not vote on the treaties until early next year, at the time the treaties were signed it seemed possible that the Senate would vote in the fall. In any case, there is no necessary relationship between the date of signature of a treaty and the time of the Senate's consideration of it.

It is not the custom in the United States to hold popular referendums in order to approve treaties. Rather, in accordance with our Constitution, the people's will is expressed by their representatives in the Senate.

The United States has primary responsibility for defending the canal during the treaty period but has no interest in intervening in Panamanian affairs. Conceivably, our responsibility for canal defense could result in action by U.S. troops should civil disturbances break out in Panama at some time; however, the objective of the U.S. action would be to protect the security and neutrality of the canal, not to influence the outcome of an internal struggle for power. Moreover, the parallel with Vietnam cited in the editorial is specious, since both treaty opponents and proponents would agree that the continued efficient functioning of the canal is an important U.S. interest that must be protected.

INDIGENOUS COMMUNIST PARTY INFLUENCES

On September 23, Representative Daniel J. Flood of Pennsylvania inserted in the Congressional Record an article by the Washington columnist Allan C. Brownfield, entitled "The Canal Treaty and the Growth of Communist Influence in Panama." In this article, Brownfield alleges that Communist influence in the Panamanian Government is widespread; that the Panamanian Communists seek to eliminate U.S. bases in the Canal Zone; that the Soviet Union recently concluded "a potentially major trade and economic agreement with the Panamanian Government"; and that, once the treaties are approved, The Panamanians will bring pressure on the United States to eliminate our military presence altogether.

The Panamanian Communist Party does not function legally in Panama. It is permitted to remain in existence, but this Government toleration depends on the party's maintaining good behavior in the Government's eyes. It consists of only about 500 members and maintains a very modest profile. It does not participate either formally or informally in the Government, nor, to the best of the State Department's knowledge, are any leading government officials members of the party. Its actual influence on the Government of Panama is marginal.

Article IV of the Panama Canal Treaty provides a basis for defense of the canal by the United States and Panama acting in cooperation with each other, while establishing a U.S. right to act unilaterally if necessary to defend the canal. An agreement in implementation of that article describes U.S. rights to station,

train, and move military forces. U.S. base rights and the legal status of U.S. defense personnel in Panama are also provided for under this status of forces agreement. Panama has a good record of adhering to its international obligations, even to a treaty which has been objectionable to it virtually from the beginning. There is no reason to believe that its behavior would be any different regarding a treaty which is much more responsive to its major concerns.

The "major trade and economic agreement" between the U.S.S.R. and Panama does not, in fact, exist. A Soviet trade mission visited Panama on July 19, 1977, and held discussions about increased Soviet-Panamanian economic and trade relations. No formal agreement was reached, however, and there has been no further activity of note. A number of Latin American countries have trade agreements with the U.S.S.R., and the recent Soviet initiative toward Panama does not seem to merit any particular attention.

CANAL USE BY BELLIGERENT NATIONS

In his 20th speech on the Panama Canal Treaty, reported in the Congressional Record of October 27, Senator Allen raised certain questions regarding the United States-Panama Protocol of an Agreement concerning neutrality signed October 10, 1914. He expressed concern that this protocol was being terminated by the new Panama Canal Treaty.

The 1914 Protocol deals with the application to Panama and the Canal Zone of the principles of international law concerning the rights and duties of belligerent nations and neutral nations during wartime. It does not relate to the principle of neutralization of the Panama Canal embodied in the 1901 Hay-Pauncefote Treaty between the United Kingdom and the United States, or to the rights of belligerent vessels to transit the canal.

Under the pre-U.N. Charter law of war, belligerent warships could not renew their supply of fuel in the ports of the same neutral state until a minimum period of 3 months has elapsed from the time of their previous refueling—article 20 of Hague Convention No. XIII (1907). The 1914 United States-Panama Protocol provides that, for these purposes, when Panama and the United States are neutral in a conflict between other nations, the ports of the Canal Zone and the ports of Panama shall be treated as being ports of the same neutral nation. Specifically, the Protocol states:

That hospitality extended in the waters of the Republic of Panama to a belligerent vessel . . . shall serve to deprive such vessel of like hospitality in the Panama Canal Zone for a period of three months, and vice versa.

The protocol is terminated by the new Panama Canal Treaty because, upon entry into force of that treaty, the Canal Zone will cease to exist as a separate jurisdictional entity. Thus, the 1914 Protocol, which addresses the use of ports in "the Panama Canal Zone" would have no further application.

At the conclusion of my remarks, I will offer further comments on the use of the canal by belligerent nations.

U.S. DEFENSE OF THE CANAL

In his 22d speech on the Panama Canal Treaty, reported in the Congressional Record of November 1, Senator Allen alleged that General Torrijos interpreted the treaty and the statement of understanding between the United States and Panama of October 14 to mean that he had the sole right to decide when American troops could come in to defend the Canal. General Torrijos himself might be the aggressor, Allen added, and, in those circumstances, would not, of course, summon U.S. troops.

Article IV of the neutrality treaty provides that the United States and Panama "agree to maintain" the canal's neutrality. This general formulation permits each country unilaterally to decide upon and take the steps it considers necessary to insure that the canal remains open and secure. The neutrality treaty does not stipulate that Panama and the United States jointly "agree to maintain" the canal's neutrality. Where joint action is contemplated, the treaty so specifies—and it does not do so in this instance.

It is highly unlikely that Panama would attack the canal. Panama has the paramount interest in keeping the canal open and operating effectively and is committed to the maintenance of the canal's neutrality. If, however, Panama should be unable or unwilling to uphold its commitment to maintain the canal's neutrality, the right of the United States to carry out its commitment would remain and the United States would be free to take whatever measures it considered appropriate to keep the canal open and operating.

STATUS OF CANAL ZONE EMPLOYEES

On September 26, Representative Robert J. Lagomarsino inserted in the Congressional Record a statement by Alfred J. Graham, president of the Canal Zone Central Labor Union and Metal Trades Council, AFL-CIO. In his statement, Mr. Graham dealt with political and security, as well as labor matters, and criticized the treaties on several different grounds. He stated that he was dissatisfied with the lack of treaty provisions that would resolve the dual citizenship problem; that employees now engaged in Canal Zone operations which would become DOD functions might lose their Washington, D.C., paybase and Canal Zone leave benefits; that he considered the Panamanian Government an oppressive regime and that U.S. citizens remaining in Panama to operate the canal were concerned with the prospective loss of their civil rights under it; that, under the neutrality treaty, the United States could find itself in the position of forcing an ally to desist from attempting to impede the passage of an enemy warship through the canal; that, as leader of the free world, the United States should conclude a treaty only with a "Constitutional Government in Panama"; and that he was convinced the canal would be in Communist hands by "shortly after the year 2000", if not sooner.

Each of these points is subject to refutation. For example, the treaty has provisions which assure that the U.S. citizens who are in Panama for purposes of the canal treaty will be treated as U.S. citizens for purposes of the treaty despite the fact that some of them may be considered to be Panamanian citizens under Panamanian law. This means that they will be entitled to enter and leave

Panama on a U.S. passport and the other documentation required by the treaty and will be entitled to all of the rights, privileges and immunities provided for U.S. citizens under the treaty and its related agreements.

The treaty, of course, does not address the status of private U.S. citizens who may be in Panama or seek to enter Panama for purposes other than the Panama Canal treaty and who may be considered Panamanian citizens under its law. Panama may treat such persons born in the Canal Zone as Panamanian citizens, for it is a well-recognized principle of international law that each nation has the right to establish its own criteria for citizenship under its law.

Under the Panama Canal Treaty, in general the terms and conditions of employment for current employees who will be employed by the new Commission will be no less favorable than those now in effect. The Secretary of the Army has assured current employees that they will keep the tropical differential and the present leave system and will suffer no reduction in pay.

The Panamanian Government, while authoritarian, has a legal basis in the constitution of 1972, which, moreover, guarantees common basic rights and freedoms to all Panamanians. At the same time, however, political or other activities which are deemed to be aimed at the overthrow of the regime are not permitted. Until the year 2000, under the terms of the treaty, all U.S. citizen employees and their dependents are assured basic civil rights in Panamanian courts similar to those that apply in U.S. courts, as well as other benefits and protections similar to those enjoyed by other U.S. Government employees overseas.

The neutrality treaty insures passage through the canal of the warships of all nations at all times. But the canal waters are only to be 3 miles under the new treaty, as they are presently. Outside of that area such vessels would be fair game.

No one can predict what the world political situation will be in the year 2000. However, one of the most important elements of the regime of neutrality, which the United States has the right to maintain permanently, is that no nation but Panama will operate the canal or maintain military forces and military installations in Panama after 1999. Panama favored this provision as much as we did as explicit proof that it will not come under foreign domination in the future.

THE PANAMA CANAL TREATIES: A POSITIVE STEP

Mr. CRANSTON. Mr. President, in the past few weeks I have had the opportunity to discuss firsthand with my constituents issues of particular concern to them. One of the topics most frequently mentioned was the new Panama Canal treaties.

I am sure that many of my colleagues found, as I did, a sense among their constituents that these treaties represented another retreat from our Nation's position as a world leader. The feeling that the United States is turning its back on the traditions and the heritage that have made it a great nation is a real one. Particularly in the aftermath of the Vietnam war, many Americans seem to

feel that the United States is no longer willing to defend the principles on which this country was founded. Inappropriately, the Panama Canal treaties are seen as one more indication of this retreat.

David McCullough, whose authoritative study of the history of the Panama Canal, "The Path Between The Seas," was recently published, succinctly articulated and rebutted this feeling in a letter to President Carter. In his letter to the President, Mr. McCullough argues correctly that these new treaties—far from being a retreat from our principles—are instead an eloquent expression of "a strong, still-creative, still-purposeful people." Mr. McCullough notes the immense pride we all have in the Panama Canal. The canal, built despite overwhelming odds, is a symbol of the creativity and vigor of our country in that period of our history. And today the new treaties signify that our country continues to be a nation of great principles, great creativity, and great courage. I heartily agree with Mr. McCullough's conclusions. I ask unanimous consent that his letter to the President be printed in the Record in its entirety.

There being no objection, the letter was ordered to be printed in the Record, as follows:

ACCORDS ARE IDEALISTIC AS WELL AS LOGICAL, HISTORIAN MCCULLOUGH TELLS
PRESIDENT

DEAR MR. PRESIDENT. Rosalee and I were so very pleased and honored to be able to meet you last Friday, and especially on such a propitious day in your campaign for the canal treaties. Your generous inscription on the newspaper picture of you and Gen. Torrijos, as well as your thoughtful remarks about my book, pleased us more than I can say, and we thank you most sincerely.

May I add also that after so many years of studying and writing about dead Presidents, I found it an enormous thrill to see and shake the hand of a live one.

During our afternoon at the White House, I had, as perhaps you know, a chance to talk at some length with presidential aides Landon Butler and Joseph Aragon, and it was Butler's suggestion that a letter covering some of my thoughts on the Panama issue might be of help to you in the months to come.

Mr. President, I am concerned about a certain lack of creative fervor in what has been said in behalf of the treaties thus far. The opposition has a "cause." Its response is full of emotion, even passion, while the arguments for the treaties, however intellectually solid, remain for many people largely an abstraction.

This is not to discount for a moment the powerful logic of the case for the treaties. Indeed, the more we are told of the hard practicalities involved—political, military, operational—the more convincing they become. They virtually speak for themselves, if presented in language of the kind the layman can understand, and, when set forth for the country by a Commander-in-Chief who is himself a former naval officer and engineer, their effect cannot help but be profound, perhaps even deciding.

But how much more important and useful this great national debate could become, how much better off we will all be for it, if the treaties are seen also as the expression of a high ideal, if in making this historic decision we can sense what Theodore Roosevelt called "the lift toward nobler things which marks a great and generous people."

There are, as I know you appreciate, all kinds of reasons why suddenly we seem to care so intensely about the canal, a subject most of us have never given much thought to until lately. To say that the opposition springs from some vague or naive nostalgia for a simpler past is really to miss the point. There is a grandeur about the Panama Canal and a grandeur of a kind we like to think of as particularly American. The canal is a triumph of an era we remember fondly for its confidence and energy, youth and sense of purpose. The canal is something we made and have looked after these many years; it is "ours" in that sense, which is very different from just ownership.

It works, still. Despite time and change it remains a huge American Success, and this just now, in the aftermath of Vietnam, is of psychological import. (There is a

haunting kind of irony to the realization that we went into the jungles of Vietnam to rescue a disastrous French failure, just as once we went into the jungles of Panama to rescue a disastrous French failure.)

Probably it is the aura of power surrounding the canal that has the most to do with our feelings about it. We have known since school days of the tremendous powers called forth to build it—the power to eradicate disease, the power to literally move mountains. There is its own miraculous power to lift and transport ships from ocean to ocean. It is both the symbol and implement of sea power. So when we talk of the canal, whether we are old, young, for or against the treaties, we are talking about very elemental feelings about our own strengths, and it is this, I think, that makes the thought of giving it up or giving it away so disturbing to many people who fail to see the treaties as a positive step.

Still, by the same token, we want, all of us, a more humane and stable world.

We want to be builders no less than did that generation which created the canal.

So for all these reasons it is imperative that the case for the treaties be expressed in the most positive terms, and with eloquence. It is because the canal is of such critical importance, because it must be kept secure and in use, because we reserve it as a monument to the human spirit, that the long outmoded Bunau-Varilla treaty has to be replaced and the nature of our presence in Panama brought up to date. Our decision must not be a grudging concession, but a far-seeing, constructive innovation. This, we should be able to say, is something we do because we know it is right. This is not merely the surest way to "Save Our Canal," it is the strong, positive act of a still-confident, still-creative, still-purposeful people.

Our sanction of this unprecedented step can become a source of national pride and self-respect in much the way building the canal was. It is the spirit in which we act that is so very important. The way we say yes to the treaties, the words we use, can, on the one hand, influence how we stand in the eyes of all Latin America, but it can also influence how we stand in our own eyes, and that, too, I know you will agree, is "in the national interest."

I think of what Theodore Roosevelt might say were he alive today. (I have a small bust of him which looks down on me from the top of a file cabinet as I write this.) An ardent reader of history, he knew the world has its moods. He saw history itself as a force, and the history of our own time and the changes it has brought would not be lost on him. He adored and drew inspiration from the great deeds of the past, and was often saddened by the passing of an era before his eyes—the vanishing of the great frontier days of the West, for example. But change was inevitable, he knew, and necessary. Change was growth. The true conservative, he once remarked, keeps his face to the future.

He believed down to his boots in a strong Executive, in *presidential* leadership, and the fact that the treaties reflect the policies and intentions of three prior administrations, in addition to your own, would carry enormous weight with him. Well before anyone else, Roosevelt recognized the importance of Alfred Thayer Mahan's thesis (the nation that controls the sea controls the decisive factor in warfare), and so it is hard to picture him dismissing or discounting such testimony to the military value of the treaties as voiced by the Joint Chiefs.

But were he to endorse the treaties, as I am quite sure he would, it would be mainly because he would see the decision as one by which we are demonstrating the *kind* of power we wish to be. For Roosevelt the canal was a gateway to the very different and uncertain new world of the new 20th century, a world in which the United States had no choice but to play a major part. "We cannot avoid meeting great issues," he said. "All that we can determine for ourselves is whether we shall meet them well or ill."

Mr. President, the Panama Canal is a vast, heroic expression of that age-old desire to bridge the divide and bring people closer together. The task now, it seems to me, is to give the country the conviction that this too is what the treaties are all about.

Sincerely,

DAVID McCULLOUGH.

NINETY-FIFTH CONGRESS
SECOND SESSION

THE PANAMA CANAL TREATIES—EXECUTIVE N, 95-1

AMENDMENTS NOS. 10, 11, AND 12

(Ordered to be printed and to lie on the table.)

THE PANAMA CANAL TREATIES: AMENDMENTS ARE KEY TO EFFECTIVE GUARANTEES

Mr. DOLE. Mr. President, it now appears likely that the Panama Canal Treaty proposals will reach the Senate floor for consideration during the 2d session of the 95th Congress. It promises to be an historic debate, and certainly one that will lead to a full examination of our future defense and economic interests in the Western Hemisphere. We should be prepared to spend sufficient time on the issue to fully discuss all major features of the canal treaties, given the broad extent of public interest in the matter.

During the past several months, I have devoted a good deal of time and attention to the treaty issue. I have studied and reflected upon the fundamental issues that are involved. I have offered fresh perspectives on several provisions of the treaties which appear to be of exceptional significance to the U.S. interests in years to come. In doing so, I hoped to stimulate a more careful consideration of these treaties and their implications for our country.

In this regard, I submitted six treaty amendments and two reservations on September 23. On October 5, in an appearance before the Senate Foreign Relations Committee, I expressed concern about conflicting interpretations of key treaty provisions by Panamanian and American negotiators. Following the release of the Carter-Torrijos "statement of understanding" concerning defense and passage rights provisions, I submitted two additional amendments to make those clarifications a part of the neutrality treaty itself on October 17. In late December, I was able to spend a day and a half in the Panama Canal Zone, where I gained additional insight into canal operations and treaty issues in general.

NEW AMENDMENTS

At this time, as in executive session, I propose three additional amendments to the canal treaties, which I hope will be thoroughly considered during the forthcoming debate. In my opinion, these revisions would better protect our ability to defend the Panama Canal against the threat of attack, and would better guarantee our perpetual access to an interoceanic canal in Central America.

Mr. President, I ask unanimous consent that the texts of my three amendments be printed in the Record at this point.

There being no objection, the amendments were ordered to be printed in the Record, as follows:

AMENDMENT No. 10 (EXEC.) To Ex. N, 95-1

In article XII, strike out paragraph 2.
Renumber subsequent paragraphs accordingly.

AMENDMENT No. 11 (EXEC.) TO Ex. N, 95-1

At the end of article IV, add the following:

6. For the duration of this Treaty and consistent with the other provisions of this article, both Parties agree that, subject to the other provisions of this Treaty, only the Republic of Panama or the United States of America may maintain military forces, defense sites, or military installations in the national territory of the Republic of Panama.

AMENDMENT No. 12 (EXEC.) TO Ex. N, 95-1

Before the period at the end of article V, insert a comma and the following: "except that, in order to maintain the regime of neutrality established under this Treaty, the United States of America and the Republic of Panama shall conclude an agreement on the continued availability to the United States of America of any defense site or military installation after the date of the termination of the Panama Canal Treaty, and if no such agreement may have been concluded before such date, the United States of America may continue on and after such date to occupy the defense sites and military installations made available for its use under the Panama Canal Treaty, notwithstanding the termination of the provisions of the Panama Canal Treaty".

Mr. DOLE. Mr. President, the first of these amendments would simply strike that section of the proposed Panama Canal Treaty which prevents the United States from negotiating with any country other than Panama for the right to construct an interoceanic canal in the Western Hemisphere. This is, in my opinion, an unnecessary and unduly restrictive limitation on our ability to safeguard our vital defense interests. Article XII of the treaty, as proposed, affectively binds the United States to construct a new canal in Panama if it should be determined that a modernized canal is desirable for defense or economic reasons. Yet, there is no commitment on the part of Panama to agree to permit construction of the canal, and we are only prevented from constructing one elsewhere.

This amendment is similar to one which I introduced on September 23. However, it is a more direct and simplified approach to this problem. Whether or not Panama is the best location for construction of a new canal is really not the immediate issue. The central question is whether the United States should bind itself, by this treaty, to foreclose all options with respect to a new canal. I submit that this would be a serious mistake on our part, and one which we might well regret prior to the year 2000.

The second of these amendments would amend the basic treaty to provide much the same type of assurance that is given under the neutrality treaty. That is, it would insure that no governments other than those of the United States and Panama may establish a military presence within Panama between the date of treaty ratification and December 31, 1999. This should not be construed as an impractical or unfair imposition upon the Government of Panama. It is a recognition of our mutual interest in protecting the canal and its neutrality from outside interference. In fact, the United States and Panama reached essentially the same agreement under article V of the neutrality treaty, covering the period after December 31, 1999. There should be no reason why our two governments

cannot express agreement on this vital provision. And, given our continuing concern about the threat of Soviet or Cuban military influence in the area, the guarantee should help resolve Senate concerns about the security of the canal during the coming decades.

My third amendment would insure that the United States has the authority to maintain a limited military presence within Panama following the expiration of the basic treaty—that is, after the year 1999. In my opinion, our ability to retain at least one or two base areas within the former Canal Zone will be vital to our ability to defend the neutrality of the canal at that time. This arrangement could be concluded under a separate base agreement, much like the United States currently has with the Government of Spain. My amendment would establish the basic authority for that agreement, and provide the necessary incentive for concluding such an agreement prior to the year 2000.

By doing so, we are not attempting to perpetuate a colonial presence in Panama. And we are not challenging the desire of the Panamanian people to establish control over the Canal Zone area. Instead, we are simply suggesting that, in order to facilitate our continuing defense responsibilities under the neutrality treaty, we be permitted to maintain a few basic defense installations on terms that would be acceptable to both the United States and Panama. As allies, and as mutual guarantors for the regime of neutrality, the United States and Panama should be able to reach an accommodation on this crucial point. In addition, I feel that this provision would substantially facilitate favorable Senate consideration of these treaties.

TREATY REVISIONS

Mr. President, when I first proposed certain treaty amendments and reservations last September, I expressed my conviction that this treaty must be modified directly through amendments or reservations in order to effectively insure that such changes would be recognized as legally binding in years to come. I emphasized this point again when I testified before the Senate Foreign Relations Committee on October 5. I still believe that, in order to prevent any misunderstandings in the future, we must resolve our misgivings about these treaties by directly amending the treaty language, or by attaching substantive reservations to the resolution of ratification.

I base my convictions on the authority of several scholars of international law, who have studied and analyzed historical precedents and the subtleties of international agreements.

One such expert in the field is Mr. Elmer Plischke, professor and head of the department of government and politics at the University of Maryland. In his book, "Conduct of American Diplomacy" (1967), Professor Plischke cites the following:

Amendments and reservations are differentiated in that the former constitute actual textual changes and, as such, even if acceptable to the President, require renewed negotiations to induce other signatories to accept them and thereby mutually incorporate them into the authentic text of the treaty * * *.

Reservations, on the other hand, are formal declarations accepting the treaty subject to specified interpretations, limitations, qualifications, or conditions, rather than requiring textual changes. * * * While other signatories must also be willing

to accept the reservations, they do not need to consider a draft revision, and the acceptance may be either express or tacit.

Prof. Louis Henkin, former consul to the U.S. Department of State and currently professor of law at Columbia University, also has provided clarification on the subject of treaty modifications in his book, "Foreign Affairs and the Constitution" (1972). Professor Henkin makes these observations:

In many cases the Senate has given its consent (to a treaty) with reservations. Whether the Senate insists on a modification in the terms of a treaty, or on a particular interpretation of it, or on some limitation of its consequences, reservation usually requires renegotiation * * * one might say, the Senate withholds consent from the treaty presented to it but indicates what revised treaty will earn its consent, and gives it in advance to a treaty as so revised.

Sometimes the Senate can be persuaded to achieve clarification or even some modification of a treaty provision without entering a reservation, by expressing instead its "understanding" of the provision. If that understanding is communicated to the other party and is accepted or acquiesced in there is no issue and the treaty need not be reopened. There is danger, however, of failure of communication that may engender doubt and controversy as to whether the parties agreed to the same terms.

Based on these particular assessments, it would seem likely that the approval of substantive amendments could conceivably necessitate renegotiation of certain treaty provisions by interested parties. However, I am not nearly so concerned about that prospect as I am about the danger associated with treaty understandings, cited by Professor Henkin and others. That is the prospect that the understanding adopted by one party to a treaty may be misunderstood by the other party. It would be far better that the differences between Panama and the United States over the wording of this treaty be taken under review at this time for further negotiations, than that such differences be glossed over now and result in an international confrontation at some later point in time.

Although some may seek to "beg out" with understandings at this stage, I suggest that we might well end up only deluding ourselves while creating difficulties for a future President and a future Congress.

AMPLE PRECEDENT

Some will suggest, I suspect, that we are blazing a new trail or following an uncharted course in proposing substantive revisions to the treaties already negotiated by our able diplomats in the executive branch. This, of course, ignores both our constitutional mandate and ample historical precedent.

Article II, section 2 of the U.S. Constitution clearly gives the Senate the responsibility of "advice and consent" on treaties negotiated by our Chief Executive. And, in fact, we have every justification, from a historical perspective, for doing so.

Since the founding of this Nation, the Senate has directly amended numerous international treaties concluded by the executive branch. Of these, 73 treaties were ratified and enacted into law with Senate amendments intact. Over the same period of time, one treaty was enacted into law with Presidential amendments, 28 treaties were ratified with Senate reservations, and 16 treaties were ratified with Presidential reservations.

It seems to me that this data is important for two reasons: First, it indicates that there is abundant precedent for Senate initiative

in modifying international treaties; and, second, it indicates that such modifications are not necessarily "fatal" to such treaties. That is, a proposal of amendments and reservations cannot be equated with efforts to "kill the treaties."

GROWING SUPPORT

Frankly, I am encouraged by the broader interest within the Senate in attaching revisions to the Panama Canal treaties. In recent days, the Senate leadership has publicly indicated its support for treaty modifications, particularly with respect to the defense and passage rights provisions. Those of us who endorsed treaty amendments and reservations last fall are gratified that our expressions of concern about treaty defects are being heeded.

Even Panamanian general Omar Torrijos refuses to be "intransigent" on the question of treaty revisions. During my conversation with the general in Panama City during late December, he indicated his willingness to "keep talking" at the negotiating table should the Senate amend the proposed accords.

At this point, it seems that only the Carter administration remains adamantly opposed to substantive treaty amendments. The President's refusal to consider Senate amendments or reservations is vaguely reminiscent of President Woodrow Wilson's intransigence toward Senate modifications to the Versailles Treaty in 1919. The result of that standoff was, of course, defeat of the treaty.

I am hopeful, Mr. President, that the forthcoming Senate debate on the Panama Canal treaties will reflect not only a conscientious attitude on the part of all Members, but a spirit of cooperation on the part of the administration, and of course, the Panamanian Government.

AMENDMENTS NOS. 13 AND 14

(Ordered to be printed and to lie on the table.)

Mr. BENTSEN. Mr. President, this morning I announced my support for the Panama Canal treaties. I stated that I would vote in favor of the treaties if they are amended to include the October 14 statement of understanding issued, but never signed, by President Carter and General Torrijos.

When the Senate considers the canal treaties next month I shall offer two amendments designed to incorporate all relevant portions of the October 14 statement. The only changes I would make in the text are those necessary for accurate legal drafting. I recognize that similar amendments have been suggested, but note that they generally deviate in some respect from the text of the statement of understanding.

The importance of the points contained in the statement of understanding is self-evident. The communique clarified our right to take action to insure that the canal remains open, secure, and accessible; it provides appropriate assurances that, in time of need or emergency, our vessels will go to the head of the line.

The statement must be made an integral part of the treaty. There can be no ambiguity on the points it addresses.

The fact that this critically important document was left unsigned is a matter of grave concern, particularly in light of General

Torrijos' comments that he did not give any autographs during his October visit to Washington. We cannot accept a situation in which the validity and binding nature of the statement of understanding is open to challenge or interpretation.

The American people deserve clear and adequate assurances on the important issues of canal neutrality and priority passage. If my amendments are accepted, they shall have such assurances.

The people and Government of Panama cannot have it both ways. Either they accept the statement of understanding or they do not. If the October 14 communique is an accurate reflection of the Panamanian interpretation of the treaty provisions, then it should be no problem for Panama to accept a Senate amendment that adheres to the text of the communique. We are not adding anything new to the treaties; we are not asking Panama for concessions. We are simply incorporating important assurances already negotiated and agreed to by President Carter and General Torrijos.

At the same time, I think the Senate should make an honest effort to avoid a situation in which we set out to amend the treaties along the lines of the statement of understanding, adding a little here, snipping off a little there, until we have destroyed the symmetry of the established text and rendered it unacceptable to Panama or forced a new plebiscite. The communique, as it stands, provides acceptable assurances on the questions of neutrality and priority passage and I strongly believe that we should adhere to the agreed text.

Regardless of what one may think about the personality and character of General Torrijos, there is a general consensus among those who have visited Panama that he has been forthcoming and sincere in his willingness to accommodate our objections and respond to our concerns.

During my stay in Panama I was assured by General Torrijos that a Senate amendment incorporating the language of the statement of understanding would not require a new plebiscite since the people of Panama were aware of the statement and its contents prior to voting on the treaties.

I credit these assurances, but would also emphasize that the important point is for the Senate of the United States to establish clearly and unequivocally, by amendment, the legitimacy of the statement of understanding and its central role in the treaty.

Adoption by the Senate of the two amendments I shall offer will improve the treaties, will provide us with important, binding, mutually acceptable assurances, without doing violence to the 14 years of careful negotiation and compromise represented in the treaties.

I sincerely hope that my colleagues will join me in support, and hopefully in sponsorship, of these amendments. I ask unanimous consent that the text of the amendments be printed in the Record.

There being no objection, the amendments were ordered to be printed in the Record, as follows:

AMENDMENT No. 13 (EXEC.) TO Ex N, 95-1

At the end of article IV, add the following: "In order to carry out the responsibility to assure that the Panama Canal shall remain open and secure to ships of all nations, each of the two Parties to this Treaty shall, in accordance with their respective constitutional processes, defend the Canal against any threat to such regime of neutrality and, consequently, shall have the right to act against any

aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal. The preceding sentence shall not be construed as conferring a right of intervention on the United States of America in the internal affairs of the Republic of Panama. Any United States of America action shall be directed at insuring that the Canal shall remain open, secure, and accessible, and no such action may be directed against the territorial integrity or political independence of the Republic of Panama".

AMENDMENT No. 14 (EXEC.) TO EX, N, 95-1

At the end of paragraph 1 of article VI, add the following: "The preceding sentence is for the purpose of, and shall be construed as, assuring the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, assuring that such vessels go to the head of the line of vessels in order to transit the Canal rapidly."

THE PANAMA CANAL TREATIES AND SENATOR ROBERT C. BYRD

Mr. CRANSTON. Mr. President, Senate Majority Leader Robert C. Byrd made an important announcement last Friday regarding his views on the Panama Canal treaties. After thoughtful deliberation, a firsthand view of the Panama Canal and discussions with a variety of people—both for and against the treaties—Senator Byrd announced that he would "vote for the present treaties and work for their ratification."

I completely agree with Senator Byrd when he said:

It is my view that these treaties are the best means of assuring continued access to and use of the Canal—and that is our primary concern.

For the benefit of my colleagues who may have missed Senator Byrd's remarks, I ask unanimous consent that they be printed in the Record.

There being no objection, the remarks were ordered to be printed in the Record, as follows:

REMARKS BY SENATOR ROBERT C. BYRD

I have studied the past, assessed the present, and taken into account the future in reaching a decision on whether to support the Panama Canal treaties.

It has not been an easy decision, and in reaching it I have attempted to consider all the relevant information in an objective manner. As part of this process, I led a Senatorial delegation to Panama to gain as much first-hand knowledge as possible about the canal, the Americans living in the Canal Zone, the Panamanian people, and the Panamanian government.

Since first reviewing the treaties in September, I have taken the position that it would be necessary to clarify two important points: the rights of the United States in guaranteeing access to the Canal, and expeditious passage for United States military vessels. I felt that it was important for a clarification to be made prior to the Panamanian plebiscite of October 23, and I stressed the importance of this to President Carter. This clarification was made in the October 14 statement of understanding by President Carter and General Torrijos.

During our visit to Panama, we discussed this with General Torrijos, who clearly indicated his adherence to the statement of understanding. Further, it was clear that the Panamanian people had been informed about these points before the plebiscite.

I do not think there should be any question that we have the right to defend the Canal. However, in order that no doubt about that interpretation be left for future generations, I have on a number of occasions stated that the substance of the October 14 statement should be added to or incorporated in the treaties in some form. I plan to work with other Senators in seeing that such language is included.

Like most Americans, I take great pride in the Panama Canal. It represents a monumental achievement. Even in this space age it remains one of history's outstanding engineering feats. However, we should also understand the pride and aspirations of the Panamanian people.

During the period since the signing of the treaties, I have been impressed by the good faith exhibited by the Panamanians. Panama's interests are closely intertwined with our own and after visiting Panama, I am more hopeful and confident about that country's future political direction. In response to concerns expressed to General Torrijos by the Senatorial delegation of which I was a member, important steps have been taken to better human rights and civil liberties in Panama by abrogating certain repressive laws.

As I have said from the beginning, the basic question to be considered is whether these treaties are in the best interests of the United States, I believe that the weight of the evidence argues convincingly that they are.

It is my view that these treaties are the best means of assuring continued access to and use of the Canal—and that is our primary concern.

Panama would have a greater stake in the Canal and thus a strong interest in its efficient and unimpeded operation. However, the United States would retain a high degree of control over the Canal through the end of the century, as well as defense rights thereafter.

Ratification of the treaties would be consistent with our own role as a leader among nations. It is particularly important for our relations with Latin America and should open a new era of mutual trust and cooperation in inter-American relations. Given the history of the Canal and the principles of our country, the treaties are in our interest and ratification is the right step to take.

I am announcing today I will vote for the treaties and will work for their approval.

PANAMA CANAL: HISTORIC CONTRIBUTIONS BY EDWARD SCHILDHAUER IN ITS DESIGN AND CONSTRUCTION

Mr. PROXMIRE. Mr. President, my State of Wisconsin has produced many leaders of national stature including some whose contributions to the acquisition by the United States of the Canal Zone territory, 1903-04, and the construction of the Panama Canal, 1904-14, are historic.

Among such leaders were Senator John C. Spooner, author of the Spooner Act of 1902 under which the Canal Zone was acquired and the canal constructed, and Edward Schildhauer, a highly competent electrical engineer.

Recruited for canal service by chief engineer John F. Stevens of the Isthmian Canal Commission, a major builder of the Great Northern across the Rocky Mountains to the Pacific and the basic architect of the Panama Canal, Schildhauer measured up to the expectations of his famous superior by making notable contributions to the success of the enterprise. He designed the electrical and mechanical machinery for the locks and thus is largely responsible for the excellent safety record of the great interoceanic waterway in the lockage since 1914 of hundreds of thousands of vessels of various types of many nations during both peace and war.

A recent news story by the editor, Greg Hageman, of the New Holstein (Wis.) Reporter provides some little known history about Schildhauer's important services and, in view of current discussions about the Panama Canal, is a most timely contribution.

Mr. President, because the indicated article is highly informative and a noteworthy addition to the cumulating literature on the canal question, it should be of interest to all Members of the Congress as well as to students of the canal question in various

parts of the Nation. I ask unanimous consent for it to be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

NATIVE SON HAS LARGE STAKE IN PANAMA CANAL PROJECT

Now, as in the early 1900's, the subject of the Panama Canal is a timely topic discussion, but while much of the conversation in this area now concerns a man from Plains, Georgia, back when the canal was first being built, much of the local conversation centered on a man from New Holstein.

The story of the canal is long and steeped in political maneuvering. The 1977 question of whether it is right or wrong to give the canal back to the Panamanian government is only the latest chapter in the political history of the Panama Canal.

Spanish explorers as early as the 16th century sought a passage through the newly discovered land masses that became known as the North Central and South Americas, but none was ever discovered. As the explorers continued to look for what they were positive must exist, the 16th, 17th, and 18th centuries dragged slowly by and still no such passage was found. The explorers left their ships and came ashore in hopes that at least gold and riches could be found and in hunting the riches of ancient Indian civilizations, it was noted that certain points in Central America were very narrow and might provide the proper position to construct a man-made passageway. Spain, England, France, Holland, and finally the United States all looked into the feasibility of constructing a canal across what became known as the Isthmus.

Most of the European planning was just that, and never left the drawing tables of the men assigned to produce such plans, but with the great westward migration taking place in the United States in the mid-1800's, our governmental leaders began to take a great interest in any type of passage way that would save the time and danger experienced by ships having to round Cape Horn on sea voyages between east and west.

Still, even with the United States' great interest in the canal, much of the work being done on such a project, was largely political, treaties drawn up and about to be signed with the New Granada (what is now Colombia) government which had control of the isthmus, then not signed because of intervention by European powers, and the same type of goings on repeated again and again.

The first great expedition to actually construct a canal came into being in 1875 at the Congress of Geographical Sciences held in Paris. As a result of that gathering, a French company, the Societe Civile Internationale du Canal Interocéanique was formed and in 1876 a route was selected that would run from the Colombian cities of Colon on the west coast to Panama on the east coast.

Ferdinand de Lesseps, the French engineer who had constructed the Suez Canal, was put in charge of the project and he determined that the canal should be a sea-level ditch type canal that joined the Atlantic and Pacific Oceans. He estimated that the cost of the canal from start to finish would run about \$208,000,000 and after using his infectious optimism to gain financial support of many of his countrymen, gathered capital amounting to \$60,000,000 and inaugurated the canal project in 1880.

Most of de Lesseps' plan was built on his great enthusiasm and reputation, however, and not on foresight, and by 1887 it was evident that his plan was not feasible. Diseases such as malaria and yellow fever took great tolls of life among the workers dispatched to the canal site, corruption among the administrators of the project ate up much of the canal funds and it became apparent that the ditch-type canal would never work. De Lesseps came up with an alternate plan of a lock-type canal, but in 1888 the French company was dissolved and a great scandal took place in France over the graft and corruption involved with the loss of funds on the project. Over \$262,000,000 was spent with only about \$100,000,000 actually spent on the canal. De Lesseps himself was sentenced to five years in prison, but never served the time, and other officials were likewise sentenced. Some fled the country and others took their own lives.

A new Panama Canal Company was formed by the French in 1894 and a new contract was arrived at with the Colombian government, but the United States government felt that with the past French failure behind them, they would also fail in this effort and so began to seek out their own canal route and plans.

In 1899, the U.S. Congress appointed a Canal Commission which after investigating the French route from Colon to Panama and a route through the country of Nicaragua, recommended the Nicaraguan route. The Nicaraguan route was actually

thought to be more costly canal-wise than the Panamanian route, but the French still had control of the Panamanian route and there appeared to be no way the right of way there could be purchased cheaply.

While part of the U.S. politicians had satisfied themselves that the Nicaraguan route was the right move, the other half had not and new negotiations with the Colombian government began on the Colon to Panama route. In 1902 under the urging of Senator John Spooner of Wisconsin, the Spooner Act was signed, which gave the president of the United States the right to select the route he thought best.

Negotiations with the French company continued and also opened with the Colombian government, but both demanded much more than the U.S. was willing to pay.

Just what amount of subtle undercover politicking began at this point and even before, is not fully known, but residents of the Isthmus had been for some time making rumblings about a revolt against Colombia and consequently setting up their own government and country. On November 3, 1903 the revolt occurred and was successful. Colombia sent troops, via the sea to quell the uprising, but the U.S. gunboat Nashville was standing off the coast of the newly formed Republic of Panama and personnel warned the Colombians not to land. The United States took the position that a treaty signed in 1846 had entrusted them to keep transit across the isthmus open and that if the Colombian troops were allowed to land this opening may become endangered.

Meanwhile, U.S. Secretary of State Hay under direction of President Theodore Roosevelt and new Panamanian minister Philippe Bunau-Varilla began negotiations for a canal treaty and on Nov. 18, 1903 the Hay-Bunau-Varilla Treaty was signed, turning over exclusive jurisdiction of the Canal Zone to the United States with the understanding that in turn, the United States would appropriate a sum of money to the Panama government each year and would also insure the independence of the new country.

In April and May of 1904, agreements were reached with the French government to transfer all canal plans, equipment, and other property located on the isthmus to the U.S. for the sum of \$40,000,000. A later payment of \$25,000,000 was made to Colombia to appease their anger over the U.S.'s part in the Panamanian independence play.

Work began on the canal in 1904 by U.S. crews, and by 1906 they had come to the same opinion that de Lesseps had arrived at near the end of his work, the ditch-type canal was not feasible, the lock-type would have to be built. It is soon after this point that Edward Schildhauer, a New Holstein native son plugged in his contribution to the success of the Panama Canal project.

Schildhauer was born in New Holstein in 1872 and was educated in the New Holstein schools, going on to the University of Wisconsin at Madison and graduating from there in 1897 with a bachelor of science degree in electrical engineering. In 1898, he entered the employ of the Edison Company (now Commonwealth Edison Co.) in Chicago and worked there, advancing in position to Assistant Electrical Engineer, until 1906 when he resigned to accept a position as an Electrical and Mechanical Engineer with the Isthmian Canal Commission in Washington, D.C. Less than a year later he was on his way to Culebra in the Canal Zone to serve there.

An excerpt from the February 1915 issue of the publication "The Wisconsin Engineer" states: "Without Edward Schildhauer the methods of manipulation of the vessels through the locks at Panama would never have approached the present state of perfection."

Schildhauer was recruited for the Canal project by Chief Engineer John Stevens, who headed engineering from 1905 to 1907, and he stayed with the Isthmian Canal Commission until 1914 when the canal was opened to traffic.

The Panama Canal, as constructed by the United States is approximately 51 miles long and provided the world with what the ancient explorers sought, a link between the Atlantic and Pacific Oceans, through the land masses known as the Americans.

The canal incorporates eight principal features: (1) a seven mile dredged channel running at sea level from the Atlantic Ocean to the Gatun Locks; (2) the Gatun Locks themselves, which raise or lower ships 85 feet to or from Gatun Lake; (3) a 24 mile channel through Gatun Lake to Gamboa; (4) the Gaillard Cut, an eight mile channel, 500 feet in width that slices through the continental divide; (5) the Pedro Miguel Locks, which provide a 31 foot step down or up from the Gaillard Cut; (6) a 750 foot wide mile long channel running across Miafiores Lakes; (7) the Miafiores Locks, providing a 54 foot, two-step drop or climb from the lake level; and (8) a sea-level channel, eight miles long running from the Miafiores Locks to the Pacific Ocean.

In 1907 when work was progressing on the ditching needed to form the canal in which the above mentioned features could be incorporated, Schildhauer was busy on an investigation tour. His colleagues were busy investigating new methods of housing workers and keeping the workers free from the diseases which had so decimated the French work groups, but Schildhauer was concerned with the mechanics of the project. He made an extensive tour through Europe studying canals in England, Holland, France, Belgium, and Germany.

A major consensus arrived at by Schildhauer on his travels was that a principle source of accidents in the European canals was due to the break down in communications between the vessel's pilot and engineer while moving the vessel through the canal. The result of his findings was the invention of the famed "electric mule" that moves the ships through the Panama Canal with great safety.

The electric mules were in reality electric locomotives that operate on the center and side walls of the locks. A vessel enters the lock, ties up to the center wall, which is extended beyond the side walls at both the upper and lower ends of the lock to serve as a mooring wall, then waits until the "mules" or locomotives arrive.

Locomotives on the center wall take lines from the vessel and tow it to a point where more locomotives on the side walls can also secure to the vessel. The vessel then enters the lock chamber with two locomotives towing it, one on either side, and two following to retard the vessel's forward movement once she reaches proper locking position.

The locomotives operate on tracks close to the edge of the lock walls and engage on a center cog rail. The maximum speed they were designed for by Schildhauer was two miles per hour when towing. However when finished with a tow, the locomotives would switch over to another track located further back on the lock wall and return to their starting point at a much faster speed.

The locomotives were not Schildhauer's only contribution to the canal however, as he also invented and patented the mechanism by which the lock miter gates were moved. It may be noted that these lock gates were constructed of girders weighing between 12 and 18 ton each and that the finished gates varied in height, according to location, from 47 to 82 feet in height and weighed from 300 to 700 ton per half gate. The entire locking system incorporated 92 half gates each seven feet thick.

The machinery invented by Schildhauer for opening and closing these miter gates consisted of a crank gear, to which is fastened one end of a strut or connecting rod, with the other end connected to a lock gate. The gear wheel moved 197 degrees during operation to open or close the gate with the operation taking about two minutes. Each crank gear was constructed of cast steel and measured approximately 19 feet, two inches in diameter and weighs about 35,000 pounds. The crank gear was in turn; driven through a system of gears and pinions by an electric motor mounted in a contiguous room. An operator in a central control house could easily operate the lock gates with the simple pull of a switch.

In today's modern world, all this might seem a bit mundane, but in Schildhauer's time, electricity was just being harnessed in many ways by man and such an operation as these mechanisms for moving the lock gates was marvelled at far and wide.

Schildhauer's electrical genius was not limited to the ways and means of using electrical power once it was harnessed. The New Holstein native also was instrumental in the designing and constructing of the Gatun and Miaflores power plants which supply the needed electricity to run the machinery developed for lock operation by Schildhauer and his cohorts.

The hydro-electric power plant designed by Schildhauer for Gatun Lake used the waters of the lake to power the entire assemblage of machinery for the 51 mile long canal system.

Taking waters from the lake the plant funneled the fluid through turbines, down a 75 foot spillway to charge three 2,000 kilowatt generators producing 5,000 horsepower and a reserve system of 2,500 horsepower for operation of the machinery. The second power plant designed at Miaflores was implemented as an auxiliary plant should the waters of Gatun Lake ever fail, which owing to the climatic conditions of the area which produce an abundance of rainfall each year in the tropics are not expected to ever happen.

In 1935, the United States implemented the Madden Dam and Power Project which stemmed and controlled the amount of water flowing into Gatun each year and created a large reservoir in Madden Lake to further increase the amount of electric power available if needed.

When the first vessels moved through the canal on August 15, 1914, Edward Schildhauer was there to witness the events and handle some of the electrical controls that handle some of the electrical controls that he had supervised the

installation of in one central operating plant. His achievements in electrical engineering for the canal go hand in hand with the medical advancements and the geographical engineering accomplishments that allowed the canal to come into being and allowed the United States to succeed where the French had failed.

Today, ships using the Panama Canal transport in the neighborhood of 150,000,000 tons of material through the interoceanic channel each year.

The future of the canal is in question right now, both as far as ownership and as far as existence. Proponents of a new canal project, thought to be necessitated by the ever increasing size of the oceanic liners and armed forces carriers have recommended building a new canal on several different sites in Central America over the past decade, but nothing has come of any of the plans. Some plans brought forth were for lock-type canals such as the Panama Canal and other proposals favored the sea level ditch advocated by the French.

The inventor of many of the canal's electrical systems died in California in 1952. He had left the Isthmian Commission in 1914, shortly after the canal opened and moved on to other pursuits. He retired in California in 1931 and lived there until his death.

Schildhauer's niece, Mrs. Sabina Paul still lives in New Holstein and she states that she doesn't really know what her uncle would have to say about the present politicking going on in regard to the ownership of the Panama Canal, but adds, "like many of the rest of us, he'd probably be spouting."

OPPOSING SENATORIAL VIEWPOINTS ON THE PANAMA CANAL TREATIES

Mr. HATCH. Mr. President, Senate debate on the proposed Panama Canal treaties is expected to get underway soon. The distinguished majority leader of the Senate has already urged the chairmen of the Senate Armed Services and Foreign Relations Committees to clear the treaties for floor debate by early February. This means that Members of the Senate have less than 30 days in which to prepare themselves for one of the most significant debates in this country.

It is important, therefore, that Senators become thoroughly knowledgeable about this issue as quickly as possible. To this end, I invite the Members attention to the extensive hearings that have been held by the Separation of Powers Subcommittee of the Senate Judiciary Committee. Two volumes of testimony have already been published, and publication of a third is expected in January. Although these hearings deal principally with the constitutional question of whether the President of the United States has the authority to dispose of American property and territory by treaty, without the approval of both Houses of Congress, a number of other salient issues concerning the treaties are addressed by the witnesses who appeared before the subcommittee.

In addition, the chairman of the subcommittee, the distinguished Senator from Alabama (Mr. Allen), has given a series of penetrating, highly informative addresses on various aspects of the canal question. These addresses, delivered between September 12, 1977 and November 8, 1977, have been assembled as two sets of documents and are available upon request at his office.

Mr. President, the latest contributions to the cumulating literature on the Panama Canal treaties are two articles by two distinguished Members of the Senate in the December 1977 issue of "The Retired Officer," the monthly magazine of the Retired Officers Association of Washington, D.C. The membership of this prominent organization, which totals some 250,000 retired military officers

from all of the States, includes many officers who served on the Isthmus, either with the Armed Services or the Panama Canal organization. They represent a highly informed body of opinion concerning the merits of these treaties, having had the benefit of personal observation of the many problems involved in the maintenance, operation, sanitation, and protection of the Panama Canal in both peace and war.

The case for rejection of the treaties is presented by Senator Strom Thurmond, a recognized authority on the problems of national defense who has also been a careful student of the Isthmian question for many years.

The case for acceptance of the treaties is presented by the late Senator from Minnesota (Mr. Humphrey), who was a member of the Committee on Foreign Relations that has been conducting some of the hearings on the proposed treaties.

One particular aspect of the articles upon which I wish to comment is the apparent assumption that the Panama Canal still operates solely under the 1903 treaty. This, of course, is not entirely accurate. The canal operates under the 1903 treaty as amended and reaffirmed in the 1936 and 1955 treaties. Likewise, it should be noted that major modernization of the canal is authorized under the "maintenance" factor of existing treaty provisions for "expansion and new construction."

Mr. President, these articles are instructive, because they highlight the major points of the Panama Canal controversy and offer startling contrasts in opposing points of view. I ask unanimous consent that they be printed in the Record at the conclusion of my remarks.

There being no objection, the material was ordered to be printed in the Record, as follows:

THE PANAMA CANAL TREATIES—SHOULD THE UNITED STATES RATIFY THEM?

THE CASE FOR REJECTION BY SENATOR STROM THURMOND

Thirteen years of negotiations with the Republic of Panama have reached their expected—and feared—conclusion. President Carter is asking the Senate to ratify a treaty giving Panama jurisdiction over the Panama Canal Zone immediately, and control of the Canal in the year 2000.

The case for rejecting the proposed treaty, and the supplementary treaty on the neutrality of the Canal, begins with one crucial point: The Panama Canal is United States property, and the Canal Zone is United States territory. According to the terms of the 1903 treaty with Panama, we acquired sovereign rights over the Canal Zone "in perpetuity." The Supreme Court upheld our exercise of sovereignty in 1907 in the case *Wilson v. Shaw*. Moreover, the maps of the world all show the Canal Zone as part of the United States.

Burden of proof

Thus, it is clear that the Burden of proof rests on those who favor the treaties; those who oppose them are merely standing up for American rights. Proponents must show that it is in the national interest to dispose of American property which, in addition to its strategic and economic value, represents a cumulative investment of roughly \$7 billion.

To do this, they have advanced arguments which, far from supporting their case, can actually be turned against it. On August 14, the chief negotiator of the treaty, Ambassador Ellsworth Bunker, stated that the basic purpose of the treaty was "to assure that the Canal is kept open, run efficiently, open to ships of all nations without discrimination."

An open Canal, operated efficiently and without discrimination—that is a worthy objective. It is an objective, however, that American control is already meeting.

That is the kind of Canal we have now. The likelihood is that Panamanian control would reduce rather than strengthen the chances of keeping it that way.

Panama is a weak, unstable, and impoverished country. Its current chief executive, the 59th in 74 years, is General Omar Torrijos a dictator who has openly flirted with Castro and the Soviet Union and has increased the national debt from \$167 million to \$1.5 billion during his tenure of office. It is hard to have any confidence in his ability, or his willingness, to work with the United States in running the Canal.

Interruption in our use of the Canal would do serious damage both to national security and to our economy. Four former Chiefs of Naval Operations recently wrote President Carter that "loss of the Panama Canal * * * would contribute to the encirclement of the U.S. by hostile navy forces, and threaten our ability to survive." At the very least, the separate neutrality treaty would force us to give access to the Canal to nations at war with us or with our allies.

Our economic interests

Our economic interest is also great. In 1975, 45 percent of the ships that passed through the Canal were coming from the United States, and 23 percent were bound for the United States. Moreover, Alaskan oil may soon produce even greater traffic. On whom would we be wiser to depend to see that this commerce is maintained—ourselves, or the Republic of Panama?

State Department officials are making ominous predictions about what will happen in Panama if the treaty is not ratified. Some have openly speculated about possible sabotage or guerilla warfare. Such statements on the parts of American officials are highly irresponsible. Their prophecy may be self-fulfilling.

It was equally irresponsible of President Carter to turn the signing ceremony into a public relations extravaganza. The President knows full well that the treaties have no force whatsoever unless ratified by the Senate. Yet he chose to treat the signing ceremony as the completion of the process, as an occasion for celebration and self-congratulation, and thus raised expectations in Latin America to an unrealistic level.

There is no way of knowing what will happen in Panama if the treaty is not ratified. On a recent trip to Panama, though, I learned that there is still considerable pro-American feeling in the country. In 1976, the United States infused \$108 million into the Panamanian economy in wages to non-American citizens, another \$39 million in expenditures by government employees, and another \$29 million in purchases of Panamanian goods.

As for the future, modernization of the Canal, projected by our planners at a cost of \$2.5 billion, offers the prospect of an economic bonanza. Adjustment of the present annuity and cession of surplus land within the Canal Zone would also help to extinguish smoldering discontent.

We must remember, too, that sabotage would harm Panama more than it would the United States. It is hardly conceivable that the Panamanian government would willfully destroy its greatest economic asset. Rebels or terrorists might make an attempt, but there would be an equal possibility of this if the Canal were transferred to Panamanian control.

Prognostications about the future, however, are beside the point. The Canal Zone is United States territory. The Canal belongs to the American people. To surrender them under the threat of violence would be to yield to blackmail. Would we give up Alaska to the Russians if they were suddenly to demand it? Such weakness is entirely contrary to our national character and heritage.

There are those who counsel generosity in our dealings with Panama. We must distinguish, though, between Panama and General Torrijos. This man has just signed a friendship and commercial pact with the Soviet Union. He has countenanced eleven violations of the present treaty in the last two years.

Conclusion

Finally, and perhaps most significantly, he has eliminated all civil and political liberties in his country. If we truly value the friendship of the Panamanian people, we will do nothing to legitimize the regime of their dictator, let alone award him the triumph of concluding this treaty.

The American people reject the barren reasoning of their diplomatic representatives. In the most recently published national opinion poll, they expressed their opposition to giving away the Canal by a margin of two to one. In a poll of South Carolinians which I took myself, the margin was nine to one. The Senate must heed this united voice.

The Panama Canal now stands as a monument to American foresight, ingenuity, and perseverance. Let us not, by entering into the proposed treaties, make it a monument to American folly.

THE CASE FOR ACCEPTANCE

(By Senator Hubert H. Humphrey)

The fundamental goal of the foreign policy of the United States is the promotion and preservation of the basic security, economic and political interests of our nation. The essential tools for achieving and maintaining these goals are the use of diplomacy and the treaty-making powers of the President (with the advice and consent of the Senate). These are tools which we utilize to prevent our basic interests from being placed in jeopardy now and at some future time. Therefore, diplomacy is the mechanism upon which we rely to avoid the necessity to use force—we use force only as a last resort—when our diplomatic efforts have been to no avail.

In essence, this is the primary issue involved in our consideration of the new Panama Canal Treaties. There are only two basic questions which the Senate of the United States must address in considering the utility of the new treaties. First, what are the interests of the United States in the Panama Canal? Second, do the new treaties more adequately protect these interests than does the present arrangement with the Republic of Panama? All other issues, including the question of sovereignty, negotiations with a dictator, and the ideological make-up of the Panamanian government, are irrelevant to the task before the Senate.

U.S. interest in the Panama Canal

Our interest in the Panama Canal is the continued access, efficient operation, neutrality, and security of this vital waterway. Our interest is nothing more and nothing less.

How best to protect this interest

Diplomacy involves the art of negotiating instruments or mechanisms, relevant to a present day setting, which seek to promote and protect basic national concerns by achieving mutuality of interests between nations. However, the real test is whether or not the level of consent achieved by diplomatic efforts to insure this mutuality of interest stands a good chance of enduring throughout the time period of the treaty.

The 1903 Treaty, relying upon the mechanism of sovereign-like rights in perpetuity to protect our interests in the Canal, has long been an unworkable mechanism in our relationship with the Republic of Panama. As a result, the very interests this mechanism was designed to protect are now jeopardized because we lack the primary element of any treaty relationship—mutual consent. When consent is gone, any agreement is, in fact, abrogated.

Thus, the 1903 Treaty no longer achieves the fundamental foreign policy goal of our nation. In fact, the existing treaty places our economics, political and security interests in the Canal in jeopardy. It naturally follows, then, that in order for our fundamental foreign policy goal to be achieved, we must employ the basic diplomatic tools at our disposal and negotiate a new treaty relationship which not only achieves mutual consent but also preserves our basic interests.

In my estimation, the new Panama Canal treaties meet this test. We have negotiated a treaty relationship in which the essential element of mutual consent has been achieved. We have employed the mechanism of joint partnership with the Panamanians, a modern-day relationship similar to agreements with our allies throughout the world, to better protect our only interest in the canal—the continued access, efficient operation, neutrality, and security of this vital waterway.

Under the new treaty, nothing will significantly change from the present circumstances for the management and defense of the Canal throughout the remainder of the century. The United States will continue to control operation of the Canal, and the United States military forces will continue to provide for the defense of the Canal from within Panamanian territory.

In addition, under the Neutrality Treaty, our basic interests are more than adequately protected in perpetuity, including the provision for maintaining the security of the Canal.

Yet, we have achieved more with these new treaties than just protecting our basic interests. Under the new treaties, the United States is granted the exclusive right to construct an interoceanic sea-level canal through Panama. Under the 1903 Treaty, it is debateable whether or not we enjoy this right. Under the 1903 Treaty, there is

no assurance that the Soviet Union, or any other nation with the capacity to do so, could not construct and control a sea-level canal if the Panamanian government were disposed to grant this right. The new Treaty clearly spells out the exclusivity of the right of the United States.

Not only do we have the exclusive right to construct a new canal, but we also retain the same neutrality and defense rights we enjoy under the new treaty relationship with the Republic with respect to the existing canal. These include the responsibility to protect and defend the canal proper, and the right of "expeditious passage" of our warships during times of emergency.

It is obvious that if there is to be a sea-level canal through Central America, Panama is the only logical site. This was emphasized in the Atlantic-Pacific Inter-oceanic Canal Study Committee recommendation of December 1, 1970, that selected Panama as the preferred site for a sea-level canal. This recommendation came after six years of technical study and review.

Furthermore, under Article V of the Neutrality Treaty, Panama relinquished all rights to invite or accept foreign military forces to make available installations for foreign military forces anywhere in the territory of the Republic. Under the 1903 Treaty, there is nothing to prevent the Soviets, or the Cubans, or any other nation from stationing troops in Panama if invited to do so by the Panamanian government.

Considerable debate has focused on the issues of expeditious passage of U.S. warships and the right of the United States to defend the Canal beyond the year 2000. I believe the Neutrality Treaty more than adequately protects U.S. interests in these two matters. The Panamanians have clearly spelled out, as has our government, what our rights are.

Under the Neutrality Treaty, Panama and the United States have the responsibility for insuring that the Canal will remain secure and open to ships of all nations. Article LV relates only to the direct defense of the Canal installations, and the scope of this right does not extend to intervention within the Republic of Panama.

The right of "expeditious passage" of U.S. warships under Article VI of the Neutrality Treaty has also been clarified in a joint statement released by President Carter and General Omar Torrijos of Panama. Expeditious passage is defined as quick transit, without obstacles, and with the least possible processing. However, in the event of an emergency or necessity, "expeditious passage" would permit the warships of both nations to go to the head of the line of ships awaiting transit. Since the Republic of Panama does not have a navy, the U.S. should not be concerned over which nation's warships would move through the Canal first.

Conclusion

Clearly, no international relationship negotiated more than 70 years ago can be expected to last forever without adjustment. In sum, the new treaties, which establish a relationship of shared responsibility and benefit, increase Panama's stake in safeguarding the very interests we ourselves wish to assure.

Panama and her Latin American neighbors long have been dissatisfied with the 1903 Treaty. This declining level of consent transcends any one government and now encompasses Panamanians of all strata.

The U.S. image and its leadership ability are under careful scrutiny around the world. This image can only be enhanced by the abrogation of the 1903 Treaty, which is viewed abroad as one-sided and anachronistic, a holdover from a colonial era which other nations have discarded.

The ability of the United States to work through this emotion-fraught issue at home through the process of Senate deliberation on giving its advice and consent to ratification of the treaties will be viewed by friend and foe alike as a sign that we can make necessary accommodations to a changing world.

Perhaps former Secretary of State Henry Kissinger best summed up the diplomatic achievement of the new treaties when he testified during Foreign Relations Committee hearings on this matter. He stated:

"The question, therefore, is which arrangement puts us in the best legal, political, and military position to protect our rights and interests if we are forced to do so by the unilateral action of Panama. I believe the new treaties will significantly reduce the risks of abrogation, and will also create far better conditions in which we could defend our rights if abrogation should occur."

In capsule form, this analysis demonstrates how we achieve, through basic diplomatic tools at our disposal, the fundamental goal of U.S. foreign policy—the promotion and preservation of the basic security, economic, and political interests of our nation. The new Panama Canal treaties enhance our ability to avoid the use of force

as the alternative—the only alternative we might have if we continue to insist on maintaining the status quo or making cosmetic changes in our existing relationship.

THE PANAMA CANAL QUESTION

Mr. SCHMITT. Mr. President, when faced with the possibility of voting for or against the proposed Panama Canal treaties, I found that neither vote satisfied an analysis of the modern situation in Panama or in Latin America.

My main concern is that the treaties are bilateral, thus it only takes one party to break them. In such a situation, the nations of the hemisphere can have no real guarantee of nondiscriminatory rates and use nor can there be a guarantee that our actions in "defense" of the canal will have the sanction of the rest of the hemisphere.

Faced with this dilemma and other basic problems with the treaties as proposed, I have worked with several individuals who are experts in international institutional arrangements. We wished to see if the "Intelsat" system of international management could be modified to be applied to the hemispheric management and defense of the Panama Canal. We believe that it can be applied. I hope my Senate colleagues will agree.

I request unanimous consent that the remainder of my remarks describing a hemispheric management concept called "Intersea" be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

INTERSEA: AN ANSWER TO THE PANAMA CANAL QUESTION

The question of the ratification of the Panama Canal treaties presents one of the most complex technical, international and political questions of our time. Unfortunately, after fourteen years of negotiations, we find ourselves in a situation where neither ratification nor rejection of the treaties are acceptable answers. This situation is not the fault of anyone; it is the fault of history and our times.

The construction of the canal was the moon landing project of my father's generation. It caught the imagination and motivation of the country and much of the world just as did the Apollo Project of the 1960's.

The canal began, as did Apollo, with a presidential initiative in response to an international challenge to American technology and pride. It was built successfully only when the best developed new technology of the age, the technology of rail transportation, was applied through vigorous and innovative management efforts. Apollo was successful half a century later because of a similar use of air transportation technology.

On top of the base of railroad technologies was built the new technologies of advanced steel manufacturing, steel construction, electrical power utilization and remote control. This scenario was replayed by Apollo upon the base of aeronautical technologies with the development of new technologies in materials, electronics, communications and in energy and environmental systems.

The control of a hostile environment was essential for the building of the canal across the Isthmus of Panama just as it was essential to the movement of men through space. In the control of yellow fever and malaria in the jungles of Panama, as with the protection of human life, in space, medical science and mankind have benefited beyond any expectations.

The sheer scale and cost of building the canal was comparable to Apollo; 262 million cubic yards of earth were moved at a cost (in 1910 dollars) of about \$650 million by a work force that probably totaled several hundred thousand people. Apollo's effort was measured in different terms—6.5 million pound space vehicles, a cost (in 1965 dollars) of about \$22 billion, and about 400,000 workers—but clearly the two projects were in the same league.

The most critical element in the construction of an American canal in Panama, as in landing men on the moon, was the motivation of young Americans who believed that it should be done. They believed that nothing they could do with their lives would be more worthwhile or more rewarding. It is that motivation, when generated, that literally moves mountains and conquers other worlds.

Today, among most Americans, we find a personal and emotional involvement in the Panama Canal issue that seems to defy any quantitative explanation. In addition to hearing about its role in the lives of our fathers or grandfathers, most Americans have some direct or indirect attachment to the canal. It may have been childhood history books, civil or military service by a member of the family, a vacation, a Christmas card, or stamp collection that implanted the image of an "American canal in Panama."

Many other Americans, old and young, are just not satisfied with the national security and foreign policies of the United States over the last several decades. They feel we have backed down too often without considering what may be best for the long-term interests of Americans or the people of other nations.

Ratification of the treaties is not acceptable politically to a majority of Americans. Nor is it clear that the implementation of the ratified treaties will guarantee to all users an acceptable and equitable operation of the canal in perpetuity.

At the same time, rejection of the treaties is clearly unacceptable nationally and economically to a majority of Panamanians. Rejection also would ignore the political realities of radical opposition faced by most Latin American leaders. Most critically, the times are moving against the propriety of the unilateral control of territory or technology of international usefulness, such as an international waterway between oceans.

In the face of this dilemma, a new answer must be found. There are new currents in the world with respect to material, territorial or technological resources which have international significance. The unavoidable inertia of fourteen years of negotiations to change the 1903 Panama Canal treaties have frozen out consideration of these new currents. If we are to find a better answer than the treaties, we must now be willing to ride with such currents.

In searching for an alternative to the proposed treaties, it appears that there are many analogies between the international utility of the Panama Canal and the international utility of global communication satellites. Foremost among these analogies is a clearly definable international need for continuous and equitable operation in the interest of all nations.

The political and technical management of a global communication satellite system, as manifested by the INTELSAT Organization, is a unique new entry into the international scene. It is an organization that developed because of a coincidence of new technology and obvious international need. To the everlasting credit of the United States, we perceived this coincidence and guided the gradual trial and error development of INTELSAT. To the everlasting credit of the INTELSAT Organization, it has become an example of international cooperation that is not only remarkably successful, but is both utilitarian and profitable.

"Could this INTELSAT model of international cooperation be applied to the Panama Canal?" was the question I posed to Dr. Delbert Smith, a specialist in international law and international institutional arrangements. Not only was his answer yes, he formulated a theoretical framework using the INTELSAT experience as a basis for an "INTERSEA Organization." Dr. Smith has used this framework to create an internally consistent draft agreement which could be implemented immediately once signed by appropriate parties.

INTERSEA goes beyond INTELSAT in that it also incorporates modern trends toward regionalism by matching Western Hemisphere control of the canal with international users' participation in operational decisions. This is clearly more desirable than other proposals for international control which would have the well-known disadvantages of undue influence by those with the least definable contribution to make to the success of the enterprise.

It is my belief that INTERSEA would satisfy the most significant national and economic interests of the United States, the Republic of Panama, all of Latin America, and the user nations of the world. Most importantly, it would bring into the management and defense of the canal those nations with the greatest interest in insuring the successful implementation of that management and defense.

The INTERSEA concept is a concept of the space age and of an age of growing awareness of certain common international resources on this spaceship Earth. INTERSEA does not require that territorial sovereignty be given up, rather it requires that territorial sovereignty be shared.

THE INTERSEA ORGANIZATION¹

It is my strong belief that it is necessary to develop a plan for Western Hemisphere control of the Panama interoceanic canal. To this end, I propose INTERSEA, a regional organization. In setting forth the basis of its organization, its advantages, and a model of its institutional structure, mandate and powers, I considered the need for an institutional development adequate for the twenty-first century, a development taking into consideration both the common heritage of mankind and various national interests. In creating the INTERSEA proposal several examples of international cooperation were examined, including INTELSAT, the Outer Space Treaty and the Moon Treaty.

Since the Panama Canal runs through the center of the western hemisphere, all of the hemisphere's countries have an interest in the existence and use of the canal. There are also hemispheric political interests. INTERSEA would insure that the Panama Canal remains secure and neutral.

Since the opening of the canal, it has been operated by the United States as a "public service" for the nations of the world. It has become apparent that to turn the canal over to another individual country now would not be in the best interests of western hemisphere nations. The United States has a major interest in the canal because some 70 percent of the shipping through the canal is bound for American ports, carrying cargo that amounts to one percent of our gross national product. Other nations, including Panama and Colombia, have even greater proportionate economic interests in the continued operation of the canal.

One of the issues which must be resolved is maintenance of permanent neutrality for the Canal Zone. Severe questions arise over whether Panama or any nation would be interested in maintaining this neutrality and in maintaining expeditious transit of United States naval vessel when necessary.

In the draft agreement which would create INTERSEA, the United States is given a clear mandate to be the principal defender of the canal in order to insure that the canal remains neutral and open. To this end, the United States is assured of rights necessary to defense, including the right of priority transit by its warships.

BASIS FOR INTERSEA CONCEPT

Technological advancements have produced a trend towards realization of a "common heritage of mankind" in certain international resources. This trend is most apparent in negotiations regarding the resources of the seas and outer space. It indicates a general realization that nations have common interests in sharing benefits from the exploitation and environmentally sound use of these resources.

Recognizing that the Panama Canal has become a common heritage resource for western hemisphere nations, an institutional arrangement should be possible which would vest operation and control of this resource in a regional organization composed of the nations of the Americas. Regionalism—the grouping of nations by a common bond of policy and limited purposes—has been recognized for some time as a valid principle. Operation and control of the canal might be effectively accomplished by transfer of the Canal Zone to a regional organization rather than allowing it to remain unilaterally controlled by any single nation.

ADVANTAGES OF REGIONAL ORGANIZATION

The advantages of sharing sovereignty are clear in several ways. First, the current and potentially disastrous discontent over which nation should exert control over the Canal Zone could be alleviated.

Second, the provisions regarding United States rights to defend the canal could be better preserved in a regional organization than through bilateral understandings. These provisions include the right to assure through military force the openness and neutrality of the canal and the right for American warships to have expeditious transit. There was sufficient question on these provisions in the treaties now before the United States Senate to require a Presidential Statement of Understanding for clarity. Creation of a regional organization could render such a statement unnecessary.

Third, an analysis reveals that a regional organization may prove to be the best arrangement to accommodate the various national interests in the canal. This includes those of the users of the canal, the sovereign exercising jurisdiction over the canal (presently the United States), the operator of the canal (presently the United States), the nation surrounding the Canal Zone (the Republic of Panama), and nations having strategic defense interests. There is no guarantee that all these

¹ The material contained in this section was developed by Dr. D. D. Smith with the assistance of R. E. Weigend, Jr. and the author and provides the theoretical basis for the regional institutional framework of INTERSEA.

interests will be or can be considered when the canal is unilaterally controlled. However, creation of INTERSEA would institutionalize access and influence in an organization legally empowered to operate and control the canal. It would be in the clear self-interest of all hemisphere nations to make such an organization work.

Fourth, the operational goals of the canal would be best assured through management by a regional organization. Three of these goals are (1) assuring free access and unimpeded passage through the canal; (2) maintaining a reasonable and uniform rate structure bearing a realistic relationship to the value derived from use, while considering operating expenses and return on investment; and (3) assuring administrative stability over a long period of time. Two other important goals could be better accomplished in a regional organization, namely effective maintenance and operation of the canal and continued expansion, improvement and development of the canal and related facilities, such as railroad lines for containerized transverse of the isthmus and pipelines for passage of oil between supertankers which are too large for the canal. INTERSEA, with its broad base of member nations, could assure that these goals are consistently met and capitalized.

Fifth, INTERSEA would provide the forum for rational planning of future canals located in Panama or in other nations. Based on the assumption that all the nations of the Americas are represented and pledged to cooperate in the organization, future canals would be created only if necessary, and then in order to meet used demand rather than for other tangential purposes such as political influence, profit or strategic advancement.

Finally, formulation of a regional organization may improve the friendship and unity of the nations of the western hemisphere by providing dynamic regional cooperation resulting in quality service which benefits.

MANAGEMENT OF INTERSEA

The conceptual advantages of a regional organization will only be realized if the actual institutional structure is designed to provide an equitable system for the various interests to exert influence and control as well as to provide for efficient and proper management of the canal.

There are two distinct bases for nations to be involved in INTERSEA. The first relates to operation of the canal and has a geographical basis centered in the western hemisphere. The second relates to use and the terms and conditions for use, and this is world-wide in scope. The United States clearly has both bases for involvement.

To provide the first basis of national involvement, the proposed INTERSEA Preamble states:

"Use occupation and control of this Hemispheric Waterway should vest in an organization whose membership is composed of the nations of the Americas and that this organization should assume the rights, power and authority from the United States which is necessary and proper to effectuate the principles set forth herein."

The degree of representation in INTERSEA by each western hemisphere nation depends on usage of the canal. Each member's interest in INTERSEA will equal the amount of its "usage share" which is initially established and periodically reviewed. The usage share determines the number of votes each member has within INTERSEA.

Figure One illustrates the relationship between the member nations in terms of usage shares. It was created based on the assumption that the flag flown by a vessel is used to determine which nation to credit for its passage and that the number of transits per year is the proper criterion to determine use. Figure One is based on Fiscal Year 1976 statistics for commercial shipping. The multilateral agreement which would create INTERSEA provides that there shall be minimum and maximum usage share levels in order to insure at least minimal representation of all interested nations.

The second basis of national involvement is provided by the creation of a special body within INTERSEA, composed of world-wide user nations. There exists practical difficulty in defining user nations due to the practice of "flags of convenience" where vessels owned by entities from one nation fly the flag of a second nation because of tax, operational or other advantages. One of the priority tasks of this body would be to consider the flag of convenience question.

A greater appreciation of the relationship between western hemisphere nations and user nations within INTERSEA comes from a look at the organizational structure. The diagram in Figure Two depicts this basic structure.

INTERSEA USAGE SHARE ASSIGNMENTS

Number and Nation	(¹)	Usage shares
1. United States	1,064	60
2. Panama	930	60
3. Peru	216	22
4. Colombia	203	20
5. Chile	170	17
6. Ecuador	163	16
7. Nicaragua	68	7
8. Mexico	60	6
9. Cuba	48	5
10. Honduras	42	4
11. Canada	22	2
12. Uruguay	19	2
13. Bermuda	19	2
14. Brazil	17	2
15. Bahamas	17	2
16. Venezuela	16	2
17. El Salvador	13	1
18. Argentina	10	1
19. Guatemala	2	1
20. Barbados	1	1
21. Belize	1	1
22. Bolivia	1	1
23. Costa Rica	1	1
24. Dominican Republic	1	1
25. French Guiana	1	1
26. Granada	1	1
27. Guyana	1	1
28. Haiti	1	1
29. Jamaica	1	1
30. Paraguay	1	1
31. Surinam	1	1
Total	² 3,099	244

¹ Number of transits (fiscal year 1976).

² Total transits by all user nations were: fiscal year 1976, 12,157; fiscal year 1975, 13,609 and fiscal year 1974, 14,033.

The main bodies within INTERSEA are the Assembly of Parties, the Board of Governors, the Board of Users and the Director General and staff. As shown in Figure Two, all the western hemisphere nations exert authority over the Assembly of Parties, Board of Governors and the Director General. In addition, those western hemisphere nations which are users exert authority within the Board of Users. Non-western hemispheric user nations exert authority within the Board of Users which, in turn, is represented within the Board of Governors.

The primary function of the Assembly of Parties is to make major policy provision for carrying out INTERSEA activities, the objective of which is described in the proposed agreement as follows:

"INTERSEA shall have as its prime objective the provision, on a commercial not-for-profit basis, of interoceanic canal facilities and services of high, functional quality and reliability to be available on an open and non-discriminatory basis to all vessels, whether civilian or military, of the world, As an adjunct to this prime objective, INTERSEA shall insure the interoceanic canal's neutrality and security, and in addition, provide a mechanism and forum for resolution of disputes regarding the subject matter of this agreement."

The Assembly of Parties has specific mandates under the agreement to effectuate specific objectives, including:

1. to create general policy and long-term objectives;
2. to enter into a Security Agreement with the United States for protection of the canal and to establish a Defense Board which would include other hemisphere nations;
3. to establish general rules concerning the establishment and adjustment of the rates of charge for utilization of the canal on a non-discriminatory basis;
4. to consider complaints submitted to it by nations, international organizations and users;
5. to maintain a body of laws, rules, procedures and instructions to deal with dispute settlements; and

6. to negotiate equitable financial arrangements with host countries such as Panama.

The Assembly of Parties is composed of one representative from each member nation. Decisions on all matters are to be taken by a three-quarters majority.

A second vote technique is incorporated in the procedural rules of the Assembly of Parties. Decisions on all matters brought to a second vote are to be taken by a three-quarters majority of the votes cast when each representative casts the number of votes which are proportional to his nation's usage share. A second vote can be demanded by any representative, thereby insuring that the significant interest of major users are protected. This second vote is taken only after a decision is approved by the first vote where each nation is allowed a single vote. The effect is the same as if the Assembly of Parties was a bicameral body, with one unit based on equality of nations and the second based on usage.

The defense of the canal is primarily provided by the United States, but can be augmented by other nations. There shall be a Security Agreement between INTERSEA (specifically, the Assembly of Parties) and the United States which details the mandate given to the United States for protection of the canal. Other hemisphere nations may join in this with the approval of the Assembly of Parties. The Assembly of Parties shall establish a Defense Board which will serve to coordinate the security efforts of the parties to the Security Agreement.

The Board of Governors has the responsibility for the operation and maintenance of the canal, for design, development, construction, establishment, operation and maintenance of any canal improvements, and for carrying out any other activities which are undertaken by INTERSEA. These activities probably would be accomplished through contract with the United States or an institution growing out of the present Panama Canal Company.

Some of the specific duties of the Board of Governors are:

1. adoption of policies, plans and programs in connection with operation and maintenance as well as appropriate improvements;
2. creation of annual budgets and budget implementation;
3. periodic establishment of the rates of charge for utilization of the canal in accordance with the general rules established by the Assembly of Parties;
4. solicitation of capital;
5. appointment and removal from office of the Director General and approval of senior staff appointments; and
6. arrangement of contracts with a nation or nations or institution for the performance of the operation and maintenance functions of the canal and other facilities of INTERSEA.

The Board of Governors is composed of approximately fifteen members, consisting of one Governor representing the United States, one representing the host country (The Republic of Panama), one representing the Board of Users, and the remainder representing other nations or pairs of nations which qualify on a formula based on use. The relationships between and voting participation of the Governors would be defined by the Assembly of Parties. Figure Three illustrates what such relationships and voting participation could be. It should be noted, however, that Figure Three is intended only for purposes of illustration and does not constitute a recommendation.

The Governors shall endeavor to make all decisions by unanimous vote, but if that is not possible, they each shall participate equal to the usage share of their respective nations. A three-quarters majority of the total voting participation is necessary for substantive decisions while a simple majority is necessary for procedural decisions. The Governor representing the Board of Users has a voting participation equal to that of the Governor with the lowest voting participation.

The Board of Users is established under the auspices of INTERSEA with the duty to advise INTERSEA on matters of policy affecting the canal's operation, administration and maintenance as well as present advice with regard to policy alternatives for plans for the canal's future. Initially, all user nations will be invited by INTERSEA to a charter conference during which the organizational structure of the Board of Users and an agreement will be established. The Board of Users will then receive staff support and funding from INTERSEA and will be represented on the Board of Governors.

The executive body of staff of INTERSEA would be headed by the Director General. Among his specific duties are:

1. to be the legal representative of INTERSEA and responsible for all administrative and management functions;
2. to contract out, on behalf of INTERSEA, to one or more competent entities technical and operational functions to the maximum extent practicable with due regard to cost and consistent with competence, effectiveness and efficiency. It should

be noted that such entities may be, according to the agreement, composed of various nationalities or may be an international corporation owned and controlled by INTERSEA; and

3. to serve as negotiator on behalf of INTERSEA.

The proposed agreement also provides for the establishment of a dispute settlement system on two levels. The first is an arbitration system for disputes by member nations among themselves or with INTERSEA, and the second is a judicial tribunal with jurisdiction over all other disputes arising as a result of the operation and maintenance of the canal. This tribunal would serve as the final court of appeals for the judicial system within the Canal Zone, using a code of criminal and civil law based on the existing Canal Zone and modified when appropriate by the Assembly of Parties.

FIGURE 3.—*Intersea initial Board of Governors*

Governor number and representative:	Voting participation
1. United States	60
2. Panama	60
3. Peru	22
4. Colombia	20
5. Chile	17
6. Ecuador	16
7. Nicaragua	7
8. Mexico	6
9. Cuba	5
10. Honduras	4
11. Canada and Uruguay ¹	4
12. Bermuda and Brazil ¹	4
13. Bahamas and Venezuela ¹	4
14. Board of Users	4
Total	223

¹ Arbitrary pairings.

RIGHTS AND OBLIGATIONS OF MEMBER NATIONS

The proposed agreement makes several declarations relative to the rights and obligations of the member nations. With reference to construction of other interoceanic canals in Central America, the member nations agree to refrain from establishing any such canals unless it is done jointly with INTERSEA.

With reference to the neutrality of the canal, the agreement provides that the canal shall be neutral in order that both in time of peace and in time of war it shall remain secure and open to peaceful transit by the vessels of all nations on terms of equality so that there shall be no discrimination. Thus, the canal will not be a target of reprisals in any armed conflict. Transit, however, is subject to several requirements which are consistent with neutrality, including:

1. payment of tolls and other charges for transit and ancillary services, provided they have been fixed uniformly by class;

2. compliance with applicable rules and regulations, provided such rules and regulations are applied uniformly;

3. military vessels of member nations shall be afforded priority transit in a conflict between a member and non-member nation;

4. the requirement that transiting vessels commit no acts of hostility while in the Canal Zone; and

5. vessels of war shall at all times be entitled to transit the canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected, as a condition of transit, to inspection, search or surveillance. However, such vessels may be required to certify that they have complied with all applicable health, sanitation and quarantine regulations. In addition, such vessels shall be entitled to refuse to disclose their internal operation, origin, armament, cargo or destination.

CONCLUSION

The proposed INTERSEA agreement could be implemented in stages. The initial step would be ratification. Subsequent stages would provide for the continued suc-

cessful and non-discriminatory operation of the canal, defense of the canal, structure of the Board of Users, financial arrangements with the host country, an expanded role for Panama in the operation of the canal and possible new ventures.

There would also be several subsidiary agreements created in conjunction with the basic INTERSEA agreement including detailed definitions and rules. A host country agreement and protocol would govern the diplomatic privileges, exemptions and immunities of the various INTERSEA representatives, Governors, judicial officials, staff and related officials with regard to their activities within the host country.

INTERSEA would provide management of the canal by a regional organization for the benefit of all hemispheric nations. INTERSEA recognizes the canal as an international resource with the common heritage of all nations. It provides for all users of the canal to have representation in decisions affecting its use, defense and expansion. INTERSEA is a model organization tailored to perform this management function through a sharing of sovereignty rather than unilateral control by any nation.

Implementation of INTERSEA would serve as a viable answer to one of the most complex technical, international and political questions of our time, the question of the future of the Panama Canal.

HUMAN RIGHTS AND THE PANAMA CANAL TREATIES

Mr. HATCH. Mr. President, those who favor ratification of the proposed Panama Canal treaties have maintained that control of the canal must be relinquished in the name of "fairness," that our past dealings with Panama have been less than just, and that, through these treaties, we will be ridding ourselves of an embarrassing colonial enclave, thus elevating our standing in world opinion.

This position is, of course, riddled with inaccuracies, but what I find particularly astonishing is the way these same people, who so glibly use words like "justice" and "human rights," overlook the injustices inherent in the causes they advocate. Has it occurred to none of the supporters of this hastily prepared version of a treaty agreement, that several very real violations of "human rights" will automatically occur if the agreement is ratified? Do the rights of the Canal Zone residents and employees, whose homes and jobs are seriously threatened by the proposed treaties, deserve to be considered? Should we be at all concerned about the Panamanian citizens and exiles whose will is not reflected in the actions of a dictator—a man whose regime we would be funding under this agreement? Treaty advocates apparently do not find it convenient to address themselves to questions like these.

A thoughtful article appearing in the November 7 issue of the New Leader magazine deals with yet another group of people whose lives will be seriously disrupted if the treaties are ratified. These are West Indian blacks, originally imported by the French to assist in the construction of the canal, and who now comprise a work force of 15,000 Canal Zone employees. They have never been assimilated into either the Panamanian or American communities, and stand to lose their livelihood should the United States abandon control of the canal, a project to which they made a significant contribution.

I ask unanimous consent that this article be printed in the Record at the conclusion of my remarks, and commend it to my colleagues as yet another example of a group of people whose

rights are being overlooked in the treaty proponents' bid to be "fair."

There being no objection, the article was ordered to be printed in the Record, as follows:

THREATENED BY THE TREATY PANAMA'S BLACKS: A U.S. RESPONSIBILITY

(By Steve C. Ropp, associate professor of government of New Mexico State)

Nearly every big power retrenchment of the past 30 years has brought with it a "refugee" problem. Not only must new jobs and homes be found for the displaced citizens of the disengaging nation, but there is also frequently a community that, because it served the departing country, finds itself unwanted or endangered. In the case of Vietnam, for instance, the United States has so far rightly provided a haven to some 145,000 South Vietnamese fleeing from the wrath of the victorious Communists.

The pending Panama Canal treaty involves a roughly analogous situation. For although the U.S. is now preparing to withdraw from Panama, while there it benefitted from the labors of a group that will fall to the tender mercies of General Omar Torrijos Herrera's regime if Washington does not offer it adequate protection. These people are the estimated 15,000 black employees—all nominally Panamanian citizens—of the U.S. government in the Canal Zone. But their plight lacks the high drama of retaliation for wartime cooperation. Indeed, few people in this country are at all aware of their precarious position.

The black's current predicament is rooted in the history of railway and canal construction on the Isthmus of Panama. In 1849, when some New York entrepreneurs decided to build a railroad there to expedite travel to the California gold fields, they imported about 2,000 Jamaican workers, who were more resistant to the ravages of malaria and yellow fever than their Chinese and Irish counterparts.

During the late 19th century, France, under the direction of Ferdinand de Lesseps, attempted to repeat its magnificent Suez performance across the swampy Panamanian isthmus. But health conditions were much worse than in the Middle East, prompting French to follow the earlier American example and hire blacks from Jamaica, Barbados and the smaller Caribbean islands. Thus when the United States picked up where the French had left off, it inherited equipment, a partially completed ditch—and a sizeable black work force that it continued to supplement from the islands as construction progressed.

The canal completed, the blacks successfully competed for the menial bluecollar and service jobs that became available with the start of operations. They had two advantages over native Panamanians: They spoke English and were Protestant. Pressure to integrate them into the white community, however, always has been strenuously and, for the most part, successfully, resisted.

For example when the 1954 *Brown v. Board of Education* ruling confronted residents with possibly having to desegregate their schools, it was suddenly stressed that blacks living in the Zone were Panamanians. Consequently, the argument ran, the issue here was not one of racial discrimination but rather of nationality: Being Panamanians, the blacks had to attend schools that taught the Spanish language and culture. This began the phase of "integrating" the workers into Panamanian life, a polite way of saying that white Zonians wished to rid themselves of the whole problem. Not unjustly do the blacks refer to themselves as the "forced Panamanians."

Segregated and discriminated against by the Americans, blacks have fared even worse with their fellow citizens. Spanish-speaking Panamanians view them as *privilegiados* (privileged ones) who should have been repatriated to their countries of origin after the canal was built. They resent the fact that 5,000 blacks continue to live in special Canal Zone communities, and that all 15,000 receive salaries which, while considered the minimum wage in the United States, are triple what the average Panamanian makes. Moreover, present racial antagonisms have a long history in Panama. The man General Torrijos overthrew in 1968, Arnulfo Arias, head of the nationalist and racist *Panamenista* party, advocated denial of citizenship or expulsion back to the islands for West Indian blacks.

In short, the blacks are a classic case of social marginality. Panamanians who work for Americans, they are disowned by both communities. Even under present conditions, whenever employment opportunities decline within the Zone, the black worker is the first to go. Displaced into Panama's economy, racial and linguistic difficulties leave him with slim chances of finding work.

Not surprisingly therefore, the prospect of an eventual United States departure from the Zone is so delicate a matter to the black community that few black canal employes living in the Republic of Panama are willing to comment on it. There can be no doubt, though, that they fear the treaty, believing their jobs endangered, and covertly wish to see President Carter's ratification effort fail. These feelings are sensed by the native population, heightening its resentment.

The blacks who reside in the Canal Zone are more outspoken, openly expressing concern and reservations. In testimony two years ago before a House subcommittee, representatives from the U.S.-administered communities argued that their interests were being ignored in the negotiations and that their loss of jobs under the 1955 treaty boded ill for the future.

A close reading of the new treaty indicates that U.S. negotiators did try to build a measure of protection for black workers into the document. Under the provisions, those fired from jobs transferred to Panama would, if possible, be placed by the United States in other positions. A special optional early retirement program is to be implemented, too, that would benefit both black and white Zonians who would find themselves jobless once the U.S. pulled out.

Nevertheless, the terms of the treaty are too qualified and too vague to offer the black population much real protection: Those holding administrative positions that come under Republic of Panama control are to be retained "to the maximum extent feasible"; displaced employes are to be offered "special job placement assistance" by Panama. Given the historical attitude toward blacks in the Republic, the treaty seems a rather weak reed for them to lean on.

This is particularly true for relatively young people. The treaty may be sufficiently generous to senior workers, allowing them to retire with a modicum of dignity—and money. But younger blacks working for the U.S. have no future either in Panama or in the Canal Zone. They see the problem they face being resolved only if the United States agrees to grant them preferential immigrant status. The black community in Panama has in fact proposed that such legislation be enacted as a necessary aspect of the treaty's adoption.

There seems little chance, though, that it will be. For one thing, letting in the Panamanian blacks would raise a host of difficulties vis-a-vis noncitizen Federal employes in other countries. For another, the President's new illegal-alien plan threatens to create a "raise-the-drawbridge" mentality on Capitol Hill that would hinder consideration of special cases. And unlike the trauma of Vietnam, which was sufficient to jar Congress into appropriating \$203 million for refugee absorption, the situation of the blacks in Panama is barely known, not to mention understood. This, perhaps more than anything else, may mean the question of our moral obligation to a community that has served us so well, and at such a high cost to its social position in the Republic of Panama, will not even be raised.

[From the Congressional Record—Senate, Jan. 20, 1978]

TESTIMONY ON PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations continued hearings. January 19, on the Panama Canal treaties receiving testimony from the following witnesses:

PANEL OF HISTORIANS

- (1) David McCullough, Author of: *Path Between the Seas*, West Tisbury, Mass.
- (2) Jules Davids, School of Foreign Service, Georgetown University, Washington, D.C.
- (3) Elting Morison, School of Humanities, Massachusetts Institute of Technology, Cambridge, Mass.
- (4) Richard W. Leopold, History Department, Northwestern University, Evanston, Ill.

PANEL OF LEGAL SCHOLARS

- (5) Richard A. Falk, Center of International Studies, Princeton University, Princeton, N.J.
- (6) Richard R. Baxter, School of Law, Harvard University, Cambridge, Mass.
- (7) John Norton Moore, Center for Oceans, Law and Policy, University of Virginia, Charlottesville, Va.
- (8) Covey T. Oliver, School of Law, University of Pennsylvania, Philadelphia, Pa.

I ask unanimous consent that the prepared text of the statements of these witnesses be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

STATEMENT OF DAVID MCCULLOUGH

Mr. Chairman, distinguished members of the Foreign Relations Committee:

My name is David McCullough. I am the author of the book, "The Path Between the Seas." It is a pleasure and honor to appear before you and I do so in the hope that my views will be of help in your historic decision on the proposed treaties with Panama. May I say also, by way of introduction, that I do not speak for any organization; I am not affiliated with any institution. As a writer I am self-employed; I speak only as a private citizen.

Mr. Chairman, I wholeheartedly support the new treaties. My feelings for the Panama Canal, for its physical grandeur, for its importance as a symbol of man's indomitable creative will, could not be greater. I am proud of the Panama Canal, as an American but even more as a human being, for I know what they were up against—the French, the Americans, the armies of black men and women from Jamaica and Barbados, all the many thousands from every corner of the world who went into the jungles to do the work.

But one of the lessons of history, one of the fundamental lessons surely, is that times change, the world moves on. Then was then and now is now. I wonder if we can remind ourselves of that simple fact often enough? The era that built the Panama Canal was immensely different from our own, with different needs, different realities. When Theodore Roosevelt went to Panama to look the work over, it was the first time an American president had ever set foot outside our borders while in office. The population of all Latin America then was less than that of the United States. In October 1914, just two months after the canal was opened, just two months after the start of the Great War in Europe, the American ambassador in London told Woodrow Wilson, "It is not the same world as it was last July, nothing is the same."

American history has become world history. Perhaps that is the most significant difference between our time and the era that built the canal.

I support the treaties because I support the canal: I know its importance, I know our interest in it is vital. As others have said, it is continued use of the canal that matters, not ownership. I support the treaties because of the very convincing case made before this committee by the Joint Chiefs. The treaties are a synthesis of the expressed policy of four consecutive administrations, Republican and Democratic; and our presence in Panama as presently constituted is an anachronism. More than this, it is asking for trouble.

A distinguished British historian tells us that the imperialist age ended twenty-two years ago, with the Suez War of 1956. I think it essential that we remember what our position was then before the world, when it was somebody else's canal at issue.

Inevitably there will be risks involved, there will be problems along the way. But the risks of holding fast, of trying to hang on to what has been, can not help but be far greater. Things simply can't go as they are in Panama.

It is a source of some pride to me that spokesmen for both sides in the present debate have cited my book as support for their case. The book has been offered as proof of why the canal is ours, and why it is not; of why we must hold the line in Panama, and why the new treaties are sixty years overdue. This is as it should be. For history is contradictory. The legitimacy of our sovereignty in the Canal Zone, as an example, can be both justified and undercut by reading the historical record.

When I began my research seven years ago, the Panama riots had occurred and negotiations for a new and different arrangement with Panama were under way. But my contention then—as now—was that so huge and powerful a human story as the origins of the canal was important unto itself, irrespective of how much or little Panama might be in the news. I had recently finished writing a book about the building of the Brooklyn Bridge, in which I had tried to say some things about the nature of American growth and individual initiative and had found in that heroic enterprise such an absorbing subject that I wanted to take on something even grander of the kind, an enterprise of even larger consequence. As time went on, as Panama became increasingly topical, until ultimately it had become a front page sensation. I felt an iron-clad obligation not simply to be thorough and fair in my efforts, but to make certain that what I wrote conveyed the actual complexities and ambiguities—and, yes, some of the mysteries—of what happened.

History is contradictory because people are. Philippe Bunau-Varilla, cause of so much that has been vexing in our relations with Panama down the years, was a man of so many shadings of mind and personality as to defy classification. In the eyes of the Panamanians he is, understandably, the villain of the piece; but it can also be said, and perhaps ought to be remembered by everyone involved with the present negotiations, that had there been no Philippe Bunau-Varilla there would probably be no Republic of Panama and the canal would be in Nicaragua.

One aspect of the treaty concerns me: Article XII, by which we agree to build no future waterway anywhere other than Panama. I question this. I don't understand why it is necessary. But Article XII is a relatively minor flaw. It is the large, long-range objective of the treaties that we ought never to lose sight of and to my mind, that objective is right *and* in the best interest of our country. Moreover, I can't see how anyone with a sense of history or a familiarity with present-day realities in Panama could fail to be impressed by the intelligence, the fairness, the legal-diplomatic brilliance of what the negotiators have achieved.

The greatest virtue of the agreements, their genius, it strikes me, is the slow, evolutionary manner by which control and ownership of the waterway itself are to be transferred. The process will be orderly. There will be ample time. The fact that Panama and the United States are to run the canal together, in partnership, for another generation nearly, will be of the utmost benefit.

As you know from your recent inspection tour of the canal, it is an immense, highly sophisticated piece of technology. To operate a conventional canal, a sea-level canal such as Suez, requires in essence, the employment of able pilots and sufficient dredging equipment to keep the passage clear. "The big ditch," as applied to Panama, is a foolish misnomer. The canal is a bridge of water, and as such dependent upon fine balances of natural resources, complex engineering, and a large dedicated personnel with innumerable special skills. Ships are carried up and over the land barrier, lifted 85 feet above sea level through a system of giant locks, these equipped with tremendous steel gates, ingenious safety mechanisms, control devices, literally thousands of moving parts.

The canal is a huge hydroelectric dam and power station, a water utility, a railroad, port facilities, hospitals, medical research laboratories. And when the time comes, the canal must be turned over to a generation of Panamanians who don't just know how to run the canal, but who have technology in their bones. Their technical-managerial competence must be second to none.

So in that regard, I would like to recommend that consideration be given to a program of special scholarships, something on the line of the Fulbright scholarships, whereby, every year, until the end of the century, some ten to twenty exceptional young Panamanians could attend the best of our technical colleges and universities. The cost of such a program would be comparatively small, the rewards enormous.

Mr. Chairman, the Panama Canal is expressive of one of the oldest, noblest desires in the human heart, to bridge the divide and bring people closer together. These treaties are expressive of that same desire. They are a progressive step, an act of strength and confidence, and of good will.

Reflecting on those Americans who played such decisive parts in the creation of the canal—Theodore Roosevelt, William Crawford Gorgas, John Stevens, George Goethals—I am struck, as I am sure you have been, by how much lasting good they were able to accomplish in their lives, what benefit they were to future generations. They were not the kind to spend overly much time looking backward, dwelling on past glories. Theodore Roosevelt never went back to Panama to see the finished canal, the work he took greater pride in than anything else in his career. The only one of those four men who went back in later years was John Stevens, who flew down on a Pan American clipper and looked the canal over from end to end. Perhaps you recall what he said when he reached home again.

When the reporters asked what had impressed him most, he said it was the ride on the airplane.

They were forward-looking people. I urge that the decision on the treaties be made in that same spirit.

STATEMENT OF JULES DAVIDS

The treaties signed by the United States and Panama on September 7, 1977, which provide for a new Panama Canal Treaty and a Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, that are now under the advice and consent of the Senate for ratification must be viewed not only in terms of their specific provisions, but also from a broader historical perspective. This is necessary, in part, to provide a clearer insight into the relations between the United States and Panama, and to indicate how and why changing conditions have made the assumptions and beliefs of many Americans concerning the Panama Canal obsolete.

Numerous differences have plagued both countries since the birth of the Republic of Panama in 1903. These controversies have been rooted in past events, in conflicting and divergent interest, and in opposing cultural outlooks.

To illuminate the significance of the new treaties, I should like to present an overview of the issues between the United States and Panama as they relate to three main considerations in the context of their times. The first entails the involvement of the United States in the Isthmian region, and the circumstances that led to the building of the Panama Canal. The second deals with the relationship established between the United States and Panama as it was affected by the Hay-Bunau Varilla Treaty of 1903, and the terms and conditions specified by Washington. These concerned the requirements that the United States deemed necessary for the operation, maintenance, and defense of the Canal. Finally, I should like to examine the cultural and psychological considerations, and opposing nationalistic attitudes.

The involvement of the United States in the Isthmian region was a product of American expansionism in the nineteenth century, a recognition of the strategic importance of the area, a desire on the part of the United States to extend its influence in the Western Hemisphere, and its interest in building a canal across Central America. This interest was expressed as early as 1821, shortly after Panama declared its independence from Spain. Two years later, the United States proclaimed the Monroe Doctrine, warning Europe against any further colonization in North America, and against intervention or interference in the Western Hemisphere.

From 1821 to 1848, the United States was largely occupied with three objectives in Central America: (1) ensuring that the benefits of a transisthmian transit would not, as Secretary of State Henry Clay declared in 1826, be "exclusively appropriated to any one nation," but would be extended "to all parts of the globe upon the payment of just compensation and reasonable tolls"; (2) thwarting British penetration in the isthmian region and its efforts to establish a protectorate over all of Central America; and (3) strengthening the position of the United States in the Caribbean.

Two developments intensified America's interest in the Isthmus and affected the involvement of the United States for the next half-century. The first was the signing of the Bidlack Treaty with New Granada (Colombia) in 1864; the second event was the discovery of gold in California in 1848. On his own initiative, American Minister Benjamin A. Bidlack responded to New Granada's request that the United States protect its territorial integrity. New Granada, in return, agreed to grant the United States a "right of way or transit across the Isthmus of Panama."

In submitting the Bidlack Treaty to the Senate for ratification in February, 1847, President James K. Polk stressed that the territorial guarantee did "not extend to the territories of New Granada," but was "confined to the single province of the isthmus of Panama." He gave assurances that it in no way constituted an "entangling alliance." The President heavily emphasized its advantages to American commerce. A trans-isthmian passage, Polk declared, would "render our communication with our possessions on the northwest coast of America comparatively easy and speedy." It would, he said, not only shorten the route to the west coast, but also to Asia and the Pacific islands.

The Bidlack Treaty, which was ratified in June, 1848 shortly after the Mexican War, set a pattern of direct American involvement isthmian affairs. Political disturbances, instability, and virtual chaotic conditions in New Granada and Central America led to sporadic American interventions to protect the transit routes across Panama and Nicaragua, as well as the railroad built in the 1850's by the Panama Railroad Company. In 1856, the first landing of American troops took place in Panama to quell the so-called "Watermelon War." The United States intervened in the Isthmus on seven subsequent occasions: in 1860, 1861, 1865, 1873, 1885, 1901, and 1902.

Violence in the Isthmian region reached capstone in Colombia's War of a Thousand Days during 1899-1902. More than 100,000 Colombian lives were lost. The attempt of Panamanian leaders, however, to attain independence in this struggle failed. Before 1902, it should be noted, American interventions were mainly initiated by requests of local Panamanian authorities of the Bogotá 1 government to put down disturbances or by U.S. consuls to protect the Panama Railroad Company. All were undertaken principally to aid the established Colombian government.

When Theodore Roosevelt took steps to carry out the terms of the Spooner Amendment of 1902, he did not expect serious complications to ensue, especially since the United States had always supported Bogotá. The Spooner Amendment had authorized the President to buy the assets of the defunct De Lesseps company for no more than \$40,000,000 and to acquire from Colombia perpetual control of a zone at least six miles wide across the Isthmus to build a canal. The rejection of American overtures angered Roosevelt. It led, as we know, to the President's tacit endorsement of the Panamanian leaders separatist movement. By inaction, and benevolent, protective "gunboat" neutrality, Roosevelt provided the opportunity for the Panamanian insurrectionists to secure their long sought goal of the attainment of their independence. The success of the Panama Revolution of 1903, however, probably owes more to Panama's deep-rooted separatism and its nationalist fervor, and to the dogged efforts of Philippe Bunau-Varilla than to the actions of Roosevelt.

Down to 1903, the primary concern of the United States in Central America centered on the building of an isthmian canal, and on preventing any European power from obtaining a monopoly control over transit routes. To be sure, the stipulation in the Clayton-Bulwer Treaty, signed with England in 1850, against "any exclusive control" over a ship canal in Central America, and the attempt of Ferdinand de Lesseps in the 1880's to construct a canal across Panama, created difficulties for the United States. Until the turn of the twentieth century, neither private American capitalists nor the United States government were in a position to build an isthmian canal. With the collapse of the De Lesseps venture and the conclusion of the second Hay-Pauncefote Treaty in 1901, however, the way finally cleared for the construction of an American controlled canal. These events coincided with the emergence of the United States as a major world power, following the Spanish-American War.

We can now take up the second consideration, namely the relations between the United States and the Republic of Panama. This involves the sources of tension that arose in the implementation of the Hay-Bunau Varilla Treaty of 1903, and in the measures taken by the United States in assuring the efficient operation, maintenance, and security and defense of the Panama Canal. Although Roosevelt did not directly instigate the Panama Revolution, America's naval presence in the isthmian waters during the early days of November 1903, and Washington's guarantee of the infant republic's independence, made it possible for the Panamanians to establish their separation from Colombia. By his "big stick" diplomacy, the President insured the building of the Panama Canal on bargain terms. Though the construction of the Canal was a remarkable technological and engineering feat, the American presence in Panama, and the extension of its power and influence throughout the Caribbean region was to incur the animosity of Colombians, the resentment of Panamanians, and the distrust and suspicion of the Latin American republics against Yankee imperialism.

Difficulties in United States-Panama relations developed almost immediately after the creation of the Republic of Panama. The Canal Zone formed a colonial enclave splitting Panama in two. Within the Zone, the rights of extraterritoriality were extended to all Americans making them immune to Panamanian law and its jurisdiction. The United States is today the only country in the world that continues to retain the vestiges of extraterritorial rights. All other major powers have long since abolished the exercise of extraterritoriality.

Since the establishment of the Republic of Panama, the principal concern of the United States has centered on the country's political stability. Because disturbances, revolts, insurrections and chaotic conditions were for so long a part of Panama's history. Washington believed it would not be possible to build or maintain a canal unless the American right of intervention was officially secured. At the insistence of the first American Minister to Panama, William Insco Buchanan, this right was included in the country's new constitution. Article 136 declared that "the government of the United States of America may intervene in any part of the Republic of Panama to reestablish public peace and constitutional order in the event of their being disturbed . . ."

From 1903 to 1939, dissension and agitation arose not only over the problems dealing with American intervention in Panama, but over the interpretation of American treaty rights, commercial relations, commissary privileges, land use for the protection of the Panama Canal, and the payment of the annual rental. Expectations that prosperity would result from the Canal Zone settlement never materialized. Panamanians quickly discovered that economic benefits accrued mainly to Americans and not to native merchants. Commissaries undersold Panamanian merchants, which generated resentment. After the opening of the Panama Canal in 1914, the competitive disadvantage to Panamanian merchants became even more severe.

Most galling to Panama was the American expropriation of land. The Panamanian government insisted that land could only be acquired by special treaties. Washington declared, however, that the right of expropriation was contained in the Treaty of 1903; all that had to be proved was that the land was needed for the Canal's operations or its defense. Under this interpretation, hundreds of square miles outside of the Canal Zone were acquired despite the protests of the Panamanians.

Efforts to revise the Hay-Bunau Varilla Treaty, that defined American rights in Panama and the terms of the building and operation of the Canal, began in 1915. Shortly after World War I, a Commission was created to investigate Panama's complaints. Numerous abuses were cited, but little progress was made in seeking their remedy. Minor concessions were finally made in a treaty concluded in 1926. None of the rights under the Hay-Bunau Varilla Treaty, however, was surrendered. With the onset of the Great Depression, a new orientation of American policy toward Latin America occurred. Attention focused on strengthening the security of the Western Hemisphere, and promoting a more cooperative relationship with the Latin American republics. Under the Franklin D. Roosevelt administration, negotiations were resumed for a new agreement between the United States and Panama. This resulted in the signing of the Hull-Alfaro Treaty in 1936, which was ratified three years later.

This agreement marked the first substantial revision of the Treaty of 1903. It acknowledged Panama's independence; the United States gave up its right to intervene in Panama's affairs; and the annual rental paid to Panama for the use of the canal strip was increased from \$250,000 to \$430,000.

Although relations with Panama improved considerably after the ratification of the Hull-Alfaro Treaty in 1939, they were again marred when Arnulfo Arias, a Harvard-trained physician and critic of the United States, became President of Panama in 1940. A spellbinding public orator, Arias allegedly sympathized with fascist ideology and purportedly condoned Axis sabotage and espionage during World War II. As President, he sought to stimulate Panamanian nationalism and to modernize Panama's political institutions by a new constitution that broadened the executive powers and created a highly centralized government. Panamanian leaders voiced their alarm at Arias' actions, and apprehension arose in the United States over the protection of the Panama Canal and the security of the Canal Zone. During World War II, a pro-Allied political coalition, opposed to Arias' dictatorial tactics, effected his ouster in October, 1941.

With the entry of the United States in the Second World War, Panama's cooperation proved to be unstinting. Panamanian leaders agreed to the establishment of American air and naval bases, and sites for radar stations, permitting in all the acquisition of bases at 134 locations outside the Canal Zone. It was specified,

however, that these bases would be evacuated within a year after the end of World War II. When they were not, a serious crisis erupted. Efforts of the United States to obtain a treaty in 1946, providing for the lease of thirteen bases for an additional five years, and the Rio Hato airbase for ten years, with an option for renewal, led to a virtual mob uprising and to a unanimous rejection of the treaty by the National Assembly.

Taken aback by the violent outburst, President Truman ordered a pull out of all equipment. At the same time, he halted plans to further Panama's development, including the building of highways, and the conversion of the present lock-type Canal to a sea-level canal at a cost of \$2.5 billion. The Panamanians also lost the annual rental for the bases in peacetime that would have brought more than \$180,000 in revenue.

Although the economic impact of the American military withdrawal was severe and resulted in a post-war economic recession, Panamanians were intent on asserting themselves. They sought especially to break free of American paternalism, and, in particular, to preserve their dignity.

During President Eisenhower's first term, conditions gradually improved and an easing of tensions occurred. In January, 1955, a new agreement was concluded that granted major concessions to Panama. The annual rent for the Panama Canal was increased to \$1,930,000; commercial activities in the Canal Zone not connected with the operations of the Canal were cut back; and the principle of a base wage for all Canal Zone employees was accepted. In return, Panama agreed to permit the United States to establish military bases.

Despite the benefits that accrued to Panama from the building of the Canal—and they were by no means insignificant—the frustrations experienced by the Panamanians were never fully resolved. This stemmed, in part, from the fact that the United States gave little thought to preserving at least the appearance of a shared sovereignty. Instead, the United States asserted what was in effect a direct colonial control in the Canal Zone. At the same time, however, it also exerted an informal colonial relationship with Panama itself. This was not imposed in any systematic fashion, but was derived from the overwhelming dependence of Panama on the United States; economically, financially, and militarily.

While Panamanians are grateful to the United States for making possible their country's independence, they have, at the same time, always resented the fact that the Treaty of 1903 was negotiated not by their own representatives, but by a Frenchman, Philippe Bunau Varilla. More hurtful to their dignity, too, is the fact that the Canal Zone cuts through the heartland of their country. This Zone of a ten-mile wide stretch of United States controlled land, complete with the American flag and extraterritorial rights, bisects Panama on a north-south axis, from sea to sea, and in perpetuity. Unfortunately, "la dignidad," so important to the Panamanians has been largely ignored by the United States in its relations with the Republic of Panama. Americans might get some idea of the situation existing in Panama if they tried to visualize a foreign power's flag planted on a River Zone running the full length of the Mississippi—a Zone complete with extraterritoriality rights and political controls, in which such a foreign power exercised authority as if it were sovereign. Here, in essence, lies the source of continued tensions between Panamanians and the United States, and which the new treaties before the Senate seek to remedy.

Finally, we need to turn our attention to a third consideration that relates to cultural and opposing nationalistic attitudes. Subtle, yet more deep-seated than political or economic grievances, they reflect the emotional feelings and cultural prejudices of both the Panamanians and Americans. At the turn of the twentieth century, many Americans were influenced by the ideas and doctrines of Manifest Destiny and Social Darwinism, which extolled the superiority of Anglo-Saxons and held that the United States was destined to spread democracy throughout the world. These beliefs were to be pervasive, and they were to be reinforced by the idea that the world was divided between civilized nations—that were equated with the advanced, industrial countries of the United States and Western Europe—and the "backward" peoples, such as those in Asia, Africa, and Latin America. The latter were viewed as "inferior" and uncivilized.

From the building of the Panama Canal to the post-World War II years, Americans hardly disguised the fact that they regarded Panamanians as persons of a lesser status than themselves. Discrimination was accepted as a fact of life. Especially distasteful to the natives were the "silver" payments for them as opposed to the "gold" for Americans. Resented, too, was the differential in wage rates for similar work performed by Panamanians and Americans in the Canal Zone. It was not until the signing of the Eisenhower treaty in 1955 that the first steps were taken toward

ameliorating wage inequities. Like Americans, Panamanians, of course, take great pride in their own traditions and culture. The practice of racial discrimination, and the intimation of "inferiority" are matters that have long disturbed Panamanians. What they insist upon is an acknowledgment of respect and equality. These, more often than not, have been denied to them by Americans in the Canal Zone, and by Washington.

Although the Treaty of 1955 helped to improve relations between Panama and the United States, it did not satisfy the aspirations most prized by the Panamanians. Washington refused to rescind the "perpetuity" clause in the Hay-Bunau Varilla Treaty of 1903, and to limit the Panama Canal concession to ninety-nine years. The United States also flatly rejected relinquishing extraterritoriality rights in the Canal Zone, and it rebuffed Panama's request that American citizens who were accused of crimes be tried by joint United States-Panamanian tribunals. Nationalist fervor increasingly intensified. This was partly a product of a world-wide resistance to colonialism, the emergence of new nations, especially in Africa, the Suez Crisis of 1956, and the rise of indigenous, nationalistic, revolutionary movements in Latin America, the Middle East, and Asia. These developments emphasized the anachronistic character of United States-Panamanian relationships.

The turmoil in Panama also became explosive. The clash of rival nationalistic attitudes was to be symbolized by flag incidents in 1959 and 1964, and by the demands of the Panamanians that the United States acknowledge their nation's sovereignty. Massive anti-United States demonstrations were staged in 1959 on Panama's Independence and Flag Day holiday. Violence occurred when several hundred Panamanians crossed into the Canal Zone. American troops were called in to control the situation. After the crisis subsided, the United States built an eight-foot fence on the Canal Zone's border in Panama City to protect the zone residents.

To placate the Panamanians and to ease the strained relations, President Eisenhower proposed in 1960 a nine-point program that pledged, among other things, bettering of job conditions, the construction of 500 homes for Panamanians in the Canal Zone, and the ending of discrimination in the zone. In September, 1960, the President also ordered the raising of the Panamanian and United States flags, side by side at the Shaler Triangle in the Canal Zone, as evidence of Panama's titular sovereignty. These measures temporarily quieted the situation.

Within a few years, a new and more explosive flag incident erupted in January, 1964. This resulted in mob riots that lasted for three-and-a-half days. Four American soldiers and twenty-four Panamanians lost their lives; more than 200 persons were seriously injured; and damage to American property was estimated at over \$2,000,000. The disturbances brought to the forefront the virulence of Panamanian nationalism, and the need to reappraise the relations between the United States and Panama. Both Panamanian leaders and President Lyndon B. Johnson recognized that a new basis of relationship had to be worked out, one which acknowledged the equality of interest of both countries in the Panama Canal. This required not merely another revision of the Treaty of 1903, but the negotiation of a new treaty.

President Johnson initiated a process of treaty negotiations that have continued from 1964 to the present day. The treaties now before the Senate Foreign Relations Committee are the result of these fourteen years of negotiation. In rejecting or ratifying them, the Senate makes a choice of holding on to our past policies or looking ahead to a relationship with Panama based on cooperation and equality of interests. Since 1964, it has become clear that the Treaty of 1903 is no longer tenable as a means of assuring indefinitely continued accessibility of the Panama Canal to world shipping without Panama's cooperation. The climate of international affairs has changed dramatically during the past two decades. A decision to perpetuate the status-quo can only nurture a hostile atmosphere that would have as its result a sharpening of cross-cultural conflicts and a deepening of animosity.

At the present time, all conceivable facets of the problems that might be posed by the provisions of the United States-Panama treaties have been exhaustively examined in Senate hearings, and in public debates. I believe the Senate's approval of the treaties will not diminish the prestige or influence of the United States in the world in any way. Quite the contrary result would occur. Its reputation would be enhanced, and the United States would be seen as living by the ideals upon which the country was founded.

While points of clarification and some changes may be required, the fact that Panama and the United States have reached a stage where major points of differences are near resolution is a remarkable achievement. One can only hope that what has been accomplished to date will be endorsed by the Senate's approval of ratification. The new treaties offer the prospect of the opening of a new era not only

in the relationship between the United States and Panama, but with the Latin American Republics as well.

STATEMENT BY ELTING E. MORISON

I think I was invited here because I know something about Theodore Roosevelt. So I will start with him. He was, said Eliher Root, the greatest educator he ever knew. Self government is really the process of continuous learning and it falls to the President and others in authority to stimulate and give direction to this process. If self government is to work in changing times, the whole society has to engage itself in the search for constructive accommodations for new conditions.

Theodore Roosevelt could get the attention of his fellow citizens and make them think. He knew how to put the hard questions a little before they became obvious to others; how to make the search for sensible answers exciting; how to startle the country into informing debate; and how to move people in their thinking beyond short run self interest toward some longer view of the general welfare.

Take one of the hardest questions of his time. Where exactly did we, as a sort of emerging country bursting with hope and energy, fit within the family of nations? How could we define and maintain an appropriate place for ourselves in the world?

Like any educator or professor he used a good many words to make his points. "We cannot," he said "sit huddled within our borders and avow ourselves an assemblage of well-to-do hucksters who care nothing for what happens beyond. No nation can help in securing an organized, peaceful and justice-doing world community until it is willing to run risks and make efforts in order to secure and maintain such a community." He said things like this from the bully pulpit day after day.

He liked words but he preferred to use the greater educative power of deeds. Take three small ones. He brought the Russians and Japanese to Portsmouth, New Hampshire to frame a peace. He interfered to get the meddlesome Kaiser off the hook at Algeciras. He sent the fleet around the world. Very small—but very striking demonstrations in the school room. They set people thinking about the necessary means—a battle line—and the appropriate ends—what he would call righteous agreements—for a constructive foreign policy.

One of those deeds, of course, was Panama. Conceived in legitimate self interest, it became a contribution to the general welfare—indeed as he said over and over again to all of civilization. In its construction and results as we have all been taught in school, it was a marvelous, truly American achievement. In its beginnings—that is in the way the rights to build and maintain the Canal were acquired—which is less often taught in school—there is less cause for satisfaction.

Here there is some difference between the great educator and me. He thought and forcefully said a thousand times that everything he did concerning the Canal was right in purpose, principle, detail and in the eyes of all higher powers. He usually did. Once he was asked about his action in another matter. "You say it was right, how do you know it was right." "Because," he replied, "I was doing it. I was doing my best." He was in court and under oath at the time.

For my part, it was one of those moments when the teacher blotted his own copy book. It seems a poor business, unbecoming in a country that likes to believe it is setting standards of international conduct for others to repair to. And, as you know, how we got there has left a legacy of resentment among those already there.

You have the history of all this before you and can make up your own minds without further lectures from Theodore Roosevelt or me. The usual comforting explanation falls, as you know, somewhere between us. He was only doing what all other ambitious nations were doing in those days. The times were different. It was the common custom for those who sought spheres of influence and maintained colonial empires. This is, on the whole, true enough. The matter can safely be left there while we turn to the matter at hand—our relations to Panama in quite different times.

The treaties you have before you seem to me one of those imaginative, educative deeds designed to help us, and others, think and act constructively in a set of new conditions.

As I read them we give up two considerations. A title that has meant different things to different people since it was written in the Treaty of 1903 and the management of a waterway that takes up a certain amount of our time, effort, money and manpower.

We retain every right and necessary condition to use the Canal, protect its integrity and defend our larger national interest and security that we now possess under the present arrangements. Those who have appeared before you from the

State Department and the Pentagon who are responsible for these matters are very clear about this.

What new thing is to be gained from these treaties is this. We make available an asset—the water that flows through their own land—to Panamanians. In joint action with us over a period of years they can acquire the economic stability, technical skill, responsibility and confidence any country needs to reach full development in modern circumstances. In a period when all those earlier arrangements between nations, lands, and territories are breaking up, this is a striking demonstration of a new kind of arrangement. It demonstrates our intent to use our great influence in an area of continuing interest to us to create a new and prudent ordering of relationships that will better fit the new times. It offers the chance in one part of the distracted world to create what we have always claimed we searched for, a community in which all nations could find membership as good—and self respecting—neighbors.

Not everybody reads these treaties this way—or there would be no debates in this particular learning process. One school of thought holds that the treaties will produce a dangerous psychological and symbolic damage. By the terms it will be revealed to all that the Old Colossus of the North has suffered a failure of the nerve and a decay of the will even to defend himself. I think this is a misreading of both the treaties and the times.

This view rests at bottom perhaps on a feeling we must all share in some degree. As an old friend who served in the Canal Zone during the war and who strongly opposes the treaties said to me in the course of our debate, "It all boils down to the fact that I just hate to give anything up." Translated into the language of international relations, this takes us back to the conditioned reflexes of 1903 and thereabouts when the usual measure of national strength was the capacity to hold another man's territory.

Today we are all groping for more constructive ways to lead from strength. These treaties are an enlightened and enlightening example. I hope you will approve them and will leave you with one more word from Theodore, the educator.

"The important thing is the next step. It often happens that the good conditions of the past can be regained not by going back, but by going forward. We cannot recreate what is dead; we cannot stop the march of events; but we can direct this march and out of the conditions develop something better than the past knew."

STATEMENT BY RICHARD W. LEOPOLD

Mr. Chairman, it is a great privilege and a unique experience for me to testify this morning. Although I have taught the history of United States foreign policy at two major universities since 1938, I have never appeared before this distinguished body. I have, however, benefited enormously, in my teaching and research, from the publications of this committee—its hearings, reports, prints, legislative summaries, and more recently—the extremely valuable Historical Series which I hope will be continued. For this largesse I am indebted to the chairman and his predecessors, especially Senator Fulbright, and to Dr. Carl Marcy and his successors.

I shall begin by making clear those areas in which I feel competent to speak and those in which I claim no expertise. I am not a specialist on Latin America or an authority on international law. I have had no connection with drafting the present treaties or with organizations that support or oppose them. As a historian, I have ranged widely over the evolution of our foreign relations from independence to the present day. In 1962, I published an 848-page survey entitled "The Growth of American Foreign Policy: A History." My research has focused on the period from 1890 to 1945. One fruit of that research was a short biography published in 1954 and entitled "Elihu Root and the Conservative Tradition." I am particularly interested in the relations between President and Congress in the formulation and execution of foreign policy and in the role played by the armed forces in shaping foreign policy. I know much less, I am sure, than do the members of this committee about the current negotiations and the details of the agreements before you.

My chief service to this committee will be to discuss the treaties as a historian, to place the current controversy in proper perspective, and to note those elements of continuity and change that are inherent in the problem. A century and a half ago, when Panama first impinged on American thinking, many Senators regarded the area as outside the proper scope of United States foreign policy. They opposed the request of President John Quincy Adams in 1825 to send two delegates to a conference, called by Simón Bolívar to meet on the isthmus, to discuss hemispheric subjects. Although consent was eventually given, no tangible results ensued. One

delegate died en route; the other arrived after the conference had completed its labors.

Twenty-five years later the situation had changed. With the extension of the republic's borders in the Pacific and the discovery of gold in California, the isthmian region was very much in the mind of the policymakers. But they then faced there a rival—Great Britain—that was much stronger in diplomatic influence, naval power, and commercial ties. Hence the Whig administration of President Zachary Taylor had to be content, in the Clayton-Bulwer Treaty of 1850, with an agreement to share equally the construction, operation, and defense of any future canal in Central America.

Twenty-five years later, attitudes had changed again. In the White House and on Capitol Hill the notion of sharing a canal with England had become unacceptable; on March 8, 1880, President Rutherford B. Hayes told Congress that henceforth "the policy of this country is a canal under American control." Initial efforts to negotiate an end to the Clayton-Bulwer Treaty failed. But by 1899 the enthusiasms generated by the War with Spain and by the dramatic dash of the battleship *Oregon* from the Pacific around Cape Horn to engage the Spanish in the Caribbean made it likely that Congress might abrogate the pact unilaterally. Faced by that prospect and greatly aided by the Senate's advice, Secretary of State John Hay in 1901 gained England's consent to terminate the Clayton-Bulwer pact and in 1903 concluded with Colombia a treaty that would have enabled the United States to build alone a canal through Panama. Rejection of that treaty by the Colombian Senate led to an uprising on the isthmus against the government at Bogotá, a revolt that could not have succeeded without questionable steps of the United States. The Theodore Roosevelt administration recognized the new republic of Panama with unseemly haste and then negotiated with equal precipitancy the Hay-Bunau Varilla Treaty of November 15, 1903 that conferred many rights we still enjoy today.

The events of November 1903 left a legacy of bitterness with Colombia, who felt she had been despoiled of valuable territory by the Colossus of the North, and with Panama, who later claimed she had been inadequately represented in the treaty creating the Canal Zone. A note of partisanship also appeared as the Democrats first sought to blame Roosevelt for instigating the uprising and then to placate Colombia by expressing regret and offering a thinly disguised indemnity. The Wilson administration's treaty of April 6, 1914 was bitterly opposed by most Republicans and did not pass until April 1921. This acrimony was overshadowed in part by the completion of the canal in 1914—a magnificent achievement that owed much to technical ingenuity, medical science, and individual heroism—and in part by the outbreak of the First World War.

The end of that war ushered in another period of change. The defeat of Imperial Germany removed, for the time being, the last European threat to the security of the hemisphere. Wilsonian ideals trumpeted the end of colonialism. Panama became an original member of the League of Nations. The death of Roosevelt in 1919 freed Republicans to reconsider the events of 1903 without fear of being disloyal to their late leader. In the Senate, progressive Republicans, led by William E. Borah, launched a campaign to modify the special privileges the United States had gained earlier in many Caribbean countries. Inevitably, these developments prompted Panama to seek alterations in the treaty of 1903.

The issues in the ensuing negotiations have a familiar ring. They included the sovereignty of Panama, the compensation she should receive from canal tolls, the privileged position of those working and residing within the Zone, the impact of these arrangements on Panama's economy, and the defense of the waterway. A new treaty signed on July 28, 1926 in Washington did not pass the Panamanian National Assembly, partly because it required Panama to "consider herself in a state of war in case of any war in which the United States should be a belligerent." Not until October 1933 when, following a visit from President Harmodio Arias, President Franklin D. Roosevelt decided to make a new agreement part of his Good Neighbor policy was the way cleared for the first revision.

The resulting Hull-Alfaro Treaty of Friendship and Cooperation recognized that 1936 was not 1903. The United States relinquished its guarantee of Panama's independence, its right to intervene to maintain order, and its power of eminent domain. The annual payments were raised from \$250,000 to \$430,000, but that concession was largely offset by the devaluation of the dollar. Defense of the canal became a responsibility of both nations, but this provision aroused criticism in Washington and Panama City. Panamanians feared that it represented a military alliance; Americans worried lest it prevent them from acting unilaterally in an emergency.

Signed on March 2, 1936, the new treaty did not enter into force until July 27, 1939. The delay was caused mostly, though not solely, by the United States. The signing coincided with Japan's decision to free herself from treaties limiting her fleet, and this fact created fears in some American minds. Even more worrisome was the growing effectiveness of airplanes which meant that, in addition to large fixed guns and a mobile navy, the defense of the canal must also depend on fighter planes and bombers based outside the Zone. Hence opposition by the Army, together with Roosevelt's diminished political clout that followed his defeat in the court reform bill of 1937 and his unsuccessful purge of recalcitrant Democratic Senators in 1938, prevented action until July 25, 1939. Even then it was necessary to include an exchange of notes on February 1, 1939 that made clear the right of the United States to take unilateral steps to defend the canal when a sudden crisis precluded joint consultation and the right of the United States to hold military maneuvers outside of the Zone if such operations were deemed essential to the security of the waterway. The tally was 65 to 16, with 15 not voting. The division was largely along party lines. Only one of the 69 Democrats voted against the treaty. Of the badly outnumbered Republicans—a mere 23 in all—15 voted nay, 5 voted aye, and 3 abstained.

Skipping over the special circumstances surrounding the often acrimonious negotiations to obtain wartime and postwar bases outside the Zone, we come to the Treaty of Mutual Understanding and Cooperation of January 25, 1955, consummated under a Republican administration. The scenario resembled that of 1933. In October 1953, President José A. Remón came to Washington to confer with President Dwight D. Eisenhower, much as Arias had done in 1933. A communique recognized the need for further change to stimulate the Panamanian economy and to halt the growth of anti-Americanism on the isthmus. Events abroad had not gone unnoticed. Two years earlier, Egypt had unilaterally abrogated British rights to maintain a base at Suez and to station troops along the canal route. A year hence, the United Kingdom would renounce those rights by treaty and also promise to evacuate its armed forces within twenty months. The Chapin-Fábrega pact, signed symbolically in Panama, raised the annual payments from \$430,000 to \$1,930,000, returned certain lands to Panama, surrendered many sanitary controls, and shared more equitably the economic benefits of the transit route. This time the Senate acted more promptly and decisively. After six months, instead of the forty in 1936-1939, it gave its consent by a tally of 72 to 14, with 10 not voting. If we count the absentees according to their expressed views, the result would have been 80 to 14. Of the 47 Republicans, only one voted against the treaty; of the 49 Democrats, 36 favored and 13 opposed.

The spirit of accommodation and the acceptance of change shown by President Eisenhower and Secretaries of State John Foster Dulles and Christian A. Herter were continued by Presidents John F. Kennedy, Lyndon B. Johnson, Richard M. Nixon, and Gerald R. Ford and by Secretaries Dean Rusk, William P. Rogers, and Henry Kissinger. The historian would stress the bipartisan belief since 1955 that agreements suitable in 1903 no longer serve the nation's interest. To the executive branch, the solution was the same whether it be the joint declaration of April 3, 1964 that reestablished relations with Panama and sought to eliminate the sources of conflict, or the unperfected treaties of June 1, 1967, or the statement of principles of February 7, 1974, issued by Secretary Kissinger and Foreign Minister Juan A. Tack. The reliance of presidents of both parties on veteran diplomat Ellsworth Bunker has insured continuity and consistency.

I am aware, of course, that since 1955 many members of the legislative branch have not shared these views of the executive. I do not intend in this prepared statement to attempt to shake the deeply held convictions of those Senators and Representatives. Rather, as a historian, I shall say a word on the potential conflict in the treaty-making process. The Senate can play and has played a constructive role. The Hay-Pauncefote Treaty of 1901 was certainly the better for amendments insisted upon by the Senate. Approval of the Hull-Alfaro Treaty of 1936 was helped by the Senate's demand for clarification in the exchange of notes of February 1, 1939. In recent years, however, too many committees of both houses have assumed responsibility for passing judgment on some treaties, and it is imperative that this committee in this instance be the spokesman for the Senate.

Certainly there is no need to oppose these treaties in order to avoid the charge of executive domination. The historian is impressed by the attempts of all Presidents beginning with Eisenhower to work closely with the legislative branch on this issue. In my judgment, this difficult problem would have been satisfactorily resolved at least ten years ago if it had not been for congressional opposition. The situation is not unlike that of normalizing relations with the People's Republic of China. For

years the President was inhibited by legislative resolutions against such steps. In retrospect, congressional opposition seems to have been a mistake. I do believe that future historians will render the same judgment on the canal treaties if we lose the present opportunity to negotiate amicably an end to an arrangement which, in the eyes of the world, is anachronistic in the 1970's.

For there is more at stake in the treaties before you than the deployment of the Navy, the welfare of interest groups within the United States, and the rights of citizens resident in the Canal zone. It is the image we project in a world eager for peaceful change and for just dealings between nations large and small. As Ambassador Bunker has suggested on countless occasions, the essence of the present treaties offers an opportunity to revitalize an outmoded relationship, to solve a serious international problem while there is still time, and to demonstrate the qualities of justice, reason, and vision that men and women of all parties and sections believe should characterize the acts of this great republic.

STATEMENT OF RICHARD FALK

In my judgment, the debate on the proposed Panama Canal Treaties has been dangerously narrow. It has presupposed the desirability of maximizing the U.S. role in relation to the Panama Canal for as long as is negotiable. Domestic critics have mainly attacked the treaties because not enough control has been retained. Supporters defend the treaties by arguing that no element of essential control has been relinquished.

I believe that far too great a U.S. role has been retained to make the treaties an effective adjustment to changing international realities. That is, I believe we have "forced" the Panamanian government to accept a bad bargain. Panama's current leadership has accepted the 1977 treaties for a variety of reasons, but principally because it is faced with a deteriorating and desperate economic situation and badly needs the economic relief that is part of "the sweetener" added to the treaty terms by U.S. negotiators. As the distinguished Cornell historian Walter LaFeber concludes, "Only large Canal revenues could rescue the governmental debt" and avoid an anti-governmental uprising in Panama and quite possibly "even those revenues could be insufficient." LaFeber believes that "[t]he rapidly deteriorating Panamanian economy and Torrijos's increasing dependence on outside private investors set the stage for the climactic negotiations of a new treaty during the summer of 1977." (Walter LaFeber, "The Panama Canal," Oxford, 1978, at p. 202; see generally on the economic situation in Panama as an element in the Canal negotiations, pp. 195-208.)

In essence, these agreements are not likely to quell Panamanian nationalist demands for very long and, thus, will probably produce a situation in which the United States will be the target of a continuing anti-colonialist campaign that is widely supported within Panama and elsewhere in international society. Indeed, the only way that the treaty regime can succeed is if the Panamanian government becomes even more repressive. The 30-percent opposition to the treaty plebiscite in Panama, together with intense opposition to ratification among Panamanian nationalists across a wide political spectrum indicates the degree to which the treaty is already unacceptable to the Panamanian people. Even General Torrijos, at the September ceremony in Washington where the leaders of both countries signed the treaties, indicated his own misgivings by drawing a distinction between "two types of truths—logical truth and pleasant truth." He signed the treaties "In the name of logical truth," indicating that it was not pleasant to accept an arrangement that "does not enjoy the support of all our people, because the 23 years agreed upon as a transition period are 8,395 days, because during this there will be military bases which make my country a strategic reprisal target, and because we are agreeing to a treaty of neutrality which places us under the protective umbrella of the Pentagon." (Remarks by General Torrijos," reprinted in "State Dep't Bull," Oct. 17, 1977, pp. 482-3, at 483.) This is hardly a triumphant statement and it should suggest the degree to which the new treaty regime remains vulnerable to Panamanian discontent.

Supporters of the proposed Panama Canal treaties often concede their colonialist features but argue that the new arrangements are a definite improvement over the 1903 Hay-Bunau-Varilla Treaty and that they move as far in an "enlightened" direction as American public opinion will tolerate. Furthermore, the claim is made that the failure to satisfy Panamanian aspirations to some extent by a new treaty of the sort proposed would lead to a serious wave of anti-American bloodshed, including possible sabotage against the Canal. These agreements, then, are claimed by their supporters to be instances of politics as to art of the possible. Such a pragmatic defense is filled with dubious, unexamined presuppositions, especially the conviction

that a wait of 23 years before American troops leave Panama will prove acceptable or that a regime of permanent protective custody administered from Washington is preferable to the present arrangement.

The evidence at my disposal suggests that Panamanian nationalists are neither satisfied nor appeased by the 1977 treaties. It is one thing to struggle against a colonial heritage that arose at the beginning of the century. It is quite another to lend substantial legitimacy to the colonial character of the relationship late in the twentieth century. To dramatize such reasons Leopoldo Aragon, a former political prisoner who was expelled from Panama by Torrijos, burned himself to death in Stockholm outside the American Embassy in protest against the treaties on September 1, 1977. One of the most widely known and respected political figures in Panama is Miguel Antonio Bernal, also living abroad in exile, who has denounced the new treaty as being "very far from fulfilling the aspirations of the Panamanian people."

Bernal argues that proposed arrangements replace the 1903 "perpetuity" imposed by force with a "legalized perpetuity". Bernal indicts the Torrijos regime for conferring legality on the American presence and on a permanent right of intervention: "We consider this as the most aberrant, disgraceful, and unacceptable type of perpetuity, as a stigma that this generation and future ones will be forced to bear, for it legalizes the American presence on our soil." Furthermore, Bernal reminds "the Panamanian and American governments, which have been working hand in glove, that the disappointment and dissatisfaction of a people can only be followed by hatred and rebellion"; the treaty represents "one of the worst concessions in Panamanian history, because it flies in the face of the struggle and sacrifices of our people for seventy-three years." (Interview with Bernal, Aug. 24, 1977, published in *Intercontinental Press*, Sept. 12, 1977, pp. 974-5.) It is crucial to listen to such responses to these proposed treaties before definitely enmeshing the United States in what is likely to be a turbulent future in Panama.

Such Panamanian reactions to the treaties gain some additional credibility by the extent to which the 1977 agreements win support from individuals such as Admiral Zumwalt and William F. Buckley, that is, from individuals who are normally associated with an aggressive U.S. foreign policy that makes no sentimental or idealistic concessions to Third World positions. And it is clear that this support, as well as that from opposition figures such as Gerald Ford or Henry Kissinger, is based on the conviction that, indeed, the new treaties effectively maintain (rather than transform) the American role with respect to the Canal. Such an impression is also fostered by Deputy Secretary of State Warren Christopher's almost gleeful insistence that "According to the Joint Chiefs, these treaties are not only as good as the existing arrangement in terms of our national security, they are far better." ("Deputy Secretary Christopher Discusses the Panama Canal Treaties," *"State Dep't. Bull."* Dec. 12, 1977, at p. 836.)

Part of the confusion about the treaties arises because General Torrijos has been quite successful in his campaign to project a leftist, nationalist image, especially here in the United States. And it is true that Torrijos built his political base by claiming nationalist and social reformist credentials. Increasingly, these earlier features of his rule seem to have opportunistic trappings and his true political inclinations seem associated with personal power and wealth. An examination of his recent governing policies reveal a rightist drift that includes opening the country to foreign investment, siphoning off a personal fortune for his family and coterie, an abysmal human rights record, and the increasing alienation of progressive elements in his own society necessitating repression. As one Latin American expert concludes, "... the odds are that Torrijos's leftism and nationalism will erode and the lineaments of a classic personalistic Latin American dictatorship not interfering with the social and economic status quo will emerge." (Martin Needler, "Omar Torrijos: The Panamanian Enigma," *"Intellect,"* Feb. 1977, p. 243.) The same author even suggests that Torrijos is following a path strikingly similar to that of the Cuban dictator Batista, who also started out as a populist reformer but moved right to satisfy personal greed and meet economic pressures. It has often been noted that whatever happens in Cuba will eventually occur, as well as in Panama.

In essence, then, the advantages of the new treaty are not apparent to those Panamanians who have been struggling against the American colonial presence in their country. Their opposition raises serious doubts about that part of the pragmatic position that argues that this treaty is better than the 1903 arrangements. It also suggests skepticism about the other part of the pragmatic position which argues that with the 1977 concessions American interests in the Canal can be reconciled with Panamanian aspirations.

These concerns can be further clarified in relation to the intervention issue, what virtually all sides of the American debate concede to be the "Achilles heel" of the

1977 agreements. In the foreground, is the necessity to say one thing to reassure the Panamanians that their sovereignty has not been infringed and quite another to reassure Americans that a right of intervention will persist even after the removal of American troops in 1999. To obtain ratification in the United States, Senators require as much reassurance as possible that the U.S. retains permanent, discretionary interventionary rights to uphold its interests in the Canal. Since the negotiated text was agreed upon last August various steps have been taken to provide some added reassurance for the American side, including the October 14 "Carter-Torrijos Understanding" and the apparent willingness of General Torrijos, as conveyed to Senator Baker during his January 1978 visit to Panama, to have the substance of this Understanding added to the treaty by way of formal amendment. Torrijos has been much praised by American politicians for his "flexibility" in these respects. As dictator in Panama Torrijos does not have to obtain any genuine assent from Panamanian lawmakers to assure ratification. However, tilting the treaty even further in the American direction exposes the colonial features and thereby strengthens anti-treaty sentiments in Panama.

As is well-known the non-intervention norm is for Latin Americans practically synonymous with sovereignty itself. To grant the United States a permanent, unilateral right to intervene in Panama to uphold its view of what is needed to assure the neutrality of the Canal is assuredly inconsistent with even moderate nationalist aspirations in Panama. It is no wonder that Panamanian demonstrations against the treaty contend that Torrijos has accepted a colonial status for Panama, evidently renouncing Panama's sovereign rights for a few Yankee dollars.

Even before the American pressure for reassurance on interventionary rights mounted the treaty was necessarily ambiguous on this crucial issue. From the very beginning, Administration spokesmen sought to quiet conservative critics of the treaty in this country by maintaining that a unilateral right of intervention was implicit in the 1977 arrangements even if it was not spelled out. For instance, earlier in these hearings Secretary of Defense Harold Brown responding to a question by Senator Stone as to whether the United States could intervene to deal with an internal situation in Panama that it believed might threaten the neutral operation of the Canal had this to say:

"My reading of that situation and of the language of the neutrality treaty is that a threat to the neutral regime would give us the right to take whatever action we considered necessary . . ." (Panama Canal Treaties, Hearings, Part 1, Administration Witnesses, p. 169.)

Secretary Brown added that such an interpretation was what General Torrijos had in mind when he acknowledged at the signing ceremony in Washington on September 7, 1977 that by agreeing to the Neutrality Treaty Panama was placing itself under the "protective umbrella of the Pentagon." (p. 170) Significantly, Torrijos went on to say this pact could, if not administered judiciously by future generations, become an "instrument of permanent intervention." (Statement of General Torrijos, Dept. of State Bull., Oct. 17, 1977, p. 482) Ambassador Linowitz also supported this view of American rights by stressing that there was "no limitation" on U.S. rights: There is nothing which says that threat is to be limited to a particular type of threat. (Hearings, p. 481.)

Problems emerged because the Panamanian negotiators back home were giving their own version of the U.S. role. Speaking before the Panama National Assembly, Romulo Escobar, the chief Panamanian negotiator, indicated that the U.S. role did not extend to situations threatening the Canal that arose out of problems of "internal order." General Torrijos also speaking in Panama stated that the Neutrality Treaty meant that "If we are attacked by superior forces, the United States is obliged to come to our defense." Somewhat self-consciously, he explained "that a weak country like Panama needs the protection of a major power if we are attacked by superior forces." (N.Y. Times, Oct. 21, 1977.) And reassuringly added that nothing in the treaties gave the United States any rights to take action in relation to internal strife in Panama.

Surely, these two sets of reassurances are contradictory in spirit, and the treaty text is ambiguous enough to make them both plausible. Rational pro-treaty forces in the United States understood the necessity of the ambiguity. Even the conservative National Review wrote an editorial in which it indicated that its pro-treaty position was premised on an unlimited, discretionary "right of intervention," but that it understood why such a right couldn't be spelled out. ("The Right to Intervene," National Review, Nov. 25, 1977, pp. 1347-48.) The dominican operation of 1965, it pointed out, enabled U.S. troops quell a domestic threat of radicalism without ever having to defend its action by claiming a right to intervene. On that occasion, the Organization of American States, after some pressuring, granted the U.S. an appro-

prate fig leaf justification. In the Panama Canal context all that is necessary, the editorial argues, is that future U.S. leaders understand and act upon their right of intervention should the occasion arise, whether the threat is internal or external. Ambassador Linowitz gave an interesting demonstration of how a future international lawyer might deal with the touchy issue of intervention if the occasion ever arose:

"Q. Under what conditions would we intervene in the canal to protect the neutrality?"

"Ambassador Linowitz. I don't like the word intervene. Under what conditions would we be in a position to move? The answer is if the permanent neutrality of the canal were jeopardized—

"Q. Who would decide that?"

"Ambassador Linowitz. We would. Then the United States would be in the position to take such steps as might be deemed necessary." (Press Briefing, White House, Aug. 12, 1977, "Dept. of State Bull.," Oct. 17, 1977, p. 529.)

The interventionary right is endorsed in the Statement of Understanding by conferring upon the United States an unrestricted right to defend the neutrality of the Canal without securing the prior assent of the Panamanian government. It is true that the Statement of Understanding retains an element of ambiguity by expressly stating that the Neutrality Treaty shall not be "interpreted as a right of intervention in the internal affairs of Panama." (for text see Hearings, p. 454.)

This continuing element of ambiguity, given plausible developments in Panama, including the possibilities of a left-turn in Panamanian politics, might place future American leaders in a difficult, dangerous situation. It is worth recalling that the "ambiguity" in the Geneva Accords of 1954 encouraged Hanoi and Washington to proceed, each on reasonable grounds, in contradictory directions that culminated in the Vietnam War. (see e.g. J.N. Moore, "Law and the Indochina War," Princeton, 1972, esp. pp. 353—478.) The North Vietnamese regarded the Geneva Accords as settling the future of all of Vietnam after a two-year interval enabling an "honorable" French withdrawal, while the Americans construed the agreements as partitioning Vietnam into two states thereby giving South Vietnam full sovereign rights to make whatever arrangements it saw fit to defend itself against internal and external enemies.

The Vietnam analogy is instructive in one other respect. The United States converted the ambiguity into "a commitment" to the Saigon regime that, then, took on a life of its own. It was widely argued that a refusal to uphold the Vietnam commitment, however foolish it might have been to make it in the first instance, would damage the reputation of the United States as an ally and an alliance leader. Here, the commitment to defend the "neutrality" of the Canal is also likely to assume a symbolic standing that may induce American leaders to honor it even when they realize that it is foolish and costly to do so.

The ambiguous point in the Panama treaties is vital to the bargain. If the ambiguity is resolved in Panama's favor, then it becomes non-ratifiable in the United States. The reason for this insistence is easy to understand. The main threat to American interests in the Canal comes from the possibility of internal developments in Panama. the prospect of an external invasion seems remote to the point of irrelevance, and in that eventuality, Panama would almost certainly welcome whatever help it could get. However, to legitimate an interventionary right in relation to a Dominican-type situation in Panama would be a perpetuation of a colonial relationship.

Neither alternative seems very desirable. In the first instance, the treaty bargain is ambiguous and each side is convinced that its view of the treaty terms is the authoritative one. In the second instance, the interventionary right is evidently endorsed in its plenary form and the treaty becomes an immediate target for Panamanian nationalist attack. The surfacing of this dilemma raises some deep questions that have been kept off the agenda of debate so far. The main such question is whether it is feasible or beneficial for the United States to insist upon a colonial role for itself in the Canal that extends into the next century. Such a role seems likely to entangle us on the reactionary side of Panamanian politics, as well as to risk involvement in a series of unpopular violent struggles. The situation in Panama is very unstable; rapid population growth, a highly inequitable distribution of wealth, growing unemployment, heavy foreign indebtedness, an adverse trade balance, and a long tradition of militant oppositional politics.

Under all these circumstances would it not be better and cheaper to leave the Canal to the Panamanians? Have not the British been lucky to be free since 1956 from the burdens and prerogatives associated with their prior administration of the Suez Canal? The Panamanians need Canal revenues so badly that it is difficult to

imagine that they would interfere with transit rights, and in the unlikely event of such interference action appropriate to the circumstance could be taken whether authorized by treaty or not.

I believe the treaties before this Committee, although intended as a positive contribution to international peace and security, are an anachronism. Their only justification is a continuing insistence that the United States must dominate the Caribbean-Gulf of Mexico area as, in Hanson Baldwin's words, a "mare nostrum of the United States." (see argument contra 1977 treaties to this effect by Baldwin, "The Panama Canal: Sovereignty and Security," "American Enterprise Institute Defense Review," No. 44, 1977, pp. 12-35, at p. 12.) If such an objective is indeed a national goal, then Baldwin is probably right to oppose even the gradual withdrawal of U.S. military presence implicit in the 1977 treaties. If such a goal is indeed anachronistic, then the treaties do not go nearly far enough in according Panama sovereign rights nor in disentangling the United States from responsibility for the future of the Canal, in the direction of affirming Panamanian national rights in relation to the Canal, nor in relinquishing U.S. rights, nor do they proceed at a rapid enough pace.

George Kennan, sensitive to the difficulties of going part way on the Canal, proposes "turning the canal over entirely to the Panamanians." (George F. Kennan, "The Cloud of Uncertain Danger," Princeton, 1977, p. 53). He is convinced that the Canal is no longer militarily or commercially important enough for the United States to justify the burdens of joint administration and defenses. In light of this geopolitical reality, Kennan argues that it places the United States in an exposed, risky, and unpopular position to maintain its role in the Canal. And so he concludes, as follows: "The retirement of the United States from the canal and all that hangs together with it has been the indignant demand of the whole Latin American community for years on end. If the United States should find it advantageous at this point (and it is my belief that it would) to yield to this demand, it would be acting on a sober and realistic judgment of its own interests." (Kennan, 58). It is sad that Kennan's view, which proceeds from rather conservative principles of assessing U.S. interests, has not even been seriously considered in the public debate. I would go further than Kennan and argue that it would not only be advantageous for the United States to end its special role in the Canal, but that it would be a positive contribution to the construction of a viable system of world order.

It seems clear that there are several options that should be compared in the context of the present debate:

- (1) retaining the 1903 arrangements;
- (2) ratifying the 1977 proposed treaties;
- (3) modifying the 1977 proposed treaties by shortening the transition period, by renouncing any unilateral rights to use force, and by giving Panama an option after U.S. withdrawal to terminate any arrangements of joint defense;
- (4) retiring from the Canal altogether and giving Panama total responsibility.

So far the debate has been limited to a controversy between positions (1) and (2) with a heavy effort by the Carter Administration to incorporate enough elements pleasing to advocates of (1) to build a ratifying consensus in support of (2), i.e., (2) has been modified to make it more similar to (1). I believe that U.S. and world interests would be better served by adoption of positions (3) or (4), possibly by a combination of both, i.e. an interim treaty providing for U.S. withdrawal over a period of 10-15 years.

In the end, pro-treaty forces fall back on their contention that a failure to ratify would produce dire results. This prediction is not convincing if the United States were to take some mitigating actions such as extending Panama the financial benefits expected to accompany the 1977 arrangements and initiating a serious study of the retirement option. It is evident from General Torrijos' remarks on various occasions that he would much prefer a treaty that went much further in according Panama full sovereign rights.

It is true, of course, that the narrow range of acceptable debate seems to have foreclosed consideration of such an option at this time. Again we should recall from our recent past that foreclosing options in this way is not conducive to rational behavior in world affairs. It defers the day of reckoning, but makes the reckoning worse when it occurs. I fear that we are dealing with the Panama Canal in a reckless, sentimental fashion, fashioning "a solution" that will bring grief to ourselves and the Panamanians.

All of these considerations lead me to oppose ratification of the 1977 proposed Panama Canal Treaties.

STATEMENT OF PROF. R. R. BAXTER

The three major questions of international law to which the conclusion of the New Panama Canal Treaties gives rise are:

1. What rights which the United States now enjoys with respect to the Panama Canal Zone will be relinquished to Panama under the terms of the new Panama Canal Treaties?

2. What rights will the United States and other countries enjoy under the new Panama Canal Treaties with respect to passage of merchant vessels and governmental ships other than warships?

3. What rights will the United States have to assure the availability of the Panama Canal to its warships and the protection of the Canal?

These three issues will be taken up in turn.

I. The existing rights of the United States in the Canal Zone.

The rights of the United States in the Canal Zone now derive from Articles II and III of the Hay-Bunau-Varilla Treaty of 1903. Article II grants to the United States "in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said Canal [referred to in the Preamble of the Treaty] of the width of ten miles * * *". Article III then grants to the United States "all rights, power and authority * * * which the United States would possess and exercise if it were the sovereign of the territory * * * to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority."

Throughout the history of the Canal, the United States has acknowledged that the Panama Canal Zone remains subject to Panamanian sovereignty. As early as 1904, Secretary of State John Hay responded to Panamanian assertions of continued "titular sovereignty" over the Zone by observing that, in view of the United States plenary power under the Treaty of 1903, any such "titular sovereignty" could only be "a barren scepter." Letter to J. D. de Obaldia, Minister of Panama, [1904], 1 Foreign Rel. U.S. 613 (1904). In the following year, Secretary of State Taft wrote to President Roosevelt:

"The truth is that while we have all the attributes of sovereignty necessary in the construction, maintenance, and protection of the canal, the very form in which these attributes are conferred in the treaty [of 1903] seems to preserve the titular sovereignty over the Canal Zone in the Republic of Panama." Letter of January 12, 1905, reprinted in Hearings Before the Senate Committee on Inter-oceanic Canals, S. Doc. 401, 59th Cong., 2d Sess. pp. 2392-93, 2399 (vol. III), 32 Senate Documents (1907, 59th Cong., 2d Sess.) 2392-93, 2399.

The letter was sent by President Roosevelt to the Congress with the first annual report of the Isthmian Canal Commission.

The distinction between titular and effective sovereignty was finally given formal recognition in Article III of the General Treaty of Friendship and Cooperation between the United States and Panama of 1936, which stated that the Canal Zone constituted "territory of the Republic of Panama under the jurisdiction of the United States of America." 53 Stat. 1807, T.S. No. 945.

In 1959, Deputy Under Secretary of State Merchant stated that he had assured the President of the Republic of Panama "that the policy of the United States Government with respect to the status of the Canal Zone remains as it had been stated more than 50 years ago to the effect that the United States recognizes that titular sovereignty over the Canal Zone remains in the Government of Panama." 41 Dep't State Bull. 859 (1959). President Eisenhower at the same time ordered the Panamanian flag flown within the Canal Zone as "visual evidence that Panama does have titular sovereignty over the region." Eisenhower, "Public Papers of the Presidents," 1959, 785, 794.

United States courts have frequently been called upon to consider the Canal Zone's legal status, but the cases have always arisen in a domestic legislative context. Pronouncements that the Zone is "a territory or possession of the United States" or that it is "foreign territory" are therefore nothing more than judicial determinations of Congressional intent concerning the applicability of particular United States statutes to the Canal Zone. In *Luckenbach Steamship Co. v. United States*, 280 U.S. 173 (1929), for example, the Supreme Court expressly avoided the international law question of "titular sovereignty" and made clear that its determination that the Canal Zone ports were "foreign" was only for purposes of construing the statute governing the Postmaster General's rate setting for mail carriage. *Id.* at 177-178. Other frequently cited cases are similarly circumscribed. The Court's assertion in *Wilson v. Shaw*, 204 U.S. 24 (1907) that "It is hypercritical to contend that * * * the [Canal Zone] does not belong to this Nation * * *", *Id.* at 33, amounts only to a holding that, for purposes of the Panama Canal Act of 1902, the United

States possessed a sufficient interest in the Canal Zone to authorize the Government's expenditure of tax revenues for the building of the canal. By the same token, the statement of the Fifth Circuit in *United States v. Husband R. (Roach)*, 453 F.2d 1054 (1971), cert. denied, 406 U.S. 935 (1972), that "The Canal Zone is an unincorporated territory of the United States," 453 F.2d at 1057, occurs in the context of a decision defining the domestic legislative authority of Congress with respect to the Canal Zone; it does not purport to address the question of sovereignty over the Canal Zone in an international sense.

The Supreme Court did, however, refer to the Canal Zone's international legal status in *Vermilya-Brown Co., Inc. v. Connell*, 335 U.S. 377 (1948). The Court held the Fair Labor Standards Act to be applicable to United States employees on bases leased from the United Kingdom in Bermuda, notwithstanding statutory language making the Act applicable only to "territories" or "possessions" of the United States. The Court cited precedents for application of the Act in territories over which the United States was not sovereign, noting that the Act had been applied "to the Canal Zone, admittedly territory over which we do not have sovereignty," 335 U.S. at 381. The reference to the Canal Zone is clearly dictum, but it is deserving of notice as a rare Supreme Court statement on the question of international sovereignty.

The United States thus never acquired "sovereignty" over the Panama Canal Zone but only rights within the terms of the various treaty arrangements between the United States and Panama, beginning with the Hay-Bunau-Varilla Treaty of 1903. The area at all times remained subject to the titular sovereignty of Panama. The relinquishment by the United States of rights under the existing treaties, pursuant to Article 1, paragraph 1, of the new Panama Canal Treaty, will thus not be a surrender of sovereignty by the United States but a retrocession of certain rights to the Republic of Panama. The continuing sovereignty of Panama over the Zone is recognized in the Preamble of the new Treaty, wherein the United States "Acknowledg[es] the Republic of Panama's sovereignty over its territory."

II. The rights of the United States and other users under the new Panama Canal Treaties.

The legal guarantees now afforded to users of the Canal are to be found in Article III of the Treaty between the United States and the United Kingdom to Facilitate the Construction of a Ship Canal of 1901 (the Hay-Pauncefote Treaty), as incorporated into the Isthmian Canal Convention between the United States and Panama of 1903 by Article XVIII thereof. The portion of Article III of the Treaty of 1901 pertinent to the passage of merchant vessels provides:

"The United States adopts, as the basis of the neutralization of such ship Canal, the following Rules, substantially as embodied in the Convention of Constantinople, signed the 28th October, 1888, for the free navigation of the Suez Canal, that is to say:

"1. The canal shall be free and open to the vessels of commerce and war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges of traffic shall be just and equitable.

"2. * * *

Secretaries of State have in the past expressed the view that third states other than the Republic of Panama and the United Kingdom have no rights under the Treaties of 1901 and 1903. Charles Evans Hughes wrote to President Harding that "other nations . . . not being parties to the [Hay-Pauncefote] treaty have no rights under it" (5 Hackworth, *Digest of International Law* 221-222 (1943)), and Secretary of State Dulles said in 1956: "And there is no international treaty giving other countries any rights at all in the Panama Canal except for a treaty with the United Kingdom which provides that it has the right to have the same tolls for its vessels as for ours." In practical terms, he said, a large number of countries rely on the Suez Canal, but no country in the world fears that its economy would be jeopardized by possible misuse or abuse of United States rights in the Canal (3 Whiteman, *Digest of International Law* 1150 (1964)).

Under the new Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, substantially the same regime as under the Treaties of 1901 and 1903 will be maintained for the Canal. The relevant portions of Articles II and III of the Neutrality Treaty provide:

"ARTICLE II

"The Republic of Panama declares the neutrality of the Canal in order that both in time of peace and in time of war it shall remain secure and open to peaceful

transit by the vessels of all nations on terms of entire equality, so that there will be no discrimination against any nation, or its citizens or subjects, concerning the conditions or charges of transit, or for any other reason, and so that the Canal, and therefore the Isthmus of Panama, shall not be the target of reprisals in any armed conflict between other nations of the world. The foregoing shall be subject to the following requirements:

"(a) Payment of tolls and other charges for transit and ancillary services, provided they have been fixed in conformity with the provisions of Article III (c);

"(b) Compliance with applicable rules and regulations, provided such rules and regulations are applied in conformity with the provisions of Article III;

"(c) The requirement that transiting vessels commit no acts of hostility while in the Canal; and

"(d) Such other conditions and restrictions as are established by this Treaty.

"ARTICLE III

"1. For purposes of the security, efficiency and proper maintenance of the Canal the following rules shall apply:

"(a) The Canal shall be operated efficiently in accordance with conditions of transit through the Canal, and rules and regulations that shall be just, equitable and reasonable, and limited to those necessary for safe navigation and efficient, sanitary operation of the Canal;

"(b) Ancillary services necessary for transit through the Canal shall be provided;

"(d) Tolls and other charges for transit and ancillary services shall be just, reasonable, equitable and consistent with the principles of international law;"

It will be observed that the significant duties incorporated in Article II are assumed by the Republic of Panama. However, under Article IV:

"The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties."

The duties assumed by Panama thus seem to rest upon the United States as well under the terms of Article IV.

The rights of users under both the 1901 and 1903 Treaties and the new Panama Canal Treaties fall in the following categories:

a. Neutralization of the Canal.

The Hay-Pauncefote Treaty states that the rules in Article III of that Treaty are on the basis of the "neutralization" of the Canal, while the Hay-Bunau-Varilla Treaty provides that the "Canal * * * shall be neutral in perpetuity."

The new Neutrality Treaty contains a declaration by Panama in Article I that "the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty." Under Article IV, "The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, * * *"

The regime of permanent neutrality established by the Treaties of 1901 and 1903 is maintained and confirmed in the new Neutrality Treaty.

b. The Canal to be Free and Open.

Rule 1 of Article III of the Hay-Pauncefote Treaty provides that "The canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules." Under Article II of the new Neutrality Treaty, the neutrality of the Canal is declared "in order that both in time of peace and in time of war it shall remain secure and open to peaceful transit by the vessels of all nations," subject to four lettered requirements concerning payment of tolls and other charges, compliance with applicable rules and regulations, and a duty not to commit acts of hostility within the Canal, as well as other conditions and restrictions established by the Treaty.

It will be observed that the formula of 1901 and 1903 is that the Canal, as well as other conditions and restrictions established by the Treaty.

It will be observed that the formula of 1901 and 1903 is that the Canal is to be "free and open," while the Neutrality Treaty stipulates that it is to be "secure and open." Some refinement of meaning was undoubtedly intended, but the nuance is of the kind that means much more to the negotiators than to those to whom the Treaty is directed. "Free" does seem to provide greater security to the user than does "secure," which places emphasis on the interests of Panama, although it may be contended that the security of the Canal is likewise intended for the benefit of users.

c. Equality and Non-discrimination.

The Canal, under the Hay-Pauncefote Treaty, is to be free and open "on terms of entire equality, so that there shall be no discrimination against any . . . nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise." The neutrality of the Canal is declared by Article II of the Neutrality Treaty in order that the Canal may be open to "peaceful transit by the vessels of all nations on terms of entire equality, so that there shall be no discrimination against any nation." The obligation of Panama appears to be the same under both the Neutrality Treaty and under the Hay-Bunau-Varilla Treaty, which incorporated by reference the Rules laid down in the Hay-Pauncefote Treaty.

d. The Justice, Reasonableness, and Equitable Character of the Rules of Transit.

Rule 1 of Article III of the Hay-Pauncefote Treaty provides that the "conditions and charges of traffic shall be just and equitable." Paragraph 1(a) of the Neutrality Treaty stipulates that the "Canal shall be operated . . . in accordance with conditions of transit through the Canal, and rules and regulations that shall be just, equitable and reasonable, and limited to those necessary for safe navigation and efficient, sanitary operation of the Canal." The interests of users appear to be given greater protection by the broadening of the language to include the concept of "reasonableness" and by placing a limitation on the purpose for which the rules are promulgated to "safe navigation and efficient, sanitary operation of the Canal."

e. Standards for Tolls.

Under the Hay-Pauncefote Treaty, "charges of traffic shall be just and equitable," while under the new treaty, "Tolls and other charges for transit and ancillary services shall be just, reasonable, equitable and consistent with the principles of international law."

The proliferation of detail in the new Neutrality Treaty, in particular the requirement that tolls and charges be "reasonable" and "consistent with the principles of international law," enhances the protection of the rights of users. The term "reasonable" imparts a greater objectivity to the standard than is provided by the terms "just" and "equitable". "Just" is the vaguest of the terms. "Equitable" might be taken to mean equitable to the territorial sovereign of the Canal, Panama, or may have some of the coloring of non-discriminatory. The standard of reasonableness is an objective one, commonly employed in connection with rate regulation, and is more weighted toward the interests of users than are the terms "just" and "equitable."

The requirement of consistency with "the principles of international law" has the beneficial effect of permitting the parties to a dispute or a third-party decision-maker to invoke precedents in the form of arrangements made with respect to other international waterways, particularly interoceanic canals.

The Neutrality Treaty creates rights enforceable by the United States and the Republic of Panama, each against the other, to allow "peaceful transit by the vessels of all nations." But to what extent may third states themselves claim and enforce rights on behalf of their vessels under the new Neutrality Treaty?

Notwithstanding the earlier statements by Secretary of State Hughes and Secretary of State Dulles concerning the position of third states, it appears that third states, not parties to the Neutrality Treaty, may themselves claim rights under that agreement. The first basis for this view is that they are third-party beneficiaries under the Neutrality Treaty. Article 36, paragraph 1, of the Vienna Convention on the Law of Treaties of 1969, to which the United States is not a party but which is widely regarded as reflecting contemporary customary international law, provides:

"A right arises for a third State from a provision of a treaty if the parties to the treaty intend the provision to accord that right either to the third State, or to a group of States to which it belongs, or to all States, and the third State assents thereto. Its assent shall be presumed so long as the contrary is not indicated, unless the treaty otherwise provides."

Conditions on the exercise of the right are referred to in paragraph 2:

"A State exercising a right in accordance with paragraph 1 shall comply with the conditions for its exercise provided for in the treaty or established in conformity with the treaty."

The statement in the Neutrality Treaty that Panama declares the Canal secure and open "to peaceful transit by the vessels of all nations" appears intended to confer a right on "all nations," not simply on the parties to the Protocol to the Neutrality Treaty.

The second possible basis for the rights of third states is the fact that a unilateral declaration by a state may give rise to rights to be enjoyed by the states to which the declaration is addressed. In the *French Nuclear Tests* case, [1974] I.C.J. Rep. 253, 267, the International Court of Justice stated:

"When it is the intention of the State making the declaration that it should be bound according to its terms, that intention confers on the declaration the character of a legal undertaking, the State being thenceforth legally required to follow a course of conduct consistent with the declaration. An undertaking of this kind, if given publicly, and with an intent to be bound, even though not made within the context of international negotiations, is binding. In these circumstances, nothing in the nature of a quid pro quo nor any subsequent acceptance of the declaration, not even any reply or reaction from other States, is required for the declaration to take effect, since such a requirement would be inconsistent with the strictly unilateral nature of the juridical act by which the pronouncement of the State was made."

Although the obligations of Panama are assumed in a bilateral treaty with the United States, Article II of the Neutrality Treaty is in form of unilateral declaration by Panama ("The Republic of Panama declares the neutrality of the Canal . . ."). That declaration, without more, creates rights in other states, since the declaration seems to have been made with the intention that it should be binding.

This conclusion is not invalidated by the existence of the Protocol to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. Under that instrument the Contracting Parties will "agree to observe and respect the regime of permanent neutrality of the Canal in time of war as in time of peace, and to ensure that vessels of their registry strictly observe the applicable rules" (Art. II). The Contracting Parties will thereby undertake individual obligations to respect the regime of the Canal which, in the absence of the Protocol, would only be conditions on the right to use the Canal conferred by the Neutrality Treaty. The effect of the Protocol is thus to convert conditions into promises.

Actually, the new Treaties will do no more than to make specific obligations resting upon both the Republic of Panama and the United States under customary international law. In *"The S.S. Wimbledon,"* P.C.I.J., ser. A. No. 1 (1923), the Permanent Court of International Justice spoke of the Kiel Canal as "an artificial waterway connecting two open seas [which] has been permanently dedicated to the use of the whole world" (at 28). The dedication in that case came through the terms of the Treaty of Versailles, whereby the Canal was thrown open to navigation by the ships of all nations. The corresponding dedication in the case of the Panama Canal was effected through the Hay-Pauncefote Treaty of 1901 and the Hay-Bunau-Varilla Treaty of 1903. Dedication alone may not be sufficient and should be followed by reliance by the international community in general before third states may with sound legal basis rely on that dedication to free and open use. That reliance has long since taken place in the case of the Panama Canal.

At the present time, the right of free and open passage through the Panama Canal has thus been established in customary international law through the dedication effected by the Treaties of 1901 and 1903 and exists independently of those treaties. The new Panama Canal Treaties will provide a more refined and precise definition of these rights.

III. The rights of the United States to protect the canal and to assure the unfettered passage of its warships.

A. The Concept of Neutralization.

As has been observed earlier in this statement, the Republic of Panama will, under the terms of the new Neutrality Treaty, declare that "the Canal, as an international transit waterway, shall be permanently neutral" (Art. I). The Canal is, of course, already "neutralized." The Hay-Pauncefote Treaty states that the rules of Article III of the Treaty are on the basis of the "neutralization" of the Canal, while the Hay-Bunau-Varilla Treaty provides that the "Canal . . . shall be neutral in perpetuity."

The terms "neutrality" and "neutralization" have always been used in a somewhat Pickwickian sense when applied to interoceanic canals such as the Panama Canal. In general, the neutralization of territory would mean that the territorial sovereign would be precluded from taking any measures, such as the building of defenses, there and that all states recognizing the status would be obliged to refrain from military activities there. In the Hay-Pauncefote Treaty, on the other hand, "neutralization" rests on the basis of a number of rules, ranging from a requirement of non-discriminatory tolls to the duty of belligerents to refrain from acts of hostility within the Canal. It was even suggested by Sir Edward Grey during the tolls controversy between the United States and the United Kingdom before the First World War that "neutralization must refer to the system of equal rights." [1912] *Foreign Relations of the U.S.* 481-489, quoted in N. Padelford, *The Panama Canal in Peace and War* 35 (1943). The term "neutralization" is thus used synoptically to refer to the whole regime of the Canal. The "neutrality" of the Canal

proclaimed in the new Neutrality Treaty is likewise linked to the rules and conditions for use of the Canal.

Nothing in the Treaty of 1901 or the Treaty of 1903 has stood in the way of defense or fortification of the Panama Canal. It has been closed to the warships and merchant ships of enemies of the United States in both World Wars, and restrictions were placed on neutral shipping. The neutrality of the Panama Canal thus does not preclude the United States—or under the new Treaties, the Republic of Panama—from taking belligerent measures in the Canal and in the area of the Canal when either state is at war.

The Neutrality Treaty incorporates a requirement that “transiting vessels commit no acts of hostility while in the Canal.” Art. II, para. (c). In this respect the Treaty carries forward the obligation already imposed on transiting vessels under Article III, Rule 2, of the Hay-Pauncefote Treaty: “The canal shall never be blockaded, nor shall any right of war be exercised nor any act of hostility be committed within it.” The Protocol to the Neutrality Treaty will make this duty of transiting vessels or condition on passage into a legal duty incumbent upon the states whose vessels use the Canal “to observe and respect the regime of permanent neutrality of the Canal in time of war as in time of peace, and to ensure that vessels of their registry strictly observe applicable rules.” The duties of states and of transiting vessels “in time of war” would appear to interpose no obstacles to measures that might be taken by the operator of the Panama Canal to close the canal to warships and merchant ships of states enemies to the operator of the Canal and to neutral ships carrying contraband to and from the enemy.

B. Protection of the Canal.

Article IV of the new Panama Canal Treaty provides that before 2000 the United States will have the primary responsibility to protect and defend the Canal, with subsidiary responsibility resting upon Panama. Both countries will be required to act to repel armed attack or any other threats to the security of the Canal or ships transiting it. The two parties are to form a Combined Board of senior military representatives to consult on all matters relating to the protection and defense of the Canal and to plan actions to be taken by the parties in concert. These combined arrangements are not to inhibit the “lines of authority” of the parties’ respective armed forces.

Until 2000, the United States may station military forces within Panama in conformity with the rights and limitations de-

Panama Canal Treaty. The United States is to “endeavor to maintain” its forces during “normal times” at a level not in excess of that prior to the entry into force of the Treaty, to the extent consistent with its primary responsibility to defend the Canal. In other words, it would be within the discretion of the United States to increase the level of forces when it perceived an emergency or threat to the Canal. Whether the United States may act unilaterally to protect the regime of neutrality is not addressed explicitly in the Panama Canal Treaty. However, the interpretation that it may be consistent with the discretion granted to the United States to decide troop levels and the primary responsibility placed upon it to defend the Canal. This view is held by the chief United States negotiators of the Panama Canal Treaty. Hearings on the Panama Canal Treaties Before the Senate Comm. on Foreign Relations, 95th Cong., 1st Sess. 32-33 (1977) (Statement by Ambassadors Bunker and Linowitz) [hereinafter cited as Hearings]. Moreover, under the Neutrality Treaty, each party may act independently to defend the Canal. See discussion *infra*.

After the expiration of the Panama Canal Treaty, the Neutrality Treaty alone will govern the protection of the Canal. Both the United States and Panama are to maintain the regime of neutrality notwithstanding other subsequent treaty commitments.

Only Panama will maintain “military forces, defense sites, and military installations within its territory.” This stipulation requires the removal of the United States military presence and indicates that Panama may not invite a foreign state to introduce military forces into its territory either informally or pursuant to a treaty. However, the blanket exclusion of foreign military forces and installations must be balanced with the overriding goal of keeping the Canal open and with the obligations of the United States to defend the Canal, a task which, as a practical matter, would be impossible in certain situations without the reintroduction of troops.

The Neutrality Treaty places no limitations on the discretion of each party to the Treaty to identify a threat to the neutrality of the Canal or to select methods which they may employ to deter dangers to the neutrality of the waterway. One implication of unilateral decision-making is that the United States may act contrary to

Panama's wishes or directly against it if, in the opinion of the United States, Panama's actions endanger the neutrality of the Canal. (Statement by Ambassador Linowitz, *id.* at 27.)

In order to clarify the interpretation which the parties gave to their rights under the Neutrality Treaty, President Carter and General Torrijos issued a Statement of Understanding (Understanding) on October 14, 1977. It states that

"Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

"This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity of political independence of Panama."

The first paragraph recognizes the rights of unilateral action including the use of force, in the event of threats to navigation through the Canal, while the second paragraph limits such action on the part of the United States to the purposes referred to in the Understanding. The prohibition of actions infringing upon the territorial integrity or political independence of Panama must be interpreted in such a way as to allow the United States to fulfill its obligation to meet aggression directed against the Canal.

That the Understanding is an authoritative interpretation of the Neutrality Treaty may be established in three ways. The Statement of Understanding is a binding agreement between the United States and Panama. Even if it were not to be regarded as itself an international agreement, the Understanding still would form part of the travaux préparatoires of the Neutrality Treaty or subsequent practice under that Treaty.

A treaty need not be formal in form or style. The Vienna Convention on the Law of Treaties defines a treaty in Article 2, paragraph 1(a), as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation." (U.N. Doc. A/CONF. 39/27 reprint ed in 63 Am. J. Int'l L. 875 (1969) and 8 Int'l Leg. Mat. 679 (1969))

The International Law Commission stated, in its commentary to this article when it was in the form of a draft that "very many single instruments in daily use, such as an 'agreed minute' or a 'memorandum of understanding,' could not appropriately be called formal instruments, but they are undoubtedly international agreements subject to the law of treaties." Report of the International Law Commission to the General Assembly, 21 U.N. GAOR, Supp. (No. 9) 21, U.N. Doc. A/6309/Rev. 1 (1965) (emphasis added). Neither the Vienna Convention nor the commentaries require that a document must be signed by representatives of the parties in order to constitute a "treaty."

In addition, two decisions of the Permanent Court of International Justice and the International Court of Justice have found informal unilateral statements by high officials to states as to the intentions and policy of their governments to place binding obligations upon those states. In the *Legal Status of Eastern Greenland* case the Permanent Court of International Justice held binding an oral declaration later written and initiated by the Norwegian Minister of Foreign Affairs, advising his Danish counterpart that "the plans of the Royal Danish Government respecting Danish sovereignty over the whole of Greenland * * * would meet with no difficulty on the part of Norway." [1933] P.C.I.J. ser. A/B, No. 53.

As a result, later Norwegian steps to occupy parts of Greenland were held unlawful. The Court based its holding on the negotiating context in which the statements were made; Norway had made its assurances in response to a Danish request and had in return received Danish assurances.

Later, in the *French Nuclear Tests* cases, the International Court of Justice held binding even unilateral declarations in the form of statements made outside of the negotiating context and without the receipt of reciprocal assurances. The Court required only that the declaration be made publicly and "with an intent to be bound;" nothing in the nature of a quid pro quo or subsequent reply was necessary. *Nuclear Tests (Australia v. France)*, [1974] I.C.J. Rep. 253, 267.

According to the standards of the *Nuclear Tests* cases and the stricter *Eastern Greenland* case, the bilateral Understanding appears a fortiori to be a binding

obligation. It was issued at a meeting between President Carter and General Torrijos which was held for the purpose of negotiating and drafting such a statement. Its official release was accompanied by a press conference in Panama by the Chief Panamanian negotiator and appearances in the United States by the two Chief United States negotiators to explain the function and meaning of the Understanding to the Senate Foreign Relations Committee.

The validity of the Understanding as an international agreement under United States domestic law remains to be considered. Two issues must be addressed: first, whether the Understanding will be submitted to the Senate for its advice and consent in conjunction with the other Panama Canal Treaties; and second, whether such a submission to the Senate is required.

In hearings before the Senate Foreign Relations Committee, Ambassador Linowitz asserted that the Understanding was a "part of the record." *Id.* at 455-456. He and Ambassador Bunker testified in detail as to the background, meaning, and implication of the document. However, the Understanding will not be appended in a physical sense to the agreements submitted to the Senate. *Id.* Yet, the Understanding has been and will in all likelihood continue to be a subject of discussion in the Senate as an authoritative interpretation of the Neutrality Agreement. Thus, it would be an exaltation of form over substance to say that the Senate will not give its advice and consent to the contents of the Understanding if it gives its approval to the Neutrality Treaty.

Even if the Understanding were not binding by itself, it would represent an authoritative interpretation of the agreement, either as part of the preparatory work of the Neutrality Treaty prior to ratification or as a subsequent practice under the Treaty after its signature. See Vienna Convention on the Law of Treaties, arts. 31 and 32. In either case, it is relevant that both parties regard the Declaration as the definitive interpretation of the meaning of the Neutrality Treaty.

An additional indication of the importance of the Understanding is found in General Torrijos' expression of desire that the Understanding be issued before the plebiscite in Panama on October 23, 1977. Press conference by Romulo Escobar Bethancourt, Chief Panamanian negotiator, in Panama, October 18, 1977, reprinted in *Hearings supra* at 457.

In light of the fact that the Understanding resulted from negotiations held especially for the purpose of clarifying the positions of the parties, was carefully drafted jointly by the heads of state, and was issued officially and publicly in both countries, its conclusiveness as an interpretation of the Neutrality Treaty is not open to serious challenge.

C. Possible Limitations on the Power of the United States to Assure Freedom of Passage Through the Canal and the Defense of the Canal.

It remains to consider whether the United Nations Charter, the Charter of the Organization of American States or the Inter-American Treaty of Reciprocal Assistance would place any limitation on the power of the United States to assure freedom of passage through the Canal for its warships and merchant ships or to defend the Canal.

Under Chapter VII of the United Nations Charter, the Security Council may determine that there is a "threat to the peace, breach of the peace, or act of aggression" and order member states to comply with the measures ordered by that organ of the United Nations. Under Article 41, the measures falling short of the use of force which may be employed by the Security Council are "complete or partial interruption of economic relations" and of "sea * * * means of communication." In addition, the United Nations may also take action by air, sea, or land forces in order to maintain or restore international peace and security under Article 42. Article 103 of the Charter provides that the obligations of a member state under the Charter prevail over the state's obligations under any other international agreement. Thus, the Security Council could order the Canal closed to the ships of a particular state or group of states and that order would prevail over the duty of Panama and the United States to allow transit.

A recommendation adopted by the Security Council under Chapter VI of the Charter or by the General Assembly under Chapter IV would not be legally binding under the Charter. The new Panama Canal Treaty and Neutrality Treaty would limit the freedom of the United States and Panama to follow such a recommendation.

So far as the Inter-American system is concerned, Article 25 of the O.A.S. Charter provides:

"If the inviolability or the integrity of the territory or the sovereignty or political independence of any American State should be affected by an armed attack or by an act of aggression that is not an armed attack, or by an extracontinental conflict, or

by a conflict between two or more American States, or by any other fact or situation that might endanger the peace of America, the American States, in furtherance of the principles of continental solidarity or collective self-defense, shall apply the measures and procedures established in the special treaties on the subject." Charter of the Organization of American States, April 30, 1948, 2 U.S.T. 2394, T.I.A.S. No. 2361, 119 U.N.T.S. 3.

The special treaty referred to is the Inter-American Treaty for Reciprocal Assistance (Rio Treaty), opened for signature Sept. 2, 1947, T.I.A.S. No. 1838, 21 U.N.T.S. 77, under which the ministers of foreign affairs of the parties may decide jointly what measures are to be taken. Under Article 8, these measures may include "partial or complete interruption of economic relations or of * * * sea * * * communications." Article 20 requires that the parties to the Treaty comply with measures falling short of the use of armed force. Thus, if Panama and the United States were called upon by the O.A.S. to close the Canal to the vessels of a state or group of states, a conflict would exist between the obligations of either country under the Panama Canal Treaties, on the one hand, and the O.A.S. Charter and Rio Treaty, on the other. If the state whose ships had been excluded were a party to the Inter-American agreements, it could not complain because it would have consented to such an action by virtue of its being a party to two treaties. A state not a party to the O.A.S. Charter and Rio Treaty would not be bound by their provisions (Vienna Convention on the Law of Treaties, art. 34), which would be *res inter alios acta*. It could properly insist that Panama and the United States perform their obligations under the Panama Canal Treaty and the Neutrality Treaty. However, the possibility of a similar conflict between the treaties governing the Canal and these two inter-American treaties has existed over the past thirty years but has caused no difficulties.

Article 2, paragraph 4, of the United Nations Charter prohibits "the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the Purposes of the United Nations." The Neutrality Treaty implicitly contemplates the use of force to maintain secure and open passage through the Canal.

The conventional rights conceded by Panama to the United States under the terms of the Neutrality Treaty are further particularized in the Understanding arrived at between President Carter and General Torrijos. There are thus two treaty bases for the right of the United States to defend the Canal.

In order to comply with the Neutrality Treaty, the Understanding and the United Nations Charter, any exercise of force by the United States would have to be limited in purpose, in intensity, and in duration to what would be strictly required for the maintenance of the neutrality of the Canal. It could not be directed toward detaching territory from Panama or altering its government, nor could it involve a long-term military presence in Panamanian territory unless that presence could be justified by a continuing threat to the Canal.

Article 15 of the O.A.S. Charter forbids intervention "for any reason whatever, in the internal or external affairs of any other States. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic and cultural elements." Article 17 of the Charter provides that "[t]he territory of a State is inviolable; if may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any ground whatever." Because the neutrality of the Canal is the subject of a treaty commitment, action taken by the United States directed toward keeping the Canal secure and open would not relate to the internal affairs of Panama.

So far as the external affairs of Panama are concerned, reliance upon an implementation of a treaty right by a party to the Treaty would not constitute intervention. Limited action by the United States to protect the neutrality of the Canal would not be directed against the "personality" of Panama or against the "political, economic and cultural elements" of Panama, but would be undertaken exclusively to keep the Canal open. In the event that United States military forces entered Panama, they would not "occupy" its territory in the sense of exercising control of that territory to the exclusion of Panamanian sovereignty. Neither would the territory be the object of the use of force, provided the military action was a proportionate response to the threat to the Canal.

Article I of the Rio Treaty forbids the use of force by parties to the Treaty in any manner inconsistent with the United Nations Charter or the Rio Treaty. Its purpose of mutual assistance and common defense is not inconsistent with the rights of the United States under the Neutrality Treaty.

The provisions of Article 103 of the United Nations Charter, providing that "in the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail," do not preclude the exercise of rights by the United States under the Neutrality Treaty and the Understanding. There is no conflict between Article 2, paragraph 4, of the Charter and the Treaty and Understanding, for, as has been shown above:

a. Panama has consented by treaty to the measures that the United States might take for the defense of the Canal, and

b. Measures to defend the Canal would not be directed against the "territorial integrity" or "political independence" of Panama, nor would they be "in any other manner inconsistent with the Purposes of the United Nations."

STATEMENT BY JOHN NORTON MOORE*

Mr. Chairman: It is pleasure and a privilege to meet with this Committee to discuss the proposed Panama Canal Treaties. The decisions to be made by the Senate in considering advice and consent to these treaties will be of profound importance for all Americans.

In considering the Panama Treaties, my statement will be organized in three parts: general views on the nature of United States interests and choices concerning the Canal; analysis of the principal international-legal issues, particularly the transit and defense rights under the Treaties; and analysis of the constitutionally permissible modalities for Congressional approval of the Treaties.

GENERAL VIEWS

The question facing the Senate and the Nation is not whether the Panama Treaties are in all respects ideal. In common with many Americans, and I would expect even our treaty negotiators, I do not believe the treaties are ideal. Indeed few are since by definition a treaty is an agreement which, if meaningful, has been bargained for and is the product of compromise. Rather, the question is whether United States interests are better served by the treaties, with any necessary clarifying understandings, or by the context that can reasonably be expected should the treaties fail. I believe the answer to this question is that the treaties better serve our interests and should be ratified, assuming clear acceptance by both sides of the Carter-Torrijos understanding clarifying United States defense rights.

It need not detract from the remarkable achievement of the United States in building the Canal, an achievement in which we can take great pride, to recognize that a treaty suitable in 1903 may not present the most appropriate basis for United States-Panamanian relations in 1978. Every American President since Lyndon Johnson has recognized that fact and has been committed to renegotiation of the 1903 Hay-Bunau-Varilla Treaty. Similarly, Latin American countries, sensitized to issues of equality in United States relations with the hemisphere, have indicated that settlement of the Canal issue with Panama "is a matter of common interest and high priority for Latin America * * *".¹

The reality is that the United States and Panama have had a significant dispute about the Canal for much of the more than half century since the Canal has been in operation. The core of that dispute has been the question of residual or "titular" sovereignty over the Zone left in doubt by the language of Article III of the 1903 treaty which granted the United States rights within the zone "which the United States would possess and exercise if it were the sovereign of the territory. * * *".² Increasingly the dispute has also focused on fairness in distribution of Canal benefits.

If the United States can settle the long Canal dispute by new agreements with Panama, it is in our interest to do so both to enhance the basis for stable Canal operations and to demonstrate that the strength of a truly great power is not just its firmness but rather its firmness in defense of the common interest. Such new

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¹ Statement of the Latin American Foreign Ministers Conference for Hemispheric Cooperation, held at Bogota, November 16, 1973.

² Article III of the 1903 Isthmian Canal Convention (emphasis added).

agreements, to be viable and fair, must also protect important United States interests in the Canal. Fortunately it may be possible to recognize both Panamanian aspirations for a new regime and the essential national and common interests in the Canal. Those interests are, I believe, that the Canal will remain open to all vessels, without discrimination, under just and reasonable conditions, and that the United States as builder and principal user of the Canal will retain the right to defend against any threat to assured transit of vessels. Indeed, the United States may remain legally obligated by the Hay-Pauncefote Treaty of 1901 with the United Kingdom to maintain such assured access and neutralization of the Canal.³

Both to deter future conflict and to protect the core national and common interests in the Canal, these access and defense rights should be clearly recognized and endorsed by any new treaties. We should not repeat the mistake of the past and accept ambiguity on core interests as good enough. Instead a good agreement should reflect a genuine understanding clearly accepted by all parties.

THE INTERNATIONAL-LEGAL ISSUES

The "Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal" is intended to go into effect simultaneously with the "Panama Canal Treaty" and to last in perpetuity, unlike the Panama Canal Treaty which by its terms would expire on December 31, 1999. As such, the "Neutrality Treaty" is the more important and enduring legal basis for permanent access and defense rights.

Articles I, II, III and VI of the Neutrality Treaty establish the basis for assured navigational rights through the Canal for vessels of all nations. In my judgment the legal guarantees of transit contained in these articles are strong and in several significant respects stronger for modern conditions than those in effect under Article III of the Hay-Pauncefote Treaty.⁴ Thus, there is an obligation that the Canal shall be operated "efficiently" and that rules and regulations for transit shall be "reasonable" as well as "just and equitable." In addition, such rules and regulations are limited to those necessary for safe navigation and efficient, sanitary operation of the Canal.⁵ Finally, there is an additional provision in Article VI(1) unmistakably guaranteeing transit rights of United States and Panamanian warships and auxiliary vessels "notwithstanding any other provisions of this Treaty."

There are, however, two ambiguities on transit rights of possible concern.⁶ I raise them largely to make a record that in my judgment reasonable interpretation of the Neutrality Treaty requires favorable interpretation on both points. If the Senate is concerned with either ambiguity it would seem an easy matter to further clarify the point as part of a general understanding.

First, it is important that the transit rights provided by the treaty apply from high seas to high seas, that is beginning and ending at the seaward limits of Panamanian Caribbean and Pacific territorial or other ocean claims. At the present time Panama and the United States claim different territorial set limits. The United States recognizes a three nautical mile territorial sea (as opposed to its 200-mile coastal fisheries claim). Panama claims a 200-mile territorial sea and at least if the Law of the Sea Conference is successful we seem to be heading toward a twelve-mile limit.

Pursuant to Annexes A and B of the Neutrality Treaty the treaty areas is defined to include Panamanian territorial sea areas around the entrance to the Canal delimited pursuant to three mile limit. This is an obvious device to avoid introducing law of the sea hassles in the Canal issue. But as a result it is remotely possible that Panama would feel free to apply the more restrictive "Innocent passage" provisions as they claim to apply them beyond the three-mile area out to 200 miles. I do not believe such an interpretation to be sound. By a reasonable test of major purposes the Panamanian guarantees must apply from high seas to high seas

³ Article III of the Hay-Pauncefote Treaty pledges free navigation and neutralization of the Canal Based on the 1888 Constantinople Convention for the Suez Canal. Article IV of the Treaty then provides:

"It is agreed that no change of territorial sovereignty or of the international relations of the country or countries traversed by the before mentioned canal shall affect the general principle of neutralization or the obligation of the High Contracting Parties under the present Treaty."

⁴ The transit guarantees of Article III, Section 1 of the Hay-Pauncefote Treaty are incorporated by reference as the transit standard in the 1903 Hay-Bunau-Varilla Treaty by Article XVIII of that Treaty.

⁵ As with any lengthy treaty there are, of course, always a myriad of minor ambiguities and I have not sought to identify all of them here.

regardless of any change in oceans jurisdictional limits. It would be surprised if this were not also the Panamanian interpretation.*

Second, since Article VI(1) provides an unambiguous right of transit for United States warships and auxiliary vessels "irrespective of their internal operation, means of propulsion, origin, destination * * * or cargo carried," by negative implication it is arguable that these features could be the basis for discrimination against certain categories of commercial vessels. To avoid this kind of problem we did not accept any such differentiation between warships and commercial vessels in the definition of transit rights in the law of the sea negotiations. Once again, however, I do not believe such an interpretation to be sound. For pursuant to Article III 1(a) all rules, regulations and conditions of transit must still be "reasonable" and "limited to those necessary for safe navigation and efficient, sanitary operation of the Canal." Moreover, Article VI(1) seems intended to provide "expeditious" transit for United States and Panamanian warships and auxiliary vessels and to make transit rights for those vessels doubly clear rather than to provide a standard for discrimination against commercial vessels.

As a final point on transit rights, although the Neutrality Treaty makes no reference to the claim, some have referred to the Canal as a "Panamanian national resource." The notion that an international canal is a national resource is, I believe, unsound and fails to consider the strong community common interest in access through such canals. The United States has consistently rejected such claims with respect to straits used for international navigation. In addition, the United States has not sought to operate the Canal as a profit venture and I do not believe it would be "just, reasonable and equitable" to seek to extract maximum economic rent at the expense of the international community.

Turning to United States defense rights, Article IV of the Neutrality Treaty is the only article in the treaties laying a permanent basis for such rights, although the "Canal Treaty" has a much more detailed regime explicitly spelling out such defense rights prior to the year 2000. Pursuant to Article IV of the Neutrality Treaty:

"The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties."

There is nothing in this article inconsistent with the right of the United States, acting alone if necessary, to use force to defend the Canal or transit rights of vessels through the Canal. Indeed it seems consistent with a continuing United States legal obligation in this regard under the Hay-Pauncefote Treaty. That is, we agreed under the Hay-Pauncefote Treaty to guarantee the neutrality of the Canal, including transit rights, and Article IV seems to reinforce that right. Without more, however, this article is only an ambiguous basis for clear recognition of United States defense rights after the year 2000. Moreover, since this is one of the core United States interests it would seem important to reduce any basis for future disagreement with Panama on this issue. As such I was pleased to see the Carter-Torrijos "Joint Statement of Understanding" of October 14, 1977. If both Panama and the United States are clear that this understanding reflects the correct interpretation of the Neutrality Treaty then I believe permanent United States defense rights in the Canal are reasonably well protected as a matter of legal right. That understanding seems to contemplate that the United States, acting alone if necessary, can use force to defend against any "threat directed against the Canal or against the peaceful transit of vessels through the Canal." Any United States action must be "directed at insuring that the Canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama." Similarly it is not "a right of intervention * * * in the internal affairs of Panama." This wording seems broad enough to include any external or internal threat to assured transit, including denial by Panama of such rights and including actions on Panamanian territory, provided any such actions are necessary, reasonable, and aimed solely at ensuring transit rights through the Canal. Moreover, I believe retention of such a right by a guaranteeing power is consistent with general international law, including the United Nations Charter and the treaties of the OAS system.

In essence the United States as builder and principal user of the Canal has undertaken to guarantee the Canal neutrality, including transit rights through the

* The United States, of course, would still be free not to recognize the Panamanian 200-mile claim and on sound ground in rejecting it. Moreover, we are not much worse off in this regard than at present under the 1903 treaty which also includes no explicit guarantees of transit rights beyond three nautical miles.

Canal. As long as any necessary use of force in defense of those rights is reasonable and carefully limited to those objectives it would not seem a "use of force against the territorial integrity or political independence of any state * * *" proscribed by both the understanding and the United Nations Charter. Moreover, the legal case would seem even stronger since the treaties and understandings simply retain for the United States a defense right we have had since 1903. With respect to the treaties of the Inter-American System (OAS), however, there may be a potential ambiguity under Articles 20 and 22 of the Revised Charter of the Organization of American States, which is binding on the United States in relations within the hemisphere. Article 20 provides:

"The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever."

Article 22 then goes on to provide that "Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation" of this principle. If the defense rights to be retained by the United States and that are now exercisable pursuant to the 1903 treaty—an "existing treaty" under Article 22—are properly viewed as continuing under Article 22, as I believe they should be, there is no problem. Moreover, I do not believe that Article 20 contemplated the situation of a specific retention of defense rights by the United States pursuant to clarification of a dispute with Panama concerning sovereignty over the Canal. It might be useful, however, to examine whether any minor changes in the understanding might be desirable to clarify the general interrelation with the OAS system.⁷ We should also remember that a Protocol to the Treaty is contemplated that would be open to all nations and that would make clear the continuing United States right, indeed obligation, to "ensure permanent access to the Canal by vessels of all nations * * *". This Protocol, to the extent signed by our OAS treaty partners, would be later in time than the OAS Charter and presumably if there were any ambiguities in interrelating the two treaties the later in time would control.

In order to clearly incorporate the October 14 Joint Understanding on defense issues, I believe that the preferable modality would be either a signed "Memorandum of Understanding" as was incorporated in Senate advice and consent to the 1955 Eisenhower-Romon Treaty with Panama or an "Exchange of Notes" as followed the 1936 Hull-Alfaro Treaty. The first of these seems closest to the present Joint Understanding and when signed by both sides it could be made part of Senate advice and consent.

As to other modalities, I do not recommend a formal reservation since this implies a contrary legal interpretation of a treaty clause and in the case of Article IV and the Joint Understanding that would not seem appropriate. Similarly, I do not believe that formal treaty amendment would add anything legally to a clear understanding embodied in a signed Memorandum of Understanding or Exchange of Notes. Such a formal amendment would also seem cumbersome and unnecessarily risky in possibly requiring another Panamanian referendum.

As a final international-legal point, I regret that the treaties do not have a mechanism for compulsory third party adjudication of differences concerning non-defense issues. Nations are understandably reluctant to submit military or defense issues to third party settlement. Sometimes this reluctance prevents agreement on any compulsory dispute settlement mechanism. To avoid this pitfall, in the law of the sea negotiation it has been generally accepted that "disputes concerning military activities" will not be subject to the dispute settlement mechanism otherwise embodied in the treaty draft (the Informal Composite Negotiating Text) if a party opts to except such activities when accepting the treaty.⁸ Had this realistic approach to the art of the possible been followed in the Panama Treaty negotiations it may well have been possible to obtain agreement on submission of disputes concerning transit of commercial vessels to compulsory arbitration or to the International Court of Justice.

Such a provision would be in both the United States and Panamanian interests in reduction of future grounds for conflict and in giving greater life to the permanent neutrality regime. Moreover, it would raise the threshold of use of force for defense of commercial transit rights and provide a useful additional option for protection of transit rights in the area arguably less clear than military transit rights. If at any time we seek further clarifying agreement with Panama in order to strengthen the treaties, I hope that we will again consider the desirability of a compulsory third

⁷ On a related point the Joint Understanding also provides that United States and Panamanian vessels of war or auxiliary vessels can "in case of need or emergency * * * go to the head of the line of vessels in order to transit the Canal rapidly."

⁸ Article 297(1) (b) of the Informal Composite Negotiating Text.

party dispute settlement mechanism for disputes concerning non-military activities arising under the treaties.

THE CONSTITUTIONAL-LEGAL ISSUES

Article II of the Panama Canal Treaty and Article VIII of the Neutrality Treaty provide that they "shall be subject to ratification in accordance with the constitutional procedures of the two Parties." For the United States I believe that there are two permissible procedures for Congressional approval of the treaties, either of which would fully meet Constitutional requirements.

First, the treaties may receive advice and consent by the Senate pursuant to the treaty power as the Administration has recommended. Some have questioned whether Article IV, Section 3, Clause 2, of the Constitution requires that international agreements disposing of territory or property of the United States must be approved by a majority of both houses rather than a two-thirds majority of the Senate alone. That clause provides "The Congress shall have the power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States" * * * .⁹ The issue, however, is whether this clause was intended to create an exclusive modality for transfer of property that would derogate from the treaty power or whether it was to be a concurrent procedure with the treaty power.

Though there is little authority specifically on the point, I believe that the best evidence as to the intent of the framers concerning both powers, Supreme Court decisions concerning the treaty power in general and boundary treaties disposing of claimed United States territory in particular, constitutional practice, and policy considerations all suggest that the property clause is not an exclusive modality for transfer of property in derogation of the treaty clause. Since elsewhere these issues have been debated at length I will not repeat the general analysis.⁹ My own appraisal of that debate, however, is that though the proponents of interpreting the property clause to be exclusive have shown in response to Administration witnesses the lack of definitive evidence as to the framers intent and that there are no Supreme Court cases squarely on point, they have not made an affirmative case for their own position. Moreover the debate seems to have ignored several relevant factors that support the concurrent interpretation.

In seeking to distinguish the Supreme Court boundary cases the proponents of the exclusive position have sought to distinguish those cases as involving disputed territorial or property rights. It is puzzling, however, why apparently these proponents feel despite a half century of dispute with Panama over Canal rights that there is no dispute concerning United States territorial or property rights in the Canal (whether supportable or not is not the question under these precedents). Such a judgment can rest only on the most narrow textual reading of the 1903 treaty divorced from real-world context. Resolution of the long-standing dispute with Panama is after all what the treaties are about. Similarly, it seems to me that the kind of momentous foreign policy issues presented in the Panama Canal Treaties are precisely the kinds of issues that may be constitutionally dealt with by treaty. The foreign policy implications of the treaties, including our relations with Panama and throughout Latin America are strong and obvious. In such a setting I believe that the proponents of the "exclusive" interpretation have a large burden of persuasion as to why the treaty power is unavailable. I do not believe they have remotely met that burden.

Second, the agreements with Panama could, I believe, be constitutionally approved pursuant to a joint Executive Congressional agreement; that is, by majority vote of both houses of Congress. Just because the treaty power is a constitutionally permissible modality does not mean that it is the only permissible modality. United States constitutional law and practice permits international agreements to be constitutionally approved pursuant to Executive-Congressional agreement procedures as well as the treaty power. Indeed, this is so regardless of importance of the agreements as has been demonstrated many times in our history.¹⁰ The truth of the

⁹ See, e.g., the statement of Attorney General Griffin Bell and the State Department Legal Adviser, Herbert Hansell, before this Committee on September 29, 1977 and the statement of Professor Raoul Berger and Charles Rice before the Subcommittee on Separation of Powers of the Committee on the Judiciary on November 2, 1977.

¹⁰ See, e.g., Moore, "Executive Agreements and Congressional Executive Relations," reprinted in "Congressional Oversight of Executive Agreements," Hearing before the Subcommittee on Separation of Powers of the Committee on the Judiciary of the United States Senate, 92d Cong., 2d sess. 149 (April 25, 1972); McDougal & Lans, "Treaties and Congressional-Executive or Presidential Agreements: Interchangeable Instruments of National Policy," 54 Yale L.J. 181-351, 534-615 (1945), reprinted in M. McDougal & Associates, *Studies in World Public Order* 404 (1960).

matter is that the United States has two constitutionally permissible modalities for approval of international agreements requiring Congressional approval. In this case the dispute concerning whether such a procedure is constitutionally required at least adds further support to a majority vote of both Houses as a constitutionally permissible modality.

CONCLUSION

The Panama Canal Treaties are not perfect. The issue, however, is not whether they are perfect but rather whether core national interests at stake are better protected by acceptance or rejection of the treaties. I believe that the core interests of the United States at stake are:

Maintenance of assured transit rights through the Canal for both military and commercial vessels;

Retention of a clear right to defend the Canal against any threat, whether internal or external, to such assured transit;

Settlement of the dispute with Panama to reduce the risk of future conflict and to establish a better basis for Canal stability; and

Demonstration to the international community particularly concerned Latin nations, that the United States is firm in the defense of the common interest. A great power deserves the title of great as much by the goals which it supports as by the power with which it supports them.

Assuming at least a signed memorandum of understanding or exchange of notes embodying the October 14 Carter-Torrijos Joint Statement of Understanding I believe that these goals will be better served by Senate advice and consent to the treaties.

Thank you.

STATEMENT OF PROFESSOR COVEY T. OLIVER, UNIVERSITY OF PENNSYLVANIA LAW SCHOOL

Mr. Chairman and Members of the Committee: It has been some years since I appeared before this honorable Committee, and I come here now as your invited "citizen" witness, rather than as an official of the Executive Branch. I am grateful to you for the invitation to appear today, along with colleagues from the specialties of international public law and United States foreign affairs law. I have not been here in the capacity in which I now appear since 1949 or 1950, during the Bricker Amendment "bicker" as to the treaty power. Strangely, one of the treaties you are now considering also raises for some an issue as to the scope of the treaty power under the Sixth Article of the Constitution.

I have always been received with thoughtful courtesy by this Committee, although more than once in my days as an official my feet have felt a touch of the flame here! One episode, I fervently hope, will not be repeated: I was opposed for the Senate's approval as Ambassador to Colombia by an intense-looking gentleman who, clutching a briefcase, said he did not know me but he did know my type and hence objected. Senator Fulbright showed him great courtesy and he departed peaceably. Two days later this same person was apprehended as he sought to dash into the office of the Governor of Michigan, and a very large revolver, loaded, was found in that briefcase! To paraphrase the old Texas lawyer's fabled response to a famous question from the Supreme Court bench about the fate of John the Baptist, I trust this Committee is no longer susceptible to such influences!

I am your witness on legal matters. I honestly think that my views on them are not the product of my outlook as to these treaties as a onetime "Latin-American hand" at State. But I feel that I must disclose briefly my political viewpoints, so that you can judge for yourselves the degree of my objectivity or the lack of it.

A life-long Democrat, I was immensely privileged to have grown up in the only part of my native Texas where, at that time, the Mexican-American had his full civic rights—and exercised them. I am of a very small minority of WASP-Texans who grew up in minority status in that State. Thanks to my wise father, my brother and I learned the language and ways of our preponderant neighbors. These early experiences have shaped my life in many ways, including the development of an interest in international affairs and the acquisition of a capacity to look at my country and my people from both "inside" and "outside" perspectives. In an issues paper I prepared on our Constitution and U.S. foreign affairs operations in Ameri-

ca's third century for the Bicentennial reassessment of the Constitution organized by the American Academy of Political and Social Science, I wrote:¹

"It would be interesting to know whether the American people believe there is a crisis today in the management of American foreign relations under the Constitution of 1789. Most expert American observers of, or participants in, the conduct of the nation's official dealings with the rest of the world would agree that we have a unique, complicated, energy-depleting system of public law for the allocation of authority for the governance of our official conduct offshore. And they would find the present situation of this system at least somewhat controversial, both at home and abroad.

"But these same American experts would divide as to whether anything can or should be done structurally. A considerable majority, probably, agree with the general thrust of Appendix L to the Report of the Commission for the Study of the Organization of the Government for Foreign Affairs, that by mutuality, patience, and other attitudinal acts of moderation, the qualified players of the 'Foreign Relations Game' for the American side can improve the 'game plan' result for the United States. So far as the evidence from writings goes, it seems that the preponderant opinion of experts, with some exceptions (as always among experts), is that it is unnecessary, unthinkable, or illusory to contemplate changing significantly the structure of American government for any reason liked to 'The United States and the World.' Nonetheless, some believe that it might be useful now to go through the exercise of reviewing the basic law controlling America's relationships with the rest of the planet.

"Basic issues of governmental structure for foreign relations should not always be examined, as they usually are, only from the standpoint of our internal concerns and expectations about the Constitution and our associations with the rest of the world. The rest of the world is also vitally concerned with, is affected by, and hence reacts to, how America does things internationally.

"Let us begin by seeing ourselves as others see us. We are a country that in its first 200 years has been phenomenally successful in every way in which the achievements of nations are measured; but usually the world does not credit our institutions and our way of life for this, as we tend to do, but rather believes that the good fortune of natural riches explains our success. Major resources, however, are seriously depleted now; and substitutes have not yet been assured. Some foreigners, following Adam Smith's view as to the fundamental wealth of nations, are willing to credit the American people also for the nation's success. But even this limited perception of us, the people, as the true wealth of the nation is in decline now.

"The United States is a federal, participatory democracy, whose state and federal constitutions all incorporate some version of separation of powers with checks and balances—thus requiring the interrelated independence of three branches of government. This makes us unique—truly solitary—in the world community. As Ambassador Moynihan did not tire of saying, democracy itself is no longer the form of government that a majority of states provide for or practice. Within participatory democracies, only a very few (not more than a dozen) states are federal in form, and of these options federalism is a serious legal factor in the foreign relations of only five! Finally, no other federalistic democracy has an operational separation of powers/checks and balances constitutional system. Nor, for that matter, do unitary (non-federal) states often practice separation of powers. In Iberic-America, for example, where the American Constitution was the model, of the few remaining democracies, only in Colombia and Costa Rica have separation of powers problems occasionally arisen in regard to relations with other states.

"Although in the world community the American system of governance for foreign relations is thus exotic, our national tendency, exhibited even in the evaluation of our Constitution, is to disregard this basic fact and to treat the problem of foreign affairs and the Constitution largely as a matter of internal values and preferences. We ascribe an almost incontestable value to the constitutional status quo and expect the rest of the world to adjust to it; or, at most, we assume that the domestic gains outweigh the possible foreign affairs losses, now and possibly for all time to come.

"But there is a rising tide of evidence that the rest of the world—especially the shrinking world of our friends—is finding our blandness in this particular increasingly irritating and destabilizing. We should not accept such evidence as conclusive, but we should not disregard it either. Thus, consider two recent illustrations:

"1. Alfonso Lopez Michelsen, elected President of Colombia, observed, in regard to an unannounced shift in United States policy (from supporting a Colombian cut-flower export industry as relevant to Colombia's development to a Congress-pres-

¹ "The United States and the World," 426 *Annals of the American Academy of Political and Social Science* 166 (July, 1976).

sured Treasury investigation of Colombian cut-flower imports as being subject to extraordinary [dumping] duties) that the episode brought sharply to attention questions of the reliability and authoritativeness of United States foreign policy declarations and assurances.

"2. The Prime Minister of Singapore at a White House dinner in his honor remarked in his toast that the friends of the United States are becoming increasingly uncertain and concerned as to who effectively speaks for the United States.

"Hence, as we proceed in accordance with the wishes and interests of the participants to examine issues of (or close to) constitutional dimensions arising from America's contemporary and projected roles in the world community, let us consider the perspectives of that community, as well as our attachment to our present system. 'Independence' requires no less."

Also, I know that as to many situations in Latin America a sense of injustice and an "envy-shame" syndrome are deep-seated. Like it or not, these inject elements of intense human relations into what some have mistakenly supposed diplomacy to be, a cool, dehumanized calculus of national interests. Surely, if the attitudes of certain key Latin American countries about the United States and Panama as to the Canal were formed on the basis of national interest in assured Canal service at the lowest possible tolls, these countries would not have so firmly aligned with Panama as, *inter alia*, to have supported vehemently the urging of Panama for a most unusual special session of the Security Council in that country several years ago, and with equal intensity to have continued to be with Panama as to the undoing (by novation) of the 1903 treaty.

Latin American countries, moreover, have not yet completed the evolutionary process of establishing complete national identities; and, meanwhile in the United States and elsewhere in the developed world the expectations of the immediate post-War that national will would be considerably moderated in the interests of wider communities have not been very effectively achieved. Under these circumstances, from the beginnings of my association with the "Panama problem," I have been forced by what had gone before to suppress my own preference for the internationalization of artificial straits connecting two or more sectors of free seas. When I came on the scene in 1964, President Johnson told me that it was already too late to consider any other solution than a direct one with Panama as sovereign of the soil. Certainly all that thereafter happened has pointed this same way.

There is no use doing more than to mention the possibility that, had our decision-makers on foreign affairs, going back many years, been more aware of—more sensitive to—the situation that was festering, things might have been different. Not often are we or other states able with calm foresight to provide for provident futures. But we ought to learn from our failures so to do.

And, to complete this disclosure, I personally wish that the arrangements with Panama had been structured into what are known as "legislative-executive agreements," put into effect by ordinary legislation by simple majorities in both houses. I do not wish to hide my very strong preference for a more efficient and more democratic way of participating in international community life (where international agreements are the most fundamental element of advancement of world order)² than the arrangement that in 1787 reflected an internal political need that I am convinced we no longer have. It is almost beyond controversy, I believe, that "legislative-executive agreements" are fully equivalent to the "treaty-making powers" of the President and two-thirds of the Senators present and voting.³ No amendment of the Constitution would be required. By practice alone, we could streamline the "ratification" process, put ourselves into the situation of most other democratic countries as to legislative approval of international agreements, and end the charge that the Senate is the "graveyard of treaties."

However, gentlemen, we have to deal with the treaties that have been negotiated and the processes chosen for their approval. Perhaps through study I am as familiar as most of you from membership here with the problems of the Senate's additions of

² Many scholars have observed that international law grows mainly today through "law making" treaties, not by the customs of nations. Customary law is not usually a law for intricate details; and the existence of 155 or more states in the world community today complicates immensely the task, if it is attempted with honesty, of finding a *consentio juris*, especially where there are lines of cleavage, such as those between rich nations and poor nations and "free world" and socialist ones.

³ The authoritative work of McDougal and Lans, supporting this view, "Treaties and Congressional-Executive or Presidential Agreements: International Instruments of National Policy," 54 Yale L.J. 181 and 534 (1945) has been widely accepted in scholarly opinion. Cf. Restatement of the Foreign Relations Law of the United States (1965) 120. Henkin, *Foreign Affairs and the Constitution*, N. 6 to Ch. VI adds:

"The argument that the Constitution permits international agreements only by treaty was long ago rejected," (citing authorities, including Opinions of the Attorney-General.)

reservations and understandings to closely negotiated international agreements. The Restatement of United States Foreign Relations Law, on which I worked, is useful on the international legal aspects of the effects of "conditioned advice and consent:"⁴ and for all time we shall have the fate of the Treaty of Versailles and its annex, the Covenant of the League of Nations, to remind us that closely bargained treaties are not easily re-negotiable to take account of Senators' preferences. Some may say that the example cited is distinguishable, it being a multipartite arrangement involving a great many states, whereas here we have only bilateral agreements. However, it is to be noted that at this stage the rest of the world (including as far as public statements go, other Latin American states) has kept itself in a cone of silence. It is not hard to foresee, however, the possibility that the Panamanian leadership could rally organized and solid opposition to some possible changes in the present texts.

On the politico-military front I need say very little. Far greater experts than I have already gone into these matters. Perhaps some were a very little bit discreet in painting the physical limitations of defense against guerrillas in jungle conditions not unlike those of Viet Nam, but on this front surely you do not need much more to prompt foresight. The possible outbursts of destructive activity aimed against this country and the interests of its citizens in other Latin American countries—and even elsewhere—likewise need no reiteration. The situation has come to be one in which we must act, and the Administration has wisely and justly chosen to act well and generously, as befits the American people. As major nations go history has so far treated us lightly as to on-going, inevitable adjustments of global society that parallel those taking place internally in our and other free societies.

THE CANAL TREATY

Turning now to the Panama Canal Treaty, I recall being taught by a very great teacher of international law at Columbia, (now) Judge Phillip C. Jessup, that an inherently inequitable treaty is never stable. This I had not been taught previously as to private law by a less wise contracts teacher elsewhere, who used to say, "Boys, boys, a contract must be performed even if it takes the hide off." We all soon come to know that many types of untenable or unjust contracts will not be required by law to be performed.⁵ Professor Jessup was speaking in the context of the trauma of unilateral violations of treaties, concession agreements, and the like. In the contemporary situation Panama has sought no more than to mobilize all available pressure to its advantage as to terms in seeking a novation that the United States also supports as the right type of solution. That the bargaining has been hard I have no doubt. The negotiations on both sides have, in essence, put details on the principles for a new Canal regime agreed upon by national leaders in the Joint Declaration of April 3, 1964, the Johnson-Robles Agreement of September 24, 1965, the Joint Statement of principles of February, 1974, and its affirmation as policy by the incoming Carter Administration.

There is considerable doubt in my mind as to the desirability of attempting through the advise and consent power to seek, in effect, to participate in the details of negotiations. The Senate has great responsibilities, but in my view they link to great issues, not to preferences as to details.

Now, as to "great issues." These seem to me to be the following ones:

(1) "Internationalization" of the waterway (as distinguished from "neutralization"). This is a lost cause. If this concept ever had a "time," that time has passed. And this solution has not been accepted elsewhere by territorial sovereigns. Nationalism and the "machismo" of sovereignty are too strong.

(2) Interests of third ("user") states. These are as well protected, legally speaking, under the proposed treaty as they have been in past.⁶ The major difference as to them is that the United States has been either a generous or an indifferent toll-fixer, whereas it seems almost certain that during the life of this treaty and certainly when "its time comes" Panama will continue to treat the Canal as its major national asset, unless in the meantime through development assistance and otherwise other important national assets develop there. Or, who knows? By 2000 AD, if not before, other factors may work to keep Panama's appetite for tolls moderate. I take it that the Hay-Pauncefote Convention is not definitively tossed upon the ash heap of history and that in any event, its principles are adequately incorporated into portions of both the proposed new treaties.

⁴ Restatement, 132-137, esp. Reporters' Note 1 to 133.

⁵ Thanks in large part to legislative relaxations of stringent common law principles and a corresponding tendency of the judiciary to favor the underdog party in interpreting contract obligations.

⁶ Professor Baxter's excellent statement, cited later in the text of my statement, should be consulted for material pertinent to my conclusion.

(3) Transfers of United States property without compensation. This policy issue is seemingly "bigger" than actually it is, when we consider that the phasing of non-Canal asset transfers is largely in the control of the United States; that the transfer value of the Canal itself must be discounted until the year 2000; and that Panama does not in the real world have the capacity to pay. The basic lesson of J. M. Keynes' "The Economic Consequences of the Peace" (1919) is still valid: unrealistic foreign exchange obligations, contracted for or imposed (Treaty of Versailles), are bad politics as well as disastrous international economics.

(4) The Constitution and transfers of U.S. Government property by self-executing treaty. Personally I do not view this as a "great issue." However, in view of the state of the authorities as detailed by the Attorney General and the Legal Adviser of the Department of State, on the one hand, and certain opposition witnesses, notably Professor Raoul Berger before the Subcommittee on Separation of Powers of the Judiciary Committee, on the other, I recognize that this Committee, and ultimately the Senate, must formulate a position on the "disposal power" (Art. IV, 3, Cl. 2) and provide a rationale therefor. I find Professor Berger's doctrine that the disposal power is "impliedly excluded" from the treaty power (Article VI) decidedly unconvincing, both as to the history of the deliberations at Philadelphia that hot summer of 1787 and as to what uses actually have been made of the treaty power in the matter of transfers, even excluding Indian treaties.

True, in the jurisprudence of the Supreme Court there are statements that determined contenders can strive to elevate to the level of obiter dicta, some strongly in support of the Administration, some, perhaps, in support of Dr. Berger. But, obiter (if that) is not decision! And my guess is that the Supreme Court would not intrude upon the "political branches" as to this point. The issue is readily distinguishable from the Court's venture beyond the "political question" doctrine in *Powell v. McCormick*, 395 U.S. 486 (1969). The line as to that doctrine in relationship to foreign relations still seems to me to be that of the dictum in *Baker v. Carr*, 369 U.S. 186 (1962), at 211-218, unaffected by *U.S. v. Nixon* 418 U.S. 683 (1974) and *Buckley v. Valeo*, 424 U.S. 1 (1976).

Unlike Dr. Berger, I do not believe that a self-executing treaty purporting to dispose of government property, " . . . even if ratified by the Senate, would be void . . ." What of standing to sue? And would the Supreme Court intervene under its self-granted authority to say what the law is? I have difficulty as to a plausible hypothetical showing standing to sue. Who? But even if the Senate should believe it faces a clear and present danger of being overruled by the Supreme Court on this issue, the Senate should nonetheless respond to the Constitution upon its own responsibility as to a matter so closely connected to its unique role as to treaties. Finally, the implementing legislation that the Legal Adviser has foreseen as necessary to put into effect many aspects of the Canal Treaty will probably tend to cure even Dr. Berger's notions of invalidity.

Conclusion: Overall, the Canal Treaty provides for a gradual transition of authority, postpones the transfer of the Canal and areas essential to its operations, maintenance, and defense for more years than there are "lives in being plus 21 years" for some of us. The price includes the transfer without compensation to Panama of "surplus" American property in the Zone and elsewhere in Panama as it becomes redundant, the phasing out of judicial and other governmental authority of the U.S. in the present Canal Zone, and the immediate ending of the irritations for Panamanians inherent in the commissary, banking, and housing situations. This is a sound trade off, considering our North American tendency to mild masochism and guilt complexes, Latin American sensitivities, and, simply, the spirit of the times. There are only two other ways than an accommodation of this sort to deal with the situation: (1) "stonewall" it, with consequences too dire to contemplate or (2) think the "unthinkable" and offer Panama political linkages with this country. As to the second alternative, I mention it only for completeness of the record, and to suggest, once again, that it is too late for much innovation. The issues have set in their historic concrete; the lines are drawn; and tiny states are seen to have, as against even super-powers, tremendous leverage authorized by the world community as a whole. In my view this country will be fortunate to be able to end the "Panama problem" on the essentially favorable terms provided in this treaty.

THE PERMANENT NEUTRALITY AND OPERATIONS TREATY

Professor R. R. Baxter's statement of December 1, 1977, before the Panama Canal Subcommittee of the House Committee on Merchant Marine and Fisheries contains substantially all of a legal nature that I otherwise might wish to say as to this Treaty. In that statement Professor Baxter answered ten important questions posed

by the Subcommittee. I consider Questions 4, 5, 6, and 8 the most significant ones; and I agree with the answers given.

Politically, Secretary Rusk has given the Foreign Relations Committee what I also believe is the wise perspective, when he points out that, as the Permanent Neutrality and Operations Treaty does not become the primary obligation of Panama until the year 2000, there will be ample time in the interim " * * * to test the ability of Panama and ourselves to proceed on the basis of the agreement * * * "

The Protocol to the Neutrality and Operations Treaty that will be open for accession by all nations of the world in accordance with a resolution to be sponsored by the United States and Panama in the Organization of American States provides a desirable politico-legal basis for "third state rights" beyond those explicitly provided under the present treaty arrangements. Both Secretary Rusk's and Professor Baxter's responses cited above confirm and explain this generalization.

There is one "Catch-22" about non-discriminatory passage that not even a more generous arrangement as to third countries alone could have cured. Old World War II warriors—including economic warfare ones—know that in time of conventional weapons war the Canal will be closed to enemies de facto by submarine and aircraft interdiction offshore from the territorial waters of Panama, even as their width may be extended under projections from contemporary Law of the Sea negotiating stances. But given improvements in long range weapons technology since World War II transit of the Canal by the United States of any major military importance can also be made into an unacceptable risk by a spatially remote enemy power center. Thus, even barring nuclear interdiction and sabotage, the Panama Canal (or Canals) does not seem to have much future relevance "in time of war. * * * "

This, it seems to me, makes problematical and illusory many of the concerns that have been voiced about American rights of defense and passage in the farther future. Military operations involving the Suez Canal since World War II have shown that even non-lock ditches are hopelessly vulnerable.

In possible contentions of force between Latin American countries both the great rivers and the artificial waterway of the region might become of significant interest, both to contending countries and to the inter-american and world communities. In such situations the present treaty's neutralization provisions might be of practical significance—until (or unless) the Security Council, the General Assembly (under the Uniting for Peace Resolution), or the Rio Pact/OAS system (to the extent still viable in this field) should "take over." In my view neutralization by bilateral arrangement—even with the possibility of third state accessions—cannot control the "higher law" regulating or controlling use of force. However, given Latin American coolness as to the Rio Pact and considering post Viet Nam influences here, it seems reasonably clear that U.S. policing of the Hemisphere against use of force by countries within the region is no longer a prime national interest.

GENERAL CONCLUSION

In relationship to neutrality, operations, and defense, the wartime national interest of the United States in the present lock canal would have to be heavily discounted in any serious military operation involving the United States and an enemy with normal modern interdiction capabilities. Thus, it is only in time of peace that the Canal seriously matters to the United States. And even in peacetime, it is an installation that is steadily declining in importance as modes of transport shift and its natural limitations restrict its use. We should avoid, therefore, an American version of the Suez Syndrome that gripped the British and the French in 1956 and led to their humiliation. The "Sad Port Said" episode seems only foolish today.

Let us take care not to run the same risk! To repudiate these treaties and to attempt to "hold" the Canal and the Zone under present political conditions in the world would be to repeat here a lamentable, "lifeline of empire" syndrome.

The Senate should, of course, give full attention—but not necessarily full faith and credit—to those of military backgrounds or viewpoints who have declared that the Canal must be "defended" against "international communism," etc. Defended when? Against what? How? With what assurance of success as against sabotage and jungle warfare? After losing over five billion dollars of materiel alone in Viet Nam?

ON PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations continued hearings January 20 on the Panama Canal treaties and received testimony from the following:

1. Ely M. Brandes, President, International Research Associates, Palo Alto, Calif.
2. Henry Geyelin, President, Council of the Americas, Washington, D.C.
3. Patrick N. Hughson, President, Association of American Chambers of Commerce in Latin America, Washington, D.C.
4. Donald G. Griffin, Vice President, Distribution and Transportation, PPG Industries, On behalf of: Transportation Association of America, Washington, D.C.
5. James J. Reynolds, Director, American Institute of Merchant Shipping, Washington, D.C.
6. Melvin Shore, Chairman, U.S. National Transportation Policy Committee, The American Association of Port Authorities, West Sacramento, Calif.
7. Seymour Milstein, President and Chief Executive Officer, United Brands Company, Washington, D.C.

I ask unanimous consent that the prepared text of the statements given before the committee be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

STATEMENT BY ELY M. BRANDES

My name is Ely M. Brandes and I reside at 554 Madison Way, Palo Alto, California. I am an economist and president of International Research Associates, also of Palo Alto, a small economic research company.

I did my undergraduate work at Birmingham Southern College in Birmingham, Alabama, and I received my graduate degree from Harvard University. I have worked as an economist for more than 30 years, including 13 years for the Federal Government. Among the federal agencies which I worked for were the Department of Commerce, the Tennessee Valley Authority, and the Atomic Energy Commission. In 1959 I joined the Stanford Research Institute in California as a senior economist. In 1968 I became an independent consultant and in 1971, an associate and I formed our present company of which I have been president since the beginning.

I have worked on projects related to the Panama Canal since 1964. During the last 14 years I have authored or co-authored more than 20 studies sponsored by the Panama Canal Company on such subjects as traffic projections, the sensitivity of Canal traffic to toll increases, and the economic value of the Canal, etc. My most recent assignment on this subject was sponsored jointly by the U.S. Department of State and the Panama Canal Company and just within the last few days we completed a draft of our reports. Because of the relevance of our findings to the treaties being considered by this Committee and by the United States Senate, I would like to present before this Committee a brief summary of our report and an assessment of its significance. I also wish to say that my statement here this morning represents the first public release of any information concerning the results of the study.

Our study had three major objectives. First, we were asked to develop a comprehensive set of traffic and revenue projections for the Panama Canal covering the period from 1978 to 2000. Second, we conducted a sensitivity analysis to determine what effect toll rate increases of various levels would have on future traffic and revenues of the Panama Canal. As part of this exercise, we also made an estimate of the maximum amount of toll revenue that could be raised. Finally, we made an analysis of the likely effect of inflation on the Canal's future ability to raise sufficient revenue to meet its costs.

With respect to future traffic and revenues, our study projects that Panama Canal traffic will increase from about 123 million tons of cargo in 1977 to about 202 million tons in the year 2000. In terms of toll revenue, and assuming present rates, the increase will be from about \$163 million to \$182 million in 1978, to \$197 million in 1980 and to about \$264 million in the year 2000. The projected growth rate in traffic for the 23 year period is slightly more than 2 percent per year. This is less than the growth rate in traffic experienced over the last 25 years when the Canal benefited greatly from the economic expansion in the Pacific basin area, and particularly, from the enormous growth in trade between the United States and Japan.

Included in our projection of future Panama Canal traffic was a significant volume of North Slope petroleum which began to move through the Canal last summer. The volume of this movement will grow sharply in the next few months. We estimate, for instance, that Alaska oil shipments will total about 25 million tons in the FY 1979, which starts October 1, 1978, and will contribute nearly \$30 million or 15 percent of all toll revenues during that year. After 1980, Alaska oil shipments

through the Canal will begin to decline but their contribution to traffic will be substantial throughout the 1980's.

It is obvious from these figures that the contribution by Alaska oil to Panama Canal traffic and revenues over the next five years will be very significant. In making our estimate with respect to Alaska oil shipments, we were fully aware that the entire question of moving Alaska oil to the East is still surrounded by many imponderables, such as the likelihood of new pipelines, the possibility of new oil finds, the future effect of conservation measures, etc. We believe we have been able to deal with most of these imponderables realistically and we think our projection is sound in spite of the many uncertainties.

However, there is one key reservation that we must make with respect to our forecast of future Alaska oil shipments through the Panama Canal, and, by extension, with respect to our total forecast of Panama Canal traffic and revenues over the next five to ten years. The reservation is that our forecast only holds as long as the present law which prevents the sale of Alaska oil to Japan remains in effect. We say this not because we have any firm convictions about the fundamental merits of this law; in fact, we have no opinion on this. But our knowledge of the economics involved simply tells us that should the oil companies be permitted to dispose of Alaska oil overseas, they will do so and not ship any of it through the Panama Canal.

With respect to the second major objective of our study, the sensitivity of Canal traffic to toll increases, we found that toll rate increase of 15 percent to 50 percent would result in traffic losses, on a tonnage basis, ranging from about 2 percent for a 15 percent increase to a 12 percent loss for a 50 percent increase. In terms of revenue, however, a toll rate increases in that range would result in revenue gains of between 13 percent and 33 percent. Increases in toll rates of more than 50 percent would result in little additional revenue. In fact, we found that the very maximum amount of revenue that could be obtained was only about 40 percent more than the revenue that was projected without any toll increase. To get this maximum amount would require a total increase of somewhere between 75 percent and 100 percent.

Since we had conducted a similar maximum revenue study some three years ago, we had an opportunity to compare the results of the two studies. We found that the estimates in the two studies were quite similar in the sense that both indicated that the attainment of maximum revenue would require total rate increases of between 75 percent and 100 percent. The two studies differed in their estimates of the amount of additional revenues that can be gotten through total increase. Our 1975 study showed that setting toll rates at the maximum level would yield 50 percent more in revenues; the present study shows that maximum toll rates would yield only 40 percent more in revenues.

The basic reason why the Panama Canal's ability to raise additional toll revenue is so severely limited can be found in the fact that many, if not most, users of the Canal have alternatives available to them which, in terms of total costs, are not much greater than the cost of using the Canal. The alternatives vary considerably, depending upon the commodity and route involved. For instance, for the shipment of dry bulk material, such as coal from the United States to Japan, the principal alternative is to use bulk carriers of 100,000 DWT tons or so and proceed via the Cape of Good Hope. In the case of imported television sets from Japan, which are shipped in containers, the best alternative is to ship the container to Los Angeles or Seattle and then by rail to the eastern half of the country. In the case of lumber shipped from British Columbia to the east coast of the United States, the alternative is to go to an all rail movement. In the case of petroleum product shipments through the Canal, the alternative is often a product exchange in which company A, which wants to ship jet fuel from the Atlantic to the Pacific, makes an agreement with company B, which wants to ship the same product from the Pacific to the Atlantic, to exchange products and then neither company ships any jet fuel through the Canal. Finally, in the case of iron ore imports by the United States from Peru, for instance, which once upon a time were quite substantial, the alternate solution was and is for Peru to sell most of its iron ore to Japan and for the United States to rely more heavily on domestic iron ore.

It is worth noting that with respect to all of these alternatives, the buyers and sellers involved appear to be almost equally well off whether they use the Canal or choose an alternative. The fact that the shift to alternatives can occur as a consequence of small increases in Panama Canal tolls is an indication that the cost difference between going through the Canal and doing the next best thing is often very small.

The third major objective of our study was to analyze the probable effects which inflation will have on the future cost of Canal operation as compared to the ability

of the future Panama Canal Commission to raise tolls. As the members of this Committee are undoubtedly aware, the proposed treaty with Panama specifies that a portion of the royalty payments to be made to Panama is to be adjusted upward in line with the expected upward movement of a price index. It must also be expected that the other costs associated with operating the Canal will continue to increase. At the same time, our projections indicate that traffic and revenues will, on average, increase only at a moderate rate, much less than the rate experienced over the last 15 years.

All of these circumstances seem to underscore the probability that toll rates may have to be increased several times during the next 23 years if the Canal is to continue on a financially self-supporting basis. The question, therefore, arises whether the present and prospective sensitivity of the traffic to toll increases is such that these increases can be absorbed; or whether at some point, soon, the Canal's ability to raise tolls will be exhausted and any further toll increases will actually result in less and less revenue.

Our findings on this question, unfortunately, are not conclusive. The future ability of the Canal to raise sufficient revenues to cover its costs depends partly on how fast the cost of Canal operation increases and partly on how well these cost increases are matched by increases in the cost of the alternatives. As my example showed, many alternatives to the Canal involve alternate transportation services which are also affected by inflation. However, there are other alternatives which do not require any measurable service. Moreover, the recent devaluation of the U.S. dollar in relation to other currencies has had the effect for many foreign ship operators of making Panama Canal transit cheaper and, thereby, lessening the impact of past or future toll rate increases.

Given the many and often conflicting trends which affect the present and future costs of transiting the Panama Canal versus its competing alternatives, it would be hazardous, if not foolhardy, to attempt a pinpoint forecast of their relative positions some 20 years hence.

Our own conclusion on this point is that for the next five to ten years a future Panama Canal Commission should have sufficient revenue resources available—actual or potential—to meet its costs. This means, in effect, that during that period the income required should either be available from toll revenues at current rates; or if necessary, those rates could safely be raised to obtain the additional amounts likely to be needed. But beyond ten years the uncertainties simply become too numerous to permit a worthwhile forecast.

So much for the principal findings. Let me now present a personal assessment of the significance of our study to the deliberations of this Committee and of the United States Senate.

Our most important finding, as far as the treaties are concerned, is that actual or potential toll revenues will be sufficient to meet the needs of the present Panama Canal Commission for the next five to ten years though our study did not concern itself with the projected expenditures of the organization during this time period—these will undoubtedly be presented by the Panama Canal Company in due time—I am familiar with the budgetary assumptions made last summer during the last phase of the negotiations. Compared to those, both our revenue and sensitivity projections indicate that the actual or potential toll revenues that will be available during this period will be larger than was estimated last summer.

A second significant conclusion of our study is that beyond the next ten years we can give no assurance about the ability of the Canal to maintain itself on a financially self-supporting basis. One very important aspect of this conclusion is that we did not come to it because we detected some insurmountable obstacles in that distant future. As I said before, our reason was simply that there are far too many uncertainties on this point to permit us to make a long-range forecast which we could consider credible.

Finally, while it is impossible to predict with any degree of certainty whether the Panama Canal can continue to function over the next 22 years on a financially self-supporting basis, I am convinced that the quality of the management of the future Panama Canal Commission will play a significant role in determining the economic life-span of the Canal. In a new organization, good top management is essential to make certain that the size and scope of that new organization matches the duties assigned to it and no more. Good management may also have an effect on the future level of revenues because Canal users often consider both the cost and the service quality of a transit before choosing between the Panama Canal and one of the alternatives.

I would therefore urge this Committee and the United States Senate to use their influence and power to assure that the appointments that will be made to the

Panama Canal Commission measure up to the level of competence which these positions will so evidently require. The importance of the Panama Canal, past, present and future, is such that it deserves nothing less.

This concludes my statement.

STATEMENT BY MR. HENRY R. GEYELIN

Mr. Chairman, members of the Committee, on behalf of the Council of the Americas, I want to thank you for this opportunity to present our views. As you know, the Council of the Americas is composed of over 200 U.S. corporations, comprising nearly ninety percent of all U.S. private investment in Latin America and the Caribbean. The mission of the Council is to further understanding and acceptance of the role of private enterprise as a positive force for the development of the Americas.

The Council of the Americas would like to urge speedy ratification of the new treaties with Panama. We are encouraged by the constructive negotiations now underway to clarify any misunderstanding and to resolve any issues which might impede the conclusion of new Panama Canal treaties. The Council's decision to support ratification of such treaties resulted from a consensus vote of the Board of Trustees in which 95% favored the Council's taking a supportive role.

We have been aware for quite some time of the hemispheric impact of the success or failure to resolve the Panama Canal treaty issue, and our extensive experience with Latin American affairs had led us to believe that there is a compelling need to modernize our relations with Panama.

Throughout 1976 and 1977, the Council supported the continuation of the negotiating process, as well as the need for a new relationship with Panama through good faith negotiations. To achieve these goals, the Council formed a Work Group on Panama to stimulate nonpartisan debate on both sides of the issue. Our statement of support for ratification of the treaties, however, is not necessarily a consequence of our prior support for the negotiating process. The Council carefully avoided taking a position on any possible terms of the treaties themselves until 1) they had been made public, and 2) member corporations had had an opportunity to analyze the documents carefully and to discuss fully both sides of the issue. This analysis has now been completed and we have decided that ratification of the new Panama Canal treaties, with appropriate clarification, merit the support of the Council of the Americas.

We believe the treaty enables the U.S. to continue to keep the Canal open by working with Panama, a long-term ally who has never failed to keep its international obligations. We further believe that the gradual nature of the proposed change in the status of the Canal over the next quarter century is the best means by which to insure the fundamental interest of the U.S.—an open Canal that is continuously accessible to world commerce.

Furthermore, we do not feel that the United States is "surrendering" the Canal to an unstable nation. We are entering into a mature partnership of mutual responsibility with a long-term friend and strong supporter of free enterprise for the benefit of the United States, Panama, and the world.

Above all, the fundamental interest of the U.S. is an open Canal, efficiently operated and maintained, accessible to ships of all nations, and permanently neutral. We believe that the best way in which to preserve this interest is for the U.S. Senate to consent to the ratification of these new treaties, with the appropriate clarifications, and to enter into the partnership that they create.

The Council of the Americas views positively the strong emphasis on free enterprise and private investment in Panama's economic development planning. Panama's goal of becoming a major regional center for shipping and trade will depend on its ability to deal successfully with private enterprise internationally. In addition, Panama's development plans indicate a healthy reliance on private investment.

To illustrate this point, Dr. Nicolas A. Barletta, Minister of Development and Planning of the Republic of Panama, at the Annual Meeting of the Council of the Americas on December 5, 1977 pointed out that because Panama's development plans are subject to its ability to act as a service center for regional trade activities, Panama would not endanger the volume of Canal traffic by requesting that the U.S. raise toll rates to an unreasonable level.

Panama's economic development planning, in our opinion, demonstrates a cautious and pragmatic approach to their problems. It is our belief that this responsible attitude will continue if the treaties are ratified and Panama increases its participation in the Canal enterprise.

The Council of the Americas supports these treaties because they are in the best interests of the United States. They are NOT special interest treaties, and they are NOT designed to "bail out" U.S. corporations. These treaties have been under negotiation since 1964, and Panama has experienced a very healthy increase in U.S. investment during this period.

These new treaties, with the appropriate clarifications, are not perceived as a weakening of the United States or as a threat to our national security. Our willingness to modernize our relationship with Panama is testimony to our belief in the sovereignty of nations, the right to self-determination, and our sincere desire for global cooperation. The Council of the Americas recognizes, as will the rest of the world, that the ratification of these treaties will be proof of our strength as a nation and as a world leader.

STATEMENT BY PATRICK N. HUGHSON

Mr. Chairman: I am Patrick N. Hughson and I appear today in my capacity as president of the Association of American Chambers of Commerce in Latin America, which is better known by its acronym, AACCLA. It is an honor for me to have been invited to testify on the Panama Canal Treaties now before your Committee, and I am pleased to have traveled to Washington from Santo Domingo for this purpose. I am a businessman and have worked for over 25 years in Latin America for the Aluminum Company of America. Accompanying me today is Mr. Keith L. Miceli, executive secretary of the Association.

AACCLA was founded by the American chambers of commerce in Latin America in 1967 to provide a means for them to collectively address new challenges created by the region's economic growth. The American chamber movement in Latin America, however, began in 1915 with the establishment of the chamber in Rio de Janeiro. Today, AACCLA consists of 16 American chambers whose underlying memberships represent over 17,000 U.S. and host country companies and individual businessmen located throughout the Hemisphere.

These businessmen and their companies are responsible for managing the overwhelming majority of the estimated \$24 billion of U.S. foreign direct investment in the region as well as a large part of the \$35 billion of total U.S.-Latin American trade. Through AACCLA, our members formulate positions on issues that critically affect the economic and commercial relations between the United States and Latin America.

The Panama Canal is clearly such an issue. For many years, most U.S. business leaders working in Latin America have recognized the importance for the United States to modernize its relationship with Panama vis-a-vis the Canal. When the current round of negotiations got underway, the initiative was noted by many of us as a timely effort to bring this 70 year-old arrangement into a form more in agreement with contemporary U.S.-Latin American relations, while preserving the U.S. national interests involved.

For this reason, AACCLA was the first U.S. business association, I am proud to say, to endorse renegotiation of the Panama Canal Treaty based on the Tack-Kissinger "principles" agreed to in 1974. We support the U.S. commitment to seek a new and fairer arrangement with Panama and applaud the wisdom of four Administrations in working to protect our national interests by looking to the future and not to the past.

We believe that the "principles" provided a sound basis for safeguarding the national interests of both nations and we were convinced that the negotiations were being conducted on a basis of good faith since both nations share the primary objective of maintaining an open and efficiently operated canal. We therefore actively supported the negotiations process and have opposed Congressional initiatives which would have blocked progress.

Late last year, long and careful review was given by AACCLA to the terms of the draft treaties and to related arguments—both pro and con. On November 1, 1977, meeting in San Jose, Costa Rica, the AACCLA Board of Directors approved a policy urging Senate ratification of the Treaties. The text of our policy position is attached to my statement.

AACCLA supports ratification for two fundamental reasons:

First, the Treaties would bind the United States and Panama in a partnership committed to maintaining the Canal open, secure, and efficiently operated. We know, for example, that under the terms of the Panama Canal Treaty, the United States will continue to have primary operating responsibility for over 20 years or until the year 2000. During this time period, Panamanians, who now constitute 70

percent of the labor force, will be trained to assume the remaining administration and technical jobs.

As U.S. businessmen in Latin America, we are well aware of the competence of Latin Americans, including Panamanians, as many currently serve in high-level corporate positions, successfully managing large, complex, multi-million dollar enterprises. Therefore, we feel, and indeed have no doubt, that the Panamanians can, in such a time span, master the technical and managerial requirements for administering and operating the Canal.

Of great significance as a motivating factor for sound administration by Panama is the fact that the Treaties increase Panama's economic stake in the Canal. What Panama earns from this enterprise will be directly related to the level of traffic that moves efficiently through the Canal. It should be remembered that Panama derives approximately 12 percent of its gross domestic product, 18 percent of its foreign exchange earnings, and employs over 10,000 of its people in Canal-related activities. With the Canal being their most important economic resource, it follows that the Panamanians will be extremely motivated to keep the Canal open and efficiently operated.

Future Canal tolls are a consideration of importance to businessmen in the region. We feel the economic incentives I just mentioned, along with certain commercial factors, will have a moderating effect on the setting of tolls. The reason is that excessive increases would result in a decline of total revenues to Panama because of lessened demand. Like similar waterways elsewhere, the Canal operates in a competitive "market" where users can consider options. Such options to the Canal include: alternate routing, alternate modes of transportation, and alternate market sourcing for certain commodities. There is no doubt in my mind that the Panamanians are well aware that the levy of excessive tolls will make the Canal uncompetitive and market forces would result in the use of these "alternatives." I have no doubt that they are also aware that once such a process of using alternates is underway, the financial and organizational investment by the importers, exporters, and shippers involved is unlikely to be easily abandoned.

In this regard it is important to keep in mind that use of the Canal is relatively much larger for many Latin American countries than for the United States. For example, Nicaragua, El Salvador, Chile, Colombia, Guatemala, Peru, and Costa Rica use the Canal for transiting anywhere from 30 to 80 percent of their international trade. These countries will not hesitate to remind their Latin American "sister" nation about the vital importance of reasonable tolls for their economic well-being.

The second reason that AACCLA supports ratification of the Treaties is that their acceptance will remove a major issue used by those who espouse anti-American feelings throughout Latin America. It will demonstrate to the developing world, including Latin America, that the United States is willing to seek new relationships with smaller countries in keeping with today's world where power alone does not guarantee right.

We must understand that, just as the Canal's construction came to symbolize the resourcefulness and ingenuity of the American people, the 1903 Treaty is a symbol to the Panamanian people and Latin America as well—one which unnecessarily invokes the old image of U.S. paternalism and interventionism.

For years, Latin American governments and peoples have urged the United States to conclude a more just and equitable treaty with Panama.

That Latin America has approved the long-awaited Treaties is evidenced by the media coverage which I have collected:

A columnist in the nationalistic Mexican newspaper *Excelsior* wrote, "On very few occasions has there been so wide a consensus in the Hemisphere as in the case of supporting the Panamanian cause * * *"

The conservative Brazilian newspaper *O Estado de Sao Paulo* declared that the Treaties "represent a great success for American diplomacy. This success, however, will be complete and total only if approved by the U.S. Senate * * * The Canal represents the last residue of American colonialism."

The liberal *El Tiempo* of Bogota, Colombia, while noting the respect won by the United States "all over the world" declared, "It is regrettable that many of the treaty's critics rely on distortion of what the accord actually signifies in order to avoid conceding the elemental justice it calls for."

The English language *Daily Journal* of Caracas, Venezuela, saw it as "a great achievement that the Government of the number-one world power and the Government of one of the world's weakest nations could peaceably reach * * * an agreement on such a difficult historic issue."

The independent *La Republica* of San Jose, Costa Rica, declared, "The signing of the new treaty turns a dream into reality. At the same time it shows the way to a

new road. It has come about because of good will on the part of the United States, responsibility from the Panamanians and solidarity of all the countries belonging to the OAS * * *

The independent *Listin Diario* of Santo Domingo, Dominican Republic, asserted that, "The U.S. now can have the satisfaction of knowing that its child out of wedlock has been legitimized as the precious resource of Panama, to be * * * for the service of Panamanian development * * *"

The conservative *La Segunda* of Santiago, Chile, stated that if the Treaties fall Senate ratification, it would "be the equivalent of Woodrow Wilson's failure to obtain approval of the League of Nations treaty in 1920. But if the Senate gives its approval, it will be a great success for the U.S. * * *"

Regarding the September 7 treaty signing ceremony in Washington, the independent *El Universo* of Guayaquil, Ecuador, praised President Carter for courage and said the occasion "can signify, if he continues his policy, a historic change for the Hemisphere with a new sense of equality and respect prevailing in future inter-American relations * * *"

And, the *El Expreso* of Lima, Peru, declared that "for all the countries of America, Wednesday was a day of jubilation and renewed hope in fraternal ties within the Hemisphere"

Given views such as these, which are common throughout Latin America, ratification of the Treaties will be seen as a reaffirmation of our American values of justice and national self-determination—the principles upon which our country was founded.

With respect to the national security aspects of the Treaties, our Board members accept the assurances by President Carter, the Secretaries of State and Defense, and the Joint Chiefs of Staff, that the terms of the Treaties provide the necessary guarantees for the secure, peaceful, and expeditious transit of our ships in peace and war. We found that the Carter-Torrijos "Statement of Understanding" prompted, in part, by your Committee hearings, further clarified those Treaty provisions.

In the event that the Treaties are not ratified by the U.S. Senate, I believe that our relations with Panama would be shattered and our relations with Latin America damaged. More importantly, I believe that it would provide extremists on both ends of the political spectrum throughout the Hemisphere—particularly the leftists—a tailor-made issue with which to whip-up anti-American feelings. It would create a highly charged emotional environment in which the Canal itself might be jeopardized, along with other symbols of the United States—including American companies throughout Latin America.

In conclusion, the AACCLA policy position in support of ratification of the Treaties, adopted by AACCLA's Board of Directors, on behalf of the American chambers of commerce throughout the Hemisphere, is based on practical considerations. It is founded in our belief that: (1) the Treaties propose a feasible means for safeguarding future U.S. commercial interests in the Canal, and (2) ratification of the Treaties will be the most important U.S. action taken in recent years leading to improved relations with Latin America.

The policy position of AACCLA follows:

AACCLA POLICY POSITION ON THE PANAMA CANAL TREATIES ADOPTED AT THE V MID-YEAR
MEETING IN SAN JOSE, COSTA RICA, NOVEMBER 1, 1977

The Association of American Chambers of Commerce in Latin America in 1975 endorsed the need for a renegotiated treaty which would protect the national interests of Panama and the United States and assure effective operations of the Canal as an international commercial facility.

It is the consensus of the Board of Directors of the Association of American Chambers of Commerce in Latin America that the terms of the Panama Canal treaties of 1977 are (1) consistent with its earlier support of the Statement of Principles of 1974; and (2) that the treaties provide a basis for safeguarding the national interests of both nations in the Panama Canal as a reliable and secure international commercial facility.

Goodwill between the two nations is an essential element for the effective implementation of any agreements and, in the opinion of the Board, ratification of the treaties would generate such goodwill with Panama as well as throughout the hemisphere.

Therefore, AACCLA urges ratification of the Panama Canal treaties.

STATEMENT OF DONALD G. GRIFFIN

Mr. Chairman and members of the Committee, my name is Donald G. Griffin. I am vice president—distribution and transportation of PPG Industries, Inc., of Pittsburgh, Pennsylvania. I am also chairman of the Policy Implementation Committee of the Transportation Association of America, known as TAA, of Washington, D.C. I appear today on behalf of TAA. With me is Colin Barrett, vice president—governmental affairs of the Association.

TAA is a national non-profit organization whose members include carriers of all modes of transportation—airlines, motor carriers, pipelines, railroads, water carriers (both domestic and international) and freight forwarders—as well as commercial users of the services of these carriers and investors in the transportation industry. The role of TAA is to provide a forum wherein the divergent views of these varied interests may be reconciled for the good of the transportation community as a whole on issues of major importance to transportation. Members include leading corporations from all sectors of the U.S. business community; as information, I am attaching to copies of my prepared statement a roster of the TAA Board of Directors, to indicate the breadth and scope of TAA's membership.

My statement will deal with the Panama Canal as an artery of commerce—including U.S. intercoastal and international—and the economic impact of the proposed treaty on the users of the Canal, both domestic and foreign. I will also make observations regarding its impact on the U.S. taxpayer and the Republic of Panama. I will not deal with any geopolitical or military aspects of the Canal.

(1) The Canal as an instrument of commerce. In fiscal 1976, 12,150 transits were made through the Canal, with a total of 127.8 million Panama Canal net tons. Approximately four percent of this tonnage was moving from U.S. ports to U.S. ports; sixty-two percent was moving from or to U.S. ports to or from foreign ports, and thirty-four percent was moving from foreign ports to foreign ports.

If not a monopoly, the Canal represents an artery which dominates the choice of its usage for those now employing it. Alternatives to the use of the Canal are "land-bridge" operations across the United States or oceanborne operations around Cape Horn. In many cases these alternatives are impractical or grossly uneconomical, leaving cargoes that must cross between the oceans with no realistic option save transit of the Canal. Studies have been conducted which indicate that tolls could at least double before most cargoes would receive even initial consideration for diversion.

In this respect, we take note that the treaty proposes to strengthen Panama's monopolistic position by committing the United States not to consider a proposed new sea-level canal, which might compete with the existing Panama Canal, through any Latin American nation other than Panama—save with Panama's consent.

(2) *Security of commercial transit.* It is our understanding that one of the objectives of the new treaty is to enhance the long-term security of the Canal as an artery of commerce. We highly applaud this objective.

(3) *Economic impact on various parties.* Attached to the written copies of my statement are appendices in which we have sought to project the economic impact of this treaty on various parties. In addition to projections of other commercial cargoes, we are presuming that 400,000 barrels per day of Alaskan crude oil will transit the Canal to U.S. Gulf and Atlantic ports.

(a) *Impact on Republic of Panama.* We note that direct payments to the Republic of Panama increase from a present level of \$2.3 million per year to approximately \$67.5 million a year, exclusive of an additional payment of up to \$10 million from any revenue surplus resulting from Canal operations. There are also provisions for the future increase of two payments included in this projected \$67.5 million total—the \$10 million annual service payment, and the 30¢-per-ton annuity payment.

(b) *Impact on users of the Canal, through tolls.* We note that tolls are projected to increase by thirty percent, or \$59.8 million, over present levels. Forty-three percent of the impact of this toll increase will fall on U.S. users of the Canal, and fifty-seven percent on foreign users, mostly from the free world.

(c) *Impact on U.S. taxpayers.* The U.S. Government, under implementing legislation now being prepared by the State Department will forego collection of interest payments from the Panama Canal Company, which in fiscal 1978 have been estimated by the Company at \$19.7 million.

Thus, shippers and the U.S. taxpayers together would in our fiscal 1979 projection contribute a total of approximately \$79.5 million. In addition to the \$67.5 million in direct payments to the Republic of Panama, another approximate \$11.8 million will find its way into the Canal operations and the Panamanian economy, we project.

TAA's basic concern is with the prospective 30% increase in tolls. Canal tolls have already been increased 19.7% in 1974 and an additional 19.5% in 1976. We also note

that the projected 30% increase will apply on the approximately 17¢ per barrel it now costs to ship Alaskan crude oil through the Canal in quantities which will soon rise above 400,000 barrels per day.

TAA policy adheres to the principle that the users of transportation facilities should bear reasonable costs thereof. With respect to the Panama Canal, our policy, however, is that tolls should be increased no more than necessary to cover "direct operating costs of the Canal itself." It is our view that the magnitude of the increases in payments to the Republic of Panama under this treaty may suggest the presence of considerations in excess of what would be viewed as normal increases in these operating costs. We do not know what weight was given by the treaty negotiators to these payments reflecting the overall national interest of the United States *vis-a-vis* the Republic of Panama.

Our proposals to lessen the economic impact of this treaty on U.S. commerce through the toll structure embrace the following points:

(1) *Interest payments to the U.S. Government.* As I stated previously, it is our understanding that implementing legislation being drafted by the State Department will include provisions foregoing further U.S. collection of interest payments on the U.S. investment in the Canal, projected in fiscal 1978 to be \$19.7 million. We support this approach.

(2) *Costs associated with assets to be transferred to the Republic of Panama.* Under this treaty, assets having a depreciated book value of \$92 million, including real estate, buildings, etc., are to be transferred to the Republic of Panama immediately upon ratification of this treaty. We understand that, under the draft implementing legislation, this transfer will not be treated as a cost to the proposed Panama Canal Commission, and operating expenses associated with these assets, including depreciation, will be eliminated from the Canal's operating budget. Again, we support this approach.

(3) *Transition costs.* The Panama Canal Company has estimated that transition costs aggregating \$9.7 million will be incurred in connection with implementation of the treaty. These are one-time costs, and as such are inappropriate, in our view, for inclusion in the rate base upon which Canal tolls are predicated. In our view, they should either be treated as capital outlays or else borne directly by the United States Government as a cost of administering the foreign policy of this nation.

(4) *Depreciation and capital expenditures.*

(a) *Depreciation of original 1903 treaty and excavations.* Commencing in 1973, a new annual cost of \$8.3 million was added to Canal operating expenses, representing depreciation (over a 40-year period) of the original 1903 treaty and excavations and other related items. It is quite inappropriate, in our view, to begin "depreciating" assets more than seven decades after the original expenditures were made, and we believe this depreciation charge should be removed from the Canal's operating budget.

(b) *Capital expenditures.* In testimony presented late last year before the Panama Canal Subcommittee of the House Committee on Merchant Marine and Fisheries, Governor H. R. Parfitt estimated that capital requirements for the Canal in future years will exceed depreciation allowances by \$7-10 million annually. This increment would, of course, be increased if our recommendation for eliminating the depreciation reserve attributed to the 1903 treaty and excavations is adopted. He suggested that such capital outlays in excess of depreciations be included in the rate base on which tolls are structured.

In our view, this comes perilously close to the error of treating capital outlays as operating costs. We believe that such outlays should be capitalized in accordance with normal business practices, and that the Panama Canal Commission should be required to meet these obligations in the same manner as commercial business enterprises—i.e., through diversion of earned surpluses, borrowings, etc. Under no circumstances should such outlays be regarded as part of the rate base, recoverable in the year they are made through the toll structure, save to the extent that their costs may be fairly attributed to that year through depreciation accounts and requirements for the servicing of indebtedness.

In this context, we feel it is inappropriate for the Canal to be permitted to earn surpluses so long as capital needs are not met through Canal revenues. To the extent earnings which might otherwise represent surpluses in excess of operating costs do not exceed accrued capital obligations, they should be treated as capital reserve funds, to be retained by the Panama Canal Commission. We note that, under provisions of this treaty, the first \$10 million of any surplus revenues must be paid over to the Republic of Panama; and that liability is a cumulative one during the life of the treaty.

We believe implementing legislation accompanying this treaty should incorporate the foregoing provisions in the interests of a sound financial structure of the Canal.

(5) *Public policy considerations in the treaty.* Defenders of this treaty have previously testified that it is intended to meet two objectives: (1) Increased security of the Canal as an artery of commerce, and (2) accomplishment of various goals of the U.S. foreign policy, such as improvement of relations with Panama and our other Latin American neighbors, improvement of the U.S. "image" abroad, etc. It would therefore appear that costs incurred as a result of this treaty are attributable in part, at least, to administration of the public policies of the United States Government.

Policies developed by the membership of TAA urge that the Government not employ its powers over the transportation industry "as an instrument of implementing social policy." By this we mean that the cost of public-policy activities and programs whose benefit will inure to the nation as a whole should be paid for by the nation as a whole, through taxpayers' funds; their cost burden should not be thrust, by Government fiat, upon any individual part of the private sector such as the transportation industry.

It is our view that the costs associated with this treaty must be attributed in some part to the implementation of U.S. foreign policy independent of the Canal and/or its operations. In this regard, we take particular note that the current payments to the Republic of Panama, amounting to approximately \$2.3 million annually, are now borne only about one-third by the Panama Canal Company; the balance of these payments are included in the State Department's budget. We believe the U.S. Government should bear a pro-rata share of the economic burden associated with this treaty, based on a fair and equitable assessment of the relative benefits of the treaty to Canal users and to the United States as a nation.

We are aware that the treaty itself now provides that these payments be made "out of Canal operating revenues." It is our understanding that this provision was incorporated in the treaty primarily for the protection of the U.S. Government, to ensure that it would incur no unforeseen financial obligations, and not at the behest of the Republic of Panama; hence, their removal from the language of the treaty should not represent a major renegotiation. Alternatively, the U.S. Government might make a direct contribution of its pro-rata share of the treaty costs to the Panama Canal Commission, with provision in domestic implementing legislation that such contribution be treated as part of the Canal operating revenues.

This treaty confronts the U.S. transportation community, to the extent it participates in movements via the Panama Canal, with the prospect of a very substantial immediate increase in tolls hard on the heels of two recent past increases, as well as the further prospect of additional future increases of unforeseeable magnitude. Under these circumstances, it is our view that the economic consequences of this treaty warrant the most careful attention by the Senate, and we urge that our proposals for alleviating its economic consequences on the commerce of the United States be given close study.

On behalf of TAA and its members, I would like to express our appreciation for this opportunity to present our views, and for your attention today.

APPENDIX A.—*Projected Fiscal 1979*

Panama Canal net tons.....	¹ 158,900,000
Canal revenues based on present tolls.....	² \$199,400,000
Canal revenues based on 30 percent ³ toll increase.....	\$259,200,000
Increase.....	\$59,800,000
Economic burden on U.S. commerce ⁴ based on present tolls.....	\$85,742,000
Economic burden on U.S. commerce ⁴ based on projected 30 percent toll increase.....	\$111,456,000
Additional economic burden on U.S. commerce ⁴ based on 30 percent toll increase.....	\$25,714,000

¹ Projected; see appendix B for derivation.

² Projected; see appendix C for derivation.

³ Minimum increase projected as necessary to cover added treaty costs; see appendix D for derivation.

⁴ Attributing 43 percent of the economic burden to U.S. commerce; see appendix E for derivation.

APPENDIX B.—*Projection of fiscal 1979 tonnage transiting the Panama Canal*

Fiscal 1977 tonnage (expressed in Panama Canal net tons) ¹	134,004,377
Fiscal 1977 free tonnage (in PCNT's) ¹	24,092
Fiscal 1977 to which tolls applied (in PCNT's)	133,980,285
Projected annual tonnage increase, fiscal 1977-79, exclusive of Alaskan oil ² (percent)	2
Projected fiscal 1979 net tonnage (in PCNT's), exclusive of Alaskan oil (rounded)	139,400,000
Projected Alaskan oil tonnage transiting the Panama Canal (in PCNT's) ³ (rounded)	19,500,000
Projected total Panama Canal net tonnage, including Alaskan oil, for fiscal 1979	158,900,000

¹ Source: Preliminary figures developed by the Panama Canal Company for inclusion in its forthcoming fiscal 1977 annual report.

² Source: Verbal communication between TAA and officials of the Panama Canal Company.

³ Independent research conducted by TAA indicates that, when the Alyeska Pipeline reaches its scheduled maximum flow of 1.2 million barrels per day—which is expected in late summer or early fall of 1978—at least 400,000 barrels per day (or 146,000,000 barrels per year) will have to be moved to trans-mountain eastern or midwest points for refining and distribution. There is no possibility that any projected trans-mountain pipeline can be constructed and operational before early in fiscal 1980 at the earliest, and other modes of transporting this oil (such as via Cape Horn and the Straits of Magellan) are considered economically or operationally impracticable. Hence, virtually this entire volume, at a minimum, must move to Gulf or Atlantic destinations via the Panama Canal. Officials of the Panama Canal Company advise that there are approximately 7.5 barrels of oil per Panama Canal net ton.

It should be noted that the Alyeska Pipeline did not commence operations until July, 1977, and no oil moved out of the port of Valdez, Alaska, until August of 1977. Virtually no Alaskan oil, thus, is included in the fiscal 1977 tonnage figures of the Panama Canal Company; all of it represents new, incremental traffic over and above projections based on fiscal 1977 actual tonnage.

APPENDIX C.—*Projection of fiscal 1979 Panama Canal toll, revenues*

[Based on present tolls]

Present toll per laden Panama Canal net ton	\$1.29
Present toll per Panama Canal net ton in ballast	\$1.03
Weighted average ¹ toll per Panama Canal net ton, loaded and in ballast	\$1.255
Projected fiscal 1979 total net tonnage transiting Panama Canal (in Panama Canal net tons) ²	159,800,000
Projected fiscal 1979 toll revenues (based on present tolls) ³	\$199,400,000

¹ Determined on the basis of fiscal 1978 projections developed by the Panama Canal Company and incorporated in testimony presented by Governor H. R. Parfitt to the Panama Canal Subcommittee of the House Committee on Merchant Marine and Fisheries November 30, 1977. The Company estimates that approximately 141,570,000 Panama Canal net tons will transit the Canal during fiscal 1978, generating toll revenues of \$177,637,000. Inherent in these figures is the presumption that approximately 86.5% of this tonnage will be laden, and 13.5% in ballast. These percentages comport with those derived for fiscal 1976 from data included in the Panama Canal Company's annual report for that year, as well.

² See Appendix B for derivation of this projected figure.

³ Determined by multiplying projected fiscal 1979 Panama Canal net tonnage by \$1.25½, the average toll for all traffic, laden and in ballast.

APPENDIX D.—PRELIMINARY ESTIMATE OF PANAMA CANAL COST FOR FISCAL 1978

[In thousands of dollars]

	1978 budget	1978 with treaty changes
Operating expenses:		
Maintenance of channels and harbors.....	\$22,563	¹ \$22,603
Navigation service and control	40,732	38,316
Locks	24,759	24,759
General repair, storehouse, engineering, and maintenance services	8,966	9,108
Marine terminals	19,801	1,659
Transportation and utilities.....	22,137	¹ 25,353
Retail and housing	51,504	6,303
Other	44,886	41,383
General and administrative	26,231	25,662
Governmental activities	85,968	² 22,097
Public service payments to Panama		10,000
Repayment of prior year's interest costs	5,273	³ 5,273
Subtotal	352,820	232,516
Interest	19,706	
Fixed annuity to Panama		10,000
Annuity based on Panama Canal net tonnage		42,471
Total operating expenses	372,526	284,987
Revenues other than tolls:		
Navigation service and control	29,962	26,247
General repair, storehouse, engineering, and maintenance services	6,062	3,155
Marine terminals	24,151	1,645
Transportation and utilities.....	23,950	¹ 26,521
Retail and housing	47,169	5,866
Governmental activities	63,132	115
Other	2,351	3,068
Total revenues other than tolls	196,777	66,617
Net costs without tolls	175,749	218,370
Capital outlay expenditures in excess of depreciation	7,133	(⁴)
Transition costs:		
Severance pay		6,093
Repatriation		1,350
Plant relocations		2,236
Total transition costs		9,679
Total recoverable from tolls in 1978 dollars		228,644
Toll revenue at existing rates		177,637
Net deficiency in toll revenue		50,412

¹ Both costs and revenues in "Transportation and utilities" and "Maintenance of channels and harbors" increase due to reclassification on internal credits for intraagency services, an offset to costs, to a revenue transaction representing services provided activities transferred to other Government agencies and the Republic of Panama.

² The restated figures for governmental activities include principally cost for fire, sanitation and industrial health services, sewers and public areas maintenance and, on transitional basis, police, and courts.

³ The 1977 budget estimated repayment to the Treasury of \$5,300,000 in unearned costs withheld in prior years. The actual repayment in 1978 will be made to the extent earned, and the balance, if any, repaid from earnings projected for fiscal year 1979.

⁴ It is expected that capital outlay expenditures will be constrained so as to approximate the level of depreciation charged through the transition period. However, over the long run, capital outlay expenditures will range between \$7,000,000 and \$10,000,000 in excess of depreciation.

Note: TAA predicts that a 28.4-percent increase in projected fiscal year 1978 toll revenues will be required to make up the projected deficit to allow for traffic diversion resulting from a toll increase of this magnitude. TAA estimates that the minimum toll increase that will be immediately required, based on these figures, will be 30 percent.

Source: Reproduced from testimony presented by Gov. H. R. Parfitt to the Panama Canal Subcommittee of the House Committee on Merchant Marine and Fisheries, Nov. 30, 1977, showing effect of treaty changes superimposed on fiscal 1978 operating budget.

APPENDIX E.—ESTIMATE OF PANAMA CANAL TOLL BURDEN ON U.S. ECONOMY

(In thousands)

	Total	U.S. import/export		U.S. domestic	
		Amount	Percent	Amount	Percent
Panama Canal traffic:					
Fiscal 1977 actual	134,000	83,080	¹ 62.0	5,360	¹ 4.0
Fiscal 1979 projected tonnage (less Alaskan oil traffic) ²	139,400	86,428	62.0	5,576	4.0
Fiscal 1979 projected Alaskan oil traffic ³	19,500		0	19,500	100.0
Total	158,900	86,426	54.4	25,076	15.8

¹ Based on actual performance in fiscal 1976, from the annual report of the Panama Canal Company for that year. Similar percentages of Panama Canal traffic moved in U.S. import/export and domestic commerce in recent years prior to fiscal 1976, and it may reasonably be presumed that these approximate percentages of Panama Canal traffic will continue to move in U.S. commerce (excluding Alaskan oil) for the foreseeable future.

² See app. B, footnote 2.

³ See app. B, footnote 3.

Note: It is presumed that 100 percent of the toll burden attributable to domestic U.S. traffic falls on the U.S. economy. It is further presumed that 50 percent of the toll burden of U.S. import/export traffic falls on the U.S. economy, with the remaining 50 percent falling on the economies of America's trading partners regarding this traffic. Based on these assumptions, the U.S. economy bears a toll burden equal to 15.8 percent plus $\frac{1}{2}$ of 54.4 percent, or 43 percent.

APPENDIX F.—IMPACT OF TAA RECOMMENDATIONS ON TOLL-INCREASE NEEDS, FISCAL 1979

	Without treaty	With treaty	
		Amount	Difference
I. Based on Panama Canal Company projections: ¹			
Tolls (loaded/ballast)	\$1.29/103	\$1.68/1.34	
Toll revenues based on fiscal year 1979 traffic projections (millions) ²	199.4	259.2	\$59.8
II. Adjustments recommended by TAA (millions):			
1. Eliminate interest payments to U.S. Government ⁴		(19.7)	(19.7)
2. Eliminate costs associated with assets being transferred immediately to Panama ⁴		(?)	(?)
3. Eliminate 1-time transition costs, and ensuing capital expenditures of approximately equivalent annual amount ⁵		9.7	9.7
4. Eliminate depreciation cost for 1903 treaty and excavations		8.3	8.3
Subtotal		17.0	17.0
Subtract (II) from (I) above (millions)		242.2	42.8

¹ Based on testimony presented by Governor Parfitt before the Panama Canal Subcommittee of the House Committee on Merchant Marine and Fisheries, Nov. 30, 1977; see app. D.

² Based on 30-percent toll increase; see app. D.

³ See app. A.

⁴ It is understood that implementing legislation now being drafted by the State Department provides for these cost elements to be eliminated, as TAA recommends. Accordingly, these adjustments have already been made in the Panama Canal Company's projections, and are not deducted here a 2nd time. Note that TAA has been unable to ascertain the dollar amount of costs, including depreciation, associated with the assets being transferred to Panama immediately upon ratification of the treaty by both nations.

⁵ See app. D for the 1-time transition costs. In footnote 4, Governor Parfitt notes that in the future capital costs in excess of depreciation will be incurred at the rate of approximately \$7,000,000 to \$10,000,000 annually; accordingly, the \$9,700,000 transition costs have been regarded as a reasonable approximation of these future capital costs for years following the transition year.

Note: Based on these adjustments, a toll increase of only 22–23 percent, rather than 30 percent, would be required to generate the necessary added revenues. No account is taken here of possible further adjustments through absorption by the U.S. Government of a portion of the burden of treaty payments to Panama pro-rated according to the foreign policy benefits of the treaty accruing to the United States.

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STATEMENT OF JAMES J. REYNOLDS

Mr. Chairman and members of the Committee, I am James J. Reynolds, President of the American Institute of Merchant Shipping, commonly known as AIMS. AIMS

is the national trade association of the American-flag oceangoing merchant fleet and includes in its membership companies which own or operate independent or proprietary American-flag tankers, chemical carriers, liquefied gas carriers and dry bulk carriers. Many of our members utilize the Canal in their operations.

The primary interest of shipowners is in the continued safe and efficient operation of the Panama Canal for reasonable toll charges by an entity which recognizes, and strives to maintain, this waterway's commercial viability. AIMS has not adopted a position on ratification of the treaties under consideration today and cannot intelligently do so until very critical matters bearing upon future toll structure and operation of the Canal are clarified. Our concern is that the Administration has failed to take into account the diversion of traffic which is likely to result from toll increases of the magnitude mentioned by Treaty Negotiators in testimony before this Committee.

It is true that the technologically advanced American-flag liner vessels which currently use the Canal realize significant savings in so doing because of their relatively high daily operating costs and the disadvantage of using much longer alternative routes. Unless tolls are handled rationally with only moderate increases, however, this situation will change and the economic commitment made to Panama in the proposed treaties may become an empty promise. Vessels carrying bulk commodities to or from the United States and the Far East via the Panama Canal are particularly toll sensitive and any increases in charges may well price these commodities out of present markets unless they are carried on very large slow-speed bulkers around the Horn or eastward over the South Atlantic and around the Cape of Good Hope. We respectfully urge this Committee to examine carefully the economic projections which have been made with regard to the Canal in light of our testimony today.

The Canal has been very useful to world commerce. In fiscal year 1977, 122.9 million tons of commercial cargo traversed its fifty-one miles between two great oceans. This cargo figures importantly in the commerce of the United States and that of our Central and South American neighbors. The long-term trend has been for Canal traffic and tolls revenue to increase continually, although the deficits experienced in fiscal years 1975 and 1976 demonstrate the relevance of world economic conditions to Canal usage. The Canal can handle considerably more traffic than it presently does and projections submitted to this Committee last year by Secretary of Transportation Brock Adams show transits increasing from 13,201 in 1976 to 21,300 in 2000, out of a theoretical Canal capacity of 26,800. We submit that if such projections are to be realized the toll structure must be characterized by reasonable stability and a rational procedure be established for their adjustment when necessary.

One very recent favorable development in Canal transits and toll revenue has arisen from the start up of crude oil from the Alaskan North Slope through the port of Valdez. From the passage of the first tanker shuttling North Slope oil through the Canal from VLCC's off Balboa to Gulf port on August 31, 1977 through the end of November, \$2,327,000 in new tolls revenue already has been generated by this activity, with \$36.5 million annually expected as shipments reach their projected maximum. Unfortunately, this movement through the Canal may be relatively short lived depending on the availability in a few years of alternative pipeline transportation, for which necessary State and Federal approvals are now pending.

Despite these generally optimistic statistics, we cannot emphasize too strongly, the fact that the continued commercial attractiveness of the Canal to American and foreign-flag vessels alike depends to a considerable extent on keeping tolls reasonable. If, on the other hand, tolls are permitted to escalate sharply as has been suggested by Administration witnesses, freight surcharges will become necessary and much of the cargo now moving through the Canal will either cease to move or shippers will seek alternative routes. Indeed some U.S. and foreign flag operators in reaction to a series of toll increases in recent years totaling more than fifty percent are already redirecting their vessels carrying Atlantic coast and Gulf cargoes to distant Far Eastern Ports by way of the Suez Canal or via the South Atlantic down around the Cape of Good Hope.

Our intercoastal and East-Orient trades are particularly susceptible to shipper reaction to higher costs and if tolls are unreasonably increased cargo will increasingly find its way across the continental United States by rail. The resultant decline in transits will place a burden of still higher tolls on those operators and cargoes for which there is no alternative to using the Canal. The land and mini bridges will become even more attractive to shippers of goods, to the detriment of a strong U.S. Merchant Marine and to the detriment of an economically viable Canal.

Those members of Congress and the public who appreciate the need for a strong U.S. Merchant Marine should be aware that American-flag vessels as a group would tend to lose more cargo than foreign-flag vessels if the Canal is priced out of their reach and they are forced into trades in which they are not competitive. A great many of the American-flag ships which use the Canal are containerships. The average containership presently pays about \$20,000 to transit the Canal, which is roughly equivalent to an average day's operating costs. On shorter voyages such as between the West Coast of South America and North Atlantic ports, where the percentage increase in voyage time by an alternative route around the Horn is the greatest, the impact of re-routing to avoid the Canal would be particularly devastating.

Turning to the proposed treaties, we see that the Canal faces two distinct time periods—the period between now and the year 2000 and the post-2000 period. Article III of the Neutrality Treaty, our guide to the latter period, lists the following rules for purposes of “the security, efficiency and proper maintenance of the Canal”:

“(a) The Canal shall be operated efficiently in accordance with conditions of transit through the Canal, and rules and regulations that shall be just, equitable and reasonable, and limited to those necessary for safe navigation and efficient, sanitary operation of the Canal;

“(b) Ancillary services necessary for transit through the Canal shall be provided;

“(c) Tolls and other charges for transit and ancillary services shall be just, reasonable, equitable and consistent with the principles of international law. . .”

Certainly no one could take exception to this most reasonable statement of intent. However, the administration of the Canal after the year 2000 will be an irrelevant matter if its handling during the remainder of this century results in the diversion of traffic to alternative routes and the emergence of new supply patterns not requiring the Canal. For this reason, we intend to concentrate on the period prior to the second millenium and address particularly those provisions of the main treaty which provide for payments to the Republic of Panama from toll revenues during the transition period.

Article III (5) calls for the annual payment of \$10 million to reimburse Panama for providing police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection.

Article XIII 4(a), (b) and (c) call for payments to Panama of \$.30 per Panama Canal ton transiting the Canal plus a fixed annuity of \$10 million plus up to a second \$10 million, if earned, with any unearned balance each year to be paid from operating surpluses in future years.

Ambassadors Bunker and Linowitz have repeatedly emphasized that none of these payments will be borne by U.S. taxpayers, a position which ignores the fact that U.S. consumers who are also taxpayers will indeed pay a very considerable portion of the payments since two-thirds of the cargo passing through the Canal and which will bear the additional cost either originates in or is destined for this country.

There are those who hold the view that since the conclusion of the Panama Canal Treaty was accomplished to attain most significant international objectives of our nation it is the entire nation which should bear the costs during the transition period. It probably does seem somewhat illogical to vessel user of the Canal whose ships fly the flags of all nations that they should be required to pay through increased toll rates the price of the United States improving its relations with our neighbors to the South, the price of improving its credibility in the family of nations and the price of removing from its posture as a great and good nation one of the last taints of colonialism remaining on earth.

On the other hand, as a very realistic matter, it is probably expecting too much of the American people through you, its trustees in the matter, to approve the United States presenting the Republic of Panama with the Canal and then to pay it some \$60 million a year for 22 years for the privilege of accepting it.

The disquiet shared by all the users of the Canal, both U.S. flag and others, arises from the obvious expectation that they are about to be asked to bear very significant additional financial burdens beyond those they are required to bear today. We all have heard predictions from the State Department that the tolls may be increased by 25% to 46% at the outset to meet the payment provisions of the new treaty. Our inquiries as to the basis for this calculation have led us to believe that the U.S. Government has given insufficient attention to the Canal's financial situation. We therefore would like to present a few suggestions for mitigating what we believe could be a very detrimental if not fatal impact on the future of the Canal resulting from overburdened tolls.

The problem and our suggestions for its possible mitigation become clear if we superimpose the treaty payment obligations on the Canal financial results as

though the Treaty had been in effect for the fiscal year 1977 ended last September 30.

During fiscal '77, 122.9 million long tons of commercial cargo traversed the Canal. These actual tons converted to 134.3 million Panama Canal tons upon which \$164.7 million were paid in toll fees during the year. Additionally, there was other income arising from direct and indirect operating sources of \$121.7 million giving us a total income of \$286.4 million against which there were expenses both direct and indirect of \$281.0 million leaving an apparent profit of \$5.4 million.

Unfortunately, that \$5.4 million profit was owed to and had to be paid to the U.S. Treasury for deferred interest of \$9.3 million on the net investment of the United States. So for all practical purposes the Canal broke even in fiscal 1977.

Now let's see what the situation would have been had the Treaty been in effect during that period. You will recall that there were 134.3 million Panama Canal tons transiting the Canal and it would have been on these that the \$30 per ton payment to Panama would have been computed, namely \$40.3 million. An additional \$10 million direct annuity would have been paid on top of the \$40.3 million making the additional toll burden \$50.3 million to which again must be added the \$10 million payments for various social services, police, fire protection, etc., making the total \$60.3 million. Obviously, that \$10 million to be paid only if the Canal operated at a profit would not have been paid for we're now up to a fiscal year loss of \$60.3 million!

While all this was taking place on our pro forma 1977 operating statement, we see that tolls were being required to bear a cost of \$18.1 million in interest charges on the net investment of the United States. We see that tolls were charged with \$22.1 million to make up for the net loss in running the Canal Zone Government and we note that tolls were debited with an annual charge of \$8.3 million in depreciation of the 1903 Treaty, excavations and other items totaling \$332 million, a practice inaugurated in 1973 after 70 years of silence and inaction. These three items alone add up to \$48.5 million of questionable existing burdens on the toll structure.

Now admittedly this entire pro forma exercise gives us at best just a rough approximation of what will happen to toll rates and to the cost of Canal users and consumers if payments to the Republic of Panama are merely added on top of the existing list of costs the toll structure must presently bear.

It is with this background that we respectfully suggests the Congress insist that the existing financial practices and structure of the Canal operation be carefully reviewed to the end that all existing unwarranted burdens on tolls including, but not limited to, those we have mentioned be eliminated in implementing legislation before we start payments to Panama. We submit that such action coupled with the new Alaskan oil toll revenue mentioned earlier should provide the source of payments to Panama while at the same time assuring a degree of stability to toll rates and a gradual increase in Canal transits so important to the continued economic viability of the Canal.

Thank you.

TESTIMONY BY MELVIN SHORE

I appreciate the opportunity to appear before your Honorable Committee to convey the thinking of the United States port industry relative to the possible ratification by the Senate of the United States of the Panama Canal Treaty.

UNITED STATES PORTS

The American Association of Port Authorities represents practically all the major ports of the four coasts (including the Great Lakes) of the United States, as well as ports in Canada, Central and South America. Please note that I am speaking on behalf of the United States ports. There have been some informal expressions of support for our position by the foreign members, but no official position has been taken that sets forth a western hemispheric position.

The ports of the United States have grown up over a period of 200 years as a result of a unique combination of federal and local investment. The federal investment has been expended primarily for the construction of harbors and channels, i.e., creating access for the ships of the world. These investments have only been made upon adequate showing of local interest in the project. This display of interest took place in the form of cost sharing to a substantial degree with the federal government as well as construction of terminal facilities for the handling of cargoes. It is of interest that the federal investment for the construction of deep water channels and harbors to date amounts to approximately \$3 billion. This sum is exceeded by the investment of the local interests of some \$5 billion.

LOCAL PORT INVESTMENT

This \$5 billion investment by the local interests is what is handling the ocean commerce of the United States. This ocean commerce amounts to some 860 million tons per annum, a very significant accomplishment on the part of the ports of the United States. We estimate that this same investment is responsible for the employment of more than 1,200,000 Americans, directly and indirectly.

Almost universally, this investment of \$5 billion was made by the sale of general obligation and revenue bonds by states, cities and special port districts. These investments have been made as there was a demonstrated need for each of the facilities. It is these local interests and their investments that has helped to make possible the growth of the United States international trade:

FROM \$35 BILLION IN 1960 TO ALMOST \$200 BILLION IN 1977

It is this type of growth that has caused an estimated 75% of the local investments in ports to have been made since the end of World War II, in just over 30 years.

LOCAL COMMITMENTS

It need not be emphasized that these investments are to be paid back as are all bond issues. Uniquely, however, in the port industry the intent is, and always has been, to pay off these bonds out of income. Any activity which suddenly changes the patterns of trade could have disastrous results upon the ability of the local entity to pay off their bonded indebtedness.

This then brings us to our concern relative to the Panama Canal Treaty now before your Honorable Committee. It is our belief that the Treaty has all of the seeds of potential serious impacts upon these economic investments that have been made in good faith by the local interests to help foster the international trade of the United States. Please understand, too, that many of our members hold other concerns relative to the Treaty, but in keeping with the demands of our professional organization, we have avoided any comment upon the many emotionally based arguments that have been put forth. No doubt there is considerable merit to many of those arguments, both pro and con.

ATTENTION TO ECONOMICS

Simply stated, it is our contention that too little, if any, attention has been paid to the economics of the future operation and maintenance of the Panama Canal and the related toll structure. An economically dead Canal is no better than a closed Canal. Such an impediment to the flow of international traffic we believe, can seriously affect the business of our ports and consequently burden the local taxpayers with the need to pay off the outstanding bonds or in the alternative lead to default on bond payments.

PAYMENTS FROM TOLLS

It is our understanding of the Treaty that it calls for the following payments to be made to the Republic of Panama from Canal tolls in addition to the funding of maintenance and operation:

1. A payment of 30¢ per Panama Canal ton (100 cubic feet of cargo space). This rate is subject to escalation based upon the Wholesale Price Index. Currently, the 30¢ would yield approximately \$40 million per year. The rate is subject to adjustment after five years and each two years thereafter.
2. A payment of \$10 million per year which is termed a fixed annuity.
3. A payment of \$10 million per year for the services of police and fire protection; street maintenance, lighting and cleaning; traffic management and garbage collecting. This payment is subject to escalation adjustment each three years.
4. An additional \$10 million per year to the extent earned but if not earned then carried forward to succeeding years.

ADMINISTRATION POSITION

It appeared that the addition of these payments to the Republic of Panama out of toll revenues would serve to inflate the tolls to a level that could cause serious damage to the volume of traffic transiting the Canal, hence to our ports. We addressed ourselves on the subject to President Carter, under date of November 3, 1977. Copy of that letter is appended as Attachment "A". In particular, we sought the studies upon which the economic conclusions could be reached that the Canal would remain viable. Our letter to President Carter was replied to by Ambassador David H. Popper, under date of December 2, 1977, copy of which is appended as Attachment "B". We found Ambassador Popper's reply non-responsive to our inqui-

ry. He hypothesizes that an increase in tolls of 30% might be adequate to cover the payments to be made to the Republic of Panama and states that they believe this would not significantly discourage the flow of traffic through the Canal. The Ambassador's letter offers no basis for his hypothetical 30% toll increase, nor does he address the subject for the long-term.

SENSITIVITY STUDY

The Ambassador's letter did forward to us a January 1975 study entitled "Panama Canal Toll Rates: Estimates of Maximum Revenues" by Ely M. Brandes and Betty R. Samuel of International Research Associates of Palo Alto, California. We are told that the study is being updated with the later data to be available early this year. The study addresses the attaining of maximum revenue for the Panama Canal Company by toll increases. It lends considerable substance to the point we wish to emphasize, i.e., beyond a certain point there will be diminishing returns when the increased toll drives business away. Further, the study concludes that various cargoes can tolerate varying percentage increases in toll rates. The study does not purport to be responsive to the question of the possible effect of the additional burden of payments to the Republic of Panama on cargo diversions and hence the long-term economic viability of the Canal under the proposed Treaty. We can only conclude that the State Department has negotiated a Treaty without proper consideration of the possible economic effects upon the Canal and certainly with no consideration to the effects upon the ports of the United States.

ADMINISTRATION TESTIMONY

We have reviewed the testimony of the Administration witnesses before your Honorable Committee last September and October as set forth in the document entitled: "Panama Canal Treaties Hearings before the Committee on Foreign Relations, United States Senate, 95th Congress, First Session."

Part I.—Administration Witnesses

We found little in the statements of these witnesses to allay our concerns. Indeed, we found a great deal of uncertainty expressed by some of the witnesses, e.g.

1. Page 43—Ambassador Linowitz. I think I talked about 25 or 30 percent or something of this kind * * * but it will be in the neighborhood of 30 percent, perhaps 35 percent. (relative to toll increases)

2. Page 271—Secretary Alexander * * * We are now conducting a detailed analysis to determine the exact toll increase which will be necessary to meet expenditures. In subsequent years, we would hold tolls to the minimum necessary to meet costs * * *

3. Page 367—Secretary Adams. It is our opinion, Senator, that an increase in tolls of up to approximately 30% would not change the present mix of traffic * * *

4. Page 445—Mr. Casey. Obviously, if tolls were to increase too greatly, many markets would be hurt severely in much the same manner, if not to the same degree, that they would be if the canal were completely closed.

But it is not certain what toll increase applied over what period of time would be too great * * *

Mr. Chairman, there are other similar types of comments throughout the testimony. We probably could have taken some comfort had a thorough study, directly on point, been presented that demonstrated that, with reasonable assumptions, toll increases could be expected that would demonstrably not adversely affect the movements of cargoes into and out of our ports. The fact that no such report was presented leads us to believe there was none and that the conclusions reached in the Treaty negotiations were based upon other unknown criterion. An attempt to come up with a study at this time seems odd to say the least, regardless of what it shows. Indeed, we must wonder what action would be proposed should the study demonstrate that excessive toll increases would be necessary?

CONTROL OF TOLL LEVELS

Of equal concern for the long-term future is the consist of the Panama Canal Commission and the Panama Canal Consultative Committee. Both bodies have a great deal to do with the setting of future toll levels. We find nothing in the Treaty requirements nor in the testimony of the Administration witnesses, to feel assured that future drastic changes in toll levels will not become the order of the day so as to meet the expected necessary maintenance and operation cost, plus the additional payments to the Republic of Panama. It has been argued that the best interests of

all members of the Commission and the Committee will only be served if the Canal remains viable. We would argue that there are many other possible interests that could be served. Indeed, it seems there was little enough attention paid to the economics during the Treaty negotiations to date.

I should stress that we do not argue for no toll increases. With rising costs for maintenance and operations, increases can be expected. These increases would be expected to be in the order of magnitude that shipowners and shippers would face in normal business relations. It does seem that burdening this facility with payments designed for diplomatic purposes is probably asking too much of what is basically a commercial enterprise. If our international relations require payments be made to a foreign government, then let them be the obligation of the nation as a whole, not those of a limited segment of our economy, i.e., the ocean commerce of the United States which in turn would impinge negatively upon our ports.

Of equal concern are the comments attributed to Dr. Romulo Escobar Bethancourt as quoted by Senator Stone on page 60. It certainly appears that the Panamanian understanding of the Treaty is that they will not be expected to keep open an unprofitable Canal. Yet the response of the Administration witnesses seems to depend upon an obscure word "open" buried in the text and the expectation that there would be additional negotiations should that eventually occur.

CANAL IS VIABLE

Finally, I would take issue with those who suggest that the Panama Canal is really not necessary for our international commerce. The customary suggestion is that it is outmoded by the advent of larger vessels. It is a growing misconception that with the news of the ever-larger tanker that the Canal is unnecessary. I am informed that over 92 percent of the world's merchant fleet of approximately 27,000 vessels can transit the Canal. New buildings will also be able to transit the Canal in the same approximate percentage. It is just not true that all vessels are going to continue to get bigger and bigger endlessly. The simple facts of economic life mitigates against such an idea. No shipper or receiver of freight can afford to handle ever larger volumes of cargo per ship without running into problems of interest on the investment in the cargo. Then too the costs associated with the need to enlarge port facilities mitigates against an excessive reliance upon the theory of economies of scale beyond reasonable limits.

There have been some suggestions, too, that the Canal has lost its viability due to the advent of mini-bridge. If anything, the growth of mini-bridge would seem to indicate that the existing toll rates are too high for these types of cargoes. It is also essential that it be recognized that the mini-bridge concept does not bear upon the type of cargoes that tend to most use the Canal, i.e., bulk cargoes. Reference to the chart on page 357 shows that almost 50 percent of the cargoes fall in the three categories of petroleum, grains and coal—all bulk cargoes. These kinds of cargoes continue to require the Panama Canal to move to market. To blithely suggest that they will find alternate routes may very well relegate them to becoming non-cargoes. Transportation costs are a vital portion of the end cost of most bulk cargoes.

Then too we must recognize that over 57 percent of the tonnage moving through the Canal is that of the United States commerce. Large volumes are involved with our exports and our balance of payments can ill-afford the introduction of additional impediments.

CONCLUSION

In conclusion, we ask that the Panama Canal Treaty not be ratified by the United States Senate until the effects of the commitments made for diplomatic purposes upon the toll level can either be shown to be nondetrimental or are removed from the toll base. We ask this in recognition of the adverse impact that drastic toll increases will have upon our ocean commerce, and consequently the ports of the United States. We also ask that there be built into the Treaty, if it is to be ratified, some mechanism to control toll increases so as to preclude having a Canal that exists in fact, but is economically dead.

THE AMERICAN ASSOCIATION,
OF PORT AUTHORITIES,
November 3, 1977.

Reply to: World Trade Center, West Sacramento, Calif.
President J. E. CARTER,
White House, Washington, D.C.

PANAMA CANAL TREATY

DEAR PRESIDENT CARTER: The United States members of the American Association of Port Authorities are deeply concerned with certain features of the future of the Panama Canal. Our prime concern centers about the future level of tolls and the economic viability of the Canal.

The American Association of Port Authorities consists of 83 United States ports as well as ports in Canada, Central America and South America. Its concern is the maintenance, operation and economy of port facilities in performing their job of serving the needs of their respective countries in handling the all-important international trade of the world. As such, the Association concerns itself with a wide variety of and concern. Although the official position matters that impinge on its area of interest of the American Association of Port Authorities, set forth below, is that of the United States membership only, informal discussion with Canadian and Latin American members indicate their like concern.

The ports of the United States have grown up over a period of years in a manner that is responsive to the demonstrated needs of cargo movement. They represent an investment of billions of dollars of local funds for wharves, piers, cranes, conveyors, storage facilities of all types, etc. In addition, the United States government has made a sizeable investment in the dredging of waterways and harbors to facilitate these developments. The prime point is that these facilities have evolved slowly over a period of time. Any event, or action, that would precipitously change the relationship between the ports is bound to have a serious dislocational consequence upon many of these investments. This would be brought about by diversion of traffic which would in turn lead to unemployment, inability to pay off local indebtedness, abandoned facilities, etc.

An important element of the traffic patterns upon which the referenced port development is based is the Panama Canal. We are aware of your commitments to see that the Panama Canal is kept open to traffic if the Treaty contemplated is implemented. However, we are unaware of adequate assurances in connection with the economic viability of the Canal, i.e. the level of the tolls. As we understand it, the Canal is to continue to be operated as a self-supporting venture. If this be the case, then the tolls must be set at a level to produce not only sufficient funds to cover its maintenance and operation but the additional funds being committed by the terms of the Treaty.

It is our understanding that the Treaty calls for the following schedule of payments to the country of Panama, all of which must be earned in addition to maintenance and operation expenses:

1. A payment based currently at 30¢ per Panama Canal ton (100 cubic feet of cargo space). The 30¢ rate is subject to future escalation. We understand that this rate will produce approximately \$40 million per year at this time.
2. A flat payment of \$10 million per year that might be termed "rent".
3. A flat payment of \$10 million per year to cover such services as fire protection, police protection, garbage disposal, etc.
4. An additional \$10 million per year to the extent that it is earned. Failure to earn the amount in any one year, carries the deficit forward to the following years until paid.

Further, it is our understanding that currently, approximately \$18 million per year is paid to the United States Treasury as an interest payment. Since this payment would cease, it would be available to help offset the above \$70 million. It would therefore appear that the \$52 million deficit would have to be raised by increasing the level of tolls.

Since the Canal is to be an operating business, we have to anticipate that as tolls increase they will reach a point that will serve to discourage the flow of traffic. As the flow decreases, further increases in toll levels are dictated. The cycle continues until the Canal may exist in fact but would be economically dead. Should this occur, we see the significant dislocations I referred to above.

To this time, we are unaware of any studies that have been made by the federal government as to the economic future of the Canal. Hence, my specific request. Finding it infeasible that an undertaking of this dimension has not addressed this

subject, I ask that I be supplied with a copy of the studies that address this question.

I believe you can understand our concerns. Presumably they are based upon our lack of information, but we have no assurance of this. Your reassurance, at an early date, in the form of factual studies, addressing the problem will be greatly appreciated.

Sincerely yours,

MELVIN SHORE,
Chairman, U.S. National Transportation Policy Committee.

DEPARTMENT OF STATE,
Washington, D.C., December 2, 1977.

MELVIN SHORE,
Chairman, U.S. National Transportation, Policy Committee, World Trade Center, West Sacramento, Calif.

DEAR MR. SHORE: President Carter has asked me to reply to your letter of November 3 concerning the Panama Canal.

We understand and agree with your concern that, under the new Panama Treaties, tolls should be set at levels which will meet maintenance and operation costs for the Canal, including payments to be made to Panama. We believe that an increase in tolls of the order of 30 percent, which might be adequate for these purposes, would not significantly discourage the flow of traffic in general or impose an appreciable burden on Canal users. In fact, an increase of this size may not be necessary, if Alaskan oil movements through the Canal increase Canal traffic significantly, and if there is a general growth in world commerce.

I should point out that your enumeration of payments to Panama required under the new Panama Canal Treaties should, in some respects, be clarified. Point 3 of that enumeration, regarding payment for public services to be assumed by Panama, does not represent an additional net cost of Canal operations, and it is subject to readjustment to reflect actual costs. The services in question are currently provided by the Canal Zone Government and the Panama Canal Company, at a cost well in excess of \$10 million annually. Moreover, while the contingent \$10 million annual payment listed in your point 4 is cumulative, any cumulative balance remaining when the Canal is turned over to Panama in the year 2000 would cease to be an obligation or liability.

You ask to be provided studies that might have been made concerning the economic effect of toll increases. A study prepared for the Panama Canal Company in January 1976 "Panama Canal Toll Rates: Estimates of Maximum Revenue" by International Research Associates addresses this subject. I have enclosed a copy of it. The study is now being updated; we expect a new version early next year.

If we can be of further assistance, please do not hesitate to let us know.

Sincerely yours,

DAVID H. POPPER,
Ambassador, Deputy for Panama Canal Treaty Affairs.

TESTIMONY BY SEYMOUR MILSTEIN

I am Seymour Milstein, President and Chief Executive Officer of United Brands Company and I very much appreciate this opportunity to express to you our reasons for urging ratification of the Panama Canal treaties which are before this committee for consideration.

United Brands Company is the largest single user of the Panama Canal. During 1977 our vessels transited the Canal nearly 400 times, an average of 33 trips per month and we paid approximately \$3 million in canal tolls and transit related charges. The company also acted as agents for vessels that made an additional 513 transits last year. In addition, we maintain offices and have operations in the Canal Zone itself.

We are convinced that ratification of the Panama Canal treaties is the only fair conclusion to the good faith negotiations conducted by our two countries over the last several years. In our judgment, these treaties represent the best evidence yet of this Nation's commitment to fair treatment for Panama and the other developing nations. Fulfilling this commitment, in our view, is particularly important if our Nation is to continue good and mutually beneficial relations in Latin America.

We are equally certain that the Panamanian government and the Panamanian people are fully capable of assuming the responsibility for managing the canal over

the period of time set forth in the treaty documents. Our position reflects our confidence in General Torrijos and the present government of Panama, based on our first-hand experience with that government over the past several years.

Our company has a long history in Panama. Our United Fruit Company division, which is engaged in the production and distribution of tropical agricultural products, principally bananas, has operated in Panama for nearly 90 years. United Brands' overall contribution to the Panamanian economy is substantial and we employ more than 10,000 people in Panama, 98 percent of whom are Panamanian. During this period we have made repeated and large commitments of personnel, capital and other resources in that nation, and we have seen our business grow and prosper there.

Our continuing investment in Panama represents more than just a business venture for United Brands. It constitutes a significant contribution by the Americans and others who are our shareholders in the continued growth and development of the Panamanian economy.

With this background, our interest in the Panama Canal treaties is obvious. It should be equally clear, however, that efficient management and operation of the canal are also vital concerns.

One of the most essential elements in United Brands' success in Latin America has been the existence of the Panama Canal. We have been involved with the Canal since its beginning. Our ships carried material and labor for its construction and our medical personnel helped make the area safe for canal workers. From 1914 to the present, this link between the Atlantic and Pacific oceans has been the key to our worldwide distribution system. Any closure or curtailment would adversely affect our customers and distributors all over the world.

With more direct long term experience in Panama than any other U.S. corporation, we have dealt extensively and for many years with the leaders of the government of Panama. We can tell you that when the government of Panama took over the schools and hospitals which United Brands had previously operated, there was no deterioration in the quality of education and health care services provided to the Panamanian people. We have always been treated fairly by the administration and the courts and, as an example, during a recent labor dispute involving our company, the Panamanian judicial system ruled fairly and equitably in the matter. We have been given the kind of treatment in Panama that accords with our expectations as free Americans.

Mr. Chairman and Senators, I am sure you can appreciate that we have given the most serious consideration to these treaties, especially since once the treaties are ratified, the results to us will not be inconsequential. As the principal user of the Canal, some might wonder why, with the prospect of paying increased toll charges, we would support the treaties. Nevertheless, we do support these treaties and we are convinced that the best interests of our company and our country will be served by ratification of the treaties.

Our most important reason for urging ratification of the treaties can be stated simply and succinctly: we believe it is the right thing to do. As a company actively involved with Panamanian affairs throughout this century, we are convinced that the time has come for a reassessment of the Panama Canal arrangement. Our sense of fairness and justice persuades us that the Panamanian peoples' interest in achieving control of the Canal is a legitimate claim. We can say forthrightly that as a company Panama has been good to us and we believe it has been a good neighbor to our country as well. Today, these treaties present the best opportunity to reciprocate this goodwill.

Ratification of the treaties will be a sign to Panama and all of Latin America that the United States recognizes the growth and maturity of its neighbors to the South. In an interdependent world, how we treat our smaller and less developed friends in this hemisphere is a measure of our commitment to the goal of mutual respect. It will be a sign that we have come to appreciate the need for cooperation and accommodation in dealing with our neighbors and that the day has passed when smaller, less developed countries will tolerate anything less than the controlling voice in their own destinies.

As users of the canal—its largest single user as I mentioned before—no one can have a greater interest in its efficient and safe operation. Were we to believe that the government of Panama would provide anything less than the highest standards in the way of maintenance and efficient and safe operation of the canal we could not endorse these treaties as warmly and completely as we do.

Of the many interested parties who will appear before this committee, we are probably unique in the depth and length of our experience with the people of Panama. Based upon this kind of experience, we have no reservations concerning

the efficiency of operation of the Canal under the Panamanians or of their adherence to their treaty or other contractual terms.

We now operate in Panama under the specific terms and provisions of a written contract, which spells out the obligations of both parties. The Panamanians have lived up to every element of that contract. In other words, they have demonstrated to us their honor and dependability and we have no reason to believe that they will not approach the operation of the Panama Canal in the same fair and pragmatic manner.

In addition, there should be no better motivation for the efficient and responsible operations of the Canal than the concept of self-interest embodied in these treaties. Twenty years ago, United Fruit paid \$4.6 million in taxes and payments for use of 30,000 acres, or approximately 47 square miles of land in Panama. In comparison, the U.S. Government paid \$2 million for the use of 500 square miles of land in the Canal Zone. Today, we pay in excess of \$15 million while the U.S. pays only \$2.5 million. The new arrangements called for in the treaties should remedy such an imbalance in the share of taxation, and are all the more reason for Panama to operate the Canal on a sound and economically viable basis.

In urging upon you ratification of the Panama Canal treaties I do not minimize for a moment the strategic importance of the canal for the United States. Certainly the U.S. has a vital stake in the future security of the waterway. However, we are persuaded by the arguments set forth by the Joint Chiefs of Staff and others in the Departments of Defense and State that the treaties now under consideration provide adequate protection to us in this regard. In our own dealings with the Panamanians over many years, we have found that while bargaining is hard, an agreement, once reached, is meticulously observed and this, I think, is an important point for the members of the Senate to bear in mind.

Mr. Chairman, I welcome this opportunity to share with this committee our support for prompt ratification of the Panama Canal treaties.

Thank you for your kind attention.

[From the Congressional Record—Senate, Jan. 23, 1978]

IS THERE REALLY SUPPORT FOR THE PANAMA CANAL TREATY?

Mr. HATCH. Mr. President, many administration officials, including the President himself, have maintained that there is growing widespread public support for the new Panama Canal Treaty. The basis of their claim is the fact that several groups and organizations have come out in defense of the agreement. There is no doubt this is true.

But, Mr. President, I question the legitimacy of this so-called support. I sincerely believe that the leaders of these influential organizations helping the President in his campaign for ratification of the treaty may have gone out of bounds in speaking for the entire membership of their groups. For example, each Member of this body may find in his mail a letter from Leslie H. Doty, a South Bend, Ind., businessman and a 30-year member of the Epworth United Methodist Church in South Bend. Mr. Doty learned that the National Council of Bishops of the United Methodist Church had, on behalf of the nationwide membership of the church, endorsed the ratification of the Panama Canal treaties. Being skeptical that this was the actual opinion of the whole church, Mr. Doty polled the members of his own congregation. The results were 214 against ratification, 23 for ratification, and 48 undecided or not wishing to take a position.

I understand that this poll is a mere straw vote, so I hasten to add that all of the professionally conducted, scientific surveys conclude the very same thing—that a vast majority of Americans are opposed to this treaty.

Individual citizens oppose this treaty. The heads of the various organizations in many instances have been aloof from their rank and file and have lost sight of their representative responsibilities. I hope that we do not take the same path and become so unresponsive that we reverse the progress toward restoring trust in Congress. If the U.S. Senate believes it can proceed without regard to the outpouring of public opinion, then it will deserve all the negative consequences that are the people's prerogative to bestow.

PANAMA CANAL TREATIES

Mr. TALMADGE. Mr. President, the Georgia House of Representatives, now in session in Atlanta, has adopted a resolution which, for myself and my colleague, Senator Nunn, I bring to the attention of the Senate, and ask unanimous consent that it be printed in the Record.

There being no objection, the resolution was ordered to be printed in the Record, as follows:

A RESOLUTION

Urging our two distinguished United States Senators to study carefully and to give the highest priority to American interests in considering the Panama Canal Treaty; and for other purposes.

Whereas, for 74 years, millions of Americans have been taught to view the Panama Canal as a symbol of United States engineering skill and ingenuity; and

Whereas, for more than half a century the Isthmus of Panama has been referred to internationally as "The Bridge of the World" because of the canal linking the Atlantic and Pacific; and

Whereas, Panama has prospered economically largely as a result of the industry, trade and tourism that have been drawn to the region by the canal and the country has become a financial center; and

Whereas, there remains much confusion regarding the proposed treaty and the absence of a reconciliation of Panama's national aspirations with the United States' strategic and economic interests despite years of negotiation.

Now, therefore, be it resolved by the House of Representatives that this body does hereby urge each of our two distinguished United States Senators to study thoroughly the matter of the Panama Canal Treaty and after said study to exercise his best wisdom and judgment in casting his individual vote in the best interests of the American people.

Be it further resolved that the Clerk of the House of Representatives is hereby authorized and directed to forward an appropriate copy of this Resolution to each of the two distinguished United States Senators from Georgia.

THE PANAMA CANAL TREATIES: A TOP PRIORITY

Mr. CRANSTON. Mr. President, a few days ago the President outlined for us what the goals and objectives of his administration would be in the forthcoming year. I think that it is important to note that the President counted among his top priorities the passage of the Panama Canal treaties. As President Carter stated:

The world is watching to see how we act on one of our most important items of business: approval of the Panama Canal treaties.

The treaties now before the Senate are the result of the work of four administrations—two Democratic and two Republican.

They guarantee that the canal will be open always for unrestricted use by the ships of the world.

Our ships have the right to go to the head of the line for priority of passage in times of need or emergency.

We retain the right to defend the canal with our own military forces if necessary to guarantee its openness and neutrality.

The treaties are to the clear advantage of ourselves, the Panamanians, and the other users of the canal.

Ratifying the Panama Canal treaties will demonstrate our good faith to the world, discourage the spread of hostile ideologies in this hemisphere, and directly contribute to the economic well being and security of the United States.

Shortly, the full Senate will begin consideration of the treaties. I look forward to the debate on these agreements as an opportunity for us to explore all of the treaties' facets to insure that they are in our Nation's best interest.

SUPPORT FOR PANAMA CANAL TREATIES

Mr. PERCY. Mr. President, I believe that the proposed treaties serve our national interests and, with certain changes, I will vote for them.

I have carefully studied and considered the Panama Canal treaties since they were submitted to the Senate last September. As a member of the Senate Foreign Relations Committee, I actively participated in 13 days of committee hearings on the treaties and heard testimony from over 85 witnesses. I went to Panama to have a firsthand look at the situation and to discuss the treaties with those who would be most directly affected by them.

During all this time, I kept uppermost in my mind some very important questions which critics of the treaties in Illinois had asked me; "Why do we need a replacement for the 1903 treaty? Can the canal be operated at the same high level of efficiency by Panama as it has been by the United States? What is the justification for financial payments to Panama? Could we not best protect our rights to defend the canal by preserving the arrangements we have now? By approving these treaties, would we not be playing right into the hands of the communists? Would we not be giving a helping hand to Fidel Castro?"

The Panama Canal issue is not simply one between the United States and Panama. How the United States deals with it will be significant for our future relations with all the countries of our own hemisphere.

I have always been impressed by what a magnificent technological achievement the building of the canal was for our country. But on my recent trip I also got a vivid picture of how the Canal Zone cuts a deep gash right through and divides the sovereign territory of Panama, and how a Panamanian traveling through the Zone from north to south is treated like a stranger in his own country. He is under the jurisdiction of the laws of another country. If he is involved in a traffic accident, he is tried in a foreign court, under a code of laws which is foreign to him. I tried to imagine what it would be like to have a similar situation in Illinois, with a foreign country encamped in a prime piece of territory, cutting a 10-mile wide strip from the western limits of Springfield to the eastern limits of Decatur, thus including both cities and all the land in between. I believe it is as natural for the Panamanians to want to exercise sovereignty over all of their country as it was for colonial Americans to want to exercise sovereignty in all of this country.

If we can come to a new arrangement which would take this factor into account and at the same time absolutely preserve our ability to defend the canal and protect our interest in keeping it running efficiently, it would seem a sound and wise thing to do. We will surely enhance our position internationally by demonstrating that we have the strength and flexibility to adapt to change, while making clear that we have no intention of abandoning our right to intervene against any aggression against the canal.

Not even the treaty opponents I questioned during the hearings believed it is possible to hold on to the old 1903 treaty without making substantial changes. I am convinced that the best interests

of the two nations can be served by adopting new treaties now with terms that are clear and beneficial to both. Presidents Eisenhower, Johnson, Nixon, Ford, and Carter all believed that a new treaty with Panama was needed.

The first treaty—the one which is in effect until the year 2000—stipulates that the United States has the right and primary responsibility to defend the canal. The United States retains the right to maintain troops and use all land and water areas and installations necessary for the operation, maintenance, and defense of the canal. The United States will also set the tolls and establish and enforce the rules of operation.

The second treaty, the so-called Neutrality Treaty, goes into effect in the year 2000. It is intended to guarantee the canal's permanent neutrality, and to assure each country's right to defend the canal. In this treaty also, Panama agrees not to allow the stationing of any foreign troops on its territory.

During the course of the hearings I stated my strong concern that some parts of this treaty were so vague that they could be interpreted differently by the United States and Panama and could lead to misunderstandings in the future that might be disastrous. These provisions concerned our unilateral right to move troops in to defend the canal, and the right of U.S. warships to go to the head of the line in case of emergency. These provisions were clarified in a statement subsequently issued by President Carter and General Torrijos. However, the statement was not signed, and its legal effect is in question. I believe that to be really meaningful, the statement must be made a formal and binding part of the treaties. I am cosponsoring two Dole amendments which would do exactly this. I could not support the treaties otherwise. With these changes, however, I believe our interests would be well protected.

There still remains the question of whether we would not avoid all this concern about defense rights if we just stayed with the present treaty. I have concluded that we will be better off under the new treaties properly amended. With regard to an external threat, there is no doubt that the United States can and will do what is necessary to meet it, and we are fully authorized to do so under the treaties. However, internal threats are another thing, given how strongly Panamanians feel about exercising full sovereignty. And in this desire they are supported by nations all over the world.

I have seen the dense jungle surrounding most of the 51 miles of the Canal Zone from which a saboteur, perhaps aided by a canal employee willing to look the other way, could emerge and put the canal out of commission with one small weapon. This is only one form that a hostile action could take. I have questioned treaty opponents about the likely consequences in Panama if these treaties are rejected, and have asked whether they were ready and willing to deal with the resulting situation. I found that not one of them had fully addressed this problem.

Several years ago we had a similar situation with Okinawa. I visited there and concluded that it would be extremely difficult to maintain a secure base in a hostile surrounding environment. We negotiated a transition with Japan and thereby greatly enhanced our ability to protect our long-term interests. Gen. D. P. McAuliffe,

Commander in Chief of the U.S. Southern Command, with whom I visited in Panama, has stated:

My judgment of our capability to keep the Canal open and in use for our country and for the countries of the free world will be enhanced, by the provisions of the Treaty . . . It really goes to the heart of having a friendly environment around the Canal in which to operate, and we can do all of our defense tasks better in a friendly rather than hostile environment.

Under the present treaty, Panama has no real stake in the canal. The annuity she now gets is compensation for giving us property and base rights, and is not contingent on whether canal operations are disrupted. Under the new treaties, Panama will have a real interest in keeping the canal open and running properly. The benefits that Panama gets will depend on the canal traffic. Her source of revenues will dry up if the canal is closed. Therefore, the new arrangements encourage the kind of environment which is our best insurance against internal threats.

With regard to payments to Panama, the treaty provides that this money will come from tolls paid by the many countries which use the canal, and will not come from the U.S. Treasury. This means that from now until the end of the century, while we will continue to have bases in Panama, the users of the canal will be footing the bill through tolls.

The financial benefits accruing to Panama will depend on the volume of canal traffic. The more efficiently the canal is run, the more traffic it will attract and the more toll revenues it will bring in.

How efficiently can we expect the Panamanians to operate the canal? Right now almost 80 percent of the canal work force is non-United States, with Americans generally holding the most technologically complex jobs. Under the new treaty, Panama will have 22 years in which to learn from the Americans how to continue the high level of efficiency which has characterized canal operations from the beginning. In Panama I was told by American oil company executives that within a period of just 5 years Panamanians had been able to take over the complete operation of refineries with highly sophisticated and complex technology.

Finally, much has been made of the Communist threat in Panama, and whether by ratifying the treaties we will be playing into the hands of Fidel Castro and the Soviet Union. When I asked Secretary of Defense Harold Brown about this, his response was that,

If I were Castro and I wanted to expand my influence and decrease that of the United States, I would certainly do all I could to prevent ratification of these treaties.

It should also be noted that Panama does not even have diplomatic relations with the Soviet Union or the People's Republic of China, and that it declared war on Japan the afternoon of Sunday, December 7, 1941, even before the United States did. In all the years under the 1903 treaty, Panama has never breached a single provision despite its patent unfairness.

It is significant that some of the most vocal support for the treaties has come from democratic regimes in Latin America such as Colombia, Costa Rica, and Venezuela. Surely, if the treaties

were a means of furthering Communist intentions in the world, it would not be in the interest of these countries to support them.

After considering all these issues carefully, I have come to the conclusion that the new treaties will serve our interests better than attempting to cling to the old treaty. Certain changes which I have outlined must be made, but assuming that they are, I believe the new treaties will offer arrangements which are fair and beneficial to both our nations.

The Panama Canal is a glorious monument to American know-how and determination. After all these years the canal has not outgrown its usefulness. But the treaty with the country whose territory is bisected by the waterway has become outmoded. We owe it to ourselves to adopt new treaties which will satisfy the interests of our two nations and assure that the Panama Canal will continue to serve all the countries which have come to depend on it.

PANAMA CANAL TREATIES GAIN SUPPORT IN CALIFORNIA

Mr. CRANSTON. Mr. President, Tuesday's Los Angeles Times published a poll—conducted by the California poll—which indicates a notable shift in Californians' opinion on the Panama Canal treaties.

Last October, the California poll's survey to determine people's views on the Panama Canal treaties showed that 49 percent of the people interviewed were opposed to the treaties while 35 percent were in favor. However, when people were questioned earlier this month on whether they favored ratification, 46 percent were opposed compared to 41 percent in favor. I think that this 6-percent increase in support for the treaties is very significant. As the Gallup poll taken last fall indicated, the more people know about the treaties, the more likely they were inclined to favor them. The recent California poll reaffirms this statement. As the American people gain a fuller understanding of these treaties, more and more come to believe that the agreements are in our Nation's best interest and support for them continues to grow.

Mr. President, I ask unanimous consent that the report on the poll be printed in the Record.

There being no objection, the report was ordered to be printed in the Record, as follows:

CANAL TREATIES GAIN SUPPORT IN STATE POLL

(By Mervin D. Field)

Public opposition in California to the proposed Panama Canal treaties is eroding. Last October The California Poll found that public disapproval of the treaties outweighed approval by a margin of 49 percent to 35 percent. This month, the gap has narrowed to just five percentage points, 46 percent against to 41 percent approval.

Republicans as a group are much stronger in their opposition than are Democrats. Telephone interviews of 1,003 Californians were conducted during the period Jan. 7—18. The sample included 399 persons who said they were registered Democrats, 261 who said they were Republicans and 343 who gave other political affiliations.

This is the question asked: "As you may have heard, the Panama Canal treaties call for the gradual transfer of control over the canal to the country of Panama by

the year 2000 with the United States retaining military defense rights. From what you have seen or heard, do you personally approve or disapprove of these treaties?"

The results and the trend are:

[In percent]

	Statewide	Southern California	Northern California	Democrats	Republican
Latest measure (January 1978):-					
Approval.....	41	39	44	46	29
Disapproval.....	46	51	40	42	57
No opinion.....	13	10	16	17	14
Previous measure (October 1977):-					
Approval.....	35	30	41	41	27
Disapproval.....	49	54	42	42	51
No opinion.....	16	16	17	17	22

SENATOR ALLEN PINPOINTS MAJOR FLAWS IN THE PANAMA CANAL TREATIES

Mr. HATCH. Mr. President, on January 18, 1978, our distinguished colleague from Alabama (Mr. Allen) appeared before the House Committee on Merchant Marine and Fisheries to explain why the Panama Canal treaties are hostile to our national interests. As Senator Allen amply demonstrates, the treaties contain major flaws that jeopardize not only our national security, but also our established constitutional processes. The Senate should be on guard against cosmetic changes which purport to correct these inherent defects in the agreement but actually serve to conceal them.

Mr. President, Senator Allen's testimony is a tribute to his leadership in the Panama Canal controversy. It is perceptive and informative. I urge Members of the Senate to study it carefully, and, Mr. President, ask unanimous consent that it be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT BY JAMES B. ALLEN

Mr. Chairman, thank you very much for affording to me an opportunity to state to you and to the distinguished members of the Committee on Merchant Marine and Fisheries my reasons for opposing ratification of the proposed Panama Canal Treaty and the proposed so-called neutrality treaty. Although the defects in both documents are legion, in my judgment there are five major flaws, each of which on its own ground would warrant complete rejection of the arrangements negotiated, inasmuch as each would independently damage the national interest of the United States to such extent as to render it improper for the Senate or the Congress to give its consent.

The five major defects, at least as I see it, are (1) the failure of the Canal treaties to require Congressional authorization for the proposed cession to Panama of United States territory and property, (2) the decision embodied in the Canal treaties and related loan agreements to pay to Panama some \$2.262 billion by means of various devices designed to circumvent the role of the House of Representatives or the Congress in appropriating funds from the Treasury of the United States, (3) the failure of the Canal Treaty to provide for an adequate defense of the Canal during its proposed 22-year term, (4) the failure of the neutrality treaty to provide for an adequate defense of the Canal thereafter, and finally (5) the astonishing provision of the Canal treaties which forbids the United States even to negotiate with another nation for the construction of any interoceanic canal in the Western hemisphere without the express consent of the Panama dictatorship.

THE CONSTITUTION IGNORED

The first major defect in the treaties is perhaps the most significant since it represents a direct assault by the executive branch on the prerogatives of the House of Representatives and since it would set a new precedent extending the authority of the executive branch far beyond the bounds contemplated by the authors of the Constitution of the United States.

As this distinguished Committee well knows, Article IV, Section 3 of the Constitution provides quite clearly that Congress, that is, the Senate and the House of Representatives acting together, "shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." Mr. Chairman, the Attorney General has advised that the proposed treaties do not in any respect violate this clause, but with all due deference to him as a very able lawyer, in this instance he is serving a client, and I cannot share his rationalization of the clear, unambiguous language of the Constitution on this subject, nor can I agree with his faulty characterization of consistent past practice in our dealings with Panama in matters of property transfer.

In 1936 and again in 1955, cessions of United States territory or property to Panama were made expressly contingent on Congressional authorization. Yet now that a truly major cession of virtually all United States territory in the Isthmus of Panama is contemplated, the executive branch has seen fit to assert a novel theory by which the Administration would circumvent the Congress. The reason for development of this novel theory of Constitutional law is, I believe, a matter of practical politics rather than legal scholarship since public opposition to giving up the Canal is so overwhelming that any Congressional authorization of a cession of territory would be difficult, if not impossible, to obtain.

But beyond this immediate issue, if we in the Senate and in the Congress permit this circumvention of the role of the whole Congress in any cession of United States territory, we will be setting a very dangerous precedent which will surely be used again by this or future administrations to assert power in an area heretofore preserved exclusively to the Congress. My own guess is that we would next see this precedent applied to the Guantanamo Naval Base in Cuba, but perhaps other cessions of territory or property are also in the works. This new precedent would haunt us down through the years, and we cannot allow it to be established.

So, Mr. Chairman, the Congress should not lightly endorse this proposed departure from sound Constitutional principles simply for the perceived political expediency of the moment. The Senate particularly should, instead, guard the prerogatives of the whole Congress by amending the proposed treaties at all appropriate points to make cessions of territory or property to Panama subject to the prior enactment of authorizing legislation by the Congress—in other words, no authorizing statute, then no transfer and a void treaty.

This distinguished Committee may be assured that I and other Senators will seek adoption of an amendment to the Canal treaty to preserve the Constitutional role of the Congress, particularly the role of the House of Representatives, in disposing of United States territory or property. Such an amendment could appropriately appear in Article I of the treaty by amending the language of that article to make the abrogation of the Treaty of 1903 subject to authorizing legislation of the Congress inasmuch as that abrogation is itself the primary means by which the property and territory of the United States is alienated and transferred to Panama. Additionally, any resolution of the Senate advising and consenting to ratification by the President should contain a specific reservation forbidding the President to exchange instruments of ratification with Panama until a statute is passed by the Congress authorizing the contemplated disposition of our territory and property in the Isthmus of Panama.

My own hope, of course, would be that such a statute would never pass, and I would certainly work to see its defeat. But notwithstanding a member's position on the Canal giveaway, we are all sworn to uphold the Constitution, and in this instance the issue is clear and there can be no room for doubt but that the whole Congress must act before any transfer can legally occur.

Finally, Mr. Chairman, I wish to emphasize that I have not reached this conclusion without study. As Chairman of the Subcommittee on Separation of Powers of the Senate Committee on the Judiciary, I have heard the testimony of 34 witnesses over 7 days of hearings dealing almost exclusively with this very question, and the overwhelming evidence is that the Administration position is devoid of any substantive legal support and ought to be rejected out of hand.

\$2.262 BILLION TO PANAMA FOR THE RIGHT TO CEDE THE CANAL ZONE TO PANAMA

I regret to say to this distinguished Committee that the Constitution is ignored elsewhere in these treaties and related documents. Most citizens learn in eighth grade civics that bills for appropriation must originate in the House of Representatives and that the people's representatives in the House are charged with primary responsibility in matters regarding the nation's pursestrings. Yet, Mr. Chairman, our negotiators have somehow figured out a means for bilking the users of the Canal and the American taxpayers of at least \$2.262 billion without any need to seek an appropriation from the Congress.

We are presented, gentlemen, with treaties which do not give the United States the right to guarantee its interests in the Canal, which do not provide for an adequate defense of the Canal, which do not allow the United States to initiate new Canal projects except with Panama's consent, but which do, on the other hand, give the Canal Zone entirely to Panama, which do also eventually give the Panama Canal Company to Panama, which do immediately give the most lucrative operations of the Panama Canal Company to Panama, which do give immediately 10 United States military bases to Panama, which do give Panama immediately political jurisdiction over 37,000 United States citizens living in the Canal Zone, and which do, finally, give to Panama \$2.262 billion in 1977 dollars. And this last I find the most incredible part of all.

You know, Mr. Chairman, ordinarily the grantee pays the grantor, but our clever negotiators have figured out a way for us to give away the Canal Zone and pay the recipient at the same time. They have also figured out a way to make these payments without Congressional approval. I will not insist on going into great detail on how this \$2.262 billion in 1977 dollars is to be paid to Panama because I know this Committee is fully familiar with the financial ramifications of this proposed arrangement. However, I would recommend to the Committee a careful reading of a speech given on August 19, 1977, before the Panamanian National Assembly by Panamanian Planning and Economic Policy Minister, Nicolas Ardito Barletta. Minister Barletta's analysis of the cash flow to Panama proposed by these arrangements is, in my judgment, highly accurate, and it is from his work rather than from the misleading Department of State estimates that I have drawn the figure \$2.262 billion.

Why are we proposing to pay these tremendous sums to Panama? Why would we permit these proposed toll increases which will surely burden commerce and inflate consumer prices in the United States? The only reason I can ascertain is a desire to provide Panama with funds to repay outstanding loans from the large international banks.

The Library of Congress did a study at my request which indicates that the external public debt of Panama is some \$1.7 billion. Interest on that sum is a tremendous burden on this small country of only 1.5 million inhabitants, and already 40% of current revenues in Panama go to carrying present indebtedness. Stating the matter bluntly, Panama is on the verge of bankruptcy and many of our large banks hold loans which may soon be bad debts, that is, of course, unless the United States taxpayer rescues the banks by providing the funds to Panama for repayment.

Mr. Chairman, sooner or later the Congress must draw the line and stop robbing American taxpayers to extend funds to bankrupt Third World countries so that international banks can collect principal and interest on shaky loans. In my judgment, the international banks should be required to write off their bad debts, to write off at least some portion of the loans they made in error, and the international banks should be put on notice that the American taxpayer will not always guarantee a profit in any loan transaction with unstable governments. Perhaps, rejection of the Panama Canal treaties would be a good method to send that message.

And another message ought to be sent. That message ought to be sent to the executive branch, and it ought to be that Congress will not permit its prerogatives to be trampled by clever devices designed to circumvent the power of Congress over appropriations. The plain fact is that we plan to give to Panama \$2.262 billion. That being the case, Congress needs to say either "yea" or "nay", as the people may wish. I know how my constituents feel on this subject, and I am sure the distinguished members of this Committee know their own constituencies. But the executive branch has structured these arrangements in a manner to prevent Congressional authorization or appropriation.

The executive branch proposes to establish a Panama Canal Commission which would be a United States government corporation structured much as is the present Panama Canal Company. This new proposed Panama Canal Commission would

replace the Panama Canal Company and would acquire back from Panama for a term of years, until year 2000, use of the principal assets now owned by the Panama Canal Company, save certain lucrative assets immediately transferred to Panama but not returned. This new Commission would then operate the Canal, serving up off the top, so to speak, Panama's slice of the pie. And that slice is a pretty big slice which all admit would require immediate toll increases and no doubt later new borrowings from the United States Treasury to enable the Commission to pony up this proposed average \$100 million annual payment to Panama.

But under this plan what happens to the existing Panama Canal Company? This question is one of the many not yet answered satisfactorily by the Administration. Also unanswered and more importantly, what happens to the existing \$319 million debt of the Panama Canal Company to the Treasury—a sum which apparently would not be transferred to the proposed new Commission? What happens to the approximately \$16 million in annual interest payments the United States receives on this debt? The answer is the same answer we've been giving the people down through the years here in the Congress—the American taxpayer, as usual, will pick up the tab. That's right, Mr. Chairman, this section setting up this proposed Panama Canal Commission is a shell game fit for any carnival huckster, and it is going to cost our Treasury \$319 million right off the bat and is going to deprive our taxpayers of some \$16–\$17 million in annual interest payments that have amounted so far to over \$600 million in payments into the Treasury.

But there is an ever greater surprise waiting for the American taxpayer of year 2000, because in year 2000 the Panama Canal Commission folds up and is out of business, much as the Panama Canal Company is now slated for collapse. And once again, Mr. Chairman, the Department of State would have us promise to Panama under these treaties that the Panama Canal Commission would leave Panama in year 2000 and turn over all of the operating assets of the Canal to Panama clear of any liens or encumbrances. In other words, American taxpayers in year 2000 are going to be forced to swallow one more defunct government corporation with massive liabilities and no assets. Mr. Chairman, we have no way of predicting what it will cost in year 2000 when the business of the Panama Canal Commission is wound up, but certainly if the experience of the last few years is any guide, that expense will be well above \$319 million the taxpayers are being asked to write off today.

Then there is the small matter of \$345 million in various so-called soft loans which the State Department has seen fit to promise to Dictator Torrijos. I use the term "small matter" not because I consider it a small matter but because the big thinkers and planners down there at the Department of State figure \$345 million is a mere drop in the bucket against the backdrop of \$7 billion annually in foreign aid porkbarrel. Bear in mind, in assessing the magnitude of this figure, that we are talking about a country of only some 1.5 million people. I daresay there are few Congressional districts in the United States which would not return to office many times over a member who could produce that kind of money in development loans. So Panama has got some pretty powerful friends here in Washington when 1.5 million people can get their hand in the till for \$345 million in development aid.

But, Mr. Chairman, the really annoying part about this \$345 million is not so much the fact that it is an exorbitant sum but that, in blandly promising this \$345 million, the Department of State has ignored entirely the Congress and, with the exception of certain appropriated monies in the military portion of the \$345 million, the Department of State plans to get this money for Panama out of existing authority without any action by the Congress and without any action by the Senate in consenting to these loans as part of the proposed treaties. Again, the prerogatives of the Congress are being ignored by appointed bureaucrats answerable apparently to no one.

DEFENSE OF THE CANAL

I suppose that the United States could absorb this financial rip-off. Certainly, we have paid needlessly vast sums in the past down a variety of ratholes and yet continued as a great and strong nation. But other aspects of these proposed treaties are far more dangerous in the long term to our national well-being than are the massive proposed cash payments to Panama. Chief among these considerations is the dangerous and obviously adverse strategic effect of abandoning—after a decent interval—the Canal and the Canal Zone to a pro-Marxist dictator who receives direction from Cuba and the Soviet Union. What folly.

But in order to understand completely the immediate dangers of the defense provisions of the proposed treaties, to appreciate fully the sophistry of the media arguments on defense rights, and to understand the true extent of our proposed surrender, care must be taken to examine in detail the Executive Agreement in

Implementation of Article IV of the Canal treaty, the article which deals with defense. Moreover, further study must be given to the annexes to the executive agreement, to the annexes to the annexes, and to the various notes, minutes and protocols—all of which form the fabric of the so-called joint military defense we would undertake with Panama.

I am particularly concerned, Mr. Chairman, that the drafters of the Canal treaty saw fit to set forth the major substantive defense provisions not in the Canal treaty in its Article IV, which is entitled "Protection and Defense", but instead in this Executive Agreement in Implementation of Article IV—an agreement which is several times as large as the entire Canal treaty itself. Article IV of the Canal treaty does not cover a complete printed page, yet the Agreement in Implementation of Article IV is some 53 pages long, excluding annexes and excluding an additional 22 pages of agreed minutes, the minutes themselves having their own annexes. So, Mr. Chairman, we have critical defense provisions not in the text of the treaty but rather in this lengthy executive agreement and in other extrinsic documents which could be modified from time to time by the executive branch with no requirement whatsoever to obtain the assent of the Senate.

Moreover, Mr. Chairman, the defense provisions already set forth in this first executive agreement are, on their face, unworkable and portend a complete withdrawal of the U.S. forces from the Canal Zone well in advance of the projected date of 2000 AD. The Administration proposes in this first executive agreement to surrender 10 out of 14 bases. Thus, we are asked at the outset to permit the surrender of 10 out of 14 military bases and to permit our forces defending the Canal to be hemmed in from day one in four relatively small enclaves. These bases would indeed be enclaves because our freedom of action outside of the four bases would be severely limited by the treaty requirement for approval of operations by a joint military board in which the United States and Panama will have equal authority. Apparently, the doctrine of unity of command is imperfectly understood at the Department of State, but the Panamanians no doubt recognize fully that this provision of the executive agreement would give a de facto veto of United States operations outside of the four retained bases.

So our forces would be restricted to four relatively small enclaves, and only the naive would doubt that we would very soon see pressure on our forces to withdraw from the four sites retained. That process of withdrawal would be facilitated by the fact that the executive department could close down any one or all of the remaining bases by amendment of the executive agreement with the stroke of a pen without the consent of the Senate or the consent of the Congress. Now, Mr. Chairman, the members of this distinguished Committee may not think that this process of accelerated withdrawal is contemplated, but I would call attention to the provision of the executive agreement implementing Article IV which provides explicitly that the agreement will be renegotiated every two years or upon the request of either government and thus tacitly acknowledges what is coming.

This treaty is for a proposed term of 22 years. Yes, we are going to need tough-minded negotiators if we plan to hang on to these four defense sites for a term of 22 years with the Panamanians hounding us daily for complete withdrawal and with our own government already proposing to negotiate the matter on a biennial basis or upon request. Frankly, Mr. Chairman, these four defense sites would rest on a foundation of sand if, by Senate ratification of the Canal treaty, the Department of State were to be given the right to agree—and they seem pretty agreeable with this dictator down there in Panama—if the Department of State were to be given the right to agree with Panama more or less at any time that the time was propitious to shut down another base.

Finally, Mr. Chairman, I would ask the Committee to consider carefully the feasibility of successful joint military operations with Panamanian forces. Over the long term, we can expect problems. How can we expect full cooperation from an army whose recruits are taught to chant in unison at their recruit training base at Fort Cimmaron, "Down with the Yankees, death to the Yankees, to the wall with the Yankees". No, Mr. Chairman, over the long term we would be naive in the extreme to expect full cooperation from Panama in any joint defense of the Canal.

CANAL NEUTRALITY

Closely related to the issue of defense is the failure of the executive branch to negotiate for the United States a right to defend the neutrality of the Canal after 2000 AD. Much has been said in the media to the effect that the United States could unilaterally preserve Canal neutrality after a full withdrawal of U.S. forces from the Isthmus of Panama, but, Mr. Chairman, a careful reading of the neutrality

treaty makes it evident that, in fact, the United States would have no such right whatsoever.

The neutrality treaty simply declares that the Canal Zone is neutral and sets forth an agreement by the United States and Panama that both parties recognize the Canal's neutrality. Nowhere is the United States granted permission to determine that the neutrality of the Canal is endangered or has been violated and nowhere is the United States granted the right to intervene to insure that the Canal is not made available to an enemy nation while being denied to our Navy and merchant ships.

Additionally, Mr. Chairman, the so-called right of expeditious transit given to United States warships is totally meaningless. The failure of our negotiators to insist on privileged passage for United States war vessels could permit Panama in an emergency to delay the movement of United States warships by simply requiring those vessels to transit the Isthmus on the same "expeditious" basis as merchant ships of all nations.

As Dr. Romulo Escobar Bethancourt, chief negotiator for Panama, put the matter, "If the gringos with their warships say, 'I want to go through first,' then that is their problem with the other ships there." Regrettably, Mr. Chairman, Dr. Escobar's analysis of the practical meaning of our right to expeditious passage, although stated undiplomatically, is nevertheless precisely correct. His complete rejection of any claim that the United States is given the right to send troops to preserve Canal neutrality also accords accurately with the language in the text. In fact, the truth is, Mr. Chairman, that Dr. Escobar's construction of the neutrality treaty, unlike the construction placed on it by our own executive department, is a construction based on the language of the treaty itself rather than on wishful thinking or on the assertions of the mass media.

But, although much has been said of late about correcting by amendment the problems of priority transit and right of intervention, no amount of band-aid amendments can correct the basic faults embodied in any plan which gives control of the Canal to Panama at any time. No amount of words in no amount of amendments can ever provide to us the same needed guarantees as are provided by actual possession. Regardless of what these treaties might eventually say on keeping the Canal open or on maintaining a regime of neutrality—whatever that might mean—if we give up physical control, this country will still, sooner or later, find itself at the mercy of some petty dictator who decides, probably with the backing of the Soviet Union, to cause difficulties for the United States in using this vital strategic waterway. Our actions in Panama are sadly reminiscent of the mistaken British policies in surrendering the Suez Canal. Ironically, only two months ago, a British nuclear submarine was diverted from the Suez Canal on some pretense or other regarding safety regulations and was diverted around Africa on a journey of months which would otherwise have been only of days. How long will it be before the Panama Canal is closed to our ships in a time of emergency, if these treaties are ratified? When that occurs—and it surely will under these treaties—we will have no option but to attack Panama and recover possession, or to eat crow and begin the long voyage around South America. Some choice.

The unsigned Memorandum between the President and Dictator Torrijos has no legal standing, and, if it did, it would do little to clarify our rights under the treaties.

No, band-aid amendments based on this unsigned memorandum will not do either. Attempts at clarification are not enough. These treaties must be amended to retain physical control of the Canal or they must be rejected entirely.

A NEW CANAL

From the language of the Canal Treaty, rather than from press reports describing peripheral issues, we have also learned a final fatal defect. According to the terms of the Canal Treaty—and unlike other provisions, the treaty is quite unambiguous on this point—the United States agrees not to negotiate without express Panamanian consent with any country except Panama for the right to construct an interoceanic canal on any other route in the Western Hemisphere.

Mr. Chairman, knowing you as I do, I feel certain that you share my astonishment that the negotiators for the United States saw fit to preclude any possibility of construction of a new interoceanic canal, perhaps at sea level, without our country first obtaining the express consent of a pro-Marxist and highly unstable military dictatorship. Why was this concession necessary? What did the United States gain from the concession?

I notice with some amusement, Mr. Chairman, that the Republic of Panama purports to grant to the United States of America the right to add a third lane of

locks to the existing canal. Inasmuch as the United States already has the right to add a third lane of locks to the existing canal, surely our negotiators did not think that a meaningless concession of that variety was sufficient consideration for giving the Panamanians a veto over any other project we may wish to undertake to connect the two oceans. Certainly, the negotiators for the United States could not have felt that the Panamanian agreement to commit Panama "to study jointly the feasibility of a sea level canal" warranted a countervailing commitment from the United States not to do anything whatsoever without Panamanian permission—but perhaps so. The bizarre behavior of our negotiators has produced other results equally as startling.

In any event, Mr. Chairman, one thing is sure and that is that the Panamanians know they got the best of this bargain. Discussing the sea level canal issue, chief Panamanian negotiator, Romulo Escobar Bethancourt, on August 19, 1977, with pride explained to the Panamanian National Assembly the unilateral benefits of the so-called sea level canal options. Dr. Escobar's remarks on the subject, like his remarks on neutrality, are illuminating and are worth studying in full. As Dr. Escobar explains, instead of the United States obtaining an option to build a sea level canal, the United States negotiators gave to the Panamanians the option to veto construction of any type of interoceanic canal, sea level or locks, proposed to be built by the United States anywhere in the Western hemisphere.

Now, Mr. Chairman, committing the United States to deal only with Panama about building another canal is a serious mistake. As the distinguished Chairman knows, the best route for a new canal is in Nicaragua, that being the route that Senator John Tyler Morgan favored during consideration of Isthmian routes in the early part of this century. Senator Morgan of Alabama, who was Chairman of the Senate Committee on Interoceanic Canals, felt strongly that Nicaragua provided a more favorable political and geographical solution to the immense problems involved in constructing a canal between the two oceans. Retrospectively, he may well have been correct, yet our present treaty negotiators propose to foreclose entirely the option Senator Morgan and many others favored, an option which should at least be kept open. Certainly, with the great volume of Alaskan oil which is only now beginning to come on stream and which must move to Gulf and East Coast refineries, any relinquishment of the right to negotiate for a route in Nicaragua is a very grave mistake indeed.

RESERVATION, AMENDMENT, AND FILIBUSTER

In summary, Mr. Chairman, I believe that the Senate and the House of Representatives should play a significant role in the formulation and revision of these proposed treaties—and I might say in the rejection of these proposed treaties—so that the terms of any new arrangement with Panama can be made fully acceptable to the American public and so that the commercial and national security interests of the United States can be fully protected.

Mr. Chairman, I am sure you know of the early practice of including Senators in delegations sent to foreign countries for the purpose of negotiating treaties. That practice has unhappily in large measure ceased, and the Senate has been more and more asked for consent rather than advice. These treaties provide an excellent opportunity for the Senate to reaffirm its Constitutional prerogative and, indeed, duty to advise the executive—to advise the President—in matters of foreign policy, particularly with respect to treaty negotiation. The Senate can give its advice through the amending process. These treaties should be amended to cure their obvious defects, and since any substantive amendment—as opposed to these band-aid amendments we are hearing about—and since any substantive amendment will require a renegotiation of the amended treaty, the Administration will be advised by these Senate amendments of what is acceptable to the Senate and to the people of the United States and what might later receive Senate consent and the authorization of Congress.

Reservations to these treaties alone would be of little or no value. Any reservations must be coupled with substantive amendments explaining to the President what is acceptable to the Senate and to the people of the United States. Reservations can only affect the obligations of the United States and, even with Panamanian assent, they can do little to bind Panama to a course of action consistent with the best interests of our country. Reservations can be used, as I pointed out earlier, to forbid the President to take any action to exchange instruments of ratification until certain pre-conditions are met. I believe very strongly that a reservation should be adopted forbidding ratification except if the Congress should see fit to authorize these transfers of United States territory and property. I hope that even proponents of these treaties would vote for that reservation since, above all, the

Senate has an obligation to prevent a usurpation of the prerogatives and powers of the whole Congress.

Reservations, however, cannot be offered, under Senate procedure, until the treaty has been considered in detail, first, in the Senate sitting as the Committee of the Whole and, second, in the Senate itself. In other words, the rules of the Senate provide for a double-barreled approach in consideration of treaties. These rules are designed to insure that treaties receive the utmost scrutiny and are considered with all appropriate deliberation. There will be, therefore, ample opportunity for amendment of these treaties in the Committee of the Whole and later on the floor of the Senate. Substantive amendments must be adopted to guide the President in renewed negotiation with Panama. Then, in my judgment, these particular treaties, being incredibly defective, should be defeated outright so that there is no question but that the Senate and the Congress intend to insist on the will of the people being put into effect by the executive branch.

Finally, Mr. Chairman, I would comment that I do not foresee a filibuster of these proposed treaties. I do foresee a full discussion, legitimate debate, and consideration of substantive and serious amendments. These proposed band-aid amendments can be dispensed with in short order, and I have no doubt they will be promptly adopted. The real deliberations will occur over the amendments of substance which are not cosmetic and which would provide some true safeguards to our vital interests.

But a filibuster would be pointless, both because a filibuster could be stopped by 60 Senators whereas the treaties could be stopped by 34 Senators, and because both treaties present questions which should be disposed of without undue delay so that the country can turn its attention to other dangerous developments which threaten our security—I refer chiefly to the Strategic Arms Limitation Talks which portend disaster for our country and which have in large measure been eclipsed by the Panama debate. But inasmuch as the concerns of the citizens of the United States regarding Panama are now abundantly evident, the Senate should with deliberation, but nevertheless promptly, discharge its duty in considering ratification. No good purpose can be served by having these proposed treaties more or less hang around for years. They should be put to the test of ratification without further delay and without further media posturing in Panama or elsewhere. My own sincere hope is that the wisdom and clear desires of the people of the United States will be respected for a change and that, accordingly, these treaties will be resoundingly defeated.

Thank you for the opportunity to appear before this distinguished Committee and before its distinguished Chairman.

VARIATIONS IN MEANING BETWEEN ENGLISH AND SPANISH TEXTS OF PANAMA CANAL TREATIES

Mr. ALLEN. Mr. President, I have frequently expressed the view that the proposed Panama Canal treaties lack clarity of expression, and are so replete with ambiguity that defective draftsmanship alone would warrant Senate rejection. I have also stated my apprehension that the Spanish text might not track the English language text and that future disputes might arise as a result of differences in the two versions of the proposed agreements.

For the past several days, I have been studying an analysis of differences which exist between the Spanish language text and the English language text of the two proposed treaties. This analysis confirms my earlier fear that the Spanish text does not accurately translate the English text. The analysis I have studied was prepared by Sylvia Costellanos, Research Director for the Senate Steering Committee. Miss Costellanos is bilingual and speaks Spanish fluently. The analysis she has prepared is a very scholarly document and reflects a great deal of work and study. I am advised that she was aided by several experts in Latin American law and legal terminology and that she has included in her analysis only those discrepancies which all agreed give rise to ambiguity and

confusion. In other words, only clear errors in translating English legal terminology to Spanish legal terminology are included.

Finally, having read her analysis, I conclude that the errors in translation were very likely—at least in many instances—deliberate in that they are errors which would permit the Panamanian negotiators to assert that they had obtained the best of the bargain while the negotiators for the United States could assert that the documents have the meaning best suited for garnering votes for ratification.

Mr. President, I ask unanimous consent that the analysis be printed in the Record.

There being no objection, the analysis was ordered to be printed in the Record, as follows:

OVERVIEW

Done at Washington, this 7th day of September, 1977, in duplicate, in the English and Spanish languages, both texts being equally authentic.

Signed in Washington, this 7th day of September, 1977, in the Spanish and English languages, both texts being equally authentic.

The quotations above are provisos found at the end of each of the Panama Canal Treaty documents. The first is the English text of the proviso; the second, a translation of the text as it appears in Spanish. Note that the Spanish text omits the phrase "in duplicate" found in the English.* This serves as an introduction to an important issue in the Canal Treaty controversy: the degree to which the language in the English and Spanish texts of the Panama Canal agreements correlate with each other.

On September 7, 1977, the United States and Panama agreed to a series of documents providing for the elimination of an American Canal Zone and the transfer of authority over the Canal to Panama. Among these documents are two treaties—the Canal Treaty and the Neutrality Treaty—several Agreements in Implementation, and exchanges of notes. The ensuing public controversy has related in some measure to the interpretation of key clauses in the Panama Canal documents. The U.S. government maintains the Neutrality Treaty gives the U.S. the right to defend the Canal after the year 2000. Panamanian Chief Negotiator Romulo Escobar Bethancourt denies this emphatically:¹ and his deputy negotiator Carlos Lopez Guevara further adds the treaty gives the U.S. "the right to hope that Panama and all other nations of the world will respect the right of American ships to transit the Canal,"² and nothing more. Similarly, there have been varying interpretations of the term "expeditious transit," with some authoritative sources describing it as the equivalent of "right of way," and others, equally authoritative, refuting this claim.

These conflicting interpretations, although serious, nevertheless arise in connection with words that are mutually accepted. There is a second question as yet unconsidered; the possibility of discrepancies between the very words used in the English and Spanish texts. This issue constitutes a separate and distinct layer of problems. Yet it is evident that to identify all possible ramifications of the documents President Carter has assigned, one must not only analyse the English texts for ambiguous language, but also the Spanish texts for potentially imprecise translations of the language.

According to the State Department, approximately 400 man-hours were spent by its official translators and the negotiating team comparing the substantive contents of the two versions of the agreements. While the resulting documents broadly correlate, their relationship is more that of highly similar documents than of identical texts. Because of differing syntactical requirements and limitations in vocabulary, some modifications are always required in translation work. The differences in these two texts, however go far beyond those needed for a smooth translation. In the Spanish documents the syntax is repeatedly changed for no apparent reason, words are included which do not exist in the English text, and terms are used which are not totally accurate translations of the words in English.

Of these many differences, some clearly will have no effect on interpretation. Others could potentially alter the meaning of the provisions in which they appear.

*The use of "done at" in English and "signed in" in Spanish does not have the same significance. Each nation is simply using the phrase that has been established by custom.

¹ *Matutino* (Panama City, Panama), August 20, 1977.

² *Miami Herald*, October 3, 1977.

Had an understanding been reached that the parties would abide by the interpretation of the English text in case of a dispute, these discrepancies would raise little problem for the U.S. Instead, Article XIV of the Canal Treaty provides for the settlement of such disputes through consultation or mediation, tacitly acknowledging at the same time that both texts are equally valid. Thus, in the reconciliation of differences the Panamanian version would legally carry as much weight as the English.

Although disputes of this nature have not often occurred in connection with previous agreements with Panama, a few have taken place. In January, 1904, the Panamanian government sent Secretary of State John Hay a list of discrepancies between the two texts of the 1903 treaty.³ These discrepancies, which it felt justified correction, were all minor. That is in itself an interesting point, given that just such minor inconsistencies permeate the 1977 agreements.

The principal reason for the traditional acceptance of the 1903 Treaty language, however, is not the absence of discrepancies *per se*, but rather a related agreement cited in the letter. "[T]he necessity of making further changes therein," Panama states, "will be oviated by your official statement that the English text shall prevail in case of such difference of interpretation."⁴ Because of this understanding, the choice of language in the Spanish text was immaterial, as it had been determined the English text would predominate.

If the ability of the U.S. to impose its understanding of the texts is limited by the very language of the documents, appeals to Panama's "cooperative spirit" will not necessarily result in U.S. interpretations predominating. Mutual good will is a spirit to be hoped for, but hardly to be inferred *a priori*, in international relations. Unspoken understandings as ephemeral in substance as the spirit they arise from, are no substitute for precise descriptions of the commitments being undertaken. When less than an unwritten understanding exists—only, as appears to be the case with possible disputes over the Spanish text, a general conviction that all will be well at the end—the risk is correspondingly greater. There are no grounds, in fact, to assume Panama would fail to insist on interpretations it regards as in its national interest, irrespective of their effect on the U.S. posture.

In general terms, the United States may face a problem with regard to the "grant" of certain functions it receives from Panama. The exact nature of America's role as Canal "manager" may be open to interpretation, as may be the exact degree of control America is empowered to exercise in regulating Canal traffic. The exact role of the Panama Canal Commission Board is also open to question. Disputes could arise about the scope of reimbursement to Panama for the public services it assumes in the former Canal Zone, and the effort Panama is under obligation to make in employing displaced Canal Company employees. Finally, as the U.S. text calls for a "feasibility" study of a sea-level canal, and the Panamanian text requires an analysis of the canal's "viability" questions may arise.

While it is impossible to predict the exact nature and intensity of potential differences over the Treaty language, one fact clearly emerges: the natural assumption on the part of most Americans that the Spanish texts faithfully follow the English documents is incorrect. Inconsistencies abound in the documents. And before a complete understanding of our agreements with Panama can be attained, these inconsistencies will have to be fully analysed and their ramifications understood.

I. "MANAGEMENT" OF THE CANAL

Throughout the treaties, the word "manage" is used repeatedly, both about functions to be performed by the U.S. in the operation of the Canal and about those to be performed by Panama. The English-language text, however, gives no inkling of the subtle word play that takes place in the Panamanian documents on this subject.

In the Panamanian text, three words are used as translations of "to manage." "Administrar" and "dirigir" are both correct translations, with the former being perhaps the most precise. The third word used, "manejar," falls into a different category. Although similar in appearance to the English term, it is not the Spanish equivalent of "to manage." Its meaning is "to operate" or "to handle".

There is a definite pattern, moreover, to the use of the three terms. In almost every case that "manage" is used in reference to the U.S. role, the Spanish term employed is "manejar." With few exceptions it is "administrar" or "dirigir" that is found in the context of responsibilities being assumed by Panama.

³ "Diplomatic History of the Panama Canal: Correspondence Relating to the Negotiation and Application of Certain Treaties on the Subject of the Construction of an Inter-oceanic Canal, and Accompanying Papers." Senate Document No. 474, 1914, p. 304.

⁴ *Ibid.*

Below is an example from Article 1 of the pattern:

"The Republic of Panama grants to the United States * * * the rights necessary * * * to manage (manejar) * * * the Canal."⁵ and:

"The Republic of Panama shall participate increasingly in the management (administration) * * * of the Canal * * *"⁶

The distinction between "managing", with its connotation of administrative responsibility, and "operating" becomes increasingly blurred in subsequent sections, as one finds "manejar" used as the translation for "to operate." In the Treaty Annex, to cite just one example, one of the rights America may exercise is listed as the "operation-(manejo) of the locks."⁷ Finally, "manejar" is also used as the translation for "handling," another of the American functions included in the Annex is the "handling (manejo) of cargo * * *"⁸

The Panamanians' choice of words in translating "to manage" obviously cannot prevent Americans, be their official role that of "managers" or "operators," from exercising the functions they retain under the treaty. But that is not to say the word play is without impact. The constant use of "manejar" helps create a perception of America's role as that of a "hired hand" rather than owner with legitimate administrative authority and control. This in turn supports the position that the Canal belongs to Panama, and the U.S. role is merely to operate it until Panamanian nationals achieve the expertise necessary to exercise full control over their property.

II. CONTROL OF TRAFFIC

In the Canal Treaty documents there are several references to the regulation of traffic in the Canal. Under Article I, section 4, "the United States and the Republic of Panama shall, cooperate to assure the uninterrupted and efficient operation of the canal."⁹ In article III, Section 1, the "Republic of Panama grants to the United States of America the right * * * to provide for the orderly transit of vessels through the Canal."¹⁰ Article III, Section 2(c) grants the United States the right to "make and enforce all rules pertaining to the passage of vessels through the Canal,"¹¹ and the Annex to the document repeats that "control of vessel movement" is one of the functions which the Panama Canal Commission "may perform."¹²

The importance of well-regulated, and above all, uninterrupted transit of ships in the Canal is paramount to the United States. The reason is obvious; the waterway is of military importance to America, and with 70% of the cargo transported through the Canal originating from or destined for the U.S., of economic significance as well.

The most revealing statement on the Panamanian attitude toward uninterrupted operations is contained in an August, 1977, speech by Panamanian Chief Negotiator Romulo Escobar Bethancourt to the Panamanian Assembly. In connection with the Neutrality Treaty, which deals with Canal operations after the year 2000, he explains his negotiating team had balked at U.S. insistence that Panama guarantee the Canal would remain permanently open. As his stated reason he explained that natural disasters or loss of revenue may someday cause Panama to close the Canal, thereby putting it in a position, if it signs the accord, of violating a treaty for reasons beyond its control.¹³

Some opponents of the treaty feel a second factor may have influenced Panama. Retaining flexibility over the flow of traffic through the Canal, including the right to shut down the waterway, provides Panama with a trump card over the United States. Significantly, the only guarantee ultimately incorporated in the Neutrality Treaty is that "the Canal shall be operated efficiently in accordance with conditions of transit through the Canal."¹⁴ The qualifier included at Panama's behest makes the guarantee virtually meaningless.

To what extent can the United States draw upon the provisions cited earlier for undisputed authority to regulate Canal traffic until the year 2000, when control is transferred to Panama?

The language in Article I ("The United States and the Republic of Panama shall cooperate to assure the uninterrupted and efficient operation of the Canal"), when

⁵ U.S. Department of State, Selected Documents, Publication No. 6A, September 1977, p. 1. Hereinafter referred to as U.S. Department of State, *Treaties*.

⁶ *Ibid.*

⁷ U.S. Department of State, *Treaties*, p. 11.

⁸ *Ibid.*, p. 12.

⁹ *Ibid.*, p. 1.

¹⁰ *Ibid.*, p. 2.

¹¹ *Ibid.*, p. 11.

¹² *Ibid.*, p. 11.

¹³ *Matutino* (Panama City, Panama), August 20, 1977.

¹⁴ U.S. Department of State, *Treaties*, p. 14.

analyzed closely, does not emerge as absolutely final. The mandate in the sentence relates to cooperation; "uninterrupted and efficient operation" occupies a secondary position as the purpose of the cooperation. The obligation being undertaken by the two nations is thus primarily to attempt to work together for the purpose of achieving efficient and uninterrupted operation. The language does not commit them to the achievement of this *per se*.

Under Article III, Section 1, the "Republic of Panama . . . grants to the United States of America the right . . . to provide for the orderly transit of ships through the Panama Canal." In the Spanish text this function is expressed as the right to provide for the "fluid transit" of vessels.¹⁵ This discrepancy did not arise out of linguistic exigencies. Not only does Spanish contain a word equivalent to "orderly" ("ordenado"), but this term is in fact used in other sections of the documents.

Interpreted literally, the Spanish version of the sentence merely gives the United States the right to ensure that the ships going through the Canal will have water (or some liquid) to sail on. From the context, of course, it is evident that the word is being employed figuratively. Yet the very use of figurative expressions in a legal document is to be questioned. Subjective imagery, open to dozens of more or less different personal interpretations, is normally avoided in international treaties in favor of highly precise terms with established legal meanings. This is regarded as the best assurance that inaccurate interpretations will not arise in the future. In this instance, however, the right given to the United States in this section can be interpreted in as many different ways as there are opinions on the meaning of "fluid."

The references in Article III, Section 2(c) and the Annex, like those in other sections, are not as final as they appear to be. Neither explicitly gives the United States the authority to ensure, unilaterally, if necessary, smooth, uninterrupted Canal traffic. It can be argued that the grant to the U.S. to regulate traffic makes this unimportant, with the latter constituting sufficient authority. But an additional factor must be considered. Although it is not explicitly stated, it is evident that the grant of authority is qualified. The organ charged with implementing this and other functions is the Panama Canal Commission and, as shall be discussed later, differences between the English and Spanish texts raise the possibility that substantial influence may be exerted by Panama on its decisions.

In summary, the Canal Treaty documents do not give the United States the clear-cut right to control the Canal traffic. They refer to cooperation with Panama on the issue, the American right to guarantee the "fluid" transit of vessels, and the authority the U.S. is to exercise through the Panama Canal Commission, over which it will not have complete control. That which the treaties make no mention of is the U.S. having explicit, unilateral authority to regulate the transit of vessels through the Canal.

III. PANAMA CANAL COMMISSION AND BOARD

Article III of the Panama Canal Treaty establishes a Panama Canal Commission through which the United States will carry out its Canal management functions. In connection with this Commission, a Board is also established.¹⁶

The Commission is described as a "United States Government agency which shall be constituted by and in conformity with" the laws of the United States of America.¹⁶ In connection with its duties, the U.S. may, among other things, "issue and enforce regulations for the effective exercise of [its] rights and responsibilities."

These points are significant in light of the role of the Board cited earlier. The English text describes the role of the Board and its relation to the Commission in this manner: "The Panama Canal Commission shall be supervised by a Board." This seems to imply the panel is one with oversight responsibility; that it shall serve as a watchdog ensuring the Commission is properly carrying out its established responsibilities.

The Spanish version does not present a literal translation of the sentence, stating, "The Panama Canal Commission shall be directed by a Board of Directors . . ." Under the Panamanian text a rather different panel seems to be created. "To direct" is not synonymous with "to supervise," the former implying the existence of policy-making authority. The combination of "to direct" and "Board of Directors" (in contrast to a simple "Board") seems to indicate that Panama expects the body being created to have far more authority than the U.S. presumably intends it to have.

¹⁵ U.S. Department of State, *Treaties*, p. 2.

¹⁶ U.S. Department of State, *Treaties*, p. 2.

¹⁷ In the Spanish text the words "by and" are omitted. The resulting sentence makes no reference to the Commission being constituted by the United States.

¹⁸ U.S. Department of State, *Treaties*, p. 2.

The policy making power of the Board implied in the Panamanian text raises at least two problems. One is the degree to which a foreign country would have control over an agency of the U.S. government.

The make-up of the Board is significant in this context. The treaty stipulates it shall consist of five Americans and four Panamanians.¹⁹ With Panamanian participation coming one vote short of control of the board, this panel would almost certainly emerge as a vehicle for strong Panamanian influence on matters relating to the Canal's operation.

The 5-4 make-up, moreover, is no guarantee the U.S. will always have a majority. With full attendance, one American voting with the Panamanian bloc would be sufficient for the latter's position to prevail. Unavoidable absences from meetings and temporary vacancies in the American positions could similarly give Panama a temporary majority on the Board. The composition of the Board, in short, dilutes—and in some instances may vitiate—the rights granted to the United States in connection with the Canal.

The second problem relates to the question of responsibility. What entity is liable for possible improper Canal operation, or accidents? The U.S. is charged with managing the Canal, and the Panamanian Canal Commission is officially a U.S. government agency. On this basis, responsibility should fall on the United States. Yet if the Board is to have a policymaking role, the U.S. has less than full control over the actions of the Commission. Would the U.S. nevertheless be made liable for problems relating to the Canal?

IV. "GRANTS" OF RIGHTS TO THE UNITED STATES

The verb "to grant" appears eight times in the course of the documents. In Spanish it is translated in three different ways, using the word which is most precisely its equivalent ("otorgar"), but also the words meaning "to confer" ("conferir") and "to concede" ("conceder").

The verb "to concede" is used almost exclusively as the translation of "to grant" in the Spanish text of the 1903 treaty with Panama. It is employed, for example, in the crucial first clause in Article III:

"The Republic of Panama grants (in Spanish, "concedes") to the United States all the rights, power and authority * * * which the United States would possess and exercise if it were the sovereign of the territory * * *"²⁰

The principal controversy surrounding this clause relates to the interpretation of "if it were the sovereign." A second source of debate has been the use of the word "concedes," with some Panamanians contending that in "conceding" these and other rights, their nation did not quite "grant" them.

This illustrates a problem that can occur when a word used is not the precise equivalent of the term agreed upon in the other language: its meaning is susceptible to questions. Had "otorgar" been used instead of "conceder," it is likely no question would have been raised. But with "conceder" employed, an argument can be made for the attribution of a different meaning on the not illogical grounds that if Panama had meant to make a "grant," it would have used the word "grant."

This particular dispute could have become far more complex than it did. As it was, it revolved around only one translation of "to grant." Upon ratification of the 1977 documents, by contrast, the governments involved will have not one, but three terms for which to sort out the nuances.

Given that grounds for distinguishing between the three terms may exist (in the opinion of present or future Panamanian officials, if nothing else), it is useful to examine what is "granted," what is "conferred," and what is conceded to the U.S. under the Canal Treaty.

Under Article I,

Panama * * * grants (confers) to the United States of America, for the duration of this Treaty, the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the Canal.²¹

Under Article III,

Panama * * * grants (confers) to the United States of America the right to manage, operate, and maintain the Panama Canal, its complementary works, installations and equipment, and to provide for the orderly transit of vessels through the Panama Canal.²²

¹⁹ U.S. Department of State, *Treaties*, p. 2.

²⁰ U.S. Department of State, *Construction of a Ship Canal to Connect the Waters of the Atlantic and Pacific Oceans*, TIAS No. 431, p. 2.

²¹ U.S. Department of State, *Treaties*, p. 1.

²² *Ibid.*, p. 2.

The text then notes that the U.S. "accepts the grant (concession) of such rights * * *"²³

The rights provided for in the two sections overlap, but are not identical. The rights to improve and protect the Canal are only "granted," while the right to manage, operate, and maintain the Canal's complementary works, installations and equipment is only conferred upon the U.S.

Under Article XI, certain rights are "conferred" on the United States in connection with jurisdiction over civil and criminal matters.²⁴ The text adds this authority "shall supplement, and is not intended to limit, the full application and effect of the rights and authority granted (conferred) to the United States of America elsewhere in this treaty and in related agreements."²⁵

If a difference exists between "to grant" and "to confer," how is the above to be interpreted? In a literal sense, it could be argued that this section applies only to those rights which were, strictly speaking, "conferred," and not to those which were "granted."

V. PAYMENT TO PANAMA FOR SERVICES

Article III stipulates that Panama will assume certain public services in what was formerly the Canal Zone, and is to be reimbursed for these services by the Panama Canal Commission.²⁶ The English text clearly calls for reimbursement for costs incurred "in" providing those services, but the Spanish text, by contrast, uses a preposition most accurately translated as "while."²⁷

A strict interpretation of the sentence in the Spanish text thus commits the Commission to reimburse Panama for costs incurred at the same time as, but not necessarily in connection with, those services. This is indicated not necessarily to argue that Panama will insist on this position, but rather to point out that the language of the Spanish text allows it to do so if it wishes.

During the first three years the treaty is in force, this discrepancy would not have an impact, as the payment to Panama for public services is set at \$10 million per annum. But at the end of three years, and every three years thereafter, the treaty calls for payment to Panama to be reviewed. The U.S. text calls for "the costs involved in furnishing said services to be reexamined."²⁸ and the Spanish text again uses the preposition equivalent to "while." The U.S. text adds "inflation and other relevant factors" are to be taken into account,²⁹ and the Panamanian text, compounding the ambiguity calls for the consideration of "inflation and other important factors." Obviously, "relevance" and "importance" are wholly different concepts.

Realistically, it is doubtful Panama would argue for the most literal interpretation of "while" and "important." Nevertheless, these terms give the government a degree of leeway it would not otherwise have. In a borderline situation, when the appropriateness of taking certain costs into account is being debated, these ambiguous terms provide Panama with an advantage it would lack under more precise language.

VI. FATE OF DISPLACED EMPLOYEES

A discrepancy appears in Article X of the Canal Treaty with regard to the future of former employees of the Panama Canal Company. Both texts agree that the two nations shall attempt to find positions for employees displaced because of the terms of the agreement. Then the documents differ. In every reference to this matter, the American version states reemployment goals will be carried out "to the maximum extent feasible,"^{30a} while the Panamanian version employs the more lukewarm "to the extent possible." Whether "feasible" and "possible" imply differing degrees of commitment is a debatable point; but the inclusion of "maximum" in the English text does convey a heightened sense of commitment not found in the Spanish text. A situation consequently could arise in which the U.S., taking its mandate from the American text, would make efforts to retain displaced employees "to the maximum extent feasible," while the Panamanian government's efforts would be limited to "the extent possible," as called for in the Spanish text.

²³ Ibid.

²⁴ U.S. Department of State, *Treaties*, pp. 8-9.

²⁵ Ibid., p. 8.

²⁶ Ibid., p. 3.

²⁷ Ibid.

²⁸ U.S. Department of State, *Treaties*, p. 3.

²⁹ Ibid.

^{30a} Ibid., pp. 77-8.

VII. DISCREPANCIES IN LEGAL TERMINOLOGY

Of the legal terms used throughout the agreements, there are instances in which the expressions used do not totally correlate. This absence of uniformity may or may not affect the execution of the treaties in a substantive manner; in most cases they probably will not. At the same time, however, their very existence seems to indicate a certain lack of careful study on the part of the officials responsible for analysing the correlation between the Spanish and English texts of the documents. That discrepancies should exist even in legal terminology is a telling point, as the choice of legal expressions, given their frequently highly technical definitions, is one normally made only after a study conducted with the utmost care.

In the Preamble and Article I there are three references to previous treaties being ended by virtue of these agreements. While the term used in English is "terminate" in both textual references (the third reference, in which "abrogation" is employed, occurs in the title to Article I), the Spanish text uses "abrogate" throughout. The words are not interchangeable. "Termination" relates to an agreement coming to an end,^{30b} while "abrogation", according to the authoritative *Black's Law Dictionary*, implies its repeal, annulment, or destruction.³¹ Undoubtedly, "abrogate" is the more forceful of the two terms. Its selection by the Panamanian negotiators, be this the result of accident of design, will likely appeal to Panamanians opposed to existing treaties.

Because the Spanish language contains a word equivalent to "terminate" as well as one having the meaning of "abrogate," no linguistic impediment existed for a common term being selected by the two parties in the negotiations. Such consistent use of one term would have totally precluded any questions arising in the future about the exact circumstances under which previous treaties were made inactive.

Under Article III, the English language text gives the U.S. the right to "make and enforce all rules pertaining to the passage of vessels through the Canal and other rules with respect to navigation and maritime matters."³² The word used in the Spanish text as the equivalent of "to make" is "promulgar," meaning "to promulgate."

The authoritative *A New Pronouncing Dictionary of the Spanish and English Languages* by Mariano Velazquez de la Cadena (normally known, and hereinafter referred to, as the *Velazquez Dictionary*) translates and defines "promulgar" as "to promulgate, to publish."³³ The supremely authoritative Spanish-language *Diccionario de la Lengua Espanola* gives the following definition of "promulgar" as a legal term: "to formally publish a law of other measure by an authority."³⁴

Clearly, while the "making" of a law or rule embraces all the steps involved in the process, its promulgation relates to only one small aspect of that process. A purist would question if the right granted in the Spanish text to "promulgate" carries with it the authority to carry through the other steps involved. While Panama is scarcely likely to make this point, if a uniform term had been selected (and the Spanish language does contain words equivalent to "make"), the question would have been totally moot.

Finally, the word used in the Spanish texts as the equivalent of "to issue," "expedir," is to same degree open to question. The *Velazquez Dictionary* defines "expedir" as "to issue from a public office."³⁵ Thus in certain parts of the texts, such as in those dealing with the issuance of licenses for various activities, the use of "expedir" is correct. In connection with the issuance of government regulations (as, for example, under Article III, which gives the U.S. the right to "issue and enforce regulations for the effective exercise of the rights and responsibilities of the United States of America * * *"³⁶, legal experts regard the use of a separate term, "dictar," as more correct.

CONCLUSION

All multilingual documents contain, perhaps inevitably, some discrepancies with regard to the exact choice of words. To say it is a frequent occurrence however, is not to say it is one without consequences. Disputes, sometimes serious ones, can and

^{30b} *Black's Law Dictionary* (St. Paul, Minnesota: West Publishing Company, 1962), p. 1641.

³¹ *Ibid.*, p. 21.

³² U.S. Department of State, *Treaties*, p. 2.

³³ *A New Pronouncing Dictionary of the Spanish and English Languages* (Chicago, Illinois: New York, New York: Wilcox & Rollett Company, 1942), Part I, p. 520.

³⁴ *Diccionario de la Lengua Espanola* (Madrid, Spain: Editorial Espasa-Calpe, S.A., 1970), p. 1072 (author's translation).

³⁵ *A New Pronouncing Dictionary of the Spanish and English Languages*, Part I, p. 310.

³⁶ U.S. Department of State, *Treaties*, p. 2.

do occur. Obviously, the very existence of a discrepancy will not automatically lead to a problem; at the same time, its presence opens the door to disputes. In the case of the Panama Canal Treaties, the differences in the two versions can easily result in problems of some degree of seriousness, particularly because there is no reason to believe Panama will automatically accept specific U.S. interpretations over its own.

The eventual acceptance or rejection of the treaties is a matter which will be decided in the coming months by the American people and the U.S. Senate. Many factors will be weighed in the course of the decision-making process. A number of these, such as the effect of the treaties on U.S. access to the canal and on its authority to defend the waterway, are of supreme importance. At the same time, an equally significant element in the decision-making process is understanding what the treaty language actually says and what its word can be interpreted to mean. A thorough understanding of this aspect of the issue will be integral to an intelligent decision on the fate of the treaties.

TESTIMONY ON THE PANAMA CANAL TREATIES

Mr. SPARKMAN. Mr. President, the Committee on Foreign Relations continued hearings today on the Panama Canal treaties and received testimony from the following:

The Honorable Eldon Rudd of Arizona.

The Honorable William D. Rogers, member, Committee of Americans for the Canal Treaties, Washington, D.C.

Peter V. Baugher, chairman, National Governing Board, the Ripon Society, Chicago, Ill.

The Reverend Jesse L. Jackson, national president, Operation PUSH, Chicago, Ill.

The Honorable Robert E. Bauman of Maryland.

Col. John P. Sheffey, executive vice president, National Association for Uniformed Services, Arlington, Va.

Egon Richard Tausch, on behalf of U.S. Industrial Council, Washington, D.C.

George Fox Mott, chairman, the Mott Research Group, Washington, D.C.

I ask unanimous consent that the prepared text of the statements given before the committee be printed in the Record.

There being no objection, the statements were ordered to be printed in the Record, as follows:

STATEMENT OF HONORABLE ELDON RUDD

Mr. Chairman, Members of the Committee, I greatly appreciate this opportunity to appear today during this final session of hearings on the proposed new Panama Canal treaties.

Let me note by way of background that I am very familiar with the countries and people of Latin America, having spent several years on diplomatic assignment in many countries throughout Latin America.

My analysis and views of the proposed treaties are based upon my understanding of the history and aspirations of Latin American peoples, as well as considerable discussion about the treaties with academic and legal scholars, business and government leaders, and people in Arizona and other parts of our country and the world.

Mr. Chairman, I believe that Senate action on these treaties may well be the most important foreign policy decision confronting the United States in 1978.

While the full text of the two treaties and their accompanying implementing agreements are available from a number of sources, regrettably most Americans will not read the full texts. Their opinions will be shaped and their judgments formed by what the opponents and proponents say about the treaties.

The President of the United States has signed the treaties. The White House has for many months been embarked on a full-scale, heavily financed propaganda effort to persuade the public and Members of Congress to ratify the President's questionable decision.

We are being told by the President and his emissaries that the treaties should be ratified for a number of reasons—among them that—

1. The U.S. presence in Panama is illegitimate.
2. Control of the Canal is no longer vital to our national defense.
3. The commercial importance of the Canal to U.S. and to world trade has diminished.
4. The Canal cannot be defended against enemy attack.
5. Failure to ratify the treaties will provoke the Panamanians to guerrilla warfare and create a second Vietnam.
6. All Latin and South American countries support the new treaties, and will be offended if they are not ratified.
7. Ratification will guarantee uninterrupted operation of the Canal.
8. Ratification will not impair or limit our present ability to defend the Canal.
9. Because it is in the self interests of Panama to keep the Canal open and operating, we should not be concerned over any aspects of the new treaties.

Mr. Chairman, if historical fact and current wisdom supports all these contentions—or even most of them—then indeed the people and the Congress should look favorably upon ratification of the treaties.

On the other hand, however, if historical fact and wisdom strongly contradict these claims in behalf of the treaties, then Congress and the people should refuse ratification. Our task is to determine the truth.

I would like to look at each one of these claims to see whether they stand up or fall under factual scrutiny.

1. Is the U.S. presence in Panama illegitimate? Does equity require the United States to revise the present treaty and make restitution to the Republic of Panama for past wrongdoing?

Vasco Nunez de Balboa crossed the Isthmus of Panama to discover the Pacific Ocean in 1513. The strategic importance of this narrow piece of ground was immediately recognized. It became the base for Spanish colonization and conquest of the New World.

Discontent in the Spanish colonies matured more slowly than it did in the English of North America. But there were numerous revolts. In 1821, the residents of the Isthmus of Panama signed a formal agreement declaring independence from Spain, and unification with Colombia.

It was a bad choice. Colombia suffered civil war and revolution. Between 1850 and 1902, the residents of Panama made 53 major efforts to achieve independence.

During this period, the United States, in support of Colombian sovereignty, landed troops on the Isthmus of Panama six times.

The discovery of gold in California heightened American interest in a proposed canal across the isthmus. In 1850, the Panamanian Railway was built by a consortium of U.S. companies and financiers. Anxious to protect the integrity of this commercial artery, the U.S. supported Colombian authority, while at the same time recognizing the legitimate claims of the Panamanians.

Between 1856 and 1870, the United States tried to negotiate a treaty with Colombia for the construction of a canal across the isthmus. Colombia rejected the American proposals and made an agreement with a French company for construction of a canal. The French failed.

In 1902, Congress passed the Spooner Act, providing President Theodore Roosevelt with authority and \$40 million to purchase the rights to an isthmian canal that had been obtained by France from Colombia.

After passage of that Act, several months of arduous negotiations between U.S. Secretary of State John Hay and Colombian Charge d'Affaires Tomas Herran resulted in a treaty, which the U.S. Senate duly ratified on March 17, 1903.

The Hay-Herran Treaty would have given the United States the right to build and operate a canal through a 10-kilometer-wide strip of land across the isthmus, for an initial payment of \$10 million and an annuity of \$250,000.

But after the treaty had been signed by the two ministers, and ratified by the U.S. Senate, Colombia saw an opportunity to increase its U.S. payment to \$50 million. The French company's rights to construct the canal were due to expire in a few months. And so the Colombia Senate refused to ratify the Hay-Herran Treaty in an attempt to also obtain the \$40 million authorized by the Spooner Act for the purchase of those canal construction rights.

Colombia's gamble, motivated in part by greed, that rejection of the Hay-Herran Treaty would result in a more lucrative deal within several months did not work. The disappointed Panamanians revolted against Colombia, the United States recognized Panama's independence and negotiated a treaty with the new nation.

This treaty, signed and ratified by both countries on November 18, 1903, has been the the operating document ever since.

The treaty says, and I quote—

"The Republic of Panama *grants* the United States in perpetuity the use, occupation and control of the Canal Zone." (Emphasis added.)

Article III of the treaty states that—

"The Republic of Panama *grants* to the United States all the rights and power and authority within the zone mentioned and described in Article II, which the United States would possess and exercise if it were the sovereign, to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority." (Emphasis added.)

Did the United States take advantage of the new, fledgling Panamanian government?

We recognized the integrity of the new government and thereby protected the new republic from its old master, Colombia, or any other aggressor.

We paid the government \$10 million for a strip of land about 10 miles wide and 50 miles long. We paid every individual landowner or squatter on this parcel of land—a total of \$150 million—and by this payment acquired title in fee simple—*total ownership* of all land within the Canal Zone. These deed instruments were all recorded and are a part of the official U.S. Court record.

In addition, we paid the defunct French company \$40 million for whatever rights they had to the ditch. We also paid the government of Colombia \$25 million for whatever claims they still might have pressed, in return for which Colombia ratified the Thomson-Urrutia Treaty officially recognizing the legitimacy of Panama's independence and U.S. sovereignty over the Canal Zone.

On top of all that, the United States spent \$366 million to construct the Panama Canal.

Is our presence in Panama legitimate? *Indeed it is.* We did not foment a revolution. We recognized a new government.

Under the terms of the 1903 treaty, Panama granted the Canal Zone to the United States. They did not rent it to us or lease it to us. The term "*grant*" is used 14 times in that treaty.

What we got for our money was the right to build the Canal, to own and occupy a strip of land about 10 miles wide and 50 miles long.

The land at that time was pest-ridden, mosquito-infested, and uninhabitable—and there was no guarantee that we could succeed where the French had failed.

We agreed to build the Canal at Panama instead of Nicaragua. We cleaned up Panama, and made a total investment of about \$2 billion.

As a result, the people of Panama today enjoy the highest standard of living in Central America, and the fourth highest in all of the Americas.

2. Is control of the Panama Canal vital to our national defense?

Indeed it is. In fact, Lieutenant General Welborn Dolvin, one of the President's spokesmen who appeared in Phoenix on December 15th urging ratification of the new treaties, declared that the Joint Chiefs of Staff and the military in general consider the Canal to be of strategic military importance.

Four former Chiefs of Naval Operations—Admirals Thomas Moorer, Arleigh Burke, Robert Carney, and George Anderson—are all on record with the statement that—

"the loss of the Canal, which would be a serious set-back in war, would contribute to encirclement of the United States by hostile naval forces and threaten our ability to survive."

General V. H. Kulac, United States Marine Corps retired, has said—

"The Panama Canal is an essential link between the naval forces of the United States, both in the Atlantic and the Pacific. It is only because of the waterway that we are able to risk having what amounts to a bare-bones, one-ocean Navy."

The U.S. Commander-in-Chief Pacific Fleet recently stated that in the event of hostilities, the Panama Canal would be absolute essential for the defense of American commitments.

He stated that if he were granted *carte blanche* use of every boxcar on every east-west railway line in the United States, without the use of the Canal he could not say with any degree of certainty that he could successfully carry out a defensive war.

Proponents of ratification have attempted to emphasize the fact that 13 of our aircraft carriers are too large to transit the Canal. This is true. But of the 176 combat surface ships, 41 nuclear-powered ballistic-missile submarines, and 75 attack submarines currently on active duty, these aircraft carriers are the only vessels which cannot transit the Canal.

I believe it is true that the overwhelming majority of high-ranking professional military men and women in the United States strongly believe that U.S. control of the Panama Canal is vital to our national defense.

More than 350 prominent generals and admirals have so stated by declaring their opposition to the proposed new treaties, in response to a survey by the Reserve Officers Association.

They include Admiral John S. McCain, former Commander-in-Chief of U.S. Pacific Forces; General Lyman Lemnitzer, former Supreme Allied Commander, NATO; General Charles L. Bolte, former Army Vice Chief of Staff; General Lewis W. Walt, former Commandant of the United States Marine Corps; Major General Ernest (Mike) Massad, former Deputy Assistant Secretary of Defense; and Brigadier General John S. Eisenhower, son of the late former President Dwight D. Eisenhower.

3. Has the commercial importance of the Canal to the U.S. and to world trade diminished?

Indeed it has not. In fiscal year 1975 there were 13,786 transits—an average of 40 vessels a day. Thirteen major trade routes funnel through the Caribbean Sea, Gulf of Mexico, Panama Canal region. Ninety-seven percent of the world's trade vessels use the Panama Canal, and 70 percent of all commerce using the Canal is bound to or from a U.S. port.

4. Can the Canal be defended against enemy attack?

Lieutenant General Dennis P. McAuliffe, Commander-in-Chief of the U.S. Southern Command headquartered in the Canal Zone, has testified that his troops are adequate to defend the Canal from any threat. He elaborated upon this statement when I visited with him personally in Panama early last year.

Because the Zone itself stretches five miles on either side of the actual ditch, guerrilla encroachments into the Canal Zone could be easily detected and stopped. Our troops are established at defensive strong points. This was the purpose in the plans of our forefathers.

The Canal is not a delicate, complicated installation. It is an engineering marvel in its simplicity. The locks are simple mechanisms, controls are manual. There are alternate power sources available. The maintenance crews on station could rapidly replace any damaged gate or lock.

An atomic bomb could destroy the Canal, but experts have testified that saboteurs would have great difficulty disabling any of the operating machinery. The so-called "suitcase bomb" theory is hardly imaginable, and I only view it as a scare tactic by those whose other arguments in favor of U.S. abandonment of the Canal are equally weak.

5. Will failure to ratify the treaties provoke the Panamanians to guerrilla warfare and create a second Vietnam?

That is highly unlikely, and this argument is typical of the "scare talk" that is being used to intimidate the American public which opposes U.S. abandonment of the Canal into accepting the proposed new treaties.

There are about 1,700,000 citizens of Panama. Many of these are violently opposed to the Torrijos military dictatorship. Panama's 8,000-man National Guard is essential to the maintenance of civil order—to perform customs and immigration duties. Only about 1,600 are trained as a military readiness force.

Student revolutionaries in Panama have caused riots in the past, and have done damage, but they are not a military force. Should they seriously attack the Canal installation, our troops would be established at defensive strong points, easily able to counter any threat to the Canal.

Vietnam was a war of mobility and position. Such is not the case in Panama. The substantial advantage would be with the U.S. defenders.

6. Do all Latin and South American countries support the new treaties? Will they be offended if the treaties are not ratified?

It is highly unlikely that many of them support the treaties. It is even more unlikely that any of them would be offended if the Congress refused to ratify them.

In fact, a number of Latin American governments are most apprehensive about the proposed new treaties. They do not believe that the Torrijos government can maintain a stable position in the Canal Zone. They are suspicious of the close ties between Torrijos and Castro Cuba, and recent agreements with the Soviet Union that have established a stronger Soviet political and economic presence in Panama.

It is an act of faith for Latin American spokesmen to attack the Gringos, to shout "Yankee go home," but uninterrupted operation of the Canal and reasonable tolls are vital to the economies of all South America.

The American presence guarantees not only the availability of transit. It also insures relative tranquility in the Caribbean-Gulf of Mexico sea space.

Addressing this question, the highly respected military writer Hanson W. Baldwin has stated—

"Even more compelling than the military and economic importance of the Canal are the political and psychological considerations. Since the failure at the Bay of Pigs, the U.S. foreign policy has suffered a series of severe defeats. We have been in retreat in many places around the world. An accepted part of the Latin mystique is to condemn the damned Yankees, but weakness, conciliation and appeasement do not earn love and respect."

I have spent a career in Latin America. Every Latin American country and citizen wants a strong United States, both militarily and economically, to lead and protect this hemisphere.

7. Will ratification of the proposed new treaties guarantee uninterrupted operation of the Canal?

8. Will ratification not impair or limit our present ability to defend the Canal?

It is at this moment our uncontested, unilateral right to defend and operate the Canal. We do not need a new treaty to do that. This claim that we need a new treaty rests upon the implicit threat that Dictator Torrijos or Panamanian guerrillas will interrupt the operation of the Canal if we do not surrender the Canal to Panama.

But defense and control of the Canal without sovereignty is doublespeak.

Without sovereignty, we would have no rights in the Canal Zone, except any specifically granted by these new treaties. The Torrijos regime or a successor government could repudiate any U.S. role to guarantee uninterrupted operation and use of the Canal, and to defend it, and then any attempts that we might make along these lines would be as an invader of foreign territory.

Let me call your attention to the opening language of the proposed new Panama Canal treaty. After two paragraphs of recital, it says—

"Acknowledging the Republic of Panama's sovereignty over its territory. . . ."

This clause repudiates 75 years of legal understanding, and all the court decisions during that period. It abrogates all prior pacts and agreements—all U.S. rights and territories are immediately ceded to Panama. It amounts to a confession of wrongful taking on the part of American governments from the time of Theodore Roosevelt.

This is the whole treaty. All the rest is window-dressing.

It is this stark and foreboding reality of ceding U.S. sovereignty over the Canal Zone to Panama that explains the ambiguous language of any other key treaty provisions, which have been the subject of so much sharp questioning and concern.

First, once U.S. sovereignty is abandoned, the United States would no longer retain a "permanent" right to use military force to defend the Canal in an emergency. American military defense of the Canal could only come at the invitation and sufferance of the Panamanian government.

Second, while the treaty gives lip-service to "expeditious transit" for U.S. military vessels in time of emergency, they would not have any priority over other ships unless such priority was specifically granted by Panama any time it was needed.

Under terms of the current treaty, there is no question that the United States has and retains rights both to permanently defend the Canal and for priority passage for our vessels.

But despite Administration claims to the contrary, the new proposed treaty language on these points is subject to Panama's interpretation and whim, with no chance of redress for the United States short of military force if Panama refuses to allow U.S. defense or priority use of the Canal once the new treaties are ratified and U.S. sovereignty is given to Panama.

On the subject of the Canal's neutrality and defense, Article IV of the proposed neutrality treaty simply states that—

"The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties."

Article V states—

"After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory."

On the subject of priority passage of U.S. military vessels through the Canal. Article VI of the proposed neutrality treaty states only that—

"U.S. vessels of war and auxiliary vessels will be entitled to transit the Canal expeditiously."

It is the position of the Administration and proponents of the new treaties that this language will allow the United States to intervene to protect the neutrality of

the Canal, if it is ever subject to threatened obstruction, attack, or closure by a hostile force. But Panamanian officials have already sharply disagreed with this interpretation—and did so even before the proposed new treaties were signed by President Carter and Dictator Torrijos.

Panamanian chief negotiator Romulo Escobar Bethancourt has flatly repudiated the insistence of Secretary of State Cyrus Vance and U.S. negotiator Sol Linowitz that we would have the right unilaterally to intervene militarily to ensure that the Canal remains open and is not closed off to any country if these new treaties are ratified.

Escobar stated to the press on August 22nd last year, and I quote—

"The neutrality pact does not provide that the United States will say when neutrality is violated."

Escobar has likewise repudiated Administration claims concerning interpretation of the proposed neutrality treaty's provision for so-called "expeditious passage" of U.S. military vessels. Escobar stated that "expeditious passage" would not necessarily mean "privileged passage" or "priority passage."

Escobar stated—

"As a matter of fact, the concept of privileged passage was rejected."

Emphasizing Panama's position that U.S. military ships would not be allowed to go to the head of the line to go through the Canal first under any circumstances. Escobar also stated—

"We cannot go that far."

Another Panamanian negotiator, Carlos Lopez Guevara, has also flatly contradicted the Administration's assertion on the right of U.S. intervention to guarantee the Canal's neutrality and the right of priority U.S. passage through the Canal.

Lopez recently stated that the U.S. would never have the right to intervene—after the new treaties had gone into effect.

With regard to passage of U.S. ships through the Canal Lopez stated—

"This neutrality treaty gives the United States the right to hope that Panama and all the countries in the world will respect the right of American ships to transit the Canal—but that is the only right it has received."

"After proper questions were raised about these statements by Panamanian officials—following the treaty signing ceremony by President Carter and Dictator Torrijos on September 17th in Washington—a so-called "Statement of Understanding" was drafted for the two leaders by U.S. negotiator Linowitz and Panamanian negotiator Escobar.

This statement supposedly clarifies the U.S. right to defend the Canal, but reiterates even more strongly that the U.S. may not intervene in the "internal affairs" of Panama.

This confirms Escobar's earlier statement that only Panama will determine when the Canal's neutrality has been violated, thus precluding unilateral U.S. action in its defense. The statement would also preclude American defense of the Canal if the threat or aggression resulted from Panamanian action.

This "Statement of Understanding" was not signed by either President Carter or Dictator Torrijos. In fact, Torrijos boasted upon his return to Panama that he had not so much as "signed an autograph" while he was in Washington on that second mission.

The statement thus appears as another diversion for treaty proponents in this country, to placate legitimate concerns about the defense of the Canal, while Dictator Torrijos is able to continue assuring his own people that the terms of the proposed new treaty will mean total expulsion of the U.S. from the Canal Zone forever.

Mr. Chairman, Panama's strident, almost hysterical anti-U.S. campaign to secure approval of the proposed new treaties by the Panamanian people last October should warn us that Panama's negotiators have pressed hard on purpose for ambiguity and impreciseness in the treaty language, in order to secure U.S. ratification as well as to permit their own action to prevent future U.S. military defense and priority use of the Canal.

I have here a copy of the Torrijos regime's official campaign literature, with English subtitles inserted by an educational group in Texas, which shows the fever pitch of anti-American sentiment that was used by Dictator Torrijos to promote approval of the proposed new treaties by the Panamanian people. I would like this literature to be reproduced as part of the official hearing record at the end of my prepared statement.

This propaganda material is full of historical distortion concerning the U.S. role in Panama. And its Marxist overtones that the proposed new treaties represent a

popular revolution against an oppressive U.S. presence in Panama illustrates perhaps another major flaw of these agreements with the Torrijos regime.

We are dealing here with a military dictatorship. Dictator Torrijos wields enormous personal power, and is responsible to no one. His regime is arbitrary and corrupt, and many of its top officials have been in and out of the Communist Party.

These new treaties make the United States a full partner—a guarantor—of the Torrijos regime. This is a regime that has—

Continued to express admiration and support for Fidel Castro and his revolutionary Communist objectives in Latin America, Africa, and around the world;

Signed a revolutionary anti-Zionist pact with Libya's pro-militant Arab Marxist dictator Moammar Khadaffi;

Formally aligned itself with the so-called Third World group, which is often guided and supported by the Soviet Union in its drive for world Communist expansionism;

Supported and promoted the illegal world drug trade, including the traffic of heroine and cocaine into the United States by Dictator Torrijos' brother, Moise Torrijos, who is under indictment in New York;

Continuously been cited as an oppressive violator of human rights by the nonpartisan Freedom House, which rates Panama under Dictator Torrijos in the "not free" category.

Such treaties giving Panama total sovereignty over the Canal Zone, which offer so many possibilities and opportunities for misunderstanding in their provisions over administration and defense of the Canal, provide a fruitful ground for infiltration, subversion, and control of Panama and the Canal by outside forces, such as Cuba and the Soviet Union.

At the very moment we were negotiating with the Torrijos regime, the Soviets were concluding new commercial relations with the Republic of Panama that included several multi-million dollar construction projects by the Soviets in Panama, use by the Soviets of facilities at old France Field airbase and the free port of Colon, and the opening of a branch of the Narodny Bank of Moscow in Panama to help orchestrate Soviet financial and commercial activities throughout the region.

Harold K. Milks, longtime expert on Latin America and currently managing editor of *The Arizona Republic*, recently stated that—

"These Soviet commercial agreements with Panama are exactly the same as the Soviet Union's opening gambit to gain a foothold in Cuba during the early 1960s."

Mr. Chairman, numerous courts have clearly held that the United States has full sovereignty in the Canal Zone. What near-term or long-term benefits will accrue to the American people by turning over this investment amounting to almost \$10 billion to a military dictatorship?

Construction of the Canal by the United States made the Republic of Panama a viable nation. The commercial activities generated provide one-third of the gross national product of Panama. It is important to note that the first American of any authority to suggest the Panama Canal give away was convicted perjurer Alger Hiss.

In 1946, Hiss was head of the Office of Political Affairs at the State Department. He sent to the new United Nations a list of so-called U.S. occupied territories, which included the Panama Canal Zone.

Proponents of the new treaties argue that there is a moral requirement to give the Canal to Panama. In truth, we have a greater moral commitment to keep the Canal, to protect it, and to make it available for world commerce.

The first time that most of the American people learned that certain government officials in Washington were planning to give away the Canal was during the 1976 Presidential campaign. Candidate Carter said during the nationally televised debates with then President Ford—

"I would never give up complete control or practical control of the Panama Canal Zone."

One of his first official acts as President was to send Ellsworth Bunker and Sol Linowitz to Panama to negotiate these new treaties.

Sol Linowitz was sent to Panama on temporary appointment, good for only six months, so that he would not have to undergo Senate confirmation. A number of knowledgeable journalists have declared that President Carter did not ask for Senate confirmation of Linowitz because he knew that an airing of Linowitz' views in favor of giving away the Canal and the Canal Zone, later written into the terms of these new treaties, would have stopped the giveaway and Linowitz' appointment before they ever got off the ground.

President Carter campaigned against former President Ford with the complaint that foreign policy negotiations of the Ford Administration were conducted in

secret. But then he kept details of the new treaties secret until about 24 hours before he signed them.

He did not seek the opinions of Members of Congress. He did not take the American people into his confidence. He ordered the treaties written on his own.

Now we are told by political pundits and news commentators that the Carter Administration has another taxpayer-paid advantage in "selling" his treaties.

The State Department is distributing pamphlets which endorse the new treaties, explaining that they are "statesmanlike . . . and achieve a fair solution consistent with . . . our national interests." Torrijos Communist ties are denied.

That the American people must pay for the Administration's propaganda program is a travesty.

President Carter himself demonstrated that his campaign is one of propaganda, not of facts, when he addressed the Panama Canal issue during his nationally televised Conversation With the President with four network journalists last December 28th.

About the proposed new treaty, he stated—

"What we wanted was one that treated us and Panama fairly, and we got it."

What is fair about giving away sovereign U.S. territory without compensation? What is fair about trying to deny the people's elected officials in the U.S. House of Representatives the right to exercise their Constitutional duty, as stated in Article IV, Section 3, "to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States," with respect to the provisions of the proposed treaty?

What is fair about denying to the people of the United States the right to build another sea-level canal in another country, such as Nicaragua, for at least 23 years, if this treaty is approved?

The President stated—

"We wanted a treaty that did not put a financial burden on the American people, and we got it."

Not true. This treaty will not only give away to Panama the Canal and Canal Zone worth about \$10 billion. We will also be paying Panama to take it—\$60 million to \$80 million a year for the next 22 years through increased tolls, which will eventually fall on the consumers.

Furthermore, the Carter Administration has promised in the side agreements that go along with the treaties to loan the Torrijos regime another \$200 million from the U.S.-financed Export-Import Bank, \$75 million from the Agency for International Development, \$20 million from the Overseas Private Investment Corporation, and \$50 million in military sales and credits—a total of \$345 million guaranteed out of the U.S. Treasury, to be paid by the American taxpayers.

The President stated—

"We wanted treaties that would guarantee proper operation of the Panama Canal itself, for us and for foreign shipping, and we got it."

How so? The Panama Canal Company, which has operated the Canal in an extraordinarily safe, efficient, and fair manner over these many years, is to be abolished. The American workforce which is the key factor in this excellent operation of the Canal is to be arbitrarily cut by at least 20 percent within the first five years of the new treaty, and no non-Panamanian will be able to work as part of the Canal workforce for more than five years.

Panama does not now have—and cannot have within the short period required—the skilled workers to efficiently and safely operate the Canal. It takes 20 years of training to perform jobs such as ships' captain-pilot, to navigate vessels through the Canal. Panama does not have people qualified to do these jobs, and at present only 1 percent of the Canal's 200 ships' captains are Panamanians.

Panama has no navy to draw from to fill these positions that the new treaty would require to be filled by Panamanians when American workers are forcibly discharged.

The President stated—

"We wanted treaties that would also guarantee us permanently the right to take what action we think necessary to keep the Canal safe, to defend it, and to keep it open for us to use, and we got it."

Despite the unsigned "Statement of Understanding" to the contrary, the proposed treaty terms do not guarantee this, and the position of Panama on these points refutes the President's claim that the United States will have any such rights or guarantees.

The President stated—

"We wanted treaties—two treaties there are—that would give us the right for expeditious passage in time of need or emergency, for our ships to go to the head of the line and go through the Canal without delay, and we got it."

Again, this statement is not backed up by the actual proposed treaty language or by interpretations of that language by key Panamanian officials. If it is the intent of both the United States and Panama that U.S. vessels should have priority passage in time of emergency, and that the U.S. should have the permanent right to defend the Canal against interruption of its operation or attack, the treaty language should say so in clear, unequivocal terms.

Failure of the treaty language to clearly state these rights on the part of the United States, leaving room for considerable misunderstanding and controversy, will only play into the hands of those who seek to generate instability and tension in key locations around the world.

And, finally, the President stated—

"We wanted treaties also that would be acceptable in the eyes of the international community, particularly in Latin America, and we got them."

It is difficult to believe that any complete, fair-minded evaluation of these treaties could result in favorable reaction around the world.

The ominous impact of the treaties on Canal tolls alone, which according to conservative Administration estimates will have to be increased by at least 25-30 percent, will be considerable to the economies of all nations who use the Canal.

Who except the Torrijos regime could possibly benefit from such huge toll increases? Who is to benefit from the lower-skilled Canal workforce, which will mean problems for vessels that use the Canal? Who can possibly be pleased by the hundreds of other unanswered questions and problems posed by these proposed new treaties and the radical restructuring of Canal operations that they will bring?

If the treaties are ratified, we will have earned the disdain and lost the respect of every nation in the world.

Why, indeed, is the United States Senate being asked to ratify these questionable treaties? Who is to benefit?

Why should the people of the United States, who now own the Canal, give this \$10 billion asset to Dictator Torrijos, and then pay him an additional \$2.2 billion over the next 22 years?

Murray Rothbard, one of the nation's more prominent libertarian thinkers, tells us why in the December, 1977, issue of a new magazine called *Inquiry*. The title of the Rothbard article is, "The Treaty that Wall Street Wrote."

The international money men who control the great banking institutions of Wall Street want the treaties adopted. Why?

There are two obvious reasons—

The first one is that they want to get their money back. They want to recover the approximately \$2.9 billion that they have loaned to the Torrijos regime since 1970. The Torrijos government is, for all practical purposes, broke. About 40 percent of its national budget must go to pay the debt service on these loans.

Why did these great banks loan this money to Torrijos? Was it just a friendly American gesture of goodwill? Perhaps not.

In 1970, Torrijos rewrote the banking laws of Panama—free of taxes, free of onerous regulations. Panama became a haven for foreign banks. Now there are about 75 banks in Panama, with total assets of more than \$8.6 billion, conducting transactions throughout the world.

Panama's shipping laws are equally accommodating to foreign owners, and a great fleet of merchant vessels flies the Panamanian flag.

Incidentally, ships of Panamanian and Colombian registry transit the Canal without paying tolls. It would be difficult to calculate the total value of this subsidy over the years of Canal operation.

If Wall Street wanted to write a new Canal treaty, to propitiate Torrijos, how did they go about it?

They arranged to send Sol Linowitz, who at the time of his appointment and during most of his service was a director of Marine Midland Bank, together with the aging Ellsworth Bunker, to write the treaties.

According to Arizona press accounts, when the Administration's Lieutenant General Wellborn Dolvin was in Phoenix last December 15th, attempting to enlist support for ratification, the General made quite a point of stating that Panama has never violated the 1903 treaty.

Of course little Panama hasn't violated the 1903 treaty. But in 1913, Panama did ask for additional payments, and during World War II we paid Panama substantial sums of money to enlarge our defense installations.

In June, 1972, the Torrijos government expropriated the power and light company in Panama that was owned by the Boise Cascade Company of Boise, Idaho. The takeover was made with troops of the Panama National Guard, and Panama finally agreed to pay Boise Cascade \$22 million for property that was worth \$87 million.

Then Panama borrowed some of the money from the United States Government to make the payment.

One month later, the Torrijos regime nationalized the Canal Zone bus service, a company incorporated in the State of Delaware and owned by U.S. citizens in the Canal Zone. Seventeen buses were hijacked. Our U.S. State Department forced the company to sell out to Panama.

Dictator Torrijos has held power in Panama for eight years—longer than any other ruler of Panama. Since 1902, Panama has had 32 presidents in more than 50 governments. The average life of the ruling regime has been 2.25 years.

These proposed Panama Canal treaties were written in secret. They serve the special interests of the New York bankers. They will transfer a capital asset worth \$10 billion to an unstable dictator.

The American taxpayer, if the treaties are ratified, will give the Republic of Panama \$2.2 billion over the life of the treaties.

Panama simply does not have the military strength to defend the Canal. If it is to be defended and kept open, the United States must do it. Ours is the only country on earth able to defend the Canal, but if we ratify the treaties our ability to defend this vital waterway will be dangerously weakened.

Mr. Chairman, Members of the Committee, the treaties that Wall Street wrote must be rejected. We cannot gamble with an installation so vital to the economic well-being and to the peace of the Western hemisphere.

Thank you, again, for this opportunity to appear to present these concerns. I will be pleased to answer your questions.

STATEMENT OF WILLIAM D. ROGERS

I am honored that the Committee of Americans for the Canal Treaties, Inc. should ask me to appear on its behalf before the Committee in this closing session of your hearings.

I speak from a variety of perspectives—as a Deputy U.S. Coordinator of the Alliance for Progress during the Kennedy Administration, President of the Center for Inter-American Relations during the late sixties, and as Assistant Secretary of State for Inter-American Affairs, Under Secretary of State for Economic Affairs and member of the Canal Company Board from 1974 to 1977.

You have already heard from a number of witnesses on all manner of aspects of the new agreements. I will not attempt to recite the full litany of arguments in favor of the treaties now. Let me try instead to touch on a few of the issues which have lately emerged as the more significant, as your consideration of the treaties comes to a close, and then try to place the treaties in a broader context of world affairs, at least as I see those affairs from the perspective of my own experience.

First, as to the specific issues which seemed to have come to the fore in the last several weeks. The debate on the treaties has served the very purposes which a debate in a democracy should serve. It has, I think, narrowed the issues, eliminated some substantial early doubt and confusion and focused the attention of the country on a few specific and precise points.

The essential structure of the treaties is now clear, I believe, to the American people.

Our interest in the Canal, it has been emphasized, is in its use, not its ownership. The debate has served to highlight how the treaties serve that purpose.

Under the treaties, the United States will continue to manage, operate and control the Canal, its maintenance policies, its employment practices and its toll rates, through the end of this Century.

We will have the lands and waters necessary for the Canal, and the base facilities around the Canal from which to defend it.

The formalism of the Canal Zone will disappear but otherwise the new treaties will cause virtually no alteration to the present mode of operation, management and control of the Canal.

Considerable attention during the debate has focused on the nature and character of Panama, its people, its leaders and its government. In my judgment, much that has been said comes close to nonsense but, nonsense or not, it is also irrelevant. Panama will take control of the Canal in the year 2000, not before. Until then, Panama will be called upon to play an increasingly participatory role in the management and security of the facilities, and to train and equip itself for the mandate

it will assume in the 21st century, but it will not have the decisive vote for another generation.

Some of the opponents have suggested, however, that the new regime will attempt to force an immediate takeover by somehow expropriating the new Canal Commission and the Canal property the moment the new treaty becomes effective. This is fanciful. Would it have the legal right to? No. The internationally recognized power of nationalization has never been thought to extend to the property and operations of a foreign government. The Canal Commission will be an entity of the United States. It will not be subject to nationalization.

Who is to stop Panama? The Army, the Navy and the Marines, who will remain where they are for another 22 years.

Is Panama likely to try? Not very. Panama, though fretful and impatient under the 1903 Treaty, which it regards as vastly more unjust than the new arrangements, has never tried to abrogate it. It seems unlikely that Panama would breach the new pacts when it honored the old.

In the year 2000, Panama will assume management responsibility, but it will do so as a trustee, bound by its own obligation, and our endorsement, to a regime of neutrality and efficiency.

There have been those who have been concerned about the reliability of that neutrality commitment in the 21st Century. The answer is that the United States will have the right to take such action as it deems necessary to enforce that regime of neutrality.

The Carter-Torrijos Statement of October 14, 1977 confirms this common interpretation of Panama and the United States. It was made public by both parties prior to the Panamanian plebiscite on the treaties.

The Neutrality Treaty furthermore proscribes foreign military presence in Panama now and after termination of our operations. No such prohibitions are included in the existing arrangement. These also serve to support and insure the continued nondiscriminatory access to the Canal in the next century.

Article VI, paragraph (1) of the Neutrality Treaty, also as confirmed by the Carter-Torrijos Statement, provides that United States vessels are entitled to transit the Canal expeditiously. This means that such vessels receive passage as "quickly as possible" and in cases of emergency, go to the head of the line.

The Agreement carries over the same basic principle of neutralization elaborated in the 1901 Hay-Pauncefote Treaty and is consistent with the terms of that Treaty which would remain in effect.

Some opponents have nevertheless objected that, however responsible the treaties may be in substance, we should not ratify them because ratification would violate the principle that one should never negotiate under threat. They seem to imply that any request by another nation to alter an arrangement which has become so outdated as to cause difficulty and resentment, even if the request for the change is made through negotiation and conciliation, is a threat. It follows from this that one can never negotiate.

A somewhat related point is the Principle of the Misunderstood Motive. This Principle says that in foreign relations you should not now do an admittedly right action for fear that you will be understood to have done that action, not for reasons of simple justice but because you are afraid. It follows from this that if in these treaties the Senate consents to revision of the 1903 arrangement which is in our own interest, we will be seen by others to be saying that we will accept any proposal, no matter how indefensible, put to us with respect to SALT, Taiwan or human rights in the Soviet Union.

I now turn to arguments which have been put forward on the other side.

It has been said by those who support the treaties that the original 1903 Agreement was unjust, that we cleverly manipulated a local rebellion for our own larger purposes, participated in the division of another nation in flagrant violation of our own treaty obligations and then signed a treaty written by a representative of the new nation who had a personal financial interest in the arrangement and which represented a form of blackmail. All true. And yet this is not, in my view, the decisive reason for the new treaties. We should not support the treaties out of guilt.

It has also been said by those who support the new treaties that if we fail to ratify, and continue to insist on the 1903 pact, there will be violence. Also true, but this also is not a decisive reason for the new treaties, as I see them. We should not support the treaties out of fear.

We should support the treaties because they are right. In searching for the decisive reason for the new treaties we should, I think, look to the future, not to the past.

I think I comprehend the real reason for the reluctance and concern of opponents of the treaties. They are apprehensive, not only about the specific case of the Canal but in a broader way because they are tired of what they conceive to have been the American withdrawals and retreats elsewhere around the world in recent years. But Panama is scarcely the time or place for a demonstration of resolve and strength. It is the classic mistake from which international conflicts have emerged in the past, to become persuaded that it is either us or them, and that if we conceded on this particular issue, our ability to defend our interests elsewhere will be forever in jeopardy.

Such us-them conflicts over land are relatively rare on the agenda of issues which trouble international relations in the late 20th century. There are not now a large number of conventional clashes of nationhood over specific pieces of territory in the world today. However, those that do come to mind such as the West Bank of the Jordan bear an ominous similarity to Panama. Each could deteriorate into useless but serious violence.

I am convinced that the world in which we live is in a process of rapid change. The challenges to our diplomacy today are less and less the zero-sum conflicts of separate, national interests. The great issues facing mankind now are issues which call for cooperative solutions.

The real challenges of our age are the challenges of global poverty, of the threat of thermonuclear devastation, of the probability of recurring regional conflicts, of the prevalence of political torture and, of the nature and strength of democracy.

A new treaty relationship with Panama will not solve any of these problems. What the new treaty relationship with Panama will do, however, is to open the way for us to exercise the responsibilities of leadership which are thrust upon us by our own power, prestige and resources and which no other nation in the world is equipped to discharge. Panama, in this sense, is a symbolic issue, testing in a way which other nations cannot fail to notice the sort of nation we are in this last quarter of the twentieth century.

For those who fear change, there are reasons enough to oppose the new treaties; for the timid and the uncertain, the arguments are close at hand why we should stand on our ancient privileges. I hope, and sometimes I even trust, however, that this is not the dominant mood of this country today, that we are, now at least, prepared to look to the future and not to the past, that we can welcome change and embrace it and that our policy in the world is built of strength, essential morality, and confidence in ourselves and our future.

In a material sense, these treaties do much for Panama, and little that is tangible for the United States. What we do gain, however, is an enhancement of our stature in the world. This is an action which will say to others that we can be sensitive to their needs, that we are prepared to promote our vision of a world order of nations with respect for the rights and interests of others, that our policy is cooperation and not domination or confrontation, and that we have the self-confidence and inner strength to apply these principles to our future conduct throughout the world.

STATEMENT OF PETER VINCENT BAUGHER

Mr. Chairman, and Members of the Committee on Foreign Relations: I appreciate this opportunity to appear before you to urge that the Senate give its advice and consent to ratification of the proposed Panama Canal treaties.

INTRODUCTION

My name is Peter V. Baugher. I am a Chicago attorney and a member of that city's Council on Foreign Relations. I also serve on the Republican National Committee's Advisory Council on National Security and International Affairs and am Chairman of the National Governing Board of the Ripon Society, on whose behalf I am testifying this morning.

Founded in 1962, the Ripon Society is a national Republican research and policy organization which takes its name from Ripon, Wisconsin, the birthplace of the GOP. It has sixteen chapters across the country and members in all 50 states. The Society encourages young men and women to participate actively in public affairs. The Society also works to formulate the kind of sound programs that will enable our Party to better fulfill its potential for constructive political leadership. We believe that we can help the GOP to identify and claim the issues of the future, to raise the questions others will not ask, to grasp ideas whose times are yet to come. Above all, the Ripon Society seeks to serve as a spokesman for the progressive Republican tradition whose integrity and vision have inspired the GOP throughout its history.

Over the past fifteen years the Ripon Society has studied and taken positions on many issues of major public importance. Few matters have commanded as much attention, or aroused as much controversy, however, as has the debate over these treaties. And perhaps this widespread interest and concern is a good thing; for the agreements now before this Committee bear not only upon our military security and commercial well-being, but also on our future relations with Latin America, and on our capacity to deal fairly and wisely with a nation which, though far smaller and less powerful than we are, is motivated in this instance by the same legitimate aspirations that moved our forebears to action just 200 years ago.

UNITED STATES INTERESTS IN THE PANAMA CANAL

Since September you have heard from a broad range of witnesses whose opinions about the treaties and general political outlooks have spanned the spectrum. Each has had his own point of view, his special message to convey. As these lengthy hearings draw to a close, it may therefore be useful to return to the beginning—to a practical assessment of how in the decades ahead we can best protect our interest in the free, neutral, and efficient operation of the Panama Canal.

As the members of this Committee are aware, the Canal is in many respects a declining asset. Constructed at the beginning of this century, it faces increasing competition from alternative modes of transportation (such as railroads, trucking, airplanes, pipelines) and is too small to accommodate the oversized ships now being built. Neither the supertankers upon which America depends for its petroleum supply, nor the giant aircraft carriers on which we rely in part for our military security can move through the Canal. Moreover, as a product of the technology of 1914, and because of its enormous fixed investment in that technology, the Panama Canal suffers the economic disadvantage of having few opportunities to effect savings based on the introduction of new equipment and engineering discoveries.

Nonetheless, it is obvious that our stake in this waterway is substantial and will remain so in the future. Its strategic importance was demonstrated at the time of the Cuban missile crisis when U.S. Pacific fleet warships entered the Caribbean on short notice by means of the Canal, and throughout the Vietnam War during which (at its peak in 1968) nearly 70 percent of all American cargo support for Vietnam traveled across the isthmus. We do it further should be stressed, have a two-ocean Navy. In recent years the number of commissioned naval ships has decreased significantly, and the ability quickly to deploy Pacific Ocean vessels in the Atlantic and move Atlantic ships to the Pacific is essential if we are to meet our international responsibilities and defense objectives.

As for our commercial interest in the Canal, the percentage of total U.S. foreign trade that passes through Panama is relatively small. It is, nevertheless, a sizable amount in absolute terms and has a disproportionate impact upon our balance of trade since two-thirds of the Canal's American tonnage are exports. Despite the fact, finally, that the nations of Central America and the western coast of South America ship an especially large proportion of their foreign trade through the Canal, this country is the origin or destination point of well over half of all of the Panama traffic (traffic which is now being heavily augmented by shipments of surplus crude oil from Alaska to Gulf and East Coast ports).

The United States thus has a vital interest in ensuring that the operation of the Canal remains open, reliable, and secure. It is this interest which cannot be compromised—and which we believe the new treaties will advance.

For a variety of geopolitical and economic reasons we also have a special interest in strengthening our ties with the nations of Latin America and the Caribbean. Our hemispheric neighbors have expressed their support for the Panamanian's efforts to gain control over the Canal in the United Nations and Organization of American States, as well as in numerous bilateral statements and private communications. Rightly or wrongly, many Latin Americans regard America's continued presence in Panama as a vestige of colonialism and the Canal as the fruit of gunboat diplomacy. Whether we like it or not, the ratification contest now under way has become a test case for our inter-American relations: to reach a mutually satisfactory and sustainable new accord with Panama will not assure success elsewhere, but to adopt what is, at least in Latin American eyes, an intransigent posture here will certainly impede any progress that might be hoped for in other arenas.

THE NEED FOR A NEW RELATIONSHIP WITH PANAMA

Many Americans have come to associate our interest in guaranteeing the continued efficient operation and defense of the Panama Canal with the specific arrangements established by the Hay-Bunau-Varilla Treaty of 1903 (as modified in 1936 and 1955). In our view, though, and in the view of four successive Presidents—two

Republicans and two Democrats—a treaty relationship with Panama of the sort now under consideration will better serve the long-term security and foreign policy of the United States.

The existing treaty arrangements between this country and Panama are out of step with contemporary realities. However we in the United States may look upon the 1903 Treaty, the rest of the world and especially the nations of this hemisphere do not acknowledge it as an equitable and freely negotiated agreement. Fervent, internationally-supported opposition to the present arrangements could readily threaten the peaceful operations of the Canal and jeopardize its reliability. The Canal will always be highly vulnerable to acts of sabotage, terrorism, and popular disturbances occurring within Panama, and our refusal to accept an altered role in its management could well result in a stream of incidents seriously harmful to the United States. Absent a restructuring of U.S.-Panamanian relations, this country could be faced with a sabotaged Canal, a repeat of the bloody 1964 riots, and perhaps a new and hostile Panamanian government. Under such circumstances negotiating a new treaty might prove impossible, and employing our armed forces to secure the Canal, even if militarily successful, could entail unacceptable costs to our foreign policy generally.

This is the practical problem. To insist on the perpetuation of the current treaty arrangements would mean that over time we would almost surely be compelled to fall back on the use of force as the ultimate basis for our presence. As Henry Kissinger commented earlier in these hearings: "This we should be prepared to do when our vital interest can be defended in no other way. But this is not the case here because the [pending] treaties give us a clear, and on balance a better, alternative."

ADVANTAGES OF THE NEW TREATIES

Aside from concern for Latin American and world opinion, why are the proposed treaties, as Dr. Kissinger says, a better alternative? To begin with, under the draft agreements the United States will remain in possession of the Canal and in full charge of its management and defense for the remainder of this century. We will continue to direct operation of the Canal, and our military forces will continue to provide for its defense from within Panamanian territory. At the same time, the new treaties contemplate a cooperative working relationship with Panama that will enhance our ability to protect and operate the Canal, permit an orderly transition from foreign to local control, and increase Panama's stake in the long-term prosperity and neutrality of its greatest national resource.

As the year 2000, when custodianship of the Canal is transferred to Panama, Article IV of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal becomes controlling. The Neutrality Treaty reaffirms the legitimacy of America's interest in the security of the Canal and sets forth the legal obligation of both Panama and the United States to maintain a permanently neutral waterway. The Treaty, moreover, describes neutrality (Articles II and III) in terms of concrete standards for the governance of the Canal which both parties are pledged to uphold.

Article IV makes the United States a guarantor of that permanent neutrality. It thus gives us a continuing right, which may be exercised unilaterally if necessary, to defend the Canal against any threats to its neutrality. And this same "regime of neutrality," and our rights and responsibility to support it, will (according to Article I) apply equally to any other interocean waterway that might subsequently be built across the isthmus. Furthermore, under Article V of the Neutrality Treaty, Panama relinquishes the right to invite or permit foreign military forces or installations anywhere in the Republic. This provision would forever prohibit Panama from allowing any other power to station military personnel on its soil. Panama's breach of that commitment would entitle and oblige the United States to take appropriate action to preserve the Canal's neutrality.

Finally, Article VI of the Neutrality Treaty provides that U.S. warships will be entitled to transit the Canal "irrespective of their internal operation, means of propulsion, origin, destination, armament or cargo carried," and that such vessels will have the right to go to the front of the line and receive priority passage in times of need or emergency.

We would not, in short, have a general right to "intervene" in Panama's internal or domestic affairs. Nor would we want such a right. But we would have under the new treaties the right and obligation to take such steps as may be required to guarantee that the Canal remains permanently neutral—free of the threat of foreign military presence and open always to the ocean-borne commerce of the world on a nondiscriminatory basis.

The new treaties will thus establish a far stronger legal underpinning and political environment for the protection of our most important interests in the Canal than could otherwise be achieved. We have retained all of the essential powers necessary to assure its security. Yet the pending treaties have the additional advantage of enlisting Panama, and (by means of the Protocol to the Neutrality Treaty) all of the nations of the world acceding to the Treaty's regime of neutrality, as our allies in pursuing this vital objective.

Most important, the new agreements provide the basis for an improved relationship between the United States and Panama founded upon cooperation, mutual respect, and our joint interest in the open and efficient operation of the Panama Canal. Were we redrafting these documents to suit our preferences, there are changes that we would make. The treaties—which were the subject of long negotiations over a period of thirteen years, and in which the United States was only one of the parties—are not, in our opinion, perfect. They do, nevertheless, embody a fundamental realignment in relations which we believe can satisfactorily serve as the framework for a mature and long-lasting settlement of our differences with Panama.

THE NECESSITY FOR CLARIFICATIONS

In supporting the ratification of these treaties we are relying on what seems now to be the unanimous interpretation of the provisions concerning (1) the extent of our right to "maintain the regime of neutrality" under Article IV of the Neutrality Treaty, and (2) the effect of our right to "expeditious transit" under Article VI of that Treaty. Ambiguities in these sections have led to considerable public confusion and have given rise to dangerously divergent opinions as to the true meaning of the pending agreements.

While the specific wording of the critical portions of Articles IV and VI is admittedly—and, in our view, undesirably—imprecise, a fair reading of these provisions supports the explanations offered by the Administration: (1) that we have the right to act unilaterally to defend the Canal's neutrality, and (2) that expeditious passage means priority passage in wartime and the speediest possible transit at all other times. These interpretations are contained in the Statement of Understanding approved by President Carter and General Torrijos on October 14, 1977, a statement that was well-publicized in Panama before October 23 plebiscite and with which the Panamanian electorate can be presumed to be in substantial accord.

The American people, however, are entitled to expect that any international agreements as important as the ones now before this Committee will, as far as possible, be free from uncertainty about their meaning or intention. Accordingly, the Ripon Society recommends that the Senate attach an understanding to its resolution of ratification endorsing the Carter-Torrijos communique and explicitly adopting its formulation as the correct, authoritative, and legally binding interpretation of the provisions in question.

Such an understanding would not require renegotiation of the pacts or the holding of a second Panamanian referendum, as a matter of law, an understanding does not substantively affect the relevant contractual relationship but seeks merely to clarify it. Such an understanding, though, would have the full force of international law by virtue of Panama's necessary acceptance of the understanding as an integral part of the formal exchange of instruments of ratification. Conditioning the Senate's advice and consent on inclusion of this language in the official text should in no way delay or disrupt final enactment of the proposed agreements and will provide the citizens of this country with the straightforward confirmation of American rights without which the treaties could not, at this point, responsibly be approved.

ARGUMENTS AGAINST THE TREATIES

Treaty opponents have raised numerous objections to ratification of the new agreements. Some of these arguments have merit; all changes in policy have their potential perils, and in that regard this issue is no different from any other. Although the charges that Omar Torrijos is an incipient communist or a brutal dictator are seemingly unfounded, for example, there is no question but that his rule is authoritarian and likely to remain so. Similarly, while Panama's apparent progress lately in the area of human rights is encouraging, much remains to be done.

With help from the United States there is little doubt that Panama will be capable of marshalling sufficient technical expertise successfully to operate the Canal after the turn of the century. But it is also a fact that Panama is a small country whose economy has not yet recovered from the 1974 recession, whose economic programs have frequently had to be abandoned, and whose financial

future is heavily mortgaged to foreign (principally U.S.) lenders. Integration of the Canal Zone into the mainstream of Panamanian life may also present real difficulties.

These circumstances, together with the concerns expressed by current employees of the Canal Company, make us apprehensive about the Panamanians' ability to manage the Canal efficiently and reliably and their willingness to work with the United States in furthering the best interests of this collaborative enterprise. The treaties are premised upon the kind of reciprocal relationship that should facilitate close cooperation, but the desire to cooperate must come from both sides if the transfer of authority is to be carried out smoothly. The prospective problems alluded to above are not insuperable. They will, however, warrant careful monitoring, and we should enter into our new relationship with Panama mindful of this reality.

Other objections to the Canal pacts are plainly spurious. Because of our obligation to maintain the regime of neutrality, it is sometimes claimed that even during a declared war we would be powerless to prevent our enemies' warships from sailing through the Panama Canal. But this misses the point. As several of the military officers appearing before you have explained, the critical strategic factor would not be our legal right to bar hostile passage, but our military capacity to prevent the enemy ships from reaching the Canal in the first place.

Doubts have also been expressed about the acceptability of the economic features of the agreements—specifically, the reference in Article XIII of the basic treaty to Panama's right until the year 2000 to receive (a) a royalty of 30 cents per ton of cargo transiting the Canal, (b) an annuity of \$10 million per year, and (c) a cumulative additional amount of up to \$10 million annually if revenues permit. These doubts can easily be satisfied. Payments to Panama during the entire time that we retain jurisdiction over the waterway will come from tolls paid by countries using the Canal rather than from the U.S. Treasury. No appropriations will be required, and no American tax dollars need ever be expended.

Finally, criticism has been made of the provision whereby the United States agrees not to construct a new canal in any country other than Panama. Why, it is asked, should we forego the right to negotiate the Nicaragua or Colombia, or any other nation, for the building of a new sea level canal? There are several answers. Under Article XII(2) of the initial treaty Panama has in exchange for our promise given up the right to permit any power other than the United States (such as the Soviet Union) to dig a canal crossing its territory. More important, engineering studies comparing the various alternatives (most notably the 1970 report of the Atlantic-Pacific Interoccean Canal Study Commission headed by former Treasury Secretary Robert B. Anderson) have all concluded that the most suitable routes lie in Panama. What is more, the cost of the conceded favorite of these routes was recently estimated by the Canal Company's accountants at \$5-6 billion. At an interest rate of 7 percent the carrying costs alone for construction of this canal would be at least \$350 million annually, double the current yearly income of the existing canal. No foreseeable increase in traffic or tolls could justify such an outlay.

The most pervasive and deeply felt objections to the treaties, however, stem from another source. Many Americans view the Panama issue against the backdrop of a succession of U.S. foreign policy setbacks in recent years. Still attempting to comprehend the Vietnam tragedy, these Americans wish to see an end to yielding and retreat by the United States. Many Americans who could not locate Panama on a map know beyond argument that U.S. enterprise and industry built the Canal against frightful odds, and that the U.S. has since maintained that waterway for the benefit of all nations. Why then, they wonder, should we now relinquish control?

We are sympathetic to these concerns. But the question of Panama is peripheral to our disillusioning post-war experience. It is the wrong issue to choose to demonstrate that we remain strong and resolute. Panama is the smallest and weakest of nations. We are not "giving" the Canal to Panama. We are, rather, assuring our ability to protect it. By acting positively now to modify our relationship with Panama—in an atmosphere free from crisis, and while we are still able objectively to assess the long-term risks and benefits—we will be demonstrating strength, not weakness. It is just this ability to distinguish between symbol and reality, to plan for future needs, and to take timely action to advance our basic interests that is the essence of a strong and effective global policy. As Secretary of Defense Brown has remarked: "The Canal is for shipping, not slogans."

In taking this position, we are unimpressed by the assertion that the U.S. owes anything to Panama by way of reparations for past injustices. The treaties should be judged purely on the basis of their projected impact on the interests of the United States and Panama. In the opinion of the Ripon Society the treaties mark a

step forward, an improvement over what currently exists. They present us with an opportunity to modernize an outdated arrangement that has come to threaten the very purposes it was designed to promote. We believe that the agreements should be ratified.

CONCLUSION

The 1903 Treaty was the product of its era, a period of territorial expansion during which the U.S. emerged as a world power and American hegemony in the Caribbean became an indisputable fact. Panama's sweeping concessions to the United States were not unusual at the time. Britain, Germany, France, Belgium, and other countries were obtaining comparable rights in other parts of the world. But while most such colonial enclaves have disappeared in recent years—submerged in a tide of nationalism in large measure encouraged by us—the U.S. continues to enjoy its original status in the Canal Zone.

What is at issue in Panama, more than anything else, is our country's conception of its international role. Some Americans would pick Panama as the right place to "draw the line," to show the world that the United States cannot be pushed around. But this is to substitute pride, soured by the bitterness of past defeats, for reason. Building the Panama Canal early in the twentieth century was a great American accomplishment, requiring ingenuity and audacity. It was, as Senator Baker noted at the outset of these hearings, one of mankind's most memorable achievements, the moon shot of its day. Keeping it open and secure in the future, however, will constitute another impressive feat, one demanding both intelligence and tact.

Last fall the *New Yorker* published a cartoon in which one of the patrons of a local drinking establishment exclaimed to his bartender: "For thirty years I never thought about the Panama Canal. Now I can't live without it!" We have had an opportunity over the past year to think long and hard about the Panama Canal. In light of the many other foreign policy problems presently confronting the United States the time has come to resolve this matter and to turn our energies back to wider concerns of international affairs.

Mr. Chairman, based on examination of the agreements before you, we are satisfied that they are fundamentally sound and in the best interests of both this country and Panama. The Ripon Society therefore recommends approval of the treaties at the earliest possible date.

APPENDIX A

THE RIPON SOCIETY,
Washington, D.C., October 21, 1977.

To Republican Members of the United States Senate.

DEAR SENATOR: The Ripon Society urges you to vote for ratification of the Panama Canal treaties.

We think it is important that any fruitful public discussion of the proposed treaties initially recognize that the Canal is becoming less intimately intertwined with our vital national interests, as it is of declining military and economic strategic importance. Neither the supertankers upon which America depends for its petroleum supply nor the 13 large aircraft carriers upon which we depend for our security, can fit through the Canal; our nuclear submarines do not use the Canal, and indeed, according to press reports, only 12 U.S. Navy ships transited the Canal in the four year period of 1971-75, and less than 7 percent of all foreign trade coming in or out of U.S. seaports passes through the Canal.

However, to the extent that our national interests are involved, we believe that the most significant factor compelling support of the proposed treaties is that ratification will maintain—if not enhance—our national security. The proposed Panama Canal Treaty reaffirms America's legitimate interest in the security of the Canal, for it expressly grants to the United States the right and obligation to be the primary defender of the Canal's security until the end of this century and to maintain the fourteen U.S. military bases in the Canal Zone.

On the other hand, we believe the arguments of treaty opponents to be without substantial merit. Their prime objection concerns the vague wording of Article IV of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (Neutrality Treaty), in which after December 31, 1999 and in perpetuity, the U.S. and Panama "agree to maintain the regime of neutrality established . . ." by the treaty. Contrary to the claims of treaty opponents, surely this phrase would suffice to provide the legal basis for any American military action on behalf of the Canal's neutrality, were that ever necessary. That the Neutrality Treaty would

establish this adequate legal basis was clearly underscored in the October 14, 1977 Statement of Understanding between President Carter and General Torrijos. Indeed, as a practical matter, the United States has often relied on treaty language far less specific than that of the Neutrality Treaty to justify the use of U.S. military force around the globe in the post-World War II years.

Actually, the danger is not that ratification of the treaties will diminish our national security—but rather that failure to ratify would have just such an effect. Virtually every informed observer agrees that a U.S. rejection of the treaties would substantially increase the likelihood that left-wing Panamanian guerrillas would move quickly to sabotage the Canal or that internal political pressures would force the Panamanian Government to renounce the current treaty. And that the Canal is eminently susceptible to sabotage and is essentially indefensible has been admitted by the Chairman of the U.S. Joint Chiefs of Staff.

America's refusal to adopt the treaties could foment an international crisis. The United States could be faced with a sabotaged Canal, a repeat of the bloody 1964 Panamanian riots, and perhaps a new and hostile Panamanian Government. Under such circumstances, negotiating a new treaty could prove impossible; employing force to secure the Canal could prove disastrous to our image in the eyes of the world.

Ratifying the treaties and averting this specter would not, however, mean that the U.S. was being blackmailed by Panama. The treaties should be ratified because of their intrinsic merit. They will, as noted, contribute to the security of the Canal, but in addition their ratification will signal to all of Latin America that the United States is willing to implement its stated policy of regarding Central and South American nations as sovereign partners. Ratification will not erase overnight the lingering, effects of the Monroe Doctrine and Theodore Roosevelt upon American policy toward these nations. It will however represent a significant step toward achieving an enlightened relationship with those nations who have long regarded America's continued presence in Panama as a vestige of colonialism and the Canal as the fruit of gunboat diplomacy.

We are deeply concerned that the imperatives of ratification will be obscured by a jingoistic campaign. While there obviously are those who oppose the treaties for sincere but, in our opinion, misguided reasons, we are distressed by those who shortsightedly seek political advantage in protesting what is speciously termed an American "giveaway." A reasoned public debate about the merits of the new treaties would, we feel, convince a majority of Americans that ratification would be in the public interest. The impending emotional campaign could preclude this kind of debate and, we fear, cause an uninformed American citizenry to resist ratification of the treaties.

Republican Senators can take the lead in attempting to educate the public about the treaties and in advocating their ratification. This would surely enhance and broaden the appeal of the Republican Party as a whole. If instead Republican Senators become the critical and successful obstructionists to ratification, and if the Canal were sabotaged or some other crisis occurred as a result of American rejection of the treaties—a plausible turn of events—Republicans would doubtless bear the public blame. By voting to ratify the Panama Canal treaties, Republican Senators can avail themselves of a special opportunity to act in a responsible and enlightened manner—an action, we believe, that is in their and the country's best interests.

Respectfully,

GLENN S. GERSTELL,
President.

APPENDIX B

BIOGRAPHICAL INFORMATION ON PETER VINCENT BAUGHER

Peter Vincent Baugher is an attorney at Schiff Hardin & Waite law firm in Chicago, Illinois. He was Law Clerk to Judge Philip W. Tone, United States Court of Appeals for the Seventh Circuit, in 1973-74.

Born in Chicago in 1948, Baugher received his legal training at Yale Law School (J. D. 1973), and his undergraduate education at Princeton University (A.B. 1970), where he studied in the Woodrow Wilson School of Public and International Affairs.

Baugher is Chairman of the National Governing Board of the Ripon Society and serves on the Republican National Committee's Advisory Council on National Security and International Affairs. He is a member of the Chicago Council on Foreign

Relations, the American Council on Germany, the Economic Club of Chicago, and a variety of other professional, civic, and community associations.

Baughner serves on several boards of directors, including those of the Chicago Educational Television Association (WTTW/Chicago Public Television), WFMT, Inc. (which owns and operates WFMT-FM radio and Chicago Magazine), and the Princeton Club of Chicago.

JANUARY 1978.

STATEMENT BY REV. JESSEE L. JACKSON

To The Foreign Relations Committee, U.S. Senate, Wednesday—January 25, 1978

MR. CHAIRMAN: The conclusion of a treaty between Panama and the United States which redefines the colonial relationship between our two countries and affirms sovereignty of the Panamanian government and people over the "Canal Zone" is an act that is long overdue.

The old relationship, which has been in existence for three quarters of a century, is an anachronism left over from the era of "gun-boat diplomacy." Along with U.S. domination of the Panama Canal Zone, the racist practice of segregation was imposed upon the Panamanian people. "White-Only" restaurants, gasoline stations and other public accommodations, segregated public schools, discrimination in employment and pay scales became part of everyday practice in the Panama Canal Zone under the protective arm of the United States military. Beyond the insult to the Panamanian people of having a foreign colonial enclave of special privilege inside the Panamanian Republic was added the insult of a humiliating system of Apartheid patterned in every detail after the Southern states of our country. Here is a classic example of racism and colonialism wedded under American military occupation.

The American flag flew over this zone inside the sovereign territory of the Panamanian Republic, and today a Panamanian living in this zone, when tried in a court of law, is tried in an American court. If found guilty, he has to appeal his case, not to the courts of the Republic of which he is a citizen, but to the Federal Court of the United States in Louisiana.

Those who are insisting that the present Panamanian government "honor" the old treaty of 1903 are to be reminded that the United States has a poor record of honoring treaties, especially as it regards the native American Indian population. We might add to this the Social Contract which the government had with the Black population of the United States as represented by the 14th and 15th Amendments, which were brutally and consistently violated in every Southern state from the period of the overthrow of Reconstruction, beginning in 1876, until the passage of the Civil Rights Act of 1964. This is undoubtedly one of the worst records of treaty violations to be found anywhere in the modern world.

It is a matter of historical fact that the Panama Canal Treaty of 1903 (The Hay-Bunau Varilla Treaty), authorizing the United States to construct an interoceanic canal through Panama, was a treaty signed by the Secretary of State and the representative of a French Canal Construction Company. The Panama Canal is a magnificent achievement of engineering technology; however, the diplomatic history and political maneuvers associated with the building of the canal, which resulted in establishing United States colonialism in the Republic of Panama, are as sordid and disgraceful as the canal is magnificent.

Mr. Chairman, I firmly believe that we as a nation should never become so sinful as to commit the ultimate sin—the desire to own another nation. Even President Woodrow Wilson in 1915 called the nation's attention to the fact that the United States "had engineered a fake revolution in Panama as the pretense for securing the right to build the canal * * * and has alienated all of Latin America in the process." A responsible Congress, carrying out its oath of office of responsibilities to the people of the United States, should have responded to President Wilson's comments at that time by restoring the Canal Zone to the sovereign Republic to which it belongs. But nearly 50 years later, in 1964, United States troops, stationed in Panama as part of the Southern Command, were shooting down Panamanian high school students in the riots that resulted from their trying to raise the Panamanian flag on a flag pole in front of Balboa High School.

When we visited and spoke to the student body at Balboa High School last November, we saw a vivid example of the chauvinist attitudes that have poisoned the minds of our American students in the Canal Zone. Before the student assembly program began, the school band played the "Star Spangled Banner" but did not play the Panamanian national anthem. In this school English is the only language

of instruction and there are only a token number of Panamanian students. A couple of miles away, but still in the Zone, is Paraiso High School for Panamanian students. All of them are bilingual, speaking Spanish and English. This year Paraiso High School is being closed. Its students will be transferred to Balboa High School, where instruction will continue to be only in English. The tragedy is that our American students are being taught attitudes of superiority that blind them to the great opportunity they have to learn another culture and grow in the process. In an age of growing internationalism, these students are being encouraged to be closed-minded and provincial. They undoubtedly get these attitudes from parents, and the public school officials have been impotent to correct them.

The demands coming from the Panamanian people and the government of Panama for a new treaty covering the Panama Canal Zone and the Canal itself leave the United States three options:

- (1) The United States can militarily *occupy* the Panama Canal Zone as a way of asserting its determination to reject the demands of the Panamanian people, or
- (2) The United States can follow, as it has followed, a "hard line" that is short of military confrontation but frustrates and *alienates* the people of Panama in their effort to reclaim sovereignty over an important part of their country, or
- (3) The United States can *participate with* representatives of the Panamanian Government in working out a new and just arrangement respecting the mutual self-interest of our two countries.

The first two options will not work toward any good end. A small nation determined to exercise its sovereign independent rights as a nation will eventually win in a military confrontation with an oppressor because world public opinion is on its side. It would be a wasteful misadventure to try the military option. Nor is anything to be gained by following the policy designed to frustrate and alienate the people of Panama. This would eventually alienate the whole of Latin America. So many countries—Costa Rica, Venezuela, Colombia, to name but a few—have their foreign trade tied into the operation of the Panama Canal that they regard the canal as a "natural resource" of the Latin American Continent and fully support their sister Republic. The third option, a new treaty of mutual respect and justice, is the United States' only viable course.

Mr. Chairman, in our visit to Panama we saw evidence of a developing nation of just 1½ million people supporting the effort of the Government to improve the general economic well-being. Reforms in health care over the past several years have expanded facilities into the rural areas for the first time; and the beginning of the development of the Cerro Colorado Copper Works will improve Panama's balance of payments condition and reduce unemployment. We were told about the considerable increase of students in higher education during this decade, especially in engineering, whose enrollment went from 300 students in 1970 to 5,000 today. New housing is being constructed for low-income families as this developing society comes to grips with acute housing shortages in the urban centers, a general characteristic of countries emerging from colonialism. The new governmental structure eliminates the old unicameral legislative body of 43 representatives, most of whom lived in Panama City. This has been replaced by redistricting the whole country into 502 districts; each legislator must live in the district from which he or she is elected. This certainly broadens the base of what we would call "representative government" and is an important reform.

There are also problems associated with the transfer of the Canal Zone to Panamanian sovereignty. There is reason to be concerned about the several thousand people who, it is estimated, will lose their jobs as the work force currently employed in the operation of this Zone is reduced in size. Many of these are black Panamanians, whose families first came to Panama from the English-speaking West Indies at the turn of the century, when the Canal was being built. They have historically formed a kind of middle stratum among the work force, in that they did not enjoy equal pay with white Americans working in the Zone but generally had a higher income than the average Panamanian family in this semi-colonial country. These Black Panamanians are also apprehensive about the possibility that racist attitudes will be revived in this situation. General Torrijos discussed very frankly with our delegation certain judicial procedures that are viewed as repressive by some, in that certain capital crimes are handled in military courts rather than in the civilian judicial system. He was proposing to the executive council changes in the procedure that would remove such cases from the military to the civilian courts.

So there are problems, but they are problems that only a sovereign government, fully in charge of its national territory, can fully address. They are not problems that need to preoccupy the U.S. Senate as it deliberates ratification of the treaty. After all, we have 10 million unemployed in the United States, and the estimated

400 thousand people in jail in our country (of which about 80 percent are Black youth) represent one of the largest prison populations in the Western world. I want to take this occasion to appeal to President Carter, in the interest of human rights, to use the power of his high office to open up a full investigation of prison conditions in the United States and the causes which have resulted in such a high percentage of Black youth among the population in jail.

Mr. Chairman, I am sure we all realize that the Panamanian people, like all people, have a history. The body of national experience which has been theirs includes experience with the arrogance of colonialism and exploitation by foreign multinational corporations. The Panamanian national experience provides them with a set of definitions that may differ substantially from some of our own. For example, the term "dictator" carries a connotation that is sinister to the people of our country. It is unfortunate but true that the foreign policy of the United States is frequently found in support of dictatorships in Iran, Chile, and Nicaragua, and a racial dictatorship of "white minority rule" in Southern Africa, to name only a few examples.

To the Panamanian people, on the other hand, given their national experience, a dictator may simply be a leader of sufficient strength, power, and character not to be overthrown or bought off. Given this operational definition, it is obvious they would prefer a Panamanian "dictator" to a CIA "democracy." For them the single overriding concern is the restoration of sovereignty over the Canal Zone and the removal of this insult to their national dignity.

Mr. Chairman, in the recent visit of our PUSH delegation to Panama, we met with religious leaders, like Monsignor Marcos McGrath, the Catholic Archbishop of Panama (Panama is a predominately Catholic country); Rabbi Kepfisz; Baptist clergy; student leaders; trade union leaders; as well as leaders of the Panamanian Government, including President Demetrious Lakas, Chief Justice Juan Materno Vasquez of the Supreme Court of Panama, and General Omar Torrijos Herrera, the Panamanian Chief of State. The determination of the Panamanian People at all levels of society to restore Panamanian sovereignty over the Canal Zone, as well as over the operation of the Canal itself, should not be underestimated.

The people of the United States, if provided with the facts, will also support the ratification of the treaty in overwhelming numbers. The Senate should act in this matter with integrity and with confidence that the people of our country will support the correcting of this injustice done to the Panamanian people.

What of the United States citizens who have been living and working in the Canal Zone? Their future is in the exercise of one of two choices—to return to the United States, the country of their citizenship, or apply to the Panamanian government for permission to continue to live in Panama.

The new Panama Canal Treaty should be ratified by the United States Senate, and without a lot of crippling amendments designed to embarrass not only President Carter and General Torrijos, but also the Panamanian people who have ratified the treaty in a national referendum. Indeed it represents both a morally and a politically sound effort at correcting an historic injustice. The assumption that the United States can own property in another sovereign country "as if in perpetuity," as the old treaty provides, is so inconsistent with the realities of today's world that it is ridiculous. So is the idea of the United States' holding the unilateral right to militarily intervene in Panama's affairs whenever it feels the "neutrality" of the Canal is endangered. That is another example of North American chauvinism and an inclination to assume the costly and presumptuous role of world policeman.

It is in the national interest of our country that just and civilized relations with the people and government of Panama be established. The United States-Panama Treaty of 1977, signed by President Jimmy Carter and General Omar Torrijos Herrera and providing for changes in the operation of the Canal and in the status of the Canal Zone, is a positive and welcome step in that direction.

Thank you, Mr. Chairman.

STATEMENT OF THE HONORABLE ROBERT E. BAUMAN

Mr. Chairman: Thank you for permitting me to appear before you today. I returned on January 11th from a week long trip to the Republic of Panama and the Panama Canal Zone which I visited in my capacity as a member of the Committee on Merchant Marine and Fisheries of the House of Representatives. My purpose in testifying before your committee today is to add to the considerable store of information which I am sure you have already received from previous witnesses regarding the Panama Canal Treaties.

I will not belabor the several major and more sensational points which have been debated thoroughly in public. However, I am convinced after an extensive trip through the Republic of Panama and the Canal Zone and after discussions with more than 150 officials and employees of the Canal Zone Company, U.S. Military, the government of the Republic of Panama as well as everyday citizens in Panama and the Zone that the whole story of the adverse impact of these treaties is not being told in the United States.

Let me concentrate first on the economic aspects of the Treaties. As you know, article XIII of the Treaties requires that the United States pay approximately \$40 to \$60 million annually to the Republic of Panama for the use of the Canal. I am sure that by now you are familiar with the equation which the Treaties provide including 30 cents per Panama Canal net ton for each toll-paying vessel going through the Canal. This 30 cents per ton will be indexed to the U.S. wholesale price index for manufactured goods and adjusted bi-annually. A fair estimate is that Panama will receive \$40 million a year from this payment.

In addition, Panama will receive a \$10 million annuity each year as compared to the current \$2.2 million under existing agreements. In addition, an annual amount of up to \$10 million per year will be paid to the Republic of Panama if the Canal operating revenues permit this. This contingent payment is a point that needs greater elaboration.

It was made clear to me in extensive discussions with Governor Harold Parfait of the Canal Zone and with a number of other officials of the Panama Canal Company that the single most important function aside from management of the traffic through the Canal is the maintenance of the existing equipment and structures. We are dealing with a 70 year old facility which requires not only regular maintenance, but preventative maintenance as well. This point was brought home to me during my travels through the Canal by boat, by helicopter and in my inspections of the locks and operating facilities.

Whether or not Panama receives the second \$10 million payment is apparently open to question so far as American officials are concerned. The fact is, in my extensive discussions with the Panamanian Planning and Economic Policy Minister, Nicholas Ardito Barletta, it was made clear to me that the Panamanian government expects to receive the full \$20 million payment which article XIII suggests each year beginning immediately upon the effective date of the Treaties.

Mr. Barletta also made it clear that he believes the tolls policy followed by the United States since the construction of the Canal and which consisted of charging only those tolls which constitute sufficient annual funding to operate the Canal and pay off indebtedness, was mistaken. He pointed out to me that in the Panamanian view, if tolls had been increased to meet inflation that had incurred since 1914 when the Canal began operating, the tolls would be 200 to 300% higher. He also said that if the tolls had to be increased the Panamanian government saw nothing wrong with requiring those increases.

In discussions with Canal Company officials, it was repeatedly emphasized that the cost requirements of Canal maintenance would not permit the payment of this second \$10 million annually. Governor Parfait has estimated in previous testimony and repeated to me that last year alone, \$65 million of the total Canal Zone operating budget of \$163 million was devoted to maintenance alone. If a mutual agreement cannot be reached as to whether money shall be used for maintenance or diverted to finance payments under article XIII this will be a source of constant aggravation between the parties. In the Panamanian view, they are due the full payment and when they obtain sovereignty over the Canal Zone it will be difficult to dispute them. Maintenance could undoubtedly take a backseat to payments. If indeed Panama does receive the full amount of the proposed payments it will mean an annual income to Panama of \$75 billion over a 20-year Treaty life.

But there are other costs that will accrue directly to the taxpayers of the United States and which are hidden in the Treaties agreement as well as in implementing legislation yet to be submitted to the Congress. We are all aware that the U.S. government has entered into a corollary agreement to provide the tune of \$295 million. In addition, the United States has agreed to provide military sales credits in the amount of \$50 million. I might add that much of this will be used to beef up the Guardia Nacional in Panama which maintains the dictatorship of General Torrijos the presence of which is obtrusive during the time any foreigner spends in Panama.

In addition, the treaties provide that there will be transferred to the Republic of Panama over a period of time, immediately in some cases, a period of 30 months in others, Canal government services and facilities valued annually at at least \$100 million or \$2 billion over the life of the treaty. These services include oil bunkering

and other facilities, housing, commissaries, theatres, retail stores and restaurants, service and recreational facilities.

Six months after ratification, 148 square miles of the Canal Zone's 372 square miles will be transferred to the Republic of Panama and at a conservative estimate of 10 cents per square foot or \$4,356 per acre for prime real estate, this means that Panama will receive lands valued at at least \$1.1 billion.

If one takes into account the value of the Panama Canal itself and adjacent improvements which will eventually come under the complete control and ownership of the Republic of Panama if these treaties are approved, another \$3.6 billion can be added to the amounts Panama will receive.

In addition, the replacement cost of military installations which will be surrendered and transferred to the Republic of Panama immediately will be at least \$1.5 billion.

My calculations do not include the fact that at present the operation of U.S. military installations and the Panama Canal company organization and their employees are estimated to provide in excess of \$250 million annually in spending which benefits the Panamanian economy. This will be increased considerably because of the transfer to Panama of many of the facilities which provide services to the Canal. The new operators can then charge for such services as they see fit.

I think a word should be said at this point regarding the attitude of the government of the Republic of Panama toward those portions of the Canal Zone and the facilities which they will receive from the U.S. either immediately, or within a period of 30 months under the terms of the treaties.

After talking to Minister Barletta, it is plain to me that the Panamanians perceive this property and these lands as a gold mine to be stripped for the benefit of the Panamanian government and, one supposes, the people of Panama, though the history of the current regime certainly does not guarantee that those benefits to the people will follow. Minister Barletta made it plain that extensive plans are underway for the use of the money which Panama will receive. He presented me a 42 page document which explained in some detail these grandiose plans. Officials of the Canal Company made it clear that if the economic feasibility of these projects were as great as the Panamanian government supposes, they would have been developed by the Canal Zone government by now as a means of generating income for financing the operations of the Canal.

These plans include diversion of canal funds to Panamanian government projects once the treaties are ratified and include several sugar mills, a fishing port, container ports, an oil terminal, copper mining development, a cement plant, and expanding tourism.

In addition, it was estimated by Minister Barletta that the money can also be used for the expansion of Tocumen International Airport at Panama City which has been under construction for some time and is well behind its deadline for completion. Other funds will go to building the last remaining portion of the Pan-American Highway through the Darien Gap.

In talking with a number of officials of the Panamanian government as well as Panamanian and American businessmen in Panama, I do not think that members of the Senate or the House can take any great comfort in the ability of the Panamanian government to carry out these projects although we can certainly rest assured that the money that the canal generates will be demanded and taken by the government.

During the nine years of the Torrijos dictatorship, there have been a number of projects which have either fallen behind in their construction or have failed to come to completion. Among these are the airport which I mentioned, a major hydroelectric project which has yet to go on line though it is much behind in its planned operation date, several sugar mills, the Contadora Island resort, agricultural development programs and mineral and natural resources development. I would also cite the failure of a proposed public transportation system, particularly in the Panama City area. I heard from a number of Panamanians the woeful fate of several hundred buses purchased by the Torrijos government from Spain two or three years ago. Most of them now sit empty in parking lots because of lack of maintenance and the inability of the government to provide parts and labor.

Solely on an economic basis, I would predict that if indeed these treaties are ratified in their present form, we can expect rapid deterioration of the Canal and its facilities because of lack of maintenance since funds will be diverted from capital improvements to the uses of the government of Panama. I need not dwell on the inefficiency of the "double veto" system of government provided under the treaties under which either party can easily block the action of the other.

Now let me turn to the question of what this treaty is going to cost the taxpayers of the United States. The philosophy of the United States government in operating the Panama Canal since its beginning in 1914 has been to extract from the levy of tolls on canal transits only enough money to operate the canal and its facilities without making any great profit. In the last few years—although the situation has changed for the better over the last few months—the Canal has been losing money because of a combination of factors. As a result certain interest payments to the U.S. Treasury have been suspended by the Panama Canal Company as is permitted by law. We were told repeatedly by Mr. Linowitz and Ambassador Bunker in their testimony before the House Merchant Marine and Fisheries Committee last August that there would not be any additional costs to the United States and our taxpayers if these treaties go into effect. Secretary Vance in testimony has stated that payments to Panama will be completely derived from canal revenues and therefore “the treaties require no new appropriations nor do they add to the burden of the American taxpayer.”

I would like to disagree emphatically with those assertions. It is unfortunate that this type of misleading statement has been part of the propaganda campaign in support of the treaties. In truth the American taxpayers are going to be asked to ante up millions for the next 23 years if Canal operation is to be assured, but they will lose control and sovereignty over the canal.

What else will the taxpayers lose? There will no longer be the approximate \$17 million annual payment to the U.S. Treasury from the new Panama Canal Commission for interest on the U.S. government's past investment. Over the life of the treaties the taxpayers will lose \$340 million which otherwise would have been paid to the Treasury. In addition, in a slick bookkeeping arrangement the Panama Canal Company will transfer to the U.S. Department of Defense for payment by the U.S. taxpayers an estimated \$66 million annually for schools, sanitation, fire and police protection, customs, health, postal and other services which are now provided by the Canal Company. This will mean an additional cost of \$66 million to the taxpayers to keep the Canal running or about \$1.3 billion over 20 years of the treaty. These funds are currently paid out of the Canal revenues.

The U.S. Civil Service Commission estimates that the cost of early retirement of present Canal employees will exceed \$135 million. And what will be the as yet uncalculated costs of transferring present facilities into the shrunken U.S. areas remaining? Or the cost of training Panamanians to take over U.S. jobs?

Lastly, it should be considered that even optimistic estimates hold that to finance the provisions of the treaty and related economic agreements there must be an immediate increase in tolls in the nature of at least 30% (which is the lower State Department figure) or 40% (which is the Canal Zone government figure.) In this regard the committee heard last week testimony from Mr. Brandes, who as you know has been commissioned by the State Department and the Panama Canal Company to study the matter of toll sensitivity. I am sure that I can not improve upon that expert study. But it is plain on its face that despite the assurances given to your Ambassador Bunker a large increase in tolls is going to be needed to finance the operation of the Canal. The alternative will be a demand from the Panamanian Government that the United States subsidize the operation of the Canal.

If that demand is made, I suspect the State Department will support it as several witnesses from the shipping industry did prospectively before your committee last week. The U.S. would then be confronted with a double dilemma. The taxpayers would have to cough up hundreds of millions of dollars to keep the Canal open and operating or the Canal would close. Such payments would be in addition to the 10 billion dollars I have estimated that the treaty already gives to Panama, and this equation does not even consider the increase in the cost of goods to American consumers shipped through the Canal once the tolls have been increased. I believe these figures demonstrate that there most certainly will be an additional burden placed on the American taxpayer.

This leads me to a suggestion that I really think your committee ought to consider. That is that all of the implementing legislation which will carry out the terms of these treaties, should they be ratified, ought to be demanded from the administration immediately. This implementing legislation should be before the Senate and House and all appropriate committees including the committee on which I serve in the House, the Committee on Merchant Marine and Fisheries, before these treaties are ever brought up for consideration in the Senate. It makes no sense at all in my view to begin debate on the treaties when the economic terms and eventual costs these documents will produce are shielded from public view until after the fact of ratification. I am confident that if the implementing legislation is presented to Congress, the treaties will be in great trouble. In spite of the repeated

assurances of the Administration that these treaties will not cost one additional dollar to the American taxpayer, the truth is otherwise.

There are many other aspects which I would like to discuss with your committee and its membership but I will leave such topics as the character of the Torrijos regime, my meeting with Dr. Romulo Escobar Bethancourt, chief Panamanian negotiator, and questions regarding the U.S. right to intervene to a full report we will be submitting shortly to the Merchant Marine and Fisheries Committee of the House.

Once again, I thank the distinguished members of the committee for their courtesy.

STATEMENT OF JOHN P. SHEFFEY, COLONEL U.S. ARMY (RET.)

Mr. Chairman, Gentlemen, I am Colonel John P. Sheffey, U.S. Army (Ret.). My experience in Panama Canal affairs has been rather extensive—five years as the Secretary of the Army's Military Assistant for Canal matters, five years as the Executive Director of the President's Atlantic-Pacific Inter-oceanic Canal Study Commission, and three years in the Department of State as Special Advisor to the U.S. Canal Treaty Negotiator on an appointment that was terminated by the Department of State in 1974. Subsequently, I have maintained contact with the State and Defense negotiators and have followed the development of the current treaty drafts. However, I have no official capacity today and am here only in the hope that I can help contribute to your understanding of the canal treaty problem. I do not speak for the members of the National Association for Uniformed Services. Most of them strongly oppose giving up the Panama Canal and are not happy with my view that a generous new treaty with Panama is both necessary and unavoidable.

The record of your earlier hearings includes almost every known argument for and against ratification of the proposed treaties, and I will not repeat them. Instead, let me clarify a couple of issues in which I can claim expertise. Then I will attempt to frame the Panama treaty problem in its true political context and suggest what should be done.

First, as the former Executive Director of the \$22 million sea-level canal study in 1965—70, I assure you that there are no foreseeable circumstances in which the United States would be likely to consider building a new Isthmian canal outside Panama. The only feasible routes are in Panama. The economic, technical and political objections to the far longer routes in Colombia and Nicaragua eliminate them from practical consideration. Limiting the choice of routes to Panama for the remainder of this century costs the U.S. nothing, and the treaty proposal for this prevents other powers' meddling in the matter.

The theoretically feasible routes in Nicaragua and Colombia are 140 miles and 100 miles in length, respectively, as compared with 40 miles or less for the Panamanian routes. The movement of large ships in narrow canal waters is a slow and hazardous operation. Ship operators would not readily accept the risk and time lost in transit. The construction and operating costs of these longer canals would be three or four times the cost of the shorter canals in Panama, and even the shorter Panamanian routes are not economically feasible at currently forecast traffic levels.

In the 1970 study, the Nicaraguan and Colombian routes were considered only for a *sea-level* canal constructed by nuclear excavation. Nuclear excavation is of questionable technical feasibility at best, and is politically infeasible beyond doubt. Conventional excavation costs on these longer routes were so great that they were not even estimated with any precision. Today's construction costs on either route would be in excess of \$20 billion, and this could easily double by the time such a canal might be needed.

Certainly, the foreseeable traffic cannot support two Isthmian canals, and 95% of the world shipping projected for the year 2000 will still be of sizes that can pass the present Panama Canal. The 5% of superships that need a larger canal cannot possibly support its cost even in Panama. The military advantages of a relatively indestructible sea-level canal are attractive, but have not moved us to build one in Panama. They are far from sufficient to justify a \$20 billion investment in a technically unsatisfactory and politically abrasive canal outside Panama.

The second issue that I want to address is that of alleged Administration pressures on the Joint Chiefs of Staff to agree to the treaties. The pressures were real and continuing, but certainly were not political threats to their careers. They were in the form of persuasion by the Secretary of State and the treaty negotiators as to just what was possible to negotiate, and ultimate acceptance by the JCS that control of the canal by a friendly Panama under an umbrella of U.S. defense would better serve U.S. defense interests than a canal controlled by military force exerted

against a hostile Panama. This took a long time and involved many successive Joint Chiefs. In the years since 1962 when President Kennedy first made the tentative decision to negotiate a new canal treaty with Panama, the U.S. position has progressively softened in the face of repeated Panamanian refusals to accept the terms offered. President Johnson and his National Security Council sought 100 more years of U.S. control and defense of an Isthmian canal, along with the right to build a sea-level canal. Upon the rejection of the 1967 treaties negotiated with this guidance, President Nixon and his NSC sought 50 more years of control of the present canal and dropped the sea-level canal objective. A treaty drafted under these terms was rejected by General Torrijos in early 1972, and subsequently Secretary Kissinger persuaded President Ford and his NSC to accept less than 50 years of U.S. control and defense. President Carter and his NSC finally accepted the 23 years proposed in the current drafts in return for Panamanian agreement to the permanent U.S.-Panamanian guarantee of the canal's neutrality. All the civilian and military officials involved have been intelligent and patriotic men, and all have acted in what they believed to be our country's interests.

You should note, however, that in the proposed treaties the Panamanians have wholly accomplished their original objectives at the outset of the negotiations in 1964. The only compensation offered the U.S. for the \$8 billion gift of the Canal Zone and sacrifice of its military position on the Isthmus is goodwill. Goodwill between nations endures only so long as their interests do not conflict. Unfortunately, the conflict of U.S. and Panamanian interests in the canal is permanent. The new treaties will change its impacts, but they will not end it. Obviously, the U.S. has not used its true negotiating power in this situation, and I'll try to explain why.

From the beginnings of the Good Neighbor policy in the 1930's, the Foreign Service professionals in the Department of State have increasingly believed that the U.S. should withdraw from Panama. Public support for this view until recently has been limited to a liberal minority; but it is a view consistent with the anti-colonialist foreign policy the U.S. has followed since World War I.

Throughout most of this period, U.S. retention of the canal was an article of faith in the Department of Defense, supported by an overwhelming majority of the Congress and the American people. However, this period has been marked by a wholesale retreat of the colonial powers from Asia, Africa, and the Mideast. We freed the Philippines and gave Okinawa back to Japan. Egypt took the Suez Canal from the British. U.S. policy makers chose to accept, for good reasons, a stalemate in Korea, compromise of the Monroe Doctrine in Cuba, and abandonment of our objectives in Vietnam. We have castigated our own leaders for undemocratic actions in support of our interests in Iran, Greece, Chile, and elsewhere. Linkage of our position in Panama with this trend has been unavoidable. Equally unavoidable is the symbolism of the canal as a place for the U.S. to take a stand and stop its worldwide retreat.

If modern history has any lesson for us to apply to the Panama situation, it is that retention of overseas possessions and democratic treatment of the local inhabitants are utterly incompatible. While the Canal Zone is technically not a colony, Panama has been a U.S. satellite for all practical purposes. U.S. control of the canal and maintenance of this relationship are inseparable, but what U.S. President would now send in the CIA to topple Torrijos and replace him with a U.S. puppet?

Panama, her Latin neighbors, and our Communist and Third World critics long ago recognized the contradictions in the U.S. position in Panama, and they have played upon them so skillfully that our own policy makers, including the Joint Chiefs, have accepted that the Panamanian cause is a just one, and it would be in the best interests of the U.S. to end the tensions of our present relationship by giving up the canal and our military bases on the Isthmus. All have concluded that the ruthless actions that would be required to hold the canal are no longer feasible. The President and the Congress will not order them; and in the long run, they wouldn't work anyhow. Torrijos has been created by the situation in Panama, and the next Panamanian leader and the one thereafter will be equally determined to take possession of the canal. The world has changed since 1903. The U.S. today cannot use the methods of our "manifest destiny" days when we were assembling our empire. A foreign policy that requires shooting the natives who get in our way is no longer acceptable at home or abroad. This is the real issue in the Panama treaties. Our desire to adhere to our democratic principles and live by the golden rule in Panama has run head-on into the historical policies that made the U.S. great and powerful. Our current policy makers are acting in support of our principles but a vast number of Americans instinctively fear that the new Panama treaties are one more step in the decline and fall of the American empire.

There is no wholly satisfactory solution to the canal problem. The proposed treaties present a Hobson's choice between existing problems in our relations with Panama and a host of new ones. Our presence in Panama is not comparable with our bases in Germany or Japan. In those countries our presence is desired. In Panama it is not. A more applicable historical example would be the experience with the NATO line of communications across France. Common sense and our perception of France's obligations and self-interest gave no warning that de Gaulle would throw us out—but he did.

Every Administration since 1964 has attempted to negotiate terms acceptable to Panama that would continue to protect the irreducible minimum of U.S. interests in the canal. Unfortunately, from the time Kissinger became Secretary of State and Ambassador Bunker the treaty negotiator, all the signals to Panama were that we would make almost any concession to reach early agreement. Ambassador Linowitz's known views and short term appointment by President Carter were a similar signal: This gave the Panamanians unwarranted bargaining power in reaching agreement on the proposed treaties. Had these signals of U.S. softness not been made, the U.S. could have negotiated a more advantageous treaty that would have been acceptable to Panama. This now will be extremely difficult, if not impossible. However, the Senate is now faced with a decision that is far less complicated than the contradictory testimony before this Committee would indicate. There is no real choice of rejecting the treaties outright and maintaining the status quo. A U.S. show of force and determination won't change Panamanian goals or end worldwide support for them. The choice is only between accepting the treaties as drafted or advising the President that their broad concepts are acceptable, but some critical details must be changed. The U.S. can further delay making this choice, but in the end a treaty embodying the general principles of the proposed treaties is inescapable.

I believe only one aspect of the treaties creates an unacceptable risk to U.S. interests. That is the ambiguity of U.S. defense rights in Article IV of the Neutrality Treaty.

The argument that Panamanian self-interest will keep the canal open after 1999 is demonstrably nonsense. I have already cited the experience with the NATO line of communications across France. The experience with the Suez is more directly comparable. Egypt desperately needed Suez Canal revenues, but closed the Suez in the 1967 war and let it remain shut down for eight years. Our experience with the Berlin Corridor is another example of the futility of dependence upon goodwill. In any event, U.S. rights to take whatever action is necessary to keep the canal in operation must be so specific that they cannot be legally challenged by Panama. This is the surest guarantee that the U.S. will never be forced to use such rights.

Under the proposed treaties, an overt military threat to the canal would present no decision problem for the U.S. The problem would be in dealing with political closure after we have departed from the Isthmus. There are many scenarios in which hostility to the U.S. could develop in Panama. Suppose that sometime after 1999 another Cuba-type situation develops in Latin America, and the U.S. again must use the canal to deploy an assault force to protect its interest. The Panamanian government (or the labor union then controlling the canal operating force) does not support U.S. objectives, and the canal operating force goes on strike and closes the canal at the critical period when the U.S. needs it most. The Government of Panama gives lip service to its treaty obligations, but tacitly supports the strikers and makes only token efforts to terminate the strike.

Does the proposed neutrality treaty give us the right to bring in operating personnel and protective forces in these circumstances? Department of State lawyers claim that it does, but I very much doubt that General Torrijos would agree. In any event, neither side can be sure of what interpretation a future Panamanian government will put on the currently proposed treaty language, and our Presidents and Joint Chiefs of Staff after 1999 should not be handicapped by such vague wording, nor should an issue of such critical importance be in any measure dependent upon Panamanian goodwill.

We can live with the problem that are bound to come with the relinquishment of sovereignty and the transfer of Zone activities to Panamanian control. But there should not be the smallest shadow of doubt as to our responsibility and determination to insure that the canal is kept in operation. This is the one single duty to ourselves and the world that is more important than all of our other objectives in a new treaty with Panama. The world understands and accepts that great powers have such responsibilities. Doubt as to our intentions or will to act is what will invite trouble in Panama. Therefore, I recommend that the Senate advise and consent to ratification of the new treaties only with the reservation that Panama

must agree that "in the event of any failure to keep the canal in operation and available to the U.S. and the world, unilateral U.S. action on Panamanian territory, aimed solely at restoring the canal to operation, would not be considered an act of war or intervention in Panama in violation of the Rio Pact and the UN Charter." This so-called derogation of Panamas' sovereignty is a small price for Panama to pay for the gift of the canal.

The recommended reservation is not a treaty change, and there is no constitutional requirement in Panama that it be voted upon by the Panamanian people. It is nothing more than a formalization of what General Torrijos as already stated in different language. If he were to refuse to concur in the reservation because it derogates Panamanian sovereignty, this would be a frank admission that Panama insists upon the right to deny the canal to the U.S. in some circumstances. In that event, the proposed treaties should not be ratified.

Thank you.

STATEMENT OF MR. EGON TAUSCH

The value of the Panama Canal to our national defense has been the subject of testimony by high-level military officials, active and retired. Some believe that the U.S. cannot be defended without the use of that waterway; others qualify such statements. But a recurring theme involves our ability to protect the Canal itself from local guerrilla activity or sabotage.

To judge this threat we have to know just how vulnerable the Canal is, under which conditions the Canal would be least vulnerable, and from what quarter we can expect danger. These questions are not only military matters; they are also technological and political.

The proposed treaties call for delivery of the Canal Zone to General Torrijos' government almost immediately after ratification with retention, by the U.S., of military bases within the Zone, and of practical control of the Canal itself until about the year 1990. If the treaties are not ratified, the U.S. retains control of the entire Canal Zone.

As long as the entire Zone is in the American hands there is little reasonable fear of guerrilla war with Panama. The tactical advantages adhere to the U.S., and the Panamanians are not interested in self-immolation.

Although large parts of Panama are jungle, the population is concentrated in the two major cities. Panama has never fought a war. The *Guardia Nacional*, which serves as both the army and the police of Panama, is 8,000 strong, almost all stationed in downtown Panama City, for political uses only. The *Guardia* doesn't like the jungle. The most committed fighters Torrijos has are the thousands of Leftist professional students, and these do better in romantic street demonstrations than in individual acts of sabotage or concerted struggles. The "martyrs" of the famous riot of 1964 were killed when a department store they were looting caved in.

Panamanians could be trained to fight—the U.S. Army has been trying to do this in jungle warfare schools in the Zone for years—but the probability, if war broke out, would be that Cubans would do all the fighting.

The analogy with Vietnam is valid, but not the way treaty supporters think it is. The crippling difficulty faced by the U.S. military in Vietnam was that geographic territory was irrelevant in that war. Fortifying towns or hilltops, though easy, was pointless; Vietnam remained a war of movement because the U.S. and Saigon forces had to maintain the offensive tactically in order to maintain political control. In the few instances when American installations were assaulted directly, the Vietcong and North Vietnamese attackers were slaughtered.

The Canal Zone, on the other hand, is only about fifty miles long and ten miles wide. Perimeters can be established and fortified. There are no "hearts and minds" to be won; only Americans live there. There are no Panamanian villages within the Zone to worry about, nor any reason why the frontier should not be cleared of vegetation for fields of fire. General Torrijos knows all of this. Difficulties would arise if and when the Zone were abandoned before the Canal was surrendered, and this is precisely what the new treaties propose to do.

The idea that the Canal itself, within an American Zone is vulnerable to sabotage by dissidents or guerrillas is based on ignorance of the physical structure of the Canal and on underestimation of 1910 technology. The Canal is not a complex, delicate mechanism. The locks are merely chambers built of solid concrete, with holes in the bottom through which the water passes by gravity when the valves are opened. The gates are steel, pivoting on posts, and locking under pressure of the

water. The machine parts are simple, solid steel and brass, and every piece is manufactured in workshops on the banks.

The gates and valves are controlled from an electric table on the deck of the control house; if the table controls become inoperative, the circuits can be reconnected on a floor below; if these are destroyed, there are steam-operated controls within the concrete banks, and a final set of manual controls. Communication at the locks is by sight and voice—computers were installed, but found to be less effective than the old method and were discontinued. As few as eleven employees can operate the entire lock system. All of the original machinery is still functioning, though minor parts are replaced regularly.

There have been comments by the media to the effect that the Canal could be disabled by dropping a few hand-grenades into the locks. Actually, as I discovered by operating the locks myself and examining the entire structure, disabling the Canal would require aerial bombardment, or satchel charges placed at dozens of different locations—a project that would require almost complete control by hostile forces in order to carry out.

The greatest danger from guerrillas or saboteurs would occur only if the Canal Zone were abandoned by the U.S. before the waterway or the military bases.

Why ratification of such treaties would give the Panamanian government, or any of its people, cause to attack the Canal is a political and an ideological question.

By now Americans should have few delusions about the nature of the Torrijos regime. The General has exiled over 1,300 Panamanians and murdered over 500. He has bankrupted Panama with his mismanagement and socialist schemes. Private enterprise is paralyzed and unemployment soaring. Torrijos has blundered in and out of a soviet-style economy, reacting either to his own whims or to unknown foreign orders.

All political parties have been outlawed, but the members of each retain their hostility to Torrijos. This is true of the Arnulfistas, the Liberals, the Republicans, the Democratic Action Party, the Christian Democrats, and the new and growing Social Democrats. All maintain underground newspapers and masses of supporters. All stand against ratification of the treaties for fear of the power such treaties would give General Torrijos.

As the official organ of the Social Democrats has put it, "To change masters if not to become free . . . to oppose the United States only to fall into the hands of the Communist world is pointless." The political parties of Panama have announced that if any of them come to power they will immediately renounce the treaties. The Democratic Action Party states, "The Panamanian people still have the last word. A treaty signed with a dictatorship, without civil rights, will be of short duration and have at its origin the reasons for its prompt repudiation."

Obtaining the new Canal treaties is Torrijos' only hope for staying in power indefinitely; not because the Panamanian people want the agreements so badly, but because the American aid that comes with them will bail the dictator out financially, because the treaties will give Torrijos needed prestige among anti-American governments, and because the immediate disappearance of the Zone will increase the jurisdiction of his secret police, and give him a power base against the remaining U.S. presence.

He must maintain this hostility to remain in power. Ratification of the treaties will add to the motives for violence, and its probability of success. The proposed treaties do not give all American holdings to Torrijos at one time. Leftist students of the F.E.P. (Federation of Panamanian Students) have been demonstrating against the provision for American bases and against any American participation in the Canal during the transition period. Since the F.E.P. is an official government organization, its position should not be dismissed lightly. Torrijos profits sufficiently from the ratification of the treaties. Honoring his obligations under those treaties will gain him little more, and failing to do so might be the more prudent course.

On August 12, 1977, shortly before the proposed treaties were released, Romulo Escobar Bethancourt, chief Panamanian negotiator and friend of Torrijos who makes no effort to hide his Communist background and connections, made a significant speech at a closed meeting with the students of the F.E.P. The diplomat began with his usual *Yanqui*-baiting then got to the meat of his exhortation. Although the new treaties he helped bring about were necessary, he said, "there are still theories that we can get more, much more, through confrontation. I believe this is true." But those who oppose the continuing bases in the Zone should do the fighting themselves. "When they talk to me, I tell them to go to the Canal Zone and attack it. I have not yet met a revolutionary who asks the government for permission to attack any blasted thing." After the applause, Escobar Bethancourt added, "In the past, when we set the bombs against our oligarchy, when we challenged the regimes

established in our country, we never asked anyone for permission. You have never asked anyone for permission . . . When one wants a confrontation, one puts his knapsack on his back, his bomb at the waist, and goes to stage the confrontation. This is not written in any book . . .

" . . . as General Torrijos has said: I prefer a nation of Castroite youths to one of castrated youths."

This incitement to violence was predicated on ratification of the proposed treaties by the U.S. Senate.

It is speeches like Escobar Bethancourt's which disprove the argument that Panama would have no reason to sabotage its own Canal when the treaties go into effect. There will still be differences between the Americans with their partial control and their bases, and the Panamanian Leftists. If the Canal is sabotaged after the Zone is lost, it probably will not be done by level heads in the Panamanian government, but by radical students whom that government has so incited for so many years that the economic value of the Canal means little to them.

Ratification of the proposed treaties would betray the majority of the people in Panama, give decisive support to a dictatorship, and invite violence—guerrilla war and sabotage—against the United States and the Panama Canal.

STATEMENT BY DR. GEORGE FOX MOTT

Mr. Chairman and members of your committee, I am here today on a matter of importance to me, to my clients, and, I believe, to our nation. The issue is one involving our government's primary responsibility to American citizens, and deals with the good faith and sincerity of a nation with whom we are now discussing new international treaties.

At this point, what you gentlemen want to know—and want I want you to know—is what this is all about.

There is a tract of land comprising some 1,000 square miles on the Caribbean coast of Panama. This tract, known as "El Nispero," was purchased in 1912 by a group of about 800 Americans incorporated as the Isthmian Timber Company. They bought at the open market price of \$220,000 U.S., with clear title which went back to a grant from the King of Spain. These Americans saw a chance to develop and share in the development and growth of the new nation of Panama.

At that time Panama was a remote and primitive country with a population of 600,000. The Americans poured into their project all the resources they were able to harness, gradually, as they were able to do so.

In 1931, Panama brought suit to challenge title to the land. The Americans won in the local court and later, in 1936, in the Panama Supreme Court—this, incidentally, at a time when Panama was hoping for Senate ratification of the 1936 treaty. At the very time when the Americans' title to the land was confirmed by the Panama Supreme Court, Panama was moving illegally and secretly to take the property from the American owners by kangaroo court actions that made a mockery of justice. They were held in secret, and were not disclosed for the public record until two years had passed—until, indeed, after the U.S. Senate had ratified the treaty, in 1939.

Our legal counsel has advised that in his opinion the whole proceeding was void and therefore the property legally still belongs to our claimants.

As of this date, Panama has refused to do anything. The U.S. State Department has stated on the record that the whole matter is such an embarrassment to Panama that it should not be made public. "Don't call us," they said. "We'll call you."—and the call is never going to come.

The property was valued in 1937 at 130 million dollars. In 1942, the stockholders in desperation to salvage something out of their loss put a value of 6 and a half million on the property. That amount compounded at 6 percent since 1937 is now One Billion, 370 Million Dollars.

We have had the 1937 timber cruise reviewed by experts and the minimum value of the timber alone on today's market is 700 Million Dollars. There are exploitable quantities of gold, silver, platinum and copper in the land.

We should request of Panama that she demonstrate her good faith by righting the wrong perpetrated by public officials secretly and illegally wresting title from the American owners.

There are those who may argue that those actions were the actions of a prior regime. If the U.S. Senate accepts this argument, where will the United States be when the next regime says of these treaties currently under consideration—"They were the treaty of a prior regime and we have nothing to do with them."?

This, in highly condensed form, is what I am talking about.

May I add that the responsibility of our nation—indeed, the first essential duty and the first justification for any form of government since tribal times—is to provide protection to its citizens for life and property at home and abroad. In reality, all other functions are simply extensions of this basic responsibility.

This case is pertinent to your hearings because it parallels in a striking way the history of U.S.-Panama relations from the beginning—namely, from 1903 to 1978, as you will discover when you read the summary calendar comparison of events in our formal presentation.

Before I go further, Mr. Chairman, may I introduce my key associates? Our Chief Counsel, Mr. Royal E. Cabell, Jr., distinguished attorney of Richmond, Virginia; Dr. E. Y. Ham, political scientist with doctorate from the University of Wisconsin; and my associate-at-large, Colonel John T. Carlton, known to many of this committee as the longtime Executive Director of the Reserve Officers Associate, recently retired from that position, and my friend of 30 years.

As a matter of record, I also wish to tell you that on November 17 and 18, 1977 a copy of our full presentation including bibliography and other pertinent material was hand-delivered to each Senator and Congressman and receipts were obtained in every case. To my amazement on an issue of this magnitude, less than 10% of Senate and House members even made *pro forma* acknowledgement, and some of my close friends in The Congress, when queried personally, affirmed they had never seen nor heard of it. Of course, I understand, but it does suggest that staff are not tending the store and votes are being pressured before facts are known!

I should also like to say that though a press release was prepared and made available through normal media channels, including all the great newspapers, the national editor of two such—one in Washington and one in San Francisco—told me that pressures were being exercised to prevent this story from being told. (As the editor of a leading textbook on journalism, I ask myself, "When did we lose a truth-serving media? Of what value is the first amendment?")

At this point, Mr. Chairman, may I ask that our basic "White Paper," a copy of which is before each of you, be placed in the Congressional Record after this testimony? It should also be of record that complete sets of copies of supporting documents have been deposited with the Librarian of the Senate and of the House, and in Library of the Hoover Institution on War, Revolution and Peace, at Stanford University.

I also ask that I may be allowed to provide additional data, if such information is desired by your committee or seems to be germane to the story of Panama and what her citizens and government have or have not done to develop her own resources in addition to subsisting on moneys and expertise from the United States. I request this consideration for a 30-day period after this hearing. Do I have your permission to provide such additions to your committee for information and consideration?

In this connection, I quote from a letter received recently from a Panamanian now resident in this country. Professor Gustav Anguizola, teaching at the University of Texas in Arlington, wrote:

I quote: "Panamanian courts are quite venal and this goes for the Supreme Court."

He says, also; "It is interesting that in the new treaty or treaties there is no proviso for a claims commission which might do justice to your clients."

I suggest to you that instead of conciliatory efforts, we try calling the shots. A good start would be to require return of this tract of land stolen from American citizens; or, at least, reimbursement to the claimants for their lost property. At compound interest—or at current value of the timber alone (something more than 715 Million Dollars)—it is quite a sum. And since the government of Panama is demanding enormous sums from us to go along with the gift of the Canal, let us stipulate that she uses some of this money to reimburse fully these American claimants.

In view of these considerations, I suggest further that before any treaty or understanding with Panama is formalized, either the property be officially returned by Panama to the claimants, or reimbursement to them should be made without further delay. Our claim in 1942 was \$6,747,900.00. The value of the land and its timber and other resources can now be variously calculated, considering interest and the changed value of the currency, at from One to Two Billion Dollars U.S. Something a little over One Billion Dollars may be a reasonable claim.

We are not seeking "pie in the sky," but we feel that our clients are entitled to an indemnity which rightfully should come from Panama—unless the United States feels that the raising of the issue would be damaging to international relations, as the State Department has contended over the years. If at this juncture it behooves the United States of America not to embarrass a foreign power because of the

wrongful acts of its highest officials—to the point that the United States is not willing to protect the rights of its citizens to have their property, it would appear that this is a cost which should be borne by the public treasury and not by the private investors. All of the claimants are people of conservative nature; nevertheless we feel that if this is the position of our government, then these claimants should be granted an indemnity by all of the people by way of a bill for private relief.

This is not a hypothetical issue. For unpaid taxes U.S. citizens go to jail. For unpaid reimbursement to American citizens someone is responsible. The United States Federal Government which was founded to protect the lives and property of its citizens has been negligent.

The evidence of this miscarriage of justice to private Americans is compelling. In view of our native penchant for generosity to foreign powers, is it not meet and proper that property plainly stolen by arch chicanery from American citizens be given equal billing?

After reading nine thousand clippings about the Canal treaties—pro and con—it is clear to me and to our group that money looms first and foremost in Panama's thoughts of the new treaties. Before we officially hand over to her further vast sums, with or without total control of the Canal, let us pay back a debt to some of our own people. Let us do it publicly and give the world clear proof that we still stand back of our citizens and that our American system of "freedom with responsibility" is a two-way street.

PANAMA CANAL TREATIES: A REVIEW OF THE RECORD

Mr. DOLE. Mr. President, it is now only a matter of days before the Panama Canal treaties reach the Senate floor for consideration. The Senate Foreign Relations Committee will begin markup on the resolution of ratification on Thursday and I understand the Senate Armed Services Committee will be winding up its hearings in the next week or so. By now, many of our colleagues have expressed their position on the treaty issue, and the nature of the forthcoming Senate debate is becoming evident.

SUPPORT FOR TREATY REVISIONS

Little by little, the treaty modification concept has gained a following in the last few months. Some who once believed these treaties to be essentially perfect now admit to certain defects. Some who once denounced treaty revisions as impractical or unacceptable now appear resigned to accept them. In fact, in some respects, a "bandwagon" approach now appears to be underway.

When the junior Senator from Kansas first proposed treaty amendments and reservations in September 1977, there was no immediate surge of interest. By mid-October, however, controversy over defense and passage provisions was strong enough to necessitate a joint statement of understanding—a tacit admission by both the Carter and Torrijos administrations that the treaties required clarification.

Now, it is gratifying to note that both the Senate majority leader and minority leader have publicly endorsed treaty modifications. General Torrijos has expressed willingness to accept some Senate revisions. And 10 Members of the Senate have so far sponsored or cosponsored proposed treaty amendments.

Just this morning the Senator from Kansas understands the administration has indicated a willingness to accept some modification. Many more have publicly or privately expressed willingness to vote for treaty changes.

So there has been a lot of movement in that direction in the past 4 months, and it is an indication of recognition that these treaties are flawed. It is an indication that these treaties will not be ratified in the forms presented last September.

Perhaps it is also an indication that many of the Members of this body are ready to assert the proper constitutional role that Congress should play in the treaty-making process. What began as a modest effort last September to reinstate active congressional involvement in the international treaty-making function has set the stage for amendments to the canal treaties, and may well have set the pace for treaty consideration in years to come.

REVIEW OF EVENTS

Mr. President, I will briefly review the chronology of my activities relating to the Panama Canal treaty issue, so that it may be a part of the permanent record.

After a careful review of the two Panama Canal treaties which were made public on September 7, I determined that I could not

support the accords in their present forms. On September 23, I introduced six amendments and two reservations in order to clarify and improve upon the treaties. My proposals address themselves to a number of issues, including defense and passage rights for the United States, the right to negotiate with any country for a new sea-level canal, extension of the transition period, reduction of toll payments to Panama, congressional approval for the transfer of U.S. property, and protection of human rights.

On October 5, I appeared before the Senate Foreign Relations Committee to elaborate upon my amendments and reservations, and submitted the text of a State Department cable which demonstrated beyond a doubt that American and Panamanian negotiators were giving different interpretations to certain vital provisions in the neutrality treaty. At that time, I commented:

There may be a few members who would just flatly oppose anything, but I don't know of anyone in that category . . . I believe that if the proper changes were made, the treaties would have widespread support.

Despite State Department intimidation efforts, I insisted upon the public's right to know about the dangerous ambiguities in the treaties.

On October 13, I advised the Senate of allegations that Gen. Omar Torrijos and other members of his family have been involved in drug-trafficking operations in the Western Hemisphere. The following day, I submitted a freedom of information request to the U.S. Drug Enforcement Administration requesting specific files which I still believe may contain information on this subject. Despite my repeated efforts to obtain these files, the administration has refused to turn over the bulk of Government materials on the Torrijos drug connection. Files have been withheld on the basis of national security and sensitive foreign policy matters. I now have an appeal pending with the Department of Justice on this subject, which certainly would expose some light on the integrity of the Panamanian Government.

Three days after the Carter-Torrijos statement of understanding was released, I introduced two additional amendments containing the identical language of that statement. I pointed out that "the joint statement, by itself, is not legally binding. And the joint agreement disproves the notion that renegotiation of certain treaty provisions is impossible." I have believed from the beginning that that statement should be made a part of the treaty language itself, and I am pleased that so many others are finally coming around to that point of view.

During late December, Senator Paul Laxalt and myself spent 2 days in Panama familiarizing ourselves with the operation of the Panama Canal, and discussing treaty provisions with local employees, civic councils, Canal Zone Government officials, and with General Torrijos. My earlier concerns about the treaties were reaffirmed as a result of that trip.

Most recently, on January 19, I introduced three additional amendments to the treaty which, in my opinion, will better protect our national interests in the area. These amendments would authorize a separate base agreement to permit U.S. retention of some military installations in Panama after the year 2000, and would prohibit the presence of any military troops or bases in Panama

other than those of the United States and Panama—after ratification of the treaties.

FULL DEBATE INSURED

We can expect to see more treaty amendments and reservations introduced in the next few days. This is useful, for it insures that the Senate will give its most careful review to the details of the treaties. It also insures that there will be full debate on treaty provisions, along with efforts to clarify ambiguities and compensate for omissions. I look forward to continuing my longstanding efforts to insist upon substantive guarantees and protections within the treaties. I hope more of my colleagues will join me in those efforts.

Mr. President, I yield back the remainder of my time.

Mr. MOYNIHAN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. DeConcini). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. WALLOP. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL—EXECUTIVE N, 95-1

AMENDMENT NO. 15

(Ordered to be printed and referred to the Committee on Foreign Relations.)

Mr. DOLE, as in executive session, submitted an amendment intended to be proposed by him to executive N, 95-1, the treaty concerning the permanent neutrality and operation of the Panama Canal.

AMENDMENT NO. 16

(Ordered to be printed and referred to the Committee on Foreign Relations.)

Mr. HATCH (for himself, Mr. Curtis, Mr. Garn, Mr. Helms, Mr. Laxalt, Mr. McClure, Mr. Thurmond, Mr. Eastland, and Mr. Allen), as in executive session, submitted an amendment intended to be proposed by them, jointly, to Executive N, 95-1, the treaty concerning the permanent neutrality and operation of the Panama Canal.

Mr. HATCH. Mr. President, the Panama Canal treaties raise a serious constitutional issue that should be resolved before the Senate turns to the consideration of the merits of these agreements. The issue is whether the President of the United States has the constitutional authority to transfer U.S. territory in the Canal Zone to the Republic of Panama by treaty alone, without the approval of both House of Congress.

Representatives of the State Department and the Justice Department argue that the President may make such a treaty because he possesses concurrent authority with Congress to dispose of Ameri-

can territory and property by treaty. Senate approval of the treaties, they insist, is all that is necessary in order to meet the requirements of the Constitution.

As a member of the Separation of Powers Subcommittee of the Senate Judiciary Committee, which recently held extensive hearings on this constitutional question, I was somewhat surprised to learn that none of the State Department's legal advisers who testified before the subcommittee was able to cite clear and unequivocal judicial precedent in support of this novel interpretation of the President's treaty-making power. The testimony of Attorney General Bell, who appeared before the Senate Foreign Relations Committee, was, in my judgment, equally deficient of valid judicial precedents that would justify this extraordinary exercise of executive power. What is more, there appears to be no prior instance in American history when a President laid claim to the existence of such concurrent authority.

In effect, then, the President is now claiming for himself a new power, a power to enter a legislative field which Congress has definitively and exclusively controlled since the creation of the Constitution. The Canal Zone was acquired in accordance with the terms of a 1902 statute passed by Congress known as the Spooner Act. By law, Congress authorized the President to acquire from Colombia perpetual control of the necessary lands for the construction of an interoceanic canal across the Isthmus of Panama. Acting in pursuance of this congressional authorization, the President negotiated the Hay-Bunau-Varilla Convention on November 18, 1903, between the United States and that portion of Colombia which became the Republic of Panama. In this manner did the United States acquire in perpetuity the rights to the territory now known as the Canal Zone, with sovereign and exclusive powers to administer it.

Since that time, the Canal Zone has remained an unincorporated territory of the United States. It is administered by the President of the United States, but only in accordance with enabling legislation enacted by Congress. This includes appropriation authority for its administration during the current fiscal year. Laws enacted by Congress have directed the form and substance of the administration and jurisprudence of the Canal Zone from the moment of acquisition to the present. In short, it is Congress which authorized treaty negotiations for the permanent acquisition of the land; and it is Congress which subsequently enacted legislation setting forth the legal status of the Canal Zone, establishing courts of justice, enacting civil and criminal codes, providing for defense, and appropriating money for the maintenance and operation of both the zone and the canal.

Moreover, all previous transfers of property in the zone under treaties with the Republic of Panama have rested on the solid foundation of congressional approval. In 1955, for example, when the United States entered into its most recent treaty with Panama, it was provided under article V that transfers of property were "subject to the enactment of legislation by the Congress." It seems reasonable to me that if all previous transfers of real estate to Panama have occurred under the authority of Congress, that the transfer of the entire zone should proceed on the same basis; other-

wise we are left with the dubious proposition that prior enactments of Congress authorizing the property transfers were gratuitous exercises in futility which the President was free to ignore. I am not aware that this peculiar notion has ever been adopted by Congress or the President in any negotiations with Panama prior to those that are presently under consideration. As recently as 1957, a representative of the State Department who testified before the Senate Foreign Relations Committee stated that legislation would be required in order to implement the transfer of all property in the zone.

Comes now the President, standing on an unprecedented and previously unexercised claim of "concurrent authority," asserting that he has the right to abrogate the power of Congress and repeal the entire statutory structure which Congress has developed since the beginning of the 20th century. If the Senate stands aside and allows the President to usurp the powers of Congress—as it has often done before—it will be preparing the way for further encroachments in the future.

In the first place, "The Panama cession will constitute a landmark which, should the State Department prevail, will be cited down the years for 'concurrent jurisdiction' of the President in the disposition of U.S. property. Acquiescence in such claims spells progressive attrition of congressional powers; it emboldens the Executive to make even more extravagant claims." Second, "it needs constantly to be remembered that a succession of Presidents have circumvented Senate participation in treaties of gravest import by resort to Executive agreements."

These are the words, Mr. President, of Raoul Berger, the eminent constitutional authority whose scholarly writings on executive privilege were so vitally instructive to the Congress when we confronted the Presidential claim of self-serving "precedents" upon which the executive branch relied for the purpose of withholding information. Today, the President seeks to circumvent the House of Representatives and gain approval for the disposal of billions of dollars worth of American territory merely by a two-thirds vote of the Senate. And what of tomorrow? How long will it be before another President seeks to dispose of other territories by an executive agreement—which is very similar in power to a treaty and does not require any congressional consent at all?

Article IV, section 3, clause 2 of the Constitution states that—

The Congress shall have the power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States.

The courts have repeatedly ruled that this is an exclusive power of the full Congress. Any authority of the Chief Executive to dispose of U.S. territory, therefore, must first be derived from authority given by an act of Congress.

In light of these considerations, Mr. President, as in executive session, I am submitting today an amendment to the treaties which would require that they shall enter into force only after both Houses of Congress have enacted legislation authorizing the transfer of Canal Zone territory and property to the Republic of Panama.

Mr. President, this is an amendment which all Senators should eagerly support, whether they favor the treaties or oppose them, because it calls upon the Senate to debate the merits of the treaties in their proper constitutional context. It speaks not to our economic, political, or strategic interests, nor to the advantages or disadvantages of transferring the canal to the Panamanians, but to the higher law which must govern our proceedings.

It is true, of course, that I have been critical of these treaties; but I hope that my colleagues will resist the temptation to allow my personal views on the treaties to cloud their judgment on the need for adherence to the Constitution. What is more important than whether the treaties are approved or rejected in the proper constitutional manner. I appeal not to the supporters of the treaties or to the opponents, but to all Senators who believe, as I do, that the Constitution must be obeyed, enforced and, in fact revered.

Even if I favored these treaties in every respect, even if changes were to be made to make them acceptable, I would continue to insist that article IV of the Constitution be followed. For there is more at stake here than the Panama Canal. There is our Constitution to consider, our separation of powers, and our commitment to limiting the growth of Executive power. I would hope that past experience has made it clear to every Member of this body that any President, be he Republican or Democrat, will be tempted to reach beyond the constitutional limits of his office if we neglect our responsibilities to check his advances.

Already we observe that a succession of Presidents have skirted the Constitution in order to get the treaties before the Senate. The Kissinger-Tack agreement, setting forth the general principles of agreement, was never submitted to the Senate for discussion and debate. Congress has never passed any legislation authorizing any new agreements or treaties with Panama; and because of our failure to insist that the Executive first receive authority to enter into the negotiations which produced these treaties, Presidents have labored at their self-appointed task in total disregard of the wishes of Congress and the American people. At no stage of the proceedings, in fact, has the Senate participated in these negotiations, or been given an opportunity to give its advice and consent. To be sure, the Executive has bypassed the Senate, just as it is now seeking to bypass the House.

Mr. President, even the Senate's confirmation process has been avoided by the acquiescence of the Senate in the interim appointment of Sol Linowitz, one of the chief negotiators of the treaties. Where does this abuse of Presidential power stop? At what point does the Senate tell the Executive: "You shall go no farther." I submit, Mr. President, that our last opportunity to confine the office of the President to its proper constitutional limits is embodied in the amendment to the treaties that I am submitting today.

There are a few skeptics, I would imagine, who will argue that the Senator from Utah is wrapping himself in the Constitution in order to defeat the treaties and embarrass the President, because he believes that the House of Representatives will never agree to the transfer of the canal. This would be a convenient excuse for opposing my amendment, but it begs the question. In the first

place, we are bound by our oaths of office to uphold the Constitution, not the Executive, and, I believe no one who knows my values and deep sincerity would ascribe improper motives to me in this regard. I have not been motivated to propose this amendment by the thought that its acceptance will defeat the treaties, because I don't know that it will. Indeed, I have no way of knowing whether the House of Representatives would favor the transfer of property or oppose it. I only know that we have a constitutional duty to perform, and that if we do not perform it these treaties will come back to haunt us for years to come. Not only will the legality of the treaties always remain in doubt, but other Presidents will use the treaties as a convenient precedent to bypass the legislative process in future international agreements involving territorial transfers.

Mr. President, I urge every Senator to study carefully the testimony of all of the legal experts who have appeared before the congressional committees regarding the constitutionality of these treaties, and to weigh it objectively against the claims of the President's spokesmen; for I firmly believe that any Senator who does this will come to the fair and honest conclusion that the proposed treaties with Panama are unconstitutional unless both Houses of Congress enact implementing legislation authorizing the transfer of canal territory.

Mr. President, I ask unanimous consent that the amendment I have submitted, together with the testimony of Raoul Berger before the House Committee on Merchant Marine and Fisheries, be printed in the Record.

There being no objection, the amendment and statement were ordered to be printed in the Record, as follows:

AMENDMENT No. 16

In paragraph 1 of article I, after "Upon its entry into force," insert "subject to the enactment of the implementing legislation referred to in paragraph 5,".

In the first sentence of paragraph 2 of article I, after "related agreements," insert "and subject to the enactment of the implementing legislation referred to in paragraph 5,".

At the end of article I, add the following:

"5. For all purposes of this Treaty, the two Parties undertake to enact, in accordance with their respective constitutional processes, the legislation necessary to implement the provisions of this treaty, including the legislation necessary to exercise the power of the Congress of the United States of America under article IV, section 3, clause 2 of the Constitution of the United States of America, relating to the disposal of territory or other property belonging to the United States of America."

In the first sentence of paragraph 1 of article III, after "as territorial sovereign," insert "but subject to the enactment of the implementing legislation referred to in Article I,".

In paragraph 10 of article III, after "Upon entry into force of this Treaty," insert "subject to the enactment of the implementing legislation referred to in Article I,".

In the first sentence of paragraph 1 of article XI, after "The Republic of Panama shall" insert a comma and the following: "subject to the enactment of the implementing legislation referred to in Article I,".

In the second sentence of paragraph 1 of article XI, after "upon the date this Treaty enters into force," insert "subject to the enactment of the implementing legislation referred to in Article I,".

In paragraph 1 of article XIII, after "Upon termination of this Treaty," insert "and subject to the enactment of the implementing legislation referred to in Article I,".

STATEMENT BY RAOUL BERGER

You have invited me to comment on the relation between the Article IV, 3(2) power of Congress to dispose of property of the United States and the treaty power. Although I am in favor of the Panama Canal Treaty, I share your solicitude for the preservation of constitutional boundaries and your concern lest the function committed to Congress be diminished. I have long held the conviction that all agents of the United States, be they Justices, members of Congress, or the President, must respect those boundaries. No agent of the people may overleap the bounds of delegated power, or encroach on power granted to another. That is the essence of constitutional government and of our democratic system.

The effect of these hearings ranges beyond the Panama Treaty, for the Panama cession will constitute a landmark which, should the State Department prevail, will be cited down the years for "concurrent jurisdiction" of the President in the disposition of United States property. For it needs constantly to be remembered that a succession of Presidents have circumvented Senate participation in treaties of grave import by resort to Executive Agreements. Acquiescence in such claims spells progressive attrition of Congressional powers. Your insistence on respect for constitutional boundaries will warn the Executive against encroachments on the powers of Congress; it will alert foreign nations to the fact that treaties for the cession of United States property must be subject to the consent of the House as well as the Senate.

The President, "by and with the advice and consent of the Senate", may make treaties. But Article IV, 3(2) provides that "the Congress shall have power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." How are the two provisions to be accommodated? For present purposes the question whether the United States has "sovereignty" over the Panama Canal need not detain us because, in my judgment, the grant of "use and occupation . . . in perpetuity" constitutes "property" no less than the familiar lease of realty for 99 years. Then there are the installations that cost billions of dollars. Disposition of these no less requires the consent of Congress than does that of territory. In 1942, the President, by Executive Agreement, promised to return certain installations to Panama subject, however, to Congressional approval.¹ A similar provision is to be found in the Treaty of 1955.² These executive constructions are confirmed by established canons of interpretation.

First, there is the settled rule that "where there is in an act a specific provision relating to a particular subject, that provision must govern in respect to that subject as against general provisions in other parts of the act, although the latter, standing alone, would be broad enough to include the subject to which the more particular provision relates."³

In other words, "a broad statutory provision will not apply to a matter specifically dealt with in another part of the same act."⁴ Restated in terms of the present issue, the specific power of disposition, in which the House of Representatives must concur, governs the general provision authorizing the President and Senate to make treaties.

Second, there is the canon that express mention signifies implied exclusion, which the Supreme Court has employed again and again: "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode."⁵ The grant of the disposition power to Congress, in other words, excludes its exercise by Senate and President. The rule was invoked by the Founders; for example, Egbert Benson said in the First Congress, in which sat many Framers and Ratifiers, that "it cannot be rationally intended that all offices should be held during good behaviour, because the Constitution has declared [only] one office to be held by this

¹ Agreement of May 18, 1942, 59 Stat. (Pt. 2) 1289: "When the authority of Congress . . . shall have been obtained therefore. . . ."

² Agreement of January 25, 1955, 6 U.S.T. 2273, 2278.

³ Swiss Nat. Ins. Co. v. Miller, 289 Fed. 570, 574 (App. D.C. 1923) emphasis added; Ginsberg & Son v. Popkin, 285 U.S. 204, 208 (1932). We should "prefer a construction which leaves to each element of the statute a function in some way different from the others" to one which causes one section to overlap with another. United States v. Dinerstein, 362 F.2d 852, 855-856 (2d Cir. 1966).

⁴ Le Page v. United State, 146 F.2d 536, 538 (8th Cir. 1945).

⁵ Botany Worsted Mills v. United States, 278 U.S. 282, 289 (1929); T.I.M.E. v. United States, 359 U.S. 464, 471 (1959): "we find it impossible to impute to Congress an intention to give such a right to shippers under the Motor Carrier Act when the very sections which established that right in Part I (for railroads) were wholly omitted in the Motor Carrier Act."

tenure.”⁶ Under these rules it is of no moment that Article IV contains no express exclusion of “concurrent jurisdiction” under the treaty power. Having given Congress the power to dispose of public property, it follows that the President and Senate were impliedly excluded therefrom. Although this particular exclusion was not before the Court, it tacitly ratified the application of the foregoing rules of construction when it stated that Article IV “implies an exclusion of all other authority over the property which could interfere with this right”⁷

Attorney-General Griffin B. Bell conceded in his statement before the Senate Foreign Relations Committee, September 25, 1977 (hereafter cited as A.G.), that “the specific powers granted to the House of Representatives and Congress in fiscal matters (Article I, section 7, clause 1 and Article I, section 9, clause 7, money bills and appropriations power) preclude making treaties self-executing to the extent that they involve the raising of revenue or the expenditure of funds. Were it otherwise, President and Senate could bypass the power of Congress and in particular of the House of Representatives over the purse-strings.”

A.G. 4-5. Now Sections 9 and 7 are couched in quite dissimilar terms. Section 9(7) is framed in terms of flat prohibition: “No money shall be withdrawn from the Treasury but in consequence of appropriations made by law. . . .” Section 7(1), however, merely provides that “All bills for raising revenue shall originate in the House.” Yet the Attorney General reads 7(1) to preclude the President and Senate from “bypass[ing] the power of Congress and in particular of the House of Representatives over the pursestrings.” What is there that distinguishes “All bills . . . shall originate in the House” from the Congress shall have power to dispose”? The impalpability of the distinction is underlined by the State Department’s concession that “treaties may [not] impose taxes.”⁸ Nothing in the Article I, 8(1) “The Congress shall have power to lay and collect taxes” distinguishes it from the Article IV “The Congress shall have power to dispose.”

If the President may not by treaty “bypass” the power of the House to originate revenue-raising bills, or the power of Congress to tax, no more may he “bypass” its “power to dispose” of the property of the United States.

In their testimony before the Congress, Herbert J. Hansell, Legal Advisor, Department of State,⁹ and Ralph E. Erickson, Deputy Assistant Attorney General,¹⁰ cited a string of cases in support of “The power to dispose of public land . . . by treaty.”¹¹ For the most part they fall under boundary treaties or treaties with Indian tribes which, as will appear, turn on circumstances peculiar to themselves. Preliminarily consider Hansell’s citation of *Missouri v. Holland*, 252 U.S. 416 (1920). It arose out of a State challenge to the treaty with Great Britain for the protection of migratory birds which annually traversed parts of the United States and Canada. Justice Holmes, addressing the argument that the treaty infringed powers reserved to the States by the Tenth Amendment, stated:

“Wild birds are not in the possession of any one, and possession is the beginning of ownership. The whole foundation of the States’ rights is the presence within their jurisdiction of birds that yesterday had not arrived, tomorrow may be in another State, and in a week a thousand miles away.”¹²

Consequently, the State could assert no “title” in migratory birds. By the same token, the United States also could not lay claim to “ownership” of the birds, and *Missouri v. Holland* is therefore wholly irrelevant to the power by treaty to dispose of property belonging to the United States.

The Indian treaty cases constitute one of the pillars of the argument for “concurrent power”; and Attorney General Griffin B. Bell referred to them as “a substantial body of Supreme Court decisions dealing with Indian tribes which holds that a treaty may dispose of property belonging to the United States without implementing legislation under Article IV, section 3, clause 2”¹³

⁶ 1 Annals of Cong. 505 (2d ed. 1836; print bearing running head “History of Congress”); see also Alexander White, id. 517. So too, John Dickinson stated in the Constitutional Convention that “the terms ‘ex post facto’ related to criminal cases only; that they would not consequently restrain the States from retrospective laws in civil cases. . . .” 2 Farrand 448-449.

⁷ Wisconsin Cent. R.R. Co. v. Price County, 133 U.S. 496, 504 (1890) emphasis added; *Sioux Tribe of Indians v. United States*, 316 U.S. 317, 326 (1942); see also *Swiss Nat. Ins. Co. v. Miles*, 289 Fed. 571, 574 (App. D.C. 1923).

⁸ Hearings on the Panama Canal Treaty before the Senate Committee on Separation of Powers (95th Cong., 1st Sess.), Part II, p. 25 (July 29, 1977), hereafter cited as Hansell.

⁹ Supra, note 8.

¹⁰ Hearings before the House Subcommittee on the Panama Canal on “Treaties Affecting the Operations of the Panama Canal,” (92nd Cong., 2d Sess.) p. 95 (December 2, 1971) hereafter cited as Erickson.

¹¹ Hansell 5; Erickson 97.

¹² 252 U.S. at 434.

¹³ A.G. 9.

To begin with *Jones v. Meehan*, 175 U.S. 1 (1899), both Hansell and Erickson quote, "It is well settled that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States."¹⁴ This was because the treaty merely *reserved* certain individual tracts from the cession to the United States. It "set apart from the tract hereby ceded [by the tribe] a reservation of six hundred and forty acres" for an individual Indian, and the issue was what kind of title did he take. The Court quoted from an opinion of Attorney General Taney, destined before long to succeed Chief Justice Marshall:

"These reservations are *executed* out of the grant made by the treaty, and *did not therefore pass with it*; consequently the *title remains as it was* before the treaty; that is to say, the lands reserved are still held under the original Indian Title."¹⁵

The Court held that "the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant of complete title in fee simple."¹⁶ That explanation presumably responded to the fact that tribal lands were generally held in common; individual titles were all but unknown, so that such title had to be secured to an individual through the machinery of the treaty. But that is far from a disposition of government land because, as Taney explained, the "reserved" title remained in the Indians. Many, if not most, of the Indian treaty cases involve just such "reserve" provisions.

We might dismiss *Holden v. Joy*, 84 U.S. 211 (1872) because, as Attorney General Bell noted, "The Court conceded that the question was immaterial in the case at bar because Congress had actually implemented and ratified that particular treaty." A.G.9. Nevertheless, the Court, in what he terms a "strong dictum", stated that "there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an Act of Congress conferring it * * *"¹⁷ I was at pains to study each of the cases cited by the Court for this assertion, and abstracted them in an appendix attached to my statement before the Senate Subcommittee on Separation of Powers. There you may see for yourself that half of the cases thus cited are entirely irrelevant, and that the rest concern "reserves" under which, as Taney observed, no title had passed to the United States but remained in the given Indian. In considering such dicta, it is well to bear in mind Chief Justice Taney's statement that the Court's "opinion upon the construction of the Constitution is always open to discussion when it is supposed to have been founded in error, and that its judicial authority should thereafter depend altogether on the force of the reasoning by which it is supported."¹⁸

By that standard the *Holden* dictum is no authority at all.

As to other treaties, Hansell tells us, "the precedents supporting the power to dispose of property by treaty alone can be found in the boundary treaties with neighboring powers, especially in the treaties between the United States and Great Britain in 1842 and 1846 for the location of our northeast and northwest boundaries. . . ."¹⁹ Settlements of boundary disputes are not really cessions of United States property. The Oregon boundary dispute proceeded from an extravagant claim; "Fifty-Four Forty or Fight"; the British, on the other hand, claimed land down to the forty-second parallel. Only when the dispute was settled by negotiation at 49 degrees could either party confidently assert that it had title. As a respected commentator, Samuel Crandall, observed, "a treaty for the determination of a disputed line operates not as a treaty of cession, but of recognition."²⁰

Among other examples of alleged treaty transfers of property, Hansell instances the return to Japan of the Ryukyu Islands.²¹ By Article III of the 1951 Treaty of Peace with Japan, the United States received the right to exercise "all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of those islands * * *." While Japan renounced in Article II "all right, title and claim" to various territories, it made no similar renunciation with respect to the Ryukyus.²² Quoting the Legal Advisor of the State Department, that "sovereignty over the Ryukyu Islands * * * remains in Japan," a District Court stated that sovereignty over a territory may be transferred by an agreement of cession," but it

¹⁴ Hansell 6; Erickson 97.

¹⁵ 175 U.S. at 12, emphasis added.

¹⁶ Id. 21.

¹⁷ Quoted A.G. 9; 84 U.S. at 247.

¹⁸ The Passenger Cases, 48 U.S. (7 How.) 283, 470 (1849), dissenting opinion.

¹⁹ Hansell 6.

²⁰ S. Crandall, *Treaties, Their Making and Enforcement* 226 (2d ed. 1916).

²¹ Hansell 6.

²² 3 U.S.T. 3169, 3172, 3173.

concluded that there had been no cession.²³ The Fourth Circuit Court of Appeals quoted a statement by Ambassador John Foster Dulles, a delegate to the Japanese Peace Conference, that the aim was "to permit Japan to retain residual sovereignty," and it held that the treaty did not make "the island a part of the United States, and it remains a foreign country for purposes of" the Federal Tort Claims Act.²⁴ In sum, Messrs. Hansell and Erickson have failed to make out a case for the President's "concurrent jurisdiction" with Congress in the disposition of United States property.

It remains to consider the arguments advanced by Attorney General Bell before the Senate Foreign Relations Committee. He cited *United States v. Percheman*, 32 U.S. (7 Pet.) 51, 88-89 (1833) to prove that "the Court held self-executing certain clauses of the Florida Treaty with Spain which related to the regulation of property rights in newly acquired territory." A.G.10. At the cited page it appears that Article 8 of the treaty provided, "all the grants of land made before the 24th of January, 1818, by his Catholic Majesty * * * in said territory ceded by His Majesty to the United States, shall be ratified and confirmed to the persons in possession of the lands. * * *"

This article, Chief Justice Marshall held, "must be intended to stipulate for that security of private property which the laws and usages of nations would, without express stipulation, have conferred."

In other words, the treaty provided that prior Spanish grants to *private* persons should be ratified and confirmed, a provision far removed from presidential "regulation" of *public* territory. Such regulation is confined to Congress, as *Foster v. Neilson*, 27 U.S. (2 Pet.) 253, 314-315 (1829) held with respect to the self-same provision: "the ratification and confirmation which are promised must be by the Act of the Legislature," i.e., Congress.

REMARKS IN THE LEGISLATIVE HISTORY OF THE TREATY POWER

Before discussing the legislative history adduced by the Attorney General, permit me a few words of explanation and apology. When his statement before the Senate Committee reached me late of a Saturday afternoon, as appears in my own Senate statement, I had only about two days to prepare my comments before having them typed and forwarded to the Senate Committee. Pressure of time conduces to oversights, and I was mistaken respecting a time sequence, and in following the Attorney General's erroneous identification of a motion made by Williamson and Spaight with one he attributed to Sherman and Morris. Leisure for reflection and further research has since enabled me to correct such inaccuracies and to sharpen my analysis. And it has strengthened my conviction that the treaty power was not designed to diminish the Article IV power of Congress.

For the most part the Attorney General's citations have reference to settlement of boundary disputes by treaties of peace which, as we have seen, do not involve cessions. He begins with a remark of George Mason in the Constitutional convention, an *in terrorem* statement during a debate on whether the Senate could share in originating revenue-raising bills. Speaking for exclusion of the Senate, Mason stated that the Senate "could already sell the whole country by means of treaties," and then toned down this extravagant overstatement to that quoted by the Attorney General: "the Senate by means of a treaty might alienate territory, etc., without legislative sanction." A.G.6, 2 Farrand 297. Mason spoke *before* the Article IV progenitor was even proposed and referred to the Committee on Detail, 2 Farrand 321, 324, and of course before the resultant "disposition" provision was debated, id. 466. Manifestly his earlier remark hardly expressed the view that the treaty power overrode the as yet unborn "power to dispose."

The Attorney General's other citations will be considered seriatim.

(1) The remarks of Gerry, and of Williamson and Spaight, cited A.G.6, were made after Madison's motion to "except treaties of peace" from the two-thirds vote requirement had been agreed to by unanimous consent. 2 Farrand 540. Gerry protested "that in treaties of peace a greater rather than a lesser proportion of votes was necessary than in other treaties. In treaties of peace the dearest interests will be at stake, as the fisheries, territory, etc. In treaties of peace also there is more danger to the extremities of the Continent, of being sacrificed, than on any other occasions."

Id. 541. The "extremities" patently refer to boundary disputes. Notwithstanding, Madison's "exception" was again approved by a vote of 8 to 3. Now Williamson and Spaight took up the opposition and "moved that no Treaty of Peace affecting territorial rights should be made without the concurrence of two thirds of the

²³ *United States v. Ushi Shiroma*, 123 F. Supp. 145, 149, 148 (D. Hawaii, 1954).

²⁴ *Burna v. United States*, 240 F.2d 720, 721 (4th Cir. 1957).

[members of the Senate present.]” id. 543²⁵ In short, they sought to exclude treaties of peace “affecting territorial rights” from the Madison “exception.” A note added to Madison’s records recites that “The subject was then debated, but the motion does not appear to have been made.” 4 Farrand 58. On the following day, Sherman and Morris spoke “agst leaving the rights, *established* by the Treaty of Peace, to the Senate, & moved to annex a proviso that no such rights shd be *ceded* without the sanction of the Legislature,” id. 548,²⁶ a clear reference to boundary disputes. The matter was resolved by striking Madison’s exception. 2 Farrand 548–549. Throughout all that was under discussion was the performance of the Senate’s own “advice and consent” function, without a hint of desire to curtail the House function under Article IV. The Convention’s overnight reversal of its approval of Madison’s motion testifies how fluid were its views in this area, arguing against giving the remarks of Gerry et al preponderant weight.

(2) Of the same order is a letter by Hugh Williamson, a delegate to the Convention, written to Madison some nine months after its close, to recall to him “a Proviso in the new Sistem which was inserted for the express purpose of preventing a majority of the Senate . . . from giving up the Mississippi. It is provided that two-thirds of the members present in the Senate shall be required in making treaties.”

A.G. 7–8; 3 Farrand 306–307. As the Attorney General’s fuller quotation shows, Williamson feared that General Wilkinson might be led to give up “the Navigation of the Mississippi,” and recalled that “the Navigation of the Mississippi . . . was not to be risked in the Hands of a meer Majority.” A *cession* of territory was not therefore involved, but rather claims to rights of navigation. At best, the Mississippi issue was a boundary claim finally settled by the Louisiana Purchase. Nor was that issue the sole motivation for insistence on a two-thirds requirement. George Mason explained in the Virginia Ratification Convention that because of their concern about the Newfoundland fisheries, “The eastern states therefore agreed a length, that treaties should require the consent of two-thirds of the members present in the Senate.” 3 Farrand 335. Such diverse motives counsel against reading the several “two-thirds” remarks as evidencing an intent to diminish the role of the House under Article IV. It was one thing to insist that the Senate, in the performance of its own function, must act by a two-thirds vote, and something else again to court the wrath of the democratically minded, who placed their faith in the House and were already disgruntled by the exclusion of the House from the negotiation and making of treaties, by further reducing the role of the House under Article IV.

(3) The Attorney General also cites an amendment proposed by the Virginia Convention as exhibiting the awareness of the Founding Fathers that the Constitution authorizes self-executing treaties disposing of the territory and property of the United States²⁷:

“No commercial treaty shall be ratified without the concurrence of the members of the Senate (not merely of those present); and no treaty ceding, contracting . . . the territorial rights or claims of the United States . . . shall be made but in cases of extreme necessity; nor shall *any* treaty be ratified without the concurrence of three-fourths of the whole number of the members of both Houses respectively.” (Emphasis added.)

A.G. 7; 3 Elliot, Debates on the Federal Constitution 600. From this attempt to bring the House into treaty ratification the Attorney General would infer that it could be excluded from the Article IV “disposition” of territory. It is simpler to read it as a renewal of the struggle for House participation in treaty-making. In any event, he proves too much. The Virginia Convention likewise recommended “That the legislative, executive and judicial powers should be separate and distinct,” that the right to challenge jurors should not be restrained. 3 Elliot 657–658.²⁸ Do these proposals prove that the separation of powers therefore is not a fundamental principle of the Constitution, or that it does not guarantee the rights to challenge jurors? When *implicit* rights are not thus negated, how much stronger is the case for giving effect to the *express* Article IV grant to Congress despite such proposals. Like the earlier remarks, the Virginia amendment testifies to the importance the Founders attached to the disposition of territory—no cession except “in cases of

²⁵ The Attorney General mistakenly attributes a more complete version of this motion to Sherman and Morris, A.G. 6–7, citing 4 Farrand 58. That page merely sets forth an insertion to be made in 3 Farrand 543, which contains only the “motion” of Williamson and Spaight.

²⁶ Emphasis added.

²⁷ “That in criminal prosecutions, no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the jury.” 3 Elliot 657–658. The Virginia Convention had been assured by John Marshall, Edmund Pendleton and Governor Randolph that the words “trial by jury” embraced all its attributes, such as the right to challenge jurors. 3 Elliot 559, 546, 547, 436, 573.

extreme necessity"—and suggests, as in the proposal to spell out the right of challenge, that the Virginians were merely seeking to make assurance doubly sure.

Our guide is furnished by *Pierson v. Ray*, 386 U.S. 547, 554-555 (1967). There the Court declared with respect to the common law immunity of judges from suit for acts performed in their official capacity:

"We do not believe that this settled principles was abolished by 1983, which makes liable 'every person' who under color of law deprives another of his civil rights * * * we presume that Congress would have specifically so provided had it wished to abolish the doctrine."

Thus the all-inclusive "every person" was held not to curtail an existing common law immunity in the absence of a specific provision. The more equivocal treaty-making power demands an even more exacting standard. Before it be concluded that it in any way diminishes the explicit grant to Congress of "power to dispose" of territory and property, a clearly expressed intention to do so should be required. That requirement is not satisfied by the random remarks collected by the Attorney General.

In my judgment, the Panama Treaty should contain a provision making it subject to approval of the Congress.

AMENDMENT NO. 17

(Ordered to be printed and referred to the Committee on Foreign Relations.)

Mr. HOLLINGS (for himself, Mr. Anderson, Mr. Eagleton, Mr. Goldwater, Mr. Nunn, and Mr. Stafford) submitted an amendment intended to be proposed by them, jointly, to executive N, 95-1, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

Mr. HOLLINGS. Mr. President, on October 17, 1977, I proposed amendments to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. My primary goal was to assure that the rights of the United States: First, to act militarily even after the year 2000 to protect the freedom of transit of the canal; and second, to enjoy "head-of-the-line" priority passage for our vessels of war and auxiliary vessels in time of emergency or need, were written into the actual text of the treaty. That way, there could be no future reason for doubt or confusion as to what was intended by the negotiators.

When I submitted those amendments, I included a third, and rather technical, amendment. In the interest of addressing the more major concerns of the two amendments I have just mentioned, and with the agreement of my cosponsors, I am asking for a reprint of my amendments with the third one deleted and the minor changes noted herein.

I ask unanimous consent that the amendment be printed in the Record.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 17

At the end of article IV, add the following: "Panama and the United States assume the responsibility to assure that the Panama Canal will remain open and secure for ships for all nations. The United States and Panama shall, each in accordance with its respective constitutional processes, defend the Canal against any threat to the regime of neutrality and each shall have the right unilaterally or collectively to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal. This shall not be interpreted as a right of intervention in the internal affairs of Panama but as a right of the United States to take such action, military or otherwise, for the sole purpose of insuring that the Canal will remain open, secure and accessible. Such right shall

never be exercised against or directed against the territorial integrity or political independence of Panama.

Amend paragraph 1 of Article VI to read as follows:

1. (a) In recognition of the important contributions of the United States of America and of the Republic of Panama to the construction, operation, maintenance, and protection and defense of the Canal, vessels of war and auxiliary vessels of those nations shall notwithstanding any other provisions of this Treaty, be entitled to transit the Canal irrespective of their internal operation, means of propulsion, origin, destination, armament or cargo carried.

(b) The vessels of war and auxiliary vessels of the United States and of Panama will be entitled to transit the Canal expeditiously. This is intended and it shall be so interpreted, to assure the transit of such vessels through the Canal as quickly as possible without any impediment, with expedited treatment, and in case of need or emergency as determined by either party, to go to the head of the line of vessels in order to transit the Canal rapidly.

PANAMA CANAL TREATIES

Mr. CRANSTON. Mr. President, the Foreign Relations Committee wound up its hearings this week on the proposed Panama Canal treaties. These hearings have been extremely informative and have contributed substantially to our knowledge and understanding of these treaties. I would like to take this opportunity to thank the committee and its distinguished chairman, Senator Sparkman, for the valuable contribution that the committee has made.

One issue, which was brought up during the hearings on Wednesday, was the matter of a second interoceanic canal either in Panama or elsewhere in Central America. Serious concern has been expressed that the proposed treaties cede too much to Panama in agreeing to seek Panamanian concurrence on the site of another canal.

Colonel Sheffey testified before the committee regarding this point. Colonel Sheffey is an extremely well-qualified witness to testify on this matter having served as a military assistant for canal affairs for the Office of the Secretary of the Army and as the Executive Director for the Atlantic-Pacific Interoceanic Canal Study Commission. Colonel Sheffey stated:

There are no foreseeable circumstances in which the United States would be likely to consider building a new Isthmian canal outside Panama. The only feasible routes are in Panama. The economic, technical and political objections to the far longer routes in Colombia and Nicaragua eliminate them from practical consideration. Limiting the choice of routes to Panama for the remainder of this century costs the U.S. nothing, and the treaty proposal for this prevents other powers' meddling in the matter.

Colonel Sheffey goes on to discuss why sites in Colombia and Nicaragua are not viable options as well as other considerations regarding a second interoceanic canal. I think that my colleagues might find Colonel Sheffey's testimony quite interesting so I ask unanimous consent that this statement relating to a sea-level canal be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

TESTIMONY BY COLONEL SHEFFEY

Mr. Chairman, Gentlemen, I am Colonel John P. Sheffey, U.S. Army (Ret.). My experience in Panama Canal affairs has been rather extensive—five years as the Secretary of the Army's Military Assistance for Canal matters, five years as the Executive Director of the President's Atlantic-Pacific Interoceanic Canal Study

Commission and three years in the Department of State as Special Advisor to the U.S. Canal Treaty Negotiator on an appointment that was terminated by the Department of State in 1974. Subsequently, I have maintained contact with the State and Defense negotiators and have followed the development of the current treaty drafts. However, I have no official capacity today and am here only in the hope that I can help contribute to your understanding of the canal treaty problem. I do not speak for the members of the National Association for Uniformed Services. Most of them strongly oppose giving up the Panama Canal and are not happy with my view that a generous new treaty with Panama is both necessary and unavoidable.

The record of your earlier hearings includes almost every known argument for and against ratification of the proposed treaties, and I will not repeat them. Instead, let me clarify a couple of issues in which I can claim expertise. Then I will attempt to frame the Panama treaty problem in its true political context and suggest what should be done.

First, as the former Executive Director of the \$22 million sea-level canal study in 1965-70, I assure you that there are no foreseeable circumstances in which the United States would be likely to consider building a new Isthmian canal outside Panama. The only feasible routes are in Panama. The economic, technical and political objections to the far longer routes in Colombia and Nicaragua eliminate them from practical consideration. Limiting the choice of routes to Panama for the remainder of this century costs the U.S. nothing, and the treaty proposal for this prevents other powers' meddling in the matter.

The theoretically feasible routes in Nicaragua and Colombia are 140 miles and 100 miles in length, respectively, as compared with 40 miles or less for the Panamanian routes. The movement of large ships in narrow canal waters is a slow and hazardous operation. Ship operators would not readily accept the risk and time lost in transit. The construction and operating costs of these longer canals would be three or four times the cost of the shorter canals in Panama, and even the shorter Panamanian routes are not economically feasible at currently forecast traffic levels.

In the 1970 study, the Nicaraguan and Colombian routes were considered only for a sea-level canal constructed by nuclear excavation. Nuclear excavation is of questionable technical feasibility at best, and is politically infeasible beyond doubt. Conventional excavation costs on these longer routes were so great that they were not even estimated with any precision. Today's construction costs on either route would be in excess of \$20 billion, and this could easily double by the time such a canal might be needed.

Certainly, the foreseeable traffic cannot support two Isthmian canals, and 95 percent of the world shipping projected for the year 2000 will still be of sizes that can pass the present Panama Canal. The 5 percent of superships that need a larger canal cannot possibly support its cost even in Panama. The military advantages of a relatively indestructible sea-level canal are attractive, but have not moved us to build one in Panama. They are far from sufficient to justify a \$20 billion investment in a technically unsatisfactory and politically abrasive canal outside Panama.

THE PANAMA CANAL TREATY DEBATE

Mr. HATCH. Mr. President, the proposed Panama Canal treaties will soon be reaching the Senate floor for a vote. It is not fashionable to oppose these treaties, a situation reflected most clearly in the news coverage of the ongoing debate. Opponents have been consistently characterized as indulging in grade-school chauvinism, and the overwhelming disapproval expressed by the American public has been repeatedly represented as "backward" and "blind to present-day realities."

This attitude of condescension is dangerous for several reasons. It calls into question the integrity of a system that was originally designed to reflect the will of its citizens. It divests treaty proponents of their responsibility to answer the very many serious questions that remain unresolved by the present version of the treaties. And it deprives the issue at hand of the larger context within which a matter of such grave implications should necessarily be considered.

An extremely perceptive article, appearing in the December issue of the American Security Council's Washington Report, does a great deal toward restoring the perspective vital to the consideration of these important treaties. I commend it to the careful attention of my colleagues, and ask unanimous consent that it be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

WHY WE MUST KEEP THE CANAL

(By M. Northrup Buechner, editor)

(Quite a bit has appeared in the news media recently about the Panama Canal issue. Most of it has been in response to the PR campaign orchestrated by the White House to gain Congressional and popular support for the proposed Treaties. The White House effort has been primarily theatrical, with the elaborate dinner for the Latin American leaders being the big event, carefully staged for maximum TV coverage.)

(Leading opposition voices have been given grudging play in the press. And the powerful popular opposition has been relegated to sparse reports of public opinion polls.)

(The article below is one we recommend highly to WR readers. It goes to the issues behind the Treaties. It reveals the inadequacy of the opposition arguments that have been presented so far in the Congress. And it provides a valuable service on behalf of the general public, by offering a compelling rationale for the so far inarticulate cry of objection from the American heartland.)

The abysmal level of the public debate over the Panama Canal was epitomized in a national interview with a prominent undecided Senator. Asked what considerations he was weighing in making up his mind, the first thing he mentioned was the veto power the new treaties give Panama over a second canal. The public pondering of such details has spread the impression that only trivia is at stake in this debate. Nothing could be further from the truth.

The public advocates of keeping the canal, however, have missed the point almost as badly as that Senator. The primary issue is not the military importance of the canal. It is not the economic importance of the canal. And it is certainly not the details of the new treaties. The primary issue is the right of the United States to exist.

The moral principle at stake is the right of the United States to keep her values, her achievements, her wealth, in the face of overwhelming global opposition. And since a country, like a man, cannot survive without values, at issues is the right of the United States to survive.

That is why the American people oppose the new treaties. That is the principle behind their desperate feeling that giving away the canal would be wrong in some way much more important than they know how to say. When they tell reporters "we have given away too much already," and "we have to stop letting them push us around," that is what they are trying to say. Though they lack the words, they see surrender of the canal for what it would be: a step in the direction of renouncing the United States' right to her values and her life.

Unfortunately, a national debate cannot be won without the words. It is not enough for people to be right. They must know why they are right. They must have the words and principles to defend their position. What happens when they do not has been most evident in the United States Senate.

Because they did not know how to oppose surrender of the canal in principle, a number of Senators have tried to prevent its surrender by becoming enmeshed in debate over the details of the new treaties. In doing so, they have made several significant contributions to the other side.

They have accepted a context for debate where it is treated as already established that we should give up the canal and the dispute therefore, is only over the side conditions. They have trapped themselves in a position where, if the conditions to which they object are changed, they cannot vote against the treaties. And they have been diverted from giving any effective leadership or voice to their enormous support in the general population.

What position should they have taken? How should the new treaties be opposed? The most damning evidence against the treaties is the arguments that are given in their favor. Those arguments fall into two general categories: the practical arguments and the moral arguments; or the arguments from fear and the arguments from guilt.

THE PRACTICAL ARGUMENTS

The most extreme, and therefore the clearest, of the practical arguments holds that if the Senate rejects the new treaties, Panama will become "another Vietnam." In other words, we should give up the canal out of fear of a war with Panama or, even more disgraceful, out of fear of independent guerrillas.

This argument marks a new low in the level of political discourse in this country and not many have had the effrontery to make it openly. That it has been left largely to implication and innuendo is the only sign that our leaders retain any respect for the American people.

For example, it was argued explicitly before the Senate Foreign Relations Committee that the best way to retain access to the canal is to give it to Panama so they will be on our side if we should have to defend it. It is very revealing (and somewhat frightening) that this argument was taken at face value by all the news media, and its implications went completely unnoticed.

Militarily, observe the helplessness of the United States implied by so desperate a need for support, and from Panama of all places, as to justify giving away the canal. Strategically, observe the absurdity of assuring access to the canal by placing all the complex, delicate machinery and equipment and controls for its operation in the hands of a potential enemy.

And, finally, since attacks by Panama are the only current danger to the canal's security, observe the threat implied by raising the issue of, and hence doubts about, our access to the canal. The real meaning of that argument was that if we try to keep the canal, Panama will deprive us of its use, and therefore we had better give it to them.

To spread this kind of thinking, an unforgiveable campaign has been carried on through the media for the last several months, specifically directed at undermining the self-confidence of the American people and frightening us into giving up the canal. Its most disgraceful element has been the effort by our own military leaders to leave the impression, again by hint, insinuation, and innuendo, that the United States is militarily impotent to assure the security of the Panama Canal.

The argument about access to the canal, for example, was repeated several times before the Senate Foreign Relations Committee by military leaders. When the Panamanian dictator was making thinly veiled threats of guerrilla war, the chairman of the Joint Chiefs of Staff did not dismiss him as absurd. Rather he implied that the threat was serious by saying he could not defend the canal with 100,000 men.

In the face of this atmosphere of national self-abasement, when President Carter clearly stated that we can and will defend the canal, his declaration came like a breath of fresh air. Then, he threatened that it would be a major, difficult, dangerous undertaking, thus contributing to that atmosphere himself.

It is shameful that this kind of fear was a major factor in the negotiations for the new treaties. Fear is a disastrous motive on which to base policy in any case. But whatever consequences might have been expected from such a policy, ceding the canal out of fear of Panama would have been beyond anyone's ability to predict.

There is no way that Panama could become another Vietnam. Militarily, the two situations have nothing significant in common. Guerrillas could be even a minor problem only if we insisted on following the same insane policy we pursued in Vietnam of fighting effects rather than causes.

In this case, however, fighting of any kind can be avoided altogether. All that is necessary is a statement by the President that an attack on any part of the Canal Zone would be considered an attack on the United States, and that any country supporting such an attack would be considered an enemy of the United States and treated accordingly.

The practical argument also holds that surrender of the canal is essential for good diplomatic relations with the Latin American countries. But even if *they* were the great powers of this hemisphere, it would be obviously self-defeating to curry their favor by giving away our possessions.

Yet, blinded by a frantic, suicidal anxiety over the good opinion of the world in general and our southern neighbors in particular, that is the course insisted on by most of our political and intellectual leaders. The tragic failure of their leadership to be worthy of the American people was never more evident.

It would undoubtedly be pointless to remind those leaders that it is *we* who are the great power here, and if anyone should worry about good opinions, it is our southern neighbors who should worry about *ours*.

THE MORAL ARGUMENTS

But if the practical arguments are insulting, the moral arguments are worse, much worse.

It is said we stole the canal and our presence in the area represents a colonialist affront to the sensitive feelings of the Latin American people. We should give up the canal, it is implied, out of guilt for these offenses.

The charge of colonialism, though repeated mindlessly by everyone, is a transparent fraud. A colony was a settlement of people, not an industrial engineering enterprise. A colony, by definition, was administered for the economic benefit of the mother country. The Panama Canal is not a colony, nor has the United States ever had a colony anywhere in the world.

But the vilest distortion in the whole debate is the charge we stole the canal. It is the exact opposite of the truth.

The opposite of theft is production. We did not steal the canal; we built it. The moral right of the United States to the canal is the right of any creator to what he has created. That right, however, is a property right, the root of all property rights, and it is not surprising that modern intellectuals and politicians are unwilling to defend anything based on that source.

It is their view that control of the canal by the Panamanians is a legitimate aspiration of the Latin American people. But there is no such thing as a "legitimate aspiration" by some to an achievement created by others.

Not only did the United States pay the costs of constructing the canal. It was her citizens who figured out how to conquer the previously unconquerable obstacles and then directed the construction in an enormously heroic effort. The Panama Canal was the greatest engineering feat in the history of many up to that time and ~~we~~ did it.

Nothing is more depraved than ridiculing the American people for their pride in their canal, a tactic adopted by some, not all, of the advocates of the new treaties. No people ever had a better right to pride in any national accomplishment. The Panama Canal is a reflection and embodiment of all that is best in the American character.

Whatever shenanigans were involved in getting sovereignty over the Canal Zone, and no one's account makes them very serious, they are nothing next to the incredible achievement of the canal itself. Without us, the Canal Zone would be just so much empty, deadly, malaria infested lakes and jungle—as would the rest of Panama.

If one considers what Panama would be like today without the canal, it is clear who has received a disproportionate share of the benefits, and if moral debts were to be collected, who would owe what to whom. Then consider that an agreement reached in conjunction with the new treaties calls for us to pay them some 345 million dollars. This is over and above the negotiated increase in payments for use of the Canal Zone from 2.3 million to about 60 million dollars a year.

WHY THEY WANT THE CANAL

There is no moral justification whatever for the demand that the United States give up the canal. What then is the cause of that demand? The same cause that is the leitmotiv in the treatment of the United States by most of the undeveloped world.

It is the motive behind the burning of American consulates, the attacks on American diplomats, the seizure of American fishing boats, the expropriation of American property, the constant attempts to humiliate us in the U.N., all of it accompanied by demands for more money, and lately, by claims of a right to a share of our wealth.

Stripped of the meaningless vicious jargon about colonialism, imperialism, and exploitation, the moral argument holds that we must give up the canal to satisfy the malice, hatred, and envy of the worst elements in the Latin American countries, and indeed, in the whole undeveloped world. Those are the "sensitive feelings" we are accused of affronting.

What is the cause of this global hostility toward the United States? It comes from two related sources.

First, whether communist, fascist, socialist, or non-ideological, the underdeveloped countries of the world are almost all dictatorships. As such, their hatred and fear of the United States has a purely practical element.

We are the last, best, shining example of the kind of life that is possible to man on earth when he is left free. We are the unavoidable proof that the brutality, torture, terror, and death they have imposed on their people are unnecessary.

But the more fundamental cause of their opposition is also the cause of tyranny as such. It is "envy" in its most vicious, virulent, destructive sense. It is what Ayn Rand has identified as "hatred of the good for being the good."

Today that motive is widely regarded as normal and natural. It is sympathetically explained, "Of course they hate us and would like to see us destroyed. After all, we are rich and they are poor; we are great and they are small; we have created achievements they cannot approach; we built a canal they could not conceive."

What that view sanctions and expresses is the ultimate evil in human psychology, the lowest and worst motive that is possible to man. It represents a hatred of every living human value, the same motive that sets up concentration camps, torture chambers, and dictatorships as ends in themselves.

The canal is a hatred symbol all right, but not of a nonexistent American colonialism. What the canal really symbolizes, and what the value-haters want symbolically to wipe out by making us give it up, is the overflowing abundance of energy, efficacy, and pride of a free people.

To surrender the canal in the face of such a motive is unthinkable. It would mean accepting their view of our virtues as vices and our achievements as stains on our national character. It would mean sanctioning hatred of the United States as natural and right and deserving a positive response. To what portion of our wealth and achievements could we claim a right after that and on what grounds?

That is the most important reason for keeping the Panama Canal. If there were no other reason whatever, that would be sufficient to hold on to it for dear life.

CONCLUSION

Those who think the Vietnam War demonstrated the unwillingness of the American people to fight for their values should think again. The only thing that war demonstrated was that the American people will not fight indefinitely for nothing.

The difference between Vietnam and the Panama Canal is the difference between fighting to save the house of a remote neighbor you have never met and fighting to save your own home.

The American people want to keep the Panama Canal. They are right to want it. And they will support the policies necessary to do so.

There is no practical reason for surrendering the canal. There is no moral reason. There is nothing but the pressure of a viciously irrational global opposition. The Senate should confound that opposition and assert the United States's right to keep her values and her life by rejecting the new treaties.

[From the Congressional Record—Senate, Jan. 30, 1978]

VIEWS OF DEAN LOUIS POLLAK ON THE PANAMA CANAL TREATY

Mr. CLARK. Mr. President, one of this country's outstanding constitutional lawyers is Dean Louis Pollak of the University of Pennsylvania Law School.

Dean Pollak, who has also been dean of the Yale Law School, has had a varied career including private practice and experience in Government; he has written a major work on "The Constitution and the Supreme Court." He has been studying the Panama Canal Treaties and carefully following the debate now taking place on the constitutional issues these treaties present. One of the most important of these is the treaty power in relation to the transfer of U.S. property and territory, a matter of great interest to the Senate.

He has sent me a short paper summarizing his views, which I believe will be highly informative to all taking part in the consideration of these treaties.

His conclusions are, first, that the Supreme Court has recognized that there is a power to dispose by treaty of territory belonging to United States which is independent of the concurrent Congressional power, and second, that the discussion in the constitutional Convention of 1787 confirms the settled understanding of our treaty-makers and of the Supreme Court that territory belonging to the United States may be ceded by treaty.

Mr. President, I ask unanimous consent that Dean Pollak's analysis be printed, in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

CAN THE UNITED STATES CEDE TO PANAMA, BY TREATY, U.S. RIGHTS IN THE TERRITORY AND INSTALLATIONS OF THE CANAL ZONE?

On November 4, 1977, Senator Allen placed in the Congressional Record a statement by Raoul Berger, former Charles Warren Fellow at Harvard University, made in hearings on the Panama Canal Treaties held by the Senate Subcommittee on Separation of Powers. The thrust of Mr. Berger's statement was that cession to the Republic of Panama of such title as the United States possesses in (1) territory in the Canal Zone, and (2) United States installations in the Zone, cannot constitutionally be effectuated by treaty, but only by statute, for the reason that the disposition of territory and other property of the United States is vested by Article IV, 3(2) of the Constitution exclusively in Congress. Mr. Berger is a constitutional lawyer and historian of great distinction, whose scholarly work has enriched our understanding of many aspects of the Constitution, and so it is appropriate to pay close attention to his views on major constitutional questions. Nonetheless, careful examination of the arguments advanced by Mr. Berger persuades me that in this instance he is in error. It is my submission that the proposed treaties with Panama, if consented to by the constitutionally required two-thirds of the Senate and duly ratified by the executive branch, will of their own force accomplish the cession to Panama of the territory and the installations in question:

A. THE DEVELOPMENT OF TREATY PRACTICE AND TREATY DOCTRINE

1. Broadly stated, Mr. Berger's thesis is that the treaty power, which the Constitution vests in the President and the Senate but does not define, cannot be read as giving to the President and the Senate powers concurrent with the powers specifically delegated to Congress by Article I, 8, Article IV, 3(2), and other provisions of the Constitution.

2. The thesis is not a new one. It was strongly advanced in 1795, in opposition to the Jay Treaty; and it was strongly resisted by no less a constitutional authority than John Marshall—the Virginia legislator who was later to be a Congressman,

then Secretary of State and finally Chief Justice. Beveridge, in his authoritative biography of Marshall, sums up the argument:

"Among the many objections to the treaty, the principal one . . . was that it violated the Constitution. The treaty regulated commerce; the Constitution gave that power to Congress, which included the House of Representatives; yet the House had not been consulted.

" . . . Marshall's position was that a "treaty is as completely a valid and obligatory contract when negotiated by the President and ratified by him, with the assent and advice of the Senate, as if sanctioned by the House of Representatives also, under a constitution requiring such sanction"; and he admitted only that the powers of the House in reference to a treaty were limited to granting or refusing appropriations to carry it into effect."¹

3. Marshall's position anticipated the pattern which has in fact characterized the utilization of the treaty power. As Secretary of State (former Congressman, former Senator and former Vice President) John C. Calhoun observed in 1844, "From the beginning and throughout the whole existence of the Federal Government it has been exercised constantly on commerce, navigation and other delegated powers." *O. Wright, The Control of American Foreign Relations* (1922) 344. Moreover, such treaty provisions have routinely been treated as self-executing except where, as Professor Louis Henkin has put it in his definitive work, "the treaty-makers voluntarily left some subjects to regulation by Congress (e.g., international tariffs and trade). . . ." *Henkin, Foreign Affairs and the Constitution* (1972) 149. Although the treaty-makers have generally supposed the treaty power to be concurrent with that of Congress with respect to commercial regulations, the disposition of American territory and other government property, and most of the other powers expressly lodged in Congress by the Constitution (and have routinely been sustained in this supposition), they have customarily felt obliged to seek statutory implementation of treaties touching the area of Congressional authority with respect to which Marshall felt action by the House of Representatives was constitutionally indispensable—namely, "granting . . . appropriations." The reason for acknowledging an exclusivity in Congress with respect to the appropriations power, but not with respect to most of its other powers (the regulation of commerce, the disposition of the property of the United States, etc.) arises from the text of the Constitution. Most legislative powers are merely couched in the familiar phrase, "Congress shall have power . . ."—a phrase which, syntactically, does not preclude concurrent authority in the President and Senate as treaty-makers. But the spending power, although couched in the same general form, is also subject to an express constitutional limitation—"No money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law . . ." [Article I, 9(7)—a limitation which arguably requires statutory implementation of a treaty commitment to make expenditures.]

4. The thesis which John Marshall steadfastly resisted in 1795 was adopted by Marshall's great rival, Thomas Jefferson, in his *Manual of Parliamentary Practice*. Jefferson—who as Secretary of State, Vice President and President "was no friend of the Treaty Power," [Henkin, *supra* at 142]—set forth four propositions, the second and fourth of which were as follows: "2. By the general power to make treaties, the Constitution must have intended to comprehend only those subjects which are usually regulated by treaty, and can not be otherwise regulated . . . 4. And also to except those subjects of legislation in which it gave a participation to the House of Representatives." *Ibid.* Marshall was not the only one of Jefferson's great contemporaries who was unpersuaded by Jefferson's narrow view of the treaty power. Justice Story noted that "The power 'to make treaties' is by the Constitution general; and of course it embraces all sorts of treaties, for peace or war; for commerce or territory; for alliance or succours; for indemnity for injuries or payments of debts; for the recognition and enforcement of principles of public law; and for any other purposes, which the policy or interests of independent sovereigns may dictate in their intercourse with each other." III *J. Story, Commentaries on the*

¹ II A. Beveridge, *The Life of John Marshall* (1916) 133-36. For tactical purposes, Marshall seems also to have argued that the Jay Treaty was so drawn as to leave to the House of Representatives leeway to determine whether to implement the commercial aspects of the Treaty; but this tactical concession respecting the form of a particular treaty was not at odds with Marshall's constitutional definition of the potential scope of the treaty power. *Ibid.*

² I say "arguably" because no such restraint on the treaty power was intimated by the Supreme Court in its classic exposition of the scope of the power in *Groffey v. Riggs*, 133 U.S. 258, 267 (1890), quoted in the text *infra*, at note 6. Textual analysis akin to that dealing with the appropriations power provides an arguable basis for concluding that treaties cannot, without statutory implementation, levy taxes, since the Constitution specifies that "all Bills for raising Revenue shall originate in the House of Representatives." Article I, 7(1). Congress' power to declare war may also be another power not shared by the treaty-makers. See the quotation from Calhoun in the text, *infra* at n.3.

Constitution of the United States (1833) 355. Story acknowledged that the treaty power was not unlimited; "A treaty to change the organization of the government, or annihilate its sovereignty, to overturn its republican form, or to deprive it of its constitutional powers, would be void; because it would destroy, what it was designed merely to fulfill, the will of the people. Whether there are any other restrictions, necessarily growing out of the structure of the government, will remain to be considered, whenever the exigency shall arise." *Id.* at 356. And then, in a footnote, Story dispatched Jefferson's constitutional doubts: "Mr. Jefferson seems at one time to have thought that the Constitution only meant to authorize the president and senate to carry into effect, by way of treaty, *any power they might constitutionally exercise*. At the same time, he admits, that he was sensible of the weak points of this position. 4 Jefferson's Corresp. 498. What are such powers given to the president and senate? Could they make appointments by treaty?"

5. Marshall and Story were early expositors of what—Jefferson and a few others apart—has always been the orthodox view that the President and the Senate, in making treaties, can regulate almost every subject matter also entrusted to the legislative authority of Congress. But it fell to Calhoun—speaking as a Congressman, a quarter-century before he became Secretary of State—to explain, with more precision than either of the great Justices achieved, the scope of the treaty power and the constraints which other parts of the Constitution impose upon its exercise [29 *Annals of Congress* 530-31 (Jan. 9, 1816)]:

"The grant of the power to make treaties is couched in the most general terms. The words of the Constitution are that the President shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senate concur. In a subsequent part of the Constitution, treaties are declared to be the supreme law of the land. Whatever limits are imposed in those general terms ought to be the results of the construction of the instrument. There appeared to him but two restrictions on its exercise; the one derived from the nature of our Government, and the other from that of the power itself. Most certainly all grants of power under the Constitution must be controlled by that instrument; for, having their existence from it, they must of necessity assume that form which the Constitution has imposed. This is acknowledged to be true of the legislative power, and it is doubtless equally so of the power to make treaties. The limits of the former are exactly marked; it was necessary to prevent collision with similar co-existing State powers. This country is divided into many distinct sovereignties. Exact enumeration here is necessary to prevent the most dangerous consequences. The enumeration of legislative power in the Constitution has relation then, not to the treaty-power, but to the powers of the State. In our relation to the rest of the world the case is reversed. Here the States disappear. Divided within, we present the exterior of undivided sovereignty. The wisdom of the Constitution appears conspicuous. When enumeration was needed, there we find the powers enumerated and exactly defined; when not, we do not find what would be vain and pernicious. Whatever, then, concerns our foreign relations; whatever requires the consent of another nation, belongs to the treaty power; can only be regulated by it; and it is competent to regulate all such subjects; provided, and here are its true limits, such regulations are not inconsistent with the Constitution. If so they are void. No treaty can alter the fabric of our Government, nor can it do that which the Constitution has expressly forbade to be done; nor can it do that differently which is directed to be done in a given mode, and all other modes prohibited. For instance, the Constitution of the United States says, no money 'shall be drawn out of the Treasury by an appropriation made by law.' Of course no subsidy can be granted without an act of law and a treaty of alliance could not involve the country in war without the consent of this House." * * *

6. As Professor Henkin recently observed, Jefferson's conception of the treaty power "would outlaw treaties on matters as to which Congress could legislate domestically" and thus "would virtually wipe out the Treaty Power." *Henkin, supra* at 149. But Jefferson's conception, as Professor Quincy Wright stated over half a century ago, was "both erroneous and incomplete." *Wright, supra* at 123.

It is a conception which, as Professor Henkin has noted, "[e]ven in Jefferson's day * * * was hardly accepted by all; it has now been long dead. Treaties have dealt with many matters that were also subject to legislation. * * * The House of Representatives has frequently bristled, but its exclusion from the treaty process was the clear constitutional plan. * * *" *Henkin, supra* at 149. In short, Calhoun has won the day.

* *Ibid.* at n. 2 (emphasis in original). That Story and Marshall were well aware that the treaty power includes authority to cede American territory is evident from the exchange of letters between Governor Edward Everett and Story set forth in Appendix A, *infra*.

7. Among the many legislative powers which can also be exercised by treaty is the particular power which Mr. Berger would deny to the treaty-makers—the power to dispose of American territory and other property. The matter was clearly put over sixty years ago by Dr. Samuel Crandall in his illuminating comparative study of the treaty power:

"In respect of territory not within the boundaries of a State, the central government exercises, subject to the express prohibitions of the Constitution applicable thereto, all the powers of government enjoyed by both the central and State governments over territory within the limits of a State. Accordingly, the power to cede such territory, if it exists as a power of government, resides in the organs of the central government. That the consent of the inhabitants of the territory to be ceded is essential to give validity to the transfer cannot be maintained. The power to cede outlying territory is no less essential to the full exercise of the treaty-making power of the United States, which "extends to all the proper subjects of negotiation between our government and the governments of other nations," than is the power to acquire. Various treaties have been concluded by which the United States has relinquished extra-territorial rights theretofore enjoyed in other countries."

B. JUDICIAL RECOGNITION THAT THERE IS A TREATY POWER TO DISPOSE OF AMERICAN TERRITORY WHICH IS INDEPENDENT OF THE CONCURRENT CONGRESSIONAL POWER

1. Dr. Crandall, as Mr. Berger has observed, is "a respected commentator." Text of Berger Statement, at note 42. But the decisive question is whether Dr. Crandall's view of the treaty power—incompatible with Jefferson's, but consonant with that of Marshall, Story, and Calhoun (and Professors Wright and Henkin)—is in accord with the views expressed by the Supreme Court. The answer is in the affirmative.

2. "It is settled," said the unanimous Court in *Jones v. Meehan*, 175 U.S. 1, 16 (1899), "that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States." This proposition, validating the power to alienate American territory by treaty, was central to the disposition of *Jones v. Meehan*. The principal issue before the Court was whether the Treaty with the Chippewas of 1863 conveyed full title to Chief Moose Dung of "six hundred and forty acres near the mouth of Thief River." The Court's holding was that:

"The title to the strip of land in controversy having been granted by the United States to the elder chief Moose Dung by the treaty itself, and having descended, upon his death, by the laws, customs and usages of the tribe, to his eldest son and successor as chief, Moose Dung the younger, passed by the lease executed by the latter in 1891 to the plaintiffs for the term of that lease; and their rights under that lease could not be divested by any subsequent action of the lessor, or of Congress, or of the Executive Departments. The construction of treaties is the peculiar province of the judiciary; and except in cases purely political, Congress has no constitutional power to settle the rights under a treaty, or to affect titles already granted by the treaty itself."

3. The Court's holding in *Jones v. Meehan* is consistent not only with its earlier pronouncement in *Holden v. Joy*, 84 U.S. 211, 247 (1872) ("On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands (lands which belonged to the United States) without an act of Congress conferring it, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political"), but with its classic formulation of the scope of the treaty power in *Geoffroy v. Riggs*:

"The treaty power, as expressed in the Constitution, is in terms unlimited except by those restraints which are found in that instrument against the action of the government or of its departments, and those arising from the nature of the government and that of the States. It would not be contended that it extends so far as to authorize what the Constitution forbids, or a change in the character of the Government or in that of one of the States, or a cession of any portion of the territory of the latter, without its consent. *Fort Leavenworth Railroad Co. v. Lowe*, 114 U.S. 525,

* S. Crandall, *Treaties, Their Making and Enforcement* (2nd ed., 1916) 226-227. For concrete examples, see *id.* at 227-8.

* Mr. Berger discusses *Jones v. Meehan* in the light of an opinion rendered by Attorney General Taney before he became Chief Justice; the Taney opinion, dealing with an earlier transaction, was discussed by the Court and rejected as not controlling. See 174 U.S. at 12-18. See also *Percheman v. United States*, 32 U.S. (7 Pet.) 511 (1833), in which Marshall held that the Treaty with Spain of 1819 had of its own force confirmed the titles of pre-treaty owners of Florida land ceded to the United States by the Treaty; *Percheman* held that the interpretation of the 1918 Treaty approved in *Foster v. Neilson*, 27 U.S. (2 Pet.) 253 (1829) (a case relied on by Mr. Berger [Addendum to Statement, Part II]), was in error.

541. But with these exceptions, it is not perceived that there is any limit to the questions which can be adjusted touching any matter which is properly the subject of negotiation with a foreign country."^a

4. Whether, as the Court said, the Constitution precludes treaty cession of territory within a state without the state's consent, may be debatable, for the Constitution does not in terms so confine the treaty power (or the concurrent legislative power to dispose of federal territory). Nonetheless the dictum is one which conforms at least in spirit to the Constitution's insistence that new states not be created out of the territory of existing states without the consent of the state or states affected. Article I, 31).

And considerations of prudence would seem to support such a constraint on the exercise of the treaty power. (See the Court's discussion, in *Fort Leavenworth Railroad Co. v. Lowe* [cited in *Geofroy v. Riggs*] of the procedures followed in fashioning the Webster-Ashburton Treaty [the Washington Treaty of 1842], settling the long-vexed questions surrounding the United States-Canadian boundary: Justice Field noted that "it was deemed necessary on the part of our government to secure the cooperation and concurrence of Maine, so far as such settlement might involve a cession of her sovereignty and jurisdiction as well as title to territory claimed by her, and of Massachusetts, so far as it might involve a cession of title to lands held by her").^b In any event, it is plain that no consent, whether of the inhabitants or of Congress, is necessary where, as in the proposed Panama treaties, the land to be ceded by treaty is not located in a state.^c

C. THE DISCUSSION IN THE CONSTITUTIONAL CONVENTION CONFIRMS THE SETTLED UNDERSTANDING OF OUR TREATY-MAKERS AND OF THE SUPREME COURT THAT AMERICAN TERRITORY MAY BE CEDED BY TREATY

1. The discussion of the treaty power in the Constitutional Convention plainly discloses the awareness of the framers that treaties might frequently be a mechanism for the cession of territory. Indeed, as Mr. Berger's Addendum shows, this awareness manifested itself more than once in proposals to surround the treaty-making process with special safeguards when it involved the cession of territory.

2. One such proposal would have stipulated "that no Treaty shall be made without the concurrence of the House of Representatives, by which the territorial boundaries of the United States may be contracted. * * * IV *Farrand, The Records of the Federal Convention of 1787* (1937 ed.) 58. This proposal, advanced on September 7, 1787—very late in the Convention's deliberations—"was then debated, but the motion does not appear to have been made."

3. The lapsed motion of September 7 evidently reflected concern at the great power proposed to be lodged in two-thirds of the Senate. But there were counter-concerns—some members of the Convention were troubled at permitting one-third-

^a 133 U.S. 258 (1890). *Geofroy v. Riggs* is a particularly strong illustration of the capacity of treaties to regulate matters delegated to Congress: That case applied a treaty to rights of inheritance in the District of Columbia, notwithstanding that Article I, 8(17) confers on Congress the power of "exclusive legislation in all cases whatsoever" relating to the District.

^b 114 U.S. 525, 541 (1885). See also the following in *The Writings and Speeches of Daniel Webster* (1903): vol. IX at 78 *et seq.*, vol. XI at 270 *et seq.*, and vol. XII at 21 *et seq.* Set forth below, in Appendix A of this memorandum, is an exchange of letters between Story and Massachusetts Governor Edward Everett which evidences Story's and Marshall's shared recognition of the capacity of a treaty to effectuate a cession of territory. (For having drawn my attention to the Everett-Story exchange, I am particularly indebted to Professor Stefan A. Riesenfeld, currently Counsellor to the Legal Advisor of the Department of State).

^c With all respect, I submit that the two Supreme Court cases relied on by Mr. Berger to support the asserted exclusivity of legislative (as opposed to treaty) power to dispose of American territory, in no way undercut the doctrines so plainly announced in *Holden v. Joy*, *Jones v. Meehan*, and *Geofroy v. Riggs*. (1) The Court's opinion in *Sioux Tribe v. United States*, 316 U.S. 317 (1942), does refer, at pp. 324 and 326, to the "exclusive" Congressional power to dispose of United States territory, but the question which the Court there answered in the negative was whether the President, acting solely on his own authority, could "convey to the Tribe the same kind of interest in the lands affected as it had acquired in the lands covered by the Fort Laramie Treaty. * * * (Id. at 324) (emphasis added.) Thus, *Sioux Tribe v. United States* properly held presidential power over federal lands to be subordinate to Congressional power, and did so against an historical background clearly illustrating that treaties are as effective as statutes to transfer title to federal lands. (2) *Wisconsin Central R.R. Co. v. Price County*, 133 U.S. 496 (1890), also relied on by Mr. Berger, holds state authority over federal lands to be subordinate to Congressional authority: when one bears in mind that the opinion was published in the same volume of the United States Reports as *Geofroy v. Riggs*, and indeed was written by the same Justice (Justice Field), it is quite clear that the Court's insistence on the paramountcy of Congressional power was directed solely at the rival power before the Court at that time—and not at the concurrent treaty power, which is, like Congressional power, part of "the Supreme Law of the Land." Article VI, 2.

plus-one of the Senate to block treaty ratification. Thus, on September 8, Rufus King "moved to strike out the 'exception of Treaties of peace' from the general clause requiring two-thirds of the Senate for making Treaties," and James Wilson then urged that "the requisition of two-thirds * * * be struck out altogether." And at this point, "A reconsideration of the whole clause was agreed to." II *Farrand* 547-48.

4. In the course of the ensuing debate, Roger Sherman stated that he "was against leaving the rights, established by the Treaty of Peace, to the Senate, & moved to annex a 'proviso [sic] that no such rights shd be ceded without the sanction of the Legislature.'" According to Madison's notes, "Mr. Govr. Morris seconded the idea of Mr. Sherman." Nonetheless, the proposal of September 8, like the proposal of September 7, does not appear to have ever been put to a vote.

5. Mr. Berger, in his Addendum, mentions the September 7 proposal and speculates on the inference to be drawn from the failure of the Convention to pursue the matter:

"Why was the motion not made after debate? Presumably, the matter was postponed for consideration [when Article IV,] Section 3(2) would come up for discussion. During this subsequent discussion of 'The Legislature shall have power to dispose of * * * the territory. * * *', it is singular that no mention was made of an exception for disposition under the treaty power. II *Farrand* 466. Non-mention is the more remarkable because such an exception would carve out an area of undefined magnitude from the power conferred, a matter which would affront the democratically minded who placed their faith in the House. It seems more reasonable to infer from the history that Article IV, Section 3(2) was designed to set at rest the fears that territory might be ceded without the concurrence of the House."

6. Mr. Berger's inference might be thought to have some modest plausibility if the discussion of Article IV, (2), to which Mr. Berger refers (the discussion summarized at II *Farrand* 466), had in fact been "subsequent" to the discussion of the treaty power. But it was not. The discussion of Article IV 3(2) referred to by Mr. Berger took place on August 30, a little over a week prior to the debate on the treaty power adverted to above.

Conclusion

As noted earlier in this memorandum, the thesis put forward by Mr. Berger is essentially the narrow Jeffersonian conception of the treaty power which would "outlaw treaties on matters as to which Congress could legislate domestically"—a conception which "has now been long dead." *Henkin, supra*, at 149. In a sense, then, it seems anomalous to be reexamining this ground in 1978. And the anomaly is only underscored by the fact that, in our own time, the major constitutional debate about the scope of the treaty power has been of a wholly different nature: Can the treaty-makers, through the exercise of their authority to act on all matters of international concern, empower Congress to enact legislation going beyond its specifically enumerated grants of power?

Yes, the Supreme Court held, in *Missouri v. Holland*.⁹ Is the treaty power then wholly unrestrained, provided it is exercised in an area of international concern? No, the Supreme Court announced, in *Reid v. Covert*.¹⁰ The treaty-makers, like all other departments of government, are restrained by those prohibitions—most notably, those embodied in the Bill of Rights—to which all actions taken under the authority of the United States must conform. In sum, since 1920, when *Missouri v. Holland* was decided, the active questions as to the scope of the treaty power have grown out of the perception that the treaty power is, at least in theory, broader than the power of Congress to enact domestic legislation. Those questions are no longer as significant as they once were—in part because of the limitations on the treaty power announced in *Reid v. Covert*, and in part because the domestic legislative authority of Congress is now acknowledged to be far broader than was perceived half a century ago. In any event, the proposition that the treaty power is infinitely narrower than the Congressional power—the clear implication of the Jeffersonian conception which Mr. Berger has now revived—is a constitutional anachronism.¹¹

⁹ 252 U.S. 416 (1920).

¹⁰ 354 U.S. 1 (1957).

¹¹ Mr. Berger's concerns about the aggrandizement of executive authority—concerns rooted in the traumas of Vietnam and Watergate—do not advance analysis of the scope of the treaty power. Treaties are made by the President, but subject to the consent of two-thirds of the Senate—hardly a recipe for unrestrained Presidential power. Arguably, such concerns are pertinent when a President proposes to take major international initiatives on his own account

Footnotes continued on next page

If the proposed treaties with Panama are approved by a two-thirds vote of the Senate, and duly ratified, they will in my judgment, of their own force effectuate the cession to Panama of American title to the land and installations of the Canal Zone.

LOUIS H. POLLAK.¹²

January 19, 1978.

APPENDIX A

Exchange of Letters Between Governor Edward Everett and Mr. Justice Joseph Story, Taken From II, *W. W. Story, Life and Letters of Joseph Story* [1851], pp. 286-89:

To Hon. Joseph Story.

BOSTON, APRIL 14, 1838.

MY DEAR SIR: The legislature has adopted some resolves relative to the Northeastern Boundary of the United States, which have been presented to me for my official signature. One of them is in the following terms:

"Resolved, That no power delegated by the Constitution to the government of the United States authorizes them to cede to a foreign nation any territory lying within the limits of either of the States in the Union."

I beg leave to ask your opinion, (to be given confidentially or otherwise as you may deem proper,) whether you consider the principle asserted in this resolve, as a well-settled doctrine of Constitutional Law. I have carefully read what is said of the treaty-making power in your Commentaries, Volume iii. p. 354, et seq. At the close of 1502, you name certain restrictions on the treaty-making power, which must be assumed; but that of ceding a part of a State is not one of them. You add, however, the remark, "Whether there are any other restrictions necessarily growing out of the structure of the government will remain to be considered whenever the exigency shall arise."

The restriction in question (if it exist) must be one of this character, and I should prefer to follow your wise counsel, and let it remain to be considered, when the exigency arises. The present controversy does not appear to me to create such an exigency, for it is a question not of ceding an admitted portion of the territory of Maine, but of ascertaining the boundary between the British territory and ours. The resolve of the legislature, however, raises the abstract question, and I wish your advice, whether I can safely affirm it.

I am, dear Sir, with the highest respect, And Sincere attachment,

Faithfully yours,

EDWARD EVERETT.

I would observe, that it is my present inclination, if I do not sign the Resolves, to let them pass *sub silentio*, as they are only expressions of the opinions of the legislature.

CAMBRIDGE, APRIL 17, 1838.

To His Excellency Edward Everett.

MY DEAR SIR: In reply to your favor of the 14th inst. which I received by yesterday's mail, I beg to say, that I consider the Resolve referred to as very objectionable as a matter of Constitutional Law, I cannot admit it to be universally true, that the Constitution of the United States does not authorize the government of the United States "to cede to a foreign nation any territory within the limits of the States of the Union." If the proposition is true, then in case of war, it would be incompetent for the government by a treaty to cede any territory conquered during the war, and which might be indispensable to purchase peace. So a cession could not be made, even with the assent of the State within which the territory was situated; for neither the State nor the United States could alone cede it, and then both could not. Yet the cession might be of a nature calculated for the safety of both nations, and might be an equivalent for a like cession on the other side.

I remember to have had some conversation with Mr. Chief Justice Marshall, some years ago, when the subject was under discussion, with reference to the contested

Footnotes continued from last page

by executive agreement with a foreign power. Cf. 39 Op. Atty. Gen. 484 1941. They are not pertinent—indeed, they may properly be termed impertinent—when a President, acting in meticulous conformity with the procedures specified in the Constitution, has asked the Senate to fulfill the partnership role in the making of treaties which the Constitution expressly contemplates.

¹² Dean of the University of Pennsylvania Law School; Albert M. Greenfield University Professor of Human Relations, History and Law.

boundary in Maine. He was unequivocally of opinion, that the treaty-making power did extend to cases of cession of territory, though he would not undertake to say that it could extend to all cases; yet he did not doubt it must be construed to extend to some.

It appears to me that our legislature have very unnecessarily, and (as I think also) against our true public policy with reference to the contested boundary of Maine, stated this proposition. It may embarrass the government in its negotiations; and it is wholly gratuitous, — since, in a case of contested boundary, there is no pretence to say that an ascertainment of the true boundary involves the question of cession.

I always look with alarm and regret upon all attempts of our legislatures to settle constitutional questions in the heat of controversy, and under the impulses of party. Nor do I think that Massachusetts ought to commit herself upon any doctrine of this sort, at this time. I doubt its soundness; but I do not at all doubt its inexpediency. The time may arrive when our very existence and salvation as a nation, may depend upon the exercise of this very power. If the national government does not possess it, it is to all intents and purposes an extinguished right of sovereignty, for the States do not possess or retain it.

I see no objection to your leaving the resolve to its constitutional operation, *sub silentio*, if you think it best not to return it to the legislature with objections. I think the doubt of a constitutional point furnishes of itself a sufficient ground for rejecting a resolve embodying a positive declaration of it, unless there be an absolute necessity for some declaration on the subject.

What I have written I must ask you to consider as confidential, though I do not mean by this to say that I should object to its being seen by any of our confidential friends, such as Mr. Webster, if you should wish to consult him.

Believe me, with the highest respect,

Truly yours,

JOSEPH STORY.

[From the Congressional Record—Senate, Jan. 31, 1978]

THE PANAMA CANAL TREATIES

Mr. HARRY F. BYRD, JR. Mr. President, one of the Nation's ablest military experts is Adm. Thomas H. Moorer, U.S. Navy (retired).

Admiral Moorer is the only person in the history of our Nation to serve as commander in chief, Pacific Fleet, commander in chief, Atlantic Fleet, Chief of Naval Operations, and Chairman of the Joint Chiefs of Staff.

Admiral Moorer testified today before the Senate Armed Services Committee in regard to the proposed Panama Canal treaties.

His statement to the committee is an excellent one which I ask unanimous consent to print in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT BY ADM. THOMAS H. MOORER, U.S. NAVY, RETIRED

Mr. Chairman and Distinguished Members of the Senate Armed Services Committee: I am honored to be here as a witness before this Committee. For the past 12 years I have appeared here many times as a member of the Executive Branch of our Government. Today, I would like to make clear that I do not represent any particular Group, Organization, or Political Party. Rather, I am here as a very concerned Citizen who has had a high level professional involvement in the use of the Panama Canal—in peace as well as war—as it relates to the military security of the people of the United States.

Although I am prepared to answer questions concerning any aspect of the proposed treaties, I will focus my statement primarily on defense of the Canal in a local sense as well as the defense of the United States in a global sense.

While I was opposed to the disposal of the Panama Canal from the outset for global strategic reasons, and so informed the President in writing, I have now carefully studied the proposed treaties in detail and am even more convinced that ratification in their present form would be very detrimental to the national interests of the people of the United States for years and years to come.

As you know Mr. Chairman, what we are addressing here today is two Treaties, three Annexes, a Protocol, two Implementary Agreements—and now we have under consideration a sugar coated Amendment which is claimed to give the United States the "right" to defend the Canal and to "go to the head of the line" with her ships. The complexity of such a conglomeration together with the ambiguities in meaning have already surfaced and in my view will continue indefinitely. Certainly there has been quote after quote from Torrijos and his associates contradicting the interpretations placed on these Treaties by the U.S. negotiators. I can supply these quotes for the record, if desired.

Turning now to the global implications contained in these proposed Treaties. The Panama Canal is one of the four maritime gateways of the world, together with the Malacca Straits, the Suez Canal, and the Gibraltar Straits. Anyone who has observed Soviet actions since World War II and studied their literature concerning maritime affairs soon learns that the Soviets fully understand the importance of the Panama Canal, even if some here in Washington do not. Only last August a Soviet strategist, writing in Red Star—later published in England as well as in Cuba—stated that "the Canal Zone must be considered by the Soviet Union as a "Priority Zone." He then goes on to describe ways to attack the Canal, using Cuba, Puerto Rico and Colombia. Writings of this kind which have appeared from time to time over the years serve to reinforce my view that the prime reason that the Soviet Union accepts the burdensome support of Cuba is due to their desire to dominate the Caribbean, including the Panama Canal, as they greatly expand their maritime capabilities—both warships and merchant ships. We have here the development of a Torrijos-Castro-Moscow Axis. Castro has sent thousands of troops to Angola, Ethiopia, and Mozambique armed and transported by the Soviets. He has been to Moscow where he is greeted with open arms. Torrijos has been to Havana where he has been decorated by Castro while both extolled the success of their respective revolutions. He has been to Libya to visit Qaddafi who, next to Castro, is the most active international revolutionary—and rich besides after, like Castro, confiscating mil-

lions of dollars worth of property belonging to American citizens. When Torrijos overflew Havana on his return to Panama after the signing of the Treaties in Washington last fall, he sent the following message to Castro: "On my return trip to my country and flying above the sky of Cuba I salute you with friendship always. . . . In Latin America your name is associated with feelings about dignity that have been channeled toward a shameful period of colonialism." Also noteworthy is the fact that in July of last year a Soviet commission visited Panama seeking port and airport concessions and offering economic assistance.

I mention these things, Mr. Chairman, not because I am one who cannot keep up with the times and am still fighting the Cold War, as my critics suggest, but because I am convinced that the above actions and attitudes clearly point to the fact that these proposed Treaties are not, as claimed by the proponents, simply a long-delayed redress of the wrongs of American colonialism imposed on a helpless tiny nation. They cannot be viewed in such a simplistic way since they have worldwide implications. The defense and use of the Panama Canal is wrapped unextricably with the overall global strategy of the United States and the security of the Free World. I submit that, if the United States opts to turn over full responsibility for the maintenance and operation of such an important waterway to a very small, resource-poor and unstable country as Panama and then withdraws all U.S. presence, a vacuum will be created which will quickly be filled by proxy or directly by the Soviet Union as is their practice at every opportunity.

So Mr. Chairman, and Members of the Committee, do not be surprised if this Treaty is ratified in its present form, to see a Soviet and/or Cuban presence quickly established in Panama. In any event any confrontation over the "neutrality" of the Canal then becomes a confrontation with the Soviet Union rather than with Panamanian guerrillas or terrorists. With the Soviets already on the scene, fighting our way in—with or without the help of the small 1500-men Panamanian Army will not be without unnecessary loss of U.S. men and material, not to mention loss of the use of the Canal.

I believe a permanent U.S. presence in the Panama Canal Zone to be the only feasible and safe posture for all of the nations of this hemisphere. In saying this I must also emphasize that the year 2000 is meaningless insofar as the requirements for the security of this hemisphere are concerned. The threat, the problems, the global balance will not change as if by magic in the year 2000, so why should we pass this dilemma down to our children and grandchildren?

In view of the above, Mr. Chairman, I have yet to hear any convincing justification advanced as to why the United States should willingly sacrifice the strategic and economic advantages afforded the United States—and indeed all our friends and allies—by our exercise of full control and economical operation of the Panama Canal as we do today and have done for years. In fact, stripped to the essence I have heard only three reasons put forward in support of the proposed treaties: (1) By signing the new Treaties we will divest ourselves of the stigma and guilt we should feel over our ruthless colonialization of Panama. (2) If we do not surrender the Canal some unknown individuals in the Isthmus of Panama will blow it up. Since we are interested in use and not control let us give it away, it is defenseless any way unless we deploy 100,000 troops to Panama and start another Vietnam. (3) The Canal is not of much use. Traffic between oceans is a convenience but is not vital. Besides aircraft carriers and big tankers cannot use the canal and less than 10 percent of the merchant ships fly the American flag—so why the concern? The American people do not buy such logic, Mr. Chairman. Despite a steady drumbeat of often misleading statements highlighting the above positions even the staunchest supporter of the Treaties will readily admit that the American people are two to one against ratification of these Treaties. The people are well aware that the United States has never had a colony of any kind for the purpose of exploitation and that they have paid out more blood and treasure on behalf of mankind, worldwide, than any nation in history. They are aware of the effort it took to construct the Panama Canal. They know that Panama achieved her freedom and her very existence due to the Canal. The Canal does not owe its existence to Panama. The American people are aware of the part often played by the Canal in the rapid transfer of Naval Forces from ocean to ocean in case of an international emergency. But above all, the American people recoil over the thought that we should base our foreign policy on sheer fright or in response to threats. Nevertheless, they have been warned many times lately that failure to ratify these Treaties will result in riots and sabotage. Such encouragement to lawlessness and violence by the advocates of these Treaties could well make them self-fulfilling prophets.

With the above as background I would now like to be more specific as to the military aspects of the proposed Treaties as they relate to: (1) the military value of

the Panama Canal to our global strategy; (2) the defense of the Canal against an external threat; (3) defense against the internal threat; (4) the capability of Panama to defend, maintain, and operate the Canal, particularly after the year 2000 when American assistance is no longer available.

(1) The Military Value of the Panama Canal To Our Global Strategy.

The intrinsic value of the Panama Canal lies in its linkage of the Atlantic and Pacific Oceans, thereby saving 8,000 miles and 20 to 30 days steaming time from ocean to ocean. Expressed in military terms, the Canal provides the following: rapid transit of ships, personnel and supplies during periods of tension or actual conflict; flexibility in application of force; timely arrival at the scene of conflict; efficient use of shipyards, warehouses and training areas on both coasts of the United States, and a steady flow of logistic support. In fact, there is no feasible war plan for the United States, taking into account our reduced forces and extended commitments, that does not assume that the Panama Canal will be available for full time priority use. The only alternative that would permit the meeting of time scales of current war plans based on the threat in both the Atlantic and Pacific oceans would be a major buildup of Naval combat forces overall, together with a very large expansion of supply and ammunition storage facilities for both the Army and the Air Force on both coasts. The utility of the Canal has been demonstrated over and over again in times of emergency. World War I, World War II, the Korean War, the Cuban Crisis, and the Vietnam War all placed heavy loads on the Panama Canal which were efficiently handled to the great benefit of the United States.

I see no change whatever in the critical contribution of the Canal to our military strength in the near future or in the out years far beyond the meaningless years of 2000. Only this week the Department of Defense announced a military policy focused on NATO which is time-sensitive and hence demands early Naval use of the Canal. Furthermore, in any NATO war, which by definition is a war with Soviet Russia and hence World War III, the United States will require in Panama air bases, communications, fueling facilities, air defenses, etc., in order to conduct anti-submarine warfare against Soviet submarines which are bound to concentrate in the approaches to the Canal and use the bases we have allowed them to acquire in Cuba, such as Cienfuegos. Therefore, I believe it is most unwise to surrender all of our Panama bases as proposed in these Treaties.

(2) The external threat.

In my view there is no external overt threat to the Panama Canal except in the context of World War III involving the Soviet Union. Here the main thrust of our defense would be primarily the interception of any hostile or suspicious ship well clear of the territorial waters of Panama. However, this operation is now complicated by the inclusion in the proposed Treaties of the dangerous proviso that permits the warships and auxiliary vessels of all nations to transit the Canal freely, without inspection, search, or even surveillance, in time of war or peace, while the policing of the Canal is entrusted exclusively to the Panamanian police and fire departments. This guarantee to all nations does not wait until the year 2000 to become operative. It is immediately applicable despite the fact that the United States "shall have primary responsibility to protect the Canal" until the year 2000. This is responsibility without authority. We were not quite so foolish in World War I and World War II. President Wilson not only barred all enemy ships but also proclaimed that no enemy alien should "enter or be found within the Canal Zone." President Roosevelt amplified these prohibitions in World War II and no nation in the world ever questioned our right to protect, defend, and police the Canal and Canal Zone and adjacent waters, or to sink and destroy enemy warships wherever found. Even the Treaty of Versailles, which was not exactly favorable to the Germans, granted them the right to protect the Kiel Canal in time of war.

The external covert threat is real and exists today. As I have explained earlier, there is a link between Torrijos, Castro, and Moscow. The Soviets have air and naval base rights in Cuba, and they frequently deploy aircraft and ships to Cuba. We would be naive indeed if we did not expect the Soviets to establish direct or proxy presence in Panama at the earliest opportunity.

(3) The Internal Threat.

The proponents of these Treaties proclaim again and again that the only way to handle the internal threat is to ratify the Treaties and give up the Canal. It is repeated over and over again that we are not interested in ownership, only continued use, which can be acquired only with the help of the Panamanians. Otherwise, they say, 100,000 troops will be required to defend the Canal and we will immediately be plunged into another Vietnam. I do not accept any of these scare statements. In the first place, a major part of the income of Panama is due directly to the existence of an operating Canal. If the Panamanians make an effort to sabotage the

Canal they are the ones that will be harmed. Most of them know this. In the second place, it is a gross overstatement to suggest that 100,000 men will be required to defend against saboteurs even if they are supported by the 1,500 men Panamanian armed forces. I estimate that 50,000 or less would be adequate even in the face of an unusually large scale determined effort. The most likely attacks can be handled with present forces. So far as the fear of another Vietnam is concerned, there is absolutely no comparison. Vietnam is on the other side of the world, 10,000 miles away. It had at least 17 battle-hardened infantry divisions. It was supported materially and politically by both Soviet Russia and The People's Republic of China. The people of the United States were divided over Vietnam; but in this case the majority are firmly united when it comes to their Panama Canal. Finally, the Canal itself is tough. One hand grenade, or stick of dynamite, will not bring the Canal operations to a complete halt as some suggest. While I do not doubt that there could be student demonstrations motivated from time to time by—to quote Ambassador Bunker—"persons trained in communist countries for political action," I do not think they comprise a threat that will bring about closing of the Canal or serious confrontation. I should point out, however, that under the terms of the proposed treaties, the Canal Zone disappears immediately and this will complicate the defense against intruders and those bent on sabotage since no longer will it be possible to emplace secure electronic warning devices.

(4) The capability of Panama to defend, maintain, and operate the Canal after the year 2000.

The overall capability of Panama to maintain and operate the Canal after the year 2000 when the United States is required to withdraw is a troublesome point. In my view the custodian of such a waterway, so important to so many nations is obligated to operate it at minimum cost for the benefit of all, as the United States has done over the years. We have already had one sad experience in the case of Egypt, which assumed control of the Suez Canal in 1956. First Egypt chose to use the Canal for her own political purposes and denied its use to Israel. Israel retaliated and sank several ships in the Canal. Egypt, lacking any industrial capacity could do nothing about it. The Canal remained closed to all shipping for several years, causing great increases in the cost of world commerce. The Suez Canal would be closed today if the United States Navy had not opened it in 1974. In the case of Panama, her capabilities are far more limited than Egypt with a population of 40 million. In the first place, the Panama Canal with its locks, pumps, and electrical controls is extremely more complex technically than the sea level Suez Canal. Furthermore, Panama is a very small country with a population about the size of Atlanta, George., i.e., 1.7 million. She is led by a military dictator with Marxist leanings. Political opponents have been exiled. Until recently all political activity had been outlawed. The press is controlled. The country is heavily in debt, and spending 40 percent of its income carrying its debt. Panama has no heavy industry worth the name and is woefully lacking in management skills as evidenced by the fact that several large-scale construction projects attempted recently have failed. It is very doubtful whether Panama will acquire the capability to maintain and efficiently operate an industrial complex the size of the Panama Canal, even long after the year 2000.

Along with the capability to operate and maintain the Canal one must consider the contribution of the Panamanian Armed Forces in the defense of the Canal. What will happen when the United States leaves in the year 2000 under the terms of these proposed Treaties? How long before the Canal falls in unfriendly hands? With the second smallest population in Latin America, Panama's army consists of nothing more than 1,500 light infantry with no modern equipment. In addition, there are about 6,000 of the Guardia Nacional who are assigned police duties, including making certain that Torrijos remains in power through removal of political opponents. It is apparent that some of the Guardia Nacional, such as Colonel Noriega, the director of intelligence, are hostile to the United States. In any event, Panama's capability to defend the Canal is practically nil.

I would like to note at this time that the proponents of these Treaties frequently claim that ratification will not result in cost to the American taxpayer. This leaves me confused since the U.S. investment in the Canal is about \$7 billion and it will take about \$40 to \$50 million of appropriated funds simply to rearrange the U.S. base structure. Furthermore, the sudden increase of 30 to 40 percent in tolls is bound to be felt by both the U.S. importer and exporter of consumer goods and could become critical to our friends and allies in South America. Panama has already announced she intends to raise tolls and operate the Canal for profit.

Finally, Mr. Chairman, I will close with a brief discussion of the proposed Amendment which, it has been reported, has been designed to soften the strong and

vociferous opposition that has been continuously voiced by the American people at large. As I understand it, the proposed Amendment will cover two points: the right of the United States to defend the Canal against a threat to its "neutrality", and the right of U.S. ships to expeditious passage. With respect to the first point: who will decide that the neutrality has been violated? Suppose the existing government of Panama supports the insurgents, or claims that there has been no violation? Does the United States make a unilateral decision to intervene militarily in order to force the maintenance of neutrality? If so, how do we reconcile such action with another proviso in the Treaties whereby we agree not to interfere with the internal affairs of Panama? Listen to General Torrijos on this subject, while speaking to the 10th Congress of the Panamanian Students Federation on 15 September 1977. "I am not afraid, nor am I denying that I signed a clause which if misinterpreted by future U.S. generations could give rise to intervention. But I am not afraid, I know the youth we are producing. And in order for there to be intervention there must be people willing to accept intervention and these people here have no intention of accepting it." Rousing applause. The new amendment now being proposed may solve our domestic political problems but the big question still unanswered is: What problems will the United States face when she sets about to correct violations of neutrality and what practical actions do we propose to take? This has not been examined in depth.

Neither has the other point in the proposed amendment, "expeditious passage," been thought through in a practical way. Now listen to Mr. Escobar Bethancourt, one of the Panamanian negotiators on the subject: "Expeditious passage does not mean privileged passage. As a matter of fact the concept of privileged passage is rejected. . . . If, after examining the provision, the Gringos say 'I want to go first,' then that is their problem with the other ships waiting there. We cannot go that far." What do we do even if the Panamanians permit U.S. ships to go to the "head of the line" but then simply walk off the job for a coffee break? The captain of a ship cannot bull his way through this lock-type canal. He must have all controls skillfully manned.

What is very unclear in many of the Annexes, Amendments, etc., is who actually enforces the terms of these agreements. There are all kinds of guarantees but no guarantor. It is shocking, and indeed frightening, to me to observe that so many of my countrymen in high places are supporting the idea that if we try to keep the Canal, Panama will deprive us of its use, and therefore the only solution is to give it away thereby placing all the complex, delicate machinery and controls in the hands of a country whose interests, under influence of our enemies, could well be contrary to those of the United States.

Mr. Chairman, as I pointed out before, the American people are opposed to these Treaties by a significant majority. No one can contradict this fact simply by suggesting that the American people don't understand the fine print. They understand it only too well. So it is of some concern and disappointment to me to learn through the press that plans are now underway to utilize the new amendment so as to permit individual Senators, who choose to do so, to vote for ratification of the Treaties, while at the same time demonstrating to their constituents that they are strongly supporting their opposing position.

Assuming these press reports are correct, it is my judgment that the American people will not be deceived by such a tactic.

Mr. Chairman and Members of the Committee, during the past year the policy of the United States has been to loudly proclaim our support together with our willingness to punish those who oppose majority rule in far away places. The Panama Canal issue is one issue about which a very significant majority of the American people have taken a firm and public position. Why cannot we begin with majority rule right here at home?

In closing, let me repeat that I am strongly convinced of the following:

1. A maritime link between the Atlantic and the Pacific is vital to the security of the United States and will always be so.

2. The Canal is not vulnerable and can be defended.

3. A permanent U.S. presence will provide the best defense and the best insurance against a major conflict in the Caribbean area.

4. There is no reason whatever for the United States to feel guilty about our construction and operation of the Canal for the benefit of all maritime nations and Panama in particular.

5. Our South American friends, despite their public statements, do not want the United States to withdraw from Panama.

6. The provision in these Treaties will cost the American taxpayer millions of dollars.

Thank you Mr. Chairman.

THE PANAMA CANAL TREATIES

Mr. GRIFFIN. Mr. President, yesterday the Committee on Foreign Relations, by a vote of 14 to 1, favorably reported the Panama Canal treaties.

I ask unanimous consent that a statement which I prepared for use during committee deliberations be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT

This has been one of the most difficult issues I have confronted in my 21 years in the Congress. I have long recognized that a major revision in our treaty relationship with the Republic of Panama is desirable and could be in the interests of both countries.

I recognize the importance of maintaining close and friendly relations with the people of Panama and with the people of other nations throughout the hemisphere. I am deeply conscious of, and concerned about, the impact that outright rejection of the treaties could have on our relations in the hemisphere.

Sometimes political responsibility imposes upon public officials the necessity of choosing among several undesirable courses of action. That may seem to be the dilemma that we face with these treaties.

After months of agonizing consideration, I have concluded that I cannot consent to ratification of the treaties before us. I think they are fatally flawed in a number of substantive respects. In my view they do not adequately protect the interests of the United States or of other nations which depend upon the canal.

I will, of course, be more specific in a statement of my individual views which will be filed with the committee report. I might just point, however, to Article XII of the Panama Canal treaty, which deeply concerns me. It takes away an option of the United States, between now and the year 2000, to even consider the possibility of building a second canal, possibly a sea-level canal, in another country. Under these treaties we would tie our hands and deny ourselves that option, which I think would be very valuable and important.

I am concerned that too much of the treaty language (and in very important areas) is full of ambiguities—ambiguities so apparent that people representing each country are telling their respective constituents that the language means different things.

If there is concern now about defending the canal—with the troops we have stationed there—and that seems to be a concern of many people who support these treaties, there should be greater concern about what would happen after the year 2000 under the provisions embodied in these treaties. I don't find that the understanding reached (between President Carter and General Torrijos) is adequate to cover that concern.

I am also disturbed that between now and the year 2000 a dwindling number of United States citizens and a growing number of Panamanian citizens would be expected to operate and maintain the canal "as employees of the United States"—but under the laws of Panama, except to the extent that there is other provision made in these treaties. Not in the year 2000, but in 30 months after the treaties are ratified, the area now included in the Canal Zone would become subject to the laws of Panama, to the police of Panama, and to the courts of Panama. I think that is a situation that would be fraught with great difficulty. There is no mechanism, no machinery provided for in these treaties to resolve the disputes that would arise.

Furthermore, I believe the defects—and I have only focused on a few of those which concern me—are so basic and so serious that they cannot be remedied by trying to rewrite the treaties on the Senate Floor.

Although these treaties should not be ratified, I believe there is a course open to the Senate other than outright rejection. Despite all of his knowledge about the history of the canal, or perhaps because of it, David McCullough, the distinguished author of "The Path Between the Seas" acknowledged before the committee that he had experienced great difficulty in reaching a personal decision about the merit of these treaties. Although he finally decided, on balance, to support the treaties, he made a very profound and perceptive point in his testimony before this committee. I would like to quote him:

"... if we say 'yes' to these (treaties) in a grudging way . . . (because we think) we have painted ourselves into a corner and we have to get out . . . (that would be) unfortunate . . . (and) just as wrong, and in some ways a greater mistake than to say 'no' in the spirit of saying 'no' because (it should be) done right—because we don't want to have to come back in 15 or 20 years and have to do it all over again."

Under the Constitution, of course, the Senate's role is one of "advice and consent." Instead of consenting to these treaties, I believe it would be a wiser course for the Senate to exercise only its "advice" authority. In other words, without rejecting these treaties outright, I believe it would be wise for the Senate in this instance to advise the President to send the negotiators back to the drawing boards with instructions to persist until a more acceptable treaty can be fashioned.

I want to say in all sincerity that I respect the two Senate leaders and those of my colleagues who have come to a contrary conclusion—those who in their own minds are convinced that these treaties do serve the best interests of the United States. To the extent that they have the courage of their convictions, that is in the best interest of the Senate, because I believe with Edmund Burke that a Senator owes his constituents his judgment and should not sacrifice it to public opinion alone.

But, when the call on the merits of an issue is as close as this is, or as I perceive it to be, I think the judgment of the people ought not to be taken lightly. Very honestly and frankly, I have come to the conclusion that in this situation, as is often the case, the people are right.

THE PANAMA CANAL TREATIES: FURTHER MODIFICATION IS ESSENTIAL

Mr. DOLE. Mr. President, the Senate Foreign Relations Committee completed markup on the proposed Panama Canal treaties yesterday. Their recommendation of an amendment to the neutrality treaty concerning American defense and passage rights through the canal signaled a major shift on the part of both the committee and the State Department, regarding modification of the treaties.

The amendment recommended by the committee is, of course, virtually identical to my proposal of last October that the text of the "Carter-Torrijos understanding" be incorporated directly into the treaty itself—not as an "understanding," not as a "protocol" or "annex," but as an integral feature of the document we are asked to ratify.

When the Senator from Kansas introduced the same amendments on October 17, there were some who said it was an obstructionist tactic. Others said that an understanding might be needed to clarify U.S. defense and passage rights, but that a treaty amendment was neither practical nor necessary. Still others—including the State Department—said that the treaties would stand on their own merits and no further alterations were desirable or necessary. I am happy to say that after 4 months of work by this Senator, as well as others, we appear to have got our point across.

MORE TO BE DONE

But let me emphasize that this initial improvement does not eliminate some of the most troublesome aspects of the proposed treaties. While progress has been made in protecting America's vital interests, the threshold of acceptability has not yet been crossed, in this Senator's view. There is more that can and must be accomplished if the Panama Canal treaties are to guarantee that future generations do not have to grapple with problems created by

these treaties. My position is not one of obstinacy, but of commitment to the principle that we should not create problems for the long run, by glossing over our misgivings in the short run.

The Senate must still confront the very important issues of the duration of the transition period, our rights to a base agreement in Panama after the year 2000, and whether we are to close our options to construct a new canal outside Panama if we so choose. These and other matters will be thoroughly discussed, I am sure, during the forthcoming Senate debate on these treaties.

Finally, I think it is important to note that the Senate's primary responsibility in the ratification process is to determine whether these treaties are in the Nation's best interests—not whether or not our actions might lead to further negotiations or referendums in Panama. There has developed among some Members a "preoccupation with the plebiscite problem," to the extent that this has become the foremost point of attention in their treaty ratification efforts. In making every effort to avoid the necessity of further treaty negotiations or popular referendums in Panama, the Senate risks the obvious inclination to overlook serious defects and shortcomings in the treaties. As undesirable as further delays might be to the State Department or the Panamanian Government, it is essential that the U.S. Senate fulfill its obligation to fully "advise and consent" on the substance of the treaties.

That is why further amendments and reservations may be necessary, and may well be approved by the Senate during the next several weeks. Our attention must remain directed to the long-term consequences of the treaty, and not to the inconveniences of the moment.

THE PANAMA CANAL TREATIES: ANSWERS TO QUESTIONS ABOUT SENATE RATIFICATION

Mr. DOLE. Mr. President, I want to direct the attention of my colleagues to two documents which may facilitate the forthcoming Senate debate on the proposed Panama Canal Treaties. Both contain highly relevant information pertaining to the treaty ratification processes of the United States and Panama, and I believe that every Member of the Senate will want to be thoroughly familiar with these basic facts before debate begins.

The first document, prepared by the Senate steering committee, is an authoritative review of the distinctions between treaty amendments, reservations, and understandings. Citing a number of historical precedents, this paper clarifies the impact and the consequences of the various treaty modification procedures. There are important differences that every Member of the Senate should be aware of, as this may well be a point of contention in the forthcoming debate.

The second item is a report prepared by the Library of Congress at my request, detailing the treaty ratification provisions of the Panamanian Constitution. The report suggests specific conditions under which a new popular plebiscite might be required in Panama as a result of Senate action.

Mr. President, I ask unanimous consent that both of these documents be printed in the Record.

There being no objection, the documents were ordered to be printed in the Record, as follows:

UNDERSTANDINGS, RESERVATIONS, AND AMENDMENTS TO THE INTERNATIONAL TREATIES

Under the Constitution, the Senate has the role of providing advice and consent to the President on international treaties. The popular misconception notwithstanding, the Senate does not ratify treaties; this act is constitutionally part of the President's role. The "advice" it provides is nonetheless binding on the Chief Executive. In its first years of existence, the Senate limited its actions to acceptance or rejection of treaties. A precedent was set in 1794, however, when an amended version of the Jay Treaty was approved; since then modifications have been included in about sixteen per cent of all international treaties approved by the Senate.

In approving changes on the floor of Congress, the action of the Senate is not technically that of "amending" a treaty (an act which is not within its constitutional province), but rather that of giving detailed "advice" to the President, who, if he decides to proceed with the treaty, is bound to accept it and initiate whatever additional negotiations with the other parties these changes might entail. Changes made by the Senate have at times been quite substantive. The Gadsden Purchase Treaty of 1853 with Mexico was virtually redrafted on the Senate floor; this example, although not representative, indicates the degree to which the Senate may impose fundamental changes. In stipulating conditions, moreover, the Senate has often approved provisions differing sharply with the views of the President or the other nation involved. According to statistics compiled in 1967, one out of every three treaties approved conditionally by the Senate up to that time was subsequently rejected either by the President or another party for the agreement.

There are several kinds of modifications: statements, declarations, understandings, reservations and amendments. All have been employed by the Senate at one time or another. Unlike treaties, which must be approved by two-thirds of those Senators present and voting, these modifications are adopted by a simple majority vote. The Senate may also choose to express its views in the Committee Report, thus making its concerns part of the legislative history of the treaty.

The terms "understanding," "statement," and "declaration" are generally used for statements which clarify or explain a country's position on a given matter in the treaty, or which give notice of a certain policy or principle; these, in other words, are statements which clarify but do not change a contractual relationship.

A reservation, by contrast, is a statement whose effect is to alter the contractual relationship. The difference between an amendment and a reservation is not necessarily one of substance, but rather of procedure. By definition an amendment involves a change in the authentic text of the treaty, and results (if the President wants to proceed with the treaty) in further negotiations with the other parties leading to the adoption of new language. While new rounds of talks are frequently held as a result of reservations, a fundamental difference between amendments and reservations is that the latter do not organically lead to such exchanges.

Although the country imposing conditions may use whatever terms it chooses (understanding, reservation, etc.) to describe them, it is ultimately their substance, and in particular the other parties' perception of this substance, that determines how they are treated. Country A might label a condition as an "understanding," thereby implying that the statement is tangential to the basic operation of the treaty; Country B, however, may feel it is substantial enough to be a "reservation," and treat it as such. Similarly, just as Country A is free to describe a reservation as relating exclusively to its personal obligations, Country B has the right to assert it changes the contractual relationship between all the parties.

Upon receipt of the Senate's conditional consent, the President has several options. He may ratify the treaty, and later notify the other parties of the conditions (or follow these steps in reverse order); he may fail to execute ratification if he considers the conditions to be totally objectionable; and he may also return the treaty to the Senate with additional explanation or for further consideration. There are no limits, either procedurally or legally, to the number of times the Senate might be asked by the President to reconsider conditions it has already insisted on.

With regard to acceptance of reservations (or understandings, statements or declarations) by the other government involved, it is customary in bilateral Inter-American treaties for that government's view to be sought and obtained before ratification

takes place. If the conditions are found acceptable, ratification, whereby the instruments of ratification are exchanged by the two nations, can take place.

The second country may convey its acceptance of a reservation either explicitly or tacitly. With reference to the latter, if a country ratifies an agreement without making reference to a reservation by the other nation, but being in full knowledge of it, under traditional law its approval of the treaty is interpreted to embrace acceptance of the reservation.

While this procedure does not normally result in problems, confusion has occasionally arisen, with nations lodging objections after the ratification ceremony.

The second nation may also make explicit reference to its acceptance of a reservation in its instruments of ratification. This procedure makes its acceptance of the reservation binding beyond dispute. Consequently, were the legislative body of Country A concerned about Country B respecting its reservations, it could make ratification by the Chief Executive contingent of receipt of diplomatic messages from Country B explicitly acknowledging and accepting these reservations.

The response of the second party is not always one of simple acceptance of a reservation. At times, it may attach reservations of its own in response to those imposed by the first party. Traditionally, when such reservations are received by the United States after the Senate has finished its consideration of the treaty, they are dealt with by the Executive Branch. The President consults with the Senate on them, but does not normally submit them to that body for official consideration.

Other options open to the second country upon inclusion of reservations by the first are to indicate a desire to reopen negotiations, or to simply withdraw from the treaty.

Amendments, as has been stated previously, automatically lead to further negotiations, in the course of which the Chief Executive of the nation proposing these changes seeks to obtain the approval of the other party for the substitute language. The reopening of negotiations per se does not annul the agreement which has already been signed. Consequently, if an American President fails to achieve agreement by the other party on the proposed changes, he may resubmit the original text to the Senate for renewed consideration.

If any changes are made at all in the wording of the treaty, a new signing ceremony must take place, and the text submitted to the Senate for approval as though it were a new treaty. If this occurs, and the new language agreed to by the second party incorporates some, but not all, of the changes stipulated by the Senate, it is then up to that body to decide between approval of the new text of insistence on the remainder of its earlier amendments. Should it vote to take the latter course, the President would have to reopen negotiations yet another time.

In the case of amendments, the other parties to the treaty would also have to follow the steps provided for under its laws to gain approval of the new language. In the case of Panama, for example, that country's constitution requires a national referendum on any treaty relating to the Canal. Presumably, then, modification of the language of the Panama Canal treaties already approved by the Panamanian people would be contingent on a second referendum. According to the State Department, were General Torrijos to ratify an amended text on his own initiative, the legality of that treaty would be highly susceptible to challenge (and, by inference, the possibility exists that the 1903 treaty would still be in force).

SUMMARY

Historically, the Senate has frequently imposed conditions on the ratification of international agreements. If the Senate uses the language of "understanding," the implication is that the contractual relationship between the parties is merely being clarified. If the Senate attaches a "reservation," to the resolution of advice and consent, the inference is that the obligation incurred under the treaty is being modified. Finally, if the Senate adds an amendment, a change is being made which involves an alteration of the actual treaty text.

Upon receipt of the Senate's advice and consent, the President may ratify the treaty, informing the other parties of the Senate's conditions in the process (in the case of reservations and understandings); he may return the treaty to the Senate for further consideration; or he may simply lay the treaty aside, taking no further steps toward its ratification. When amendments have been added to the treaty by the Senate, the President must initiate further negotiations with the other parties, unless he selects to simply put the treaty aside. If a new text emerges from these negotiations, it must be submitted to the Senate for advice and consent as though it were a new treaty. Before ratification can take place, the other parties to the treaty

also have to obtain approval for the new text in accordance with the steps called for under their legal systems and constitutions.

PLEBISCITE FOR AMENDMENTS TO PANAMA CANAL TREATIES

PANAMA

The requester desires an opinion as to whether amendments to the Panama Canal Treaties would require a new plebiscite in Panama.

I. Constitutional provisions

The Constitution currently in force in Panama was enacted and came into effect on October 11, 1972.¹ According to its article 163 (4) one of the functions of the President of the Republic is "to conduct foreign relations, to accredit and receive diplomatic and consular agents, and to enter into international treaties and agreements, which shall be submitted to the National Assembly for consideration."

This provision, also present in all past Panamanian constitutions, has two important exceptions in the current constitution. First, article 277 (transitory) recognizes Brigadier General Omar Torrijos Herrera, Commander in Chief of the National Guard, as the Supreme Leader of the Panamanian Revolution, and, in order to ensure the fulfillment of the objectives of the revolutionary process, authorizes him to exercise for a 6-year period a number of public functions, one of which is the direction of the country's foreign relations.

The second exception related to treaties dealing with the Panaman Canal, which under the purview of articles 274 (transitory) of the Constitution, which reads as follows:

Art. 274. Treaties which may be signed by the Executive Organ with respect to the Panama Canal, its adjacent zone, and the protection of the said Canal, and for the construction of a new Canal at sea level or of a third set of locks, shall be submitted to a national plebiscite.

Finally, article 141 of the Constitution provides that the functions of the National Assembly of Municipal Representatives (*Asamblea Nacional de Representantes de Corregimientos*) include enacting laws for several purposes, among which is: "1. To approve or reject public treaties signed by the Executive."

As far as we can ascertain no other constitutional or statutory provisions regulate this subject.

II. The plebiscite of October 23, 1977

Law 33 of September 13, 1977,² submitted the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal to a plebiscite in the following terms:

Act 1. A plebiscite is hereby convened that shall take place on October 23, 1977, [with the purpose] that the citizens though their vote shall decide whether or not they approve the new Treaty of the Panama Canal, the Treaty concerning the permanent neutrality of the Panama Canal, and the related agreements and annexes signed between the Governments of Panama and the United States of America on Wednesday, September 7, 1977.

According to article 11 of the same law voters had to choose between ballots saying "yes" or "no" to the following proposition provided by article 10 of the same law:

"I agree with the new Treaty of the Panama Canal, the Treaty concerning the Permanent Neutrality of the Canal and the Operation of the Panama Canal, the minutes agreed upon, the exchanges of notes, maps, the related agreements, and the annexes signed between the Governments of Panama and the United States of America on Wednesday, September 7, 1977."

Neither the text of the ballot nor any other provisions of Law 33 of 1977 referred to future amendments to the treaties being approved by the Plebiscite of October 23, 1977.

In the Plebiscite the Canal treaties were approved by a wide margin by Panamanian voters.³ It appears, therefore, that the remaining constitutional step would be the enactment of the treaties as a law by the National Assembly, according to article 141 of the Constitution, cited above.

¹ *Constitution of Panama* [Organization of American States, Washington, 1974] (English version).

² *Gaceta Oficial*, Sept. 19, 1977.

³ *New York Times*, Oct. 25, 1977.

III. Conclusions

The 1972 Panamanian Constitution requires that treaties signed by the Executive concerning the Panama Canal must be submitted to a national plebiscite for their approval. Neither the Constitution nor any statutory provision states whether or not a plebiscite is required in the case of amendments to treaties already approved by a plebiscite. Therefore, the law governing the subject must be interpreted by resorting to sources other than the statutes themselves.

The requirement of a plebiscite for the approval of treaties dealing with the Canal was established for the first time in the 1972 Panamanian Constitution. Unfortunately, the materials available to this Library do not cover the legislative history of this Constitution or provide any other judicial, administrative, or even monographic sources related to this problem, preventing us from issuing a substantiated opinion on the subject at the present time.

We can note, however, some of the basic elements that may be considered, within the context of Panamanian law, for arriving at a definite opinion on the subject:

(1) The Plebiscite of October 23, 1977, as noted in part II above, approved the text of the Panama Canal treaties and related agreements and documents as signed by the Governments of Panama and the United States on a specific date: September 7, 1977.

(2) The eventual amendments to the treaties could range from mere formalities to substantial modifications to the nature, extent, and content of the treaties; therefore, the content and nature of the amendments to be introduced to the treaties may determine, to an important extent, the necessity for a new plebiscite.

(3) According to Panamanian law, the interpretation of this legal problem can be considered an attribute of the Executive, which is in charge of the conduct of foreign relations, but the National Assembly of Municipal Representatives could consider the problem while passing the treaties as a law. Also, the Supreme Court could eventually be asked to rule about the legality of the treaties and their formal approval is an important element of the case.⁴

(Prepared by Eduardo Abbott, Legal Specialist, Hispanic Law Division, Law Library, Library of Congress, January 1978.)

PANAMA CANAL TREATIES

Mr. ROBERT C. BYRD. Mr. President, I testified last Thursday at the Senate Foreign Relations Committee hearings on the Panama Canal treaties.

I ask unanimous consent that my testimony be printed in the Record.

There being no objection, the testimony was ordered to be printed in the Record, as follows:

STATEMENT OF THE HONORABLE ROBERT C. BYRD

Thank you, Mr. Chairman and members of the committee. I will not unduly detain the committee and its work today.

I certainly want to express my appreciation for the opportunity to appear before the committee today.

I want to commend you, Mr. Chairman, and commend the members of the committee for the diligence of the committee in giving such extensive consideration to the treaties and to the issues that are related to the treaties.

The record you have made in your hearings, involving a wide range of witnesses, constitutes an invaluable source of information on this subject for the public and for the Senate.

I particularly appreciate, Mr. Chairman, the manner in which you and the committee are responding to my request in regard to the timing of the conclusion of

⁴ Art. 188 of the 1972 Panamanian Constitution entrusts the Supreme Court with several functions, among which is the following: "1. Guardianship of the integrity of the Constitution, to which end it shall decide, after hearing the Attorney General of the Republic or the Solicitor General, on the constitutionality of laws, decrees, decisions, resolutions and other acts challenged before it by any person on the grounds of content or form." Based on similar provisions of past constitutions the Supreme Court has ruled on the constitutionality of laws and decrees approving treaties. For example: Judgments 1/63 of Jan. 22, 1963, and 12/63 of July 29, 1963, in *1 Jurisprudencia Constitucional* 424-26, 438-39 (Universidad de Panama, Seccion de Investigacion Juridica, Panama City, 1967).

your action on the treaties. In my letter of December 1, 1977, to you, Mr. Chairman, I asked the committee to attempt to report the treaties by about January 25 so that the Senate would be able to move to consideration of the treaties shortly thereafter, certainly in early February. I am gratified that the committee has been able to adhere to that schedule.

I know, Mr. Chairman, that you and your colleagues are aware of my announced position in support of the treaties, provided certain conditions, which I will shortly refer to, are met.

Today I want to reiterate that strong support. It will not be a passive support; it will be an active support. And, I want to elaborate on some of the reasons why I believe that ratification is the right step to take.

In reaching this decision, I have attempted to consider all of the relevant factors in an objective manner. An important part of this process was the visit to Panama in November by a delegation of Senators which I led. It was a seven-member Senate delegation, and on that delegation was Senator Sarbanes, who is present. I believe that he was the only member of your committee on that particular visit.

I am pleased to see that most members of this committee have also visited Panama in recent weeks.

I suspect that, as in my own case, the trip was of great benefit in furthering your knowledge and understanding of the issues involved.

Since I first had the opportunity to review the treaties in September, it has been apparent to me that it would be necessary to clarify and guarantee at least two important points, and that this would need to be done in order to gain public support for, and Senate approval of, the treaties. I stated this position as early as last September.

The two critical points as far as I am concerned are:

One, the rights of the United States to guarantee neutral access to the canal at all times, beyond the year 2000; and

Two, expeditious, or "head-of-the-line", passage for United States military and auxiliary vessels.

I stressed to President Carter the importance of clarifying these matters, these two points, before the Panamanian plebiscite on the treaties on October 23. Some members of this committee will recall a subsequent meeting at the White House at which this was discussed. Thereafter, on October 14, President Carter and General Torrijos agreed to the Statement of Understanding clarifying these two important points.

Our Senatorial delegation discussed this Statement of Understanding with General Torrijos when we were in Panama, as did your group and as did the delegation led by the distinguished member of the committee, our distinguished Minority Leader, Senator Baker. General Torrijos stated to our delegation clearly that he subscribed to the agreement and would be willing to sign it.

Furthermore, it was clear that the Panamanian people had been fully informed about these points before the plebiscite, particularly through the televised address to the nation by General Torrijos on October 20, as well as through newspaper accounts. Our delegation viewed a videotape of General Torrijos' October 20 address while we were in Panama.

In view of all this, there should not be any doubt about our right—and about the recognition of that right by the Panamanians—to defend the canal. However, because this will be a matter of importance to future generations—and so that there can be no question about the interpretation as enunciated by General Torrijos and President Carter in their joint statement—I have consistently taken the position that the substance of the October 14 statement should be formally approved and incorporated in appropriate language and through the proper parliamentary technique by the Senate. Senator Baker, the Minority Leader, has expressed similar concerns, and he and I have, upon several occasions, discussed the necessity for the Senate to take some formal, positive action in this regard. It is our intention to continue to work with members of the committee and with other Senators in seeing that such action is taken.

Senator Baker and I discussed this with some of you recently. We will continue to discuss it with you. The committee is well aware of our position in this regard.

Like most Americans, I take great pride in the Panama Canal. It represents a monumental achievement. Even in today's space age it remains one of history's outstanding engineering feats. As David McCullough, who testified before you a few days ago, wrote in "The Path Between the Seas," the creation of a water passage across Panama was one of the supreme human achievements of all time, the culmination of a heroic dream of 400 years and of more than 20 years of phenomenal effort and sacrifice.

However, while taking justifiable pride in the role that the United States played in constructing and operating the canal, we must also try to understand the pride and the aspirations of the Panamanians. It is their nation—their nation, not ours, it is not my State of West Virginia—that is bisected by a strip of land and water controlled by a foreign power. It is their country that is bisected by the Canal Zone.

One of the benefits of traveling to Panama was the opportunity not only to see things on a first-hand basis, but also to hear the views of the Panamanians. The trip of my delegation to Panama certainly heightened my awareness of how the Panamanians feel, of how American businessmen feel who are in Panama, of how Americans who are living in Panama feel, and of how Americans who live in the Canal Zone feel.

We met with people who are opposed to and supportive of the treaty. We met with the opposition lawyers group. We met with students. We met with Panamanian government officials and with our own government officials. We tried to get a first-hand basic viewpoint from as many sources as possible—both pro and con.

Our discussions with Panamanians, as well as with U.S. citizens, served as a reminder that the 13 years of negotiations under Republican and Democratic Administrations which led to the treaties involved a two-sided process, attempting to reconcile the interests of both nations.

During the period since the treaties were signed, I have been impressed by the good faith exhibited by the Panamanians. Panama's interests and our own interests are closely interwoven. And, after visiting Panama, I am more hopeful and more confident about that country's future political direction, particularly if the Senate approves these treaties, and if they are ratified by the President.

The Senatorial delegation of which I was a member expressed some strong concerns to General Torrijos about human rights and civil liberties in Panama. Senator Sarbanes, in particular, Senator Metzenbaum, and Senator Riegle were among those who expressed these concerns. General Torrijos pledged to that delegation that steps would be taken to abrogate certain repressive laws, including those which had limited the right of assembly and had provided for summary trial and detention.

He has subsequently informed me that these laws have been abrogated, and that action is being taken to insure greater press freedom as well.

Mr. Chairman, I have tried to focus my own analysis of the treaties on one basic question and I stated this in Panama. May I say, parenthetically, that there is no political mileage for any United States Senator in voting for these treaties. Any Senator who votes for these treaties, in my judgment, will have some of the political skin taken off his political nose. And, that is true in the State of West Virginia as elsewhere.

But I believe that as people become better informed concerning the history of the treaties, the content of the treaties, and the implications upon future relations with other countries, particularly Latin American countries, of ratification of the treaties—or, on the other hand, rejection thereof—I believe that a well-informed public, will see that the treaties in the long run are in the best interests of the United States.

This has been the basic question on which I have tried to focus, and I believe that my delegation felt the same. What is in the best interests of the United States? Is ratification of the treaties in the best interests of the United States?

I have concluded that the weight of the evidence argues convincingly that approval and ratification of the treaties are in the best interests of the United States. Indeed, these treaties better protect our long-term interests than does the 1903 Hay-Bunau-Varilla Treaty, which was never signed by any Panamanian.

Panamanians have long resented that treaty and the unusual circumstances under which it was concluded.

The new treaties would provide Panama with a greater stake in the canal and thus a stronger interest in its efficient and unimpeded operation.

I believe that those of us who have been to the canal are aware of the potential vulnerability of many of the canal facilities. I was particularly impressed by the obvious vulnerability of the facilities to sabotage, to terrorist activity, to guerrilla action. This was particularly apparent during our helicopter overflight of the canal. The potential threats cannot be overlooked.

However, under these treaties the United States would retain a high degree of control over the canal through the end of this century, as well as defense rights thereafter. We will have the right to take action against any aggression, or threat directed against the canal, or the peaceful transit of vessels through the canal after the year 2000.

This must be made clear by the United States Senate as it acts on the approval of these treaties.

In my view, these treaties are the best means of assuring continued access to and use of the canal—and that should be our primary concern.

I have been particularly impressed by the testimony of our top-ranking military officers in support of the treaties. The men who are responsible today—not yesterday, not 50 years ago—but those who are responsible today for the defense of this country support these treaties. The Joint Chiefs of Staff have pointed out that the strategic value of the canal, is in its use, in keeping it open. That is more easily assured if we enjoy cooperation and goodwill from the Panamanians, rather than confrontation with Panama or resentment on the part of the Panamanians.

Although we want to maintain ready access to the canal, there have been significant changes and advances in alternative modes of transportation in recent years. Further, our giant aircraft carriers, as well as the largest cargo ships and the new super tankers, are too big to transit the canal.

Mr. Chairman, I know the committee has looked at all aspects of the treaties, as I have endeavored to do. They rank among the foremost international issues of our time. The committee's action will, I believe, affect the course of international relations with Latin America for many years.

I hope the committee will conclude that, in the final analysis, these treaties are true to our own national values, and that ratifying them will be consistent with our role as a leader among nations. Approval of the treaties is particularly important for our future relations with Latin America and should open a new era of mutual trust and cooperation in inter-American relations.

In discussions with representatives of Colombia and Venezuela, I have found that they are very supportive of the treaties.

It has been claimed by some that approval of the treaties would give rise to increased communist influence in Panama. In my judgment, just the opposite is true. The best way to prevent increased communist influence is to approve the treaties. Our failure to do so would almost certainly give renewed impetus to extremist elements on the right and on the left in the area and would open the way for greater Soviet and Cuban involvement.

As I mentioned earlier, Panama's history is closely interwoven with our own. I believe that the Panamanians desire friendly relations with us. That is their natural inclination. These treaties offer the best way to assure good relations between our nations and to discourage the rise of communism in that area.

In closing, Mr. Chairman, I want to express the hope that the committee, in its recommendations to the Senate, will provide guidance for the Senate as to how the Senate might best meet the concerns that many of us have about the treaties, without creating the necessity for reopening the negotiations, and, I would hope, without creating the necessity for another plebiscite in Panama. That could be a situation fraught with danger and uncertainty and could undercut all that has been done to move us toward a successful resolution of the matter.

Mr. Chairman, the Panama Canal, as David McCullough has written, is an expression of that old and noble desire to bridge the divide, to bring people together. Certainly, the canal has done this in many respects. Now, however, the time has come to bridge the divide between Panama and the United States and for the two nations to work together in seeing that the canal continues to serve the people of the United States and Panama and the world.

I thank you, Mr. Chairman.

THE PANAMA CANAL TREATIES

Mr. LEAHY. Mr. President, the role of an elected representative in a democracy is not only that of a constituent servant. We are elected also to use our own best judgment, and it is my opinion that the elected official who abandons his judgment in favor of popular sentiment abdicates his responsibility to bring his own faculties to bear on the issues of the day.

If I believed I was sent to Washington by the people of Vermont simply to poll them and reflect the results in my own votes, I would be compelled to oppose the ratification of the Panama Canal treaties. But I do not believe that. On the contrary, I believe each of us is bound to come to our own determination of what is in the best interest of the Nation and the people of our respective States.

With that in mind, I am here this morning to announce that after months of studying the canal treaties and discussing them with many of my constituents, after listening to the public debate on the issue and in light of what I observed during my recent trip to Panama, it is my judgment that the treaties, as modified by the Carter-Torrijos clarification of October 14, should be ratified and I will work toward that end.

As a Nation which categorically rejects colonialism, our only valid interest in the canal is that it continue to operate in the manner it has since it was completed in 1914. We must insure that the canal will remain open to the world shipping and secure from military threat. The question then becomes how best to accomplish that. The answer is ratification of the treaties.

Prior to my trip to Panama, I had been told by a number of different people how difficult it would be to defend the canal from either internal or external attack. The Joint Chiefs of Staff estimate that at least 100,000 U.S. troops would be required.

But as I flew over the canal, it became clear to me how grossly I had underestimated the vulnerability of the canal. I am not a military expert, but with all due respect to our Armed Forces, I doubt the canal could be adequately protected by 100,000 American soldiers.

Given that situation, one can more clearly understand the opinion of Defense Secretary Harold Brown when he told the Foreign Relations Committee:

Ability to defend and control access to the canal is essential. But the issue is how that ability can best be assured—by a cooperative effort with a friendly Panama or by a garrison amid hostile surroundings.

If we learned nothing else from Vietnam, certainly we discovered the difficulty of fighting indigenous forces in their own jungle terrain.

By ratifying the treaties and truly making the Panama Canal Panamanian, we increase the stake the Panamanians have in keeping the canal open. Increased toll revenues will be a keystone of their national economy and colonial resentment can give way to nationalistic pride.

Those are a few of the pragmatic reasons for ratifying these treaties. But there are other reasons, reasons that I feel are ulti-

mately far more important in terms of our country's relationship with the rest of the world, and surely in terms of its relationship with Latin America.

As has been pointed out before, there are elements in the history of the canal that we cannot and should not look upon with pride. We cannot be proud that we fostered the Panamanian revolution from Colombia in 1903 and then concluded the original canal treaty with a Frenchman who never returned to Panama. We cannot be proud that that original treaty was never signed by a Panamanian.

But we have every reason to be proud of the way in which we have operated the canal. That operation has always been marked by scrupulous neutrality, and we have never operated the canal as a money-making venture. Rather, we have maintained it as a nonprofit service to world shipping. And obviously, the canal stands as an incredible technological feat today, to say nothing of the era in which it was built. Indeed, in this regard it ranks with the building of the pyramids and the landing of a man on the moon.

Despite this record of operation, the canal remains a constant reminder of an earlier, less enlightened era in our foreign policy. The memory is not a happy one for our American neighbors to the south and has proven to be a barrier to better relations with those neighbors. The Organization of American States unanimously supports the new treaties. To reject them would invite worsened relations with Central and South America.

But there is even more at stake than our relations with the nations of the Western Hemisphere. The entire Third World would regard rejection of the treaties as a further indication of our lack of commitment to political and economic justice for the developing countries.

Much has been written and said about how ratification of the treaties would play into the hands of the Communists. I believe the effect would be quite the opposite, for I suspect the Communists would rejoice at the loss in world opinion we would suffer if the treaties are rejected.

I will have more to say on these matters during the Senate debate on ratification as I plan to take an active role in that debate. Also, I will be sending my constituents a letter in which I will outline the arguments both for and against the treaties and detail my reasons for supporting them. I am sure most of them will be convinced of the merit of this decision.

This is not the most momentous issue of foreign policy that we face as a nation. Certainly the upcoming SALT treaty is of substantially greater world importance. But the Panama Canal treaties represent one of the most controversial questions in the country today. It is our responsibility to study and act on this issue rationally in the same way we would a more obscure bit of business. If that is our approach, it seems to me an inescapable conclusion that the option of ratifying these treaties will better insure the future operation of the canal than any military option available to us, and it will enhance the standing of the United States in our own hemisphere and in the world at large.

The greater and more powerful a country is, the greater the responsibility that country has to be just. The United States is the greatest and most powerful nation in the world—it can afford this act of overdue justice.

Mr. President, I yield back the floor.

Mr. ROBERT C. BYRD. Mr. President, will the Senate yield?

Mr. LEAHY. I certainly will yield.

Mr. ROBERT C. BYRD. Mr. President, I commend the Senator on his statement, on the logic of his statement, and on his courage in taking a position that is an unpopular one in any State, I would judge at this time. But the Senator has demonstrated this type of courage before, and he has demonstrated this kind of vision and understanding, and I am not surprised that he has taken the unpopular position in this instance, believing that in the long run his position is in the best interests of the country.

I applaud him and I salute him.

Mr. LEAHY. Mr. President, I might say that the decision is certainly made easier by the enlightened leadership on this position shown by the distinguished majority leader and the distinguished minority leader.

I discussed this matter with the President of the United States yesterday, and I made it a point to commend to the President the leadership of the Senate. There are many who, because of their office, because of their national office, such as the one that our distinguished majority leader holds, have far more at stake politically in taking the positions they have taken. Certainly that is a leadership position that commends itself to all of us.

I thank the distinguished Senator from West Virginia for his very, very kind remarks.

Mr. ROBERT C. BYRD. I thank the Senator.

PANAMA CANAL TREATY—EXECUTIVE N, 95—1

AMENDMENT NO. 18

(Ordered to be printed and to lie on the table.)

Mr. HATCH, as in executive session, submitted an amendment intended to be proposed by him to Executive N, 95—1, the Panama Canal Treaty.

Mr. HATCH. Mr. President, there is an important consideration regarding the Panama Canal Treaties that has been overlooked thus far in our discussion of these agreements. In our efforts to unravel all of the mysteries associated with the precise meanings of various provisions of the treaties as they appear in the English text, we have neglected to examine the language in the Spanish text to determine whether it accurately reflects the language in our own documents. I am persuaded that there are a number of discrepancies which warrant our concern.

Recently, the Senate steering committee, of which I am a member, prepared a comparative analysis of the English and Spanish versions of the treaties. This study is entitled "The English and Spanish Texts of the 1977 Panama Canal Treaties: A Comparison." It was written by Silvia Castellanos, a bilingual staff member of the committee, with the assistance of linguists and legal experts

drawn from the universities and the Library of Congress. The study contains a line-by-line analysis of the language in the two versions of the treaties, and concludes that "inconsistencies abound in the documents."

On January 25, 1978, my distinguished colleague from Alabama (Mr. Allen) inserted in the Record the overview section of this study, which summarizes the basic problems of translation in the documents. I commend Senator Allen for calling our attention to this study, and urge Senators to examine it closely. Copies of the full study are available at my office, 6317 Dirksen Senate Office Building.

Mr. President, these inconsistencies create a second layer of problems for the United States. Their presence means that we must contend not only with conflicting interpretations of the English text, but also the Spanish meaning of every word in the documents.

Why the State Department did not carry out its responsibility of insuring that the two versions of the treaties are substantively the same is a question that I cannot answer. I do know, however, that these discrepancies indicate carelessness on the part of the State Department, and arouse skepticism in my mind regarding State Department assurances in the past about the proper interpretations of the agreement and the intentions of the negotiators.

In anticipation of serious disagreements between the United States and Panama about these matters, I am today submitting an amendment to the treaties which would establish needed guidelines for the resolution of controversies pertaining to the proper interpretation of these agreements. The amendment provides that the English text shall prevail whenever there are differences of interpretation between the United States and the Republic of Panama.

Mr. President, I ask unanimous consent that this amendment be printed in the Record.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT No. 18

In the signature clause thereof, strike out "both texts being equally authentic" and insert in lieu thereof "but, in case of divergence, the English language text shall be binding on the two Parties".

SECRETARY VANCE CLARIFIES U.S. ECONOMIC COMMITMENT UNDER THE PANAMA CANAL TREATIES

Mr. STONE. Mr. President of great concern to many Americans has been the question: What economic commitments to Panama is the United States entering into under the Panama Canal treaties? Many people have been concerned that our financial commitments will be quite extensive and I have shared their concern.

For this reason I questioned the Department of State extensively during Senate Foreign Relations Committee markup of the treaties and proposed: First an amendment eliminating language from article XIII paragraph 1 of the main treaty requiring the United States to turn over the canal to Panama in the year 2000 "free from liens or debts" and second an understanding that no financial obligation

from the United States to Panama is established by ratification of the treaties other than the specifically stated toll revenue provisions of article XIII.

In response to my concerns, Secretary of State Vance today sent me a detailed letter stating clearly that:

First, there are no "hidden or secret" financial agreements or obligations between the United States and Panama arising from these treaties.

Second, the only financial obligations of these treaties are specifically stated in the treaty. Economic and military assistance to Panama would continue only by the regular annual appropriations process involving the Congress.

Third, there will be, at the end of fiscal year 1978, no Panama Canal Company outstanding long-term obligations. Any future liens and debts which may arise would be subject to United States control and approval.

This letter is a useful and informative declaration summarizing the nature of the economic relationship between the United States and Panama arising out of the Panama Canal treaties. It has clarified my concerns and will be a useful addition to the record for the Senate debate and a historical document for interpretation of this economic relationship between our countries in future generations. I ask unanimous consent that this letter be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

SECRETARY OF STATE,
Washington, D.C.

Hon. RICHARD STONE,
U.S. Senate.

DEAR DICK. This is with reference to the concerns which you raised during the Senate Foreign Relations Committee Hearings of January 27, and the proposals you made to clarify the nature of the U.S. financial obligation under the proposed Panama Canal Treaty. It is understood that the intended purpose of these two proposals is to ensure that ratification of the Panama Canal Treaty would impose no "hidden" financial obligations of the United States to Panama.

We wish to assure you that all proposed financial commitments to Panama under the new Treaty have been fully disclosed. There are no "secret" agreements. Moreover, we wish to set forth the following specific assurances with regard to the particular concerns you raised.

First, the only financial obligations to the Republic of Panama resulting from the Treaty are those specifically set forth in the Treaty and the two Agreements in Implementation. The contemplated economic and military cooperation programs described in my note to the Panamanian Ambassador of September 7, 1977, would not come into being unless and until (a) a further exchange of notes is entered into between the two Governments and (b) all applicable legislative and program criteria have been met with respect to each proposed project, including the availability of appropriated funds where necessary. These contemplated programs were intentionally made the subject of a separate instrument not legally related to the Treaty to assure that the rights and obligations of the Parties under the Treaty would not be contingent in any way upon the contemplated programs. In short, ratification of the Treaty would establish no obligation on the part of the U.S. with respect to these programs or any similar financial transactions that may be proposed in the future. Rather, these programs are to be addressed on their own merits in accordance with applicable U.S. law and program criteria.

Second, you expressed concern that the U.S. obligation under Article XIII(1) to turn the Canal over to Panama upon the termination of the Treaty in operating condition "and free of liens and debts, except as the two Parties may otherwise agree" be clarified. This provision was included in the Treaty in recognition of the fact that until the termination of the Treaty on December 31, 1999, the Canal will be operated and managed by a United States Government agency in accordance

with U.S. law. Accordingly, the U.S. will retain the authority to structure the financial management of the Canal operation as it sees fit.

Our management authority under the Treaty is so broad that the U.S. could, for example, authorize the new Commission to borrow funds from private sources. Accordingly, it was considered appropriate to provide Panama the assurance contained in the quoted phrase that the U.S. would turn over the Canal free and clear, and not subject to a mortgage to which Panama did not consent.

In this connection, I would note that the U.S. has always operated the Canal on a self-sustaining basis, and that the Panama Canal Company has never had to exercise the authority granted it by law to borrow from the U.S. Treasury. In FY 1976 it did use its legal authority to defer \$93 million of certain statutorily required payments to the Treasury. It has already paid part of this deferred amount and will pay the remaining \$39 million in FY 1978. Once this payment has been made, the Company will have no outstanding long-term obligations and will have continued its record of meeting all its expenses from operating revenues.

The Treaty does, however, provide that if the two Parties agree, liens and debts may be carried over. For example, during the last years of U.S. operation, a major capital improvement might seem desirable, but the U.S. might not wish to finance all of the expenditures required given the remaining length of its tenure as Canal operator. In these circumstances, the Parties could agree to an arrangement whereby Panama would assume responsibility for amortizing the debt involved in the investment when it took over management of the operation. Thus, the Treaty embodies a balanced and responsible approach to the problems involved in a transition from one manager to another.

I trust that the foregoing clarifications and assurances will fully meet the important and legitimate concerns you so clearly defined during the Committee hearings.

With warm regards,

Sincerely,

CYRUS R. VANCE.

THE PANAMA CANAL

Mr. THURMOND. Mr. President, I have before me an excellent article which appeared in the Tuesday, November 29, 1977, New York Times on the Panama Canal controversy.

It was written by one of our most respected diplomats and statesmen, our friend John Davis Lodge.

Mr. President, this is a scholarly article which should be brought to the attention of each Member of the Senate before the debate begins on the canal treaties, and I, therefore, ask unanimous consent that it be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

THE CANAL: A RAMPART

(By John Davis Lodge)

WESTPORT, CONN.—The principal arguments veliemently raised in support of the Panama Canal treaties are not altogether convincing.

It is alleged in screeching tones that we stole it. That is contrary to the record. It was an act of constructive statesmanship by one of our great Presidents, Theodore Roosevelt. It constitutes a notable public service by the United States to the entire world. We should not be apologetic but proud of this unprecedented engineering achievement. We succeeded where the French failed. But for us, the Panama Canal would not exist. In one way or another it has been paid for by us many times over.

Should we now say that the Louisiana Purchase, by which President Thomas Jefferson bought one-third of the United States from Napoleon for \$15 million, was a steal and that therefore we should return this vast area to France? And how about Alaska? And Hawaii?

It is asserted that the Panama Canal constitutes an anachronistic vestige of colonialism in a decolonializing world. Certainly the British, French, Spaniards and Portuguese have been shedding their colonies. But how about the Russians and their satellites? Are these satellites not in effect colonies?

Moreover, the Panama Canal Zone is not a colony. It is inhabited by many thousands of Americans. True, it is not contiguous to the United States, as it is to Panama. Is contiguity then the criterion? Well then, how about Alaska, contiguous to Canada and close to Siberia. Should we hand Alaska over to Canada or perhaps to Russia? Alaska is a state as is Hawaii. Yes—and we could conceivably make a state out of the Panama Canal Zone.

It is declared that the Latin Americans resent the North American presence in the Canal Zone. Yet there are many others who fear Russian control of the canal by means of their control of Fidel Castro's Cuba and Castro's power and influence over Gen. Omar Torrijos Herrera, the current, temporary, unelected, left-wing, military dictator of Panama. And there are many others around the world who fear that the Panamanians, in spite of their threats and promises, will not run the canal as efficiently as we do. We run it very well indeed.

Argentina, Brazil, Chile, Bolivia, Uruguay, Paraguay and Ecuador have anti-Communist Governments and fear Communist infiltration of the Canal Zone. Many in these countries would dread our relinquishing control of it.

The principal argument advanced in favor of the treaties is that, as General Torrijos has warned us, if they are not ratified by the Senate there will be trouble in Panama—demonstrations, riots, bombs, guerrilla activity—and that therefore we must agree to the treaties as an act of appeasement—a mini-Munich, if you will—but, in effect, a shotgun arrangement.

We got tired of the Vietnam War, we refused to help in Angola, and so now it is proposed that 217 million Americans should cave in and run away before the ominous threat of 1.5 million people in Panama. This is the worst possible reason for ratification of the treaties, for it portrays us Americans as a supine pack of cowards, a paper tiger who will give in at the slightest threat of combat. It is succumbing to blackmail.

This is the argument that would cause us to lose face and friends and confidence in many parts of the world, particularly in South America, where our sanctimonious sermonizing about human rights has made us unpopular.

Certainly the treaties can properly be revised. However, let us recognize that in the mortal struggle in which we are inextricably involved, for the United States to surrender control of the canal will, in this jungle world, present the enemy with an advantage. While in some ways the canal may be obsolete, in unfriendly hands it could present a difficult and dangerous problem for the United States, especially in the event of a showdown.

The overriding question is this: Is it in the interests of our national security, is it in the best interest of the United States as leader of the non-Communist world to lessen our control of this vital waterway and rampart at a time when Russian imperialism, heavily and increasingly armed, is very much on the march? The national interest must be the determining factor. We should be governed by geopolitical considerations. If we move out, will the enemy eventually move in?

THE PANAMA CANAL TREATIES: A MISSING COMPONENT

Mr. HARRY F. BYRD, JR. I thank the distinguished majority leader.

Mr. President, on Tuesday, January 31, Mr. Herbert J. Hansell, legal advisor to the Department of State, testified before the Senate Armed Services Committee.

Mr. Hansell testified that if the proposed new treaties are ratified by the Senate, implementing legislation will need to be enacted.

The implementing legislation will contain crucial interpretations of the treaty language with regard to the appropriations process, pension costs, labor contracts, toll structure, employment practices, accounting procedures, commercial organization, jurisdiction of U.S. courts and law enforcement, and other important detail—including direct costs to the taxpayers.

Just how important is the implementing legislation?

Yesterday that question was put to the Governor of the Canal Zone, Maj. Gen. H. R. Parfitt, when he testified before the Senate Armed Services Committee.

Governor Parfitt replied that it would be most helpful to the Senate in its consideration of the proposed new treaties.

Elmer Staats, Comptroller General of the United States, told the Armed Services Committee that if he were a Senator, he would want to have available the implementing legislation before voting on the treaties.

But the most definitive statement was made by Mr. Hansell in his testimony before the Foreign Relations Committee on September 29, 1977.

I quote from Mr. Hansell's testimony, he being the legal advisor to the State Department:

Finally, Mr. Chairman, I am pleased to have this opportunity to report to this committee on the proposed legislation to implement these treaties that is being prepared for submission to Congress in the near future. That legislation, of course, will be an essential component of the overall program of implementation of the treaties.

For emphasis I repeat again Mr. Hansell's statement to the Senate Foreign Relations Committee:

That legislation, of course, will be an essential component of the overall program of implementation of the treaties.

Yet, that "essential component" has not been submitted to the Congress.

Mr. Hansell told the Foreign Relations Committee on September 29, that:

We hope to have a complete draft available for submission to both Houses of Congress within several weeks. We have been at work on it for some period of time. Certainly well before the end of October we expect to have it to you.

But October has come and gone, November has come and gone, December has come and gone, January has come and gone—and still the implementing legislation is not available to the Congress.

Under questioning Tuesday, Mr. Hansell could not tell the committee when such legislation might be available.

The point that I raise with the Senate and the point which I hope the leadership would consider before calling up the Panama Canal treaties is that legislation considered by the State Department "an essential component" in implementing the treaties—and promised to the Congress last October—is not available.

The fact that the legislation was promised to the Congress in October but is not yet available in February suggests to me that it is, indeed, "an essential component" and must, indeed, have wide ramifications and much complexity. Perhaps as a matter of state the administration wishes to withhold this "essential" component for fear of weakening support for the treaties.

But would it be fair, wise or appropriate to require the Senate to debate the proposed new treaties without the Senate having available the "essential component" of legislation that would be required if the treaties are ratified?

To determine whether the treaties are sound and should be enacted requires that all of the facts be available. Yet, the implementing legislation, essential to carrying out the purposes of the treaties, is not available for consideration by the Senate.

I urge delay in calling up the proposed Panama Canal Treaties until the implementing legislation is available for consideration—which legislation the Governor of the Canal Zone said would be helpful to the Senate and would shed light on the matter; and which legislation the State Department terms "an essential component" in implementing the treaties.

In conclusion, I emphasize, too, that the State Department on September 29, 1977 promised the Senate Foreign Relations Committee "a complete draft (would be) available for submission to both Houses of Congress in several weeks."

I have no desire merely to delay consideration of the treaties; I do feel it important to have "essential" components available when the debate begins.

I should think, Mr. President, that the proponents—even more, perhaps, than the opponents—would want this information available to avoid potential serious misunderstanding with Panama and possible difficulties with the House of Representatives in obtaining enactment of implementing legislation.

In ending, I ask this question: How can the treaties be properly debated when essential components are missing?

I thank the distinguished majority leader for yielding to me.

SENATE RESOLUTION 268—PROVIDING FOR RADIO COVERAGE OF SENATE PROCEEDINGS DURING CONSIDERATION OF THE PANAMA CANAL TREATIES

Mr. ROBERT C. BYRD. Mr. President, for the Senator from Rhode Island (Mr. Pell), on behalf of the Committee on Rules and Administration, I send to the desk a resolution, together with the committee report thereon, and ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER (Mr. Hart). The resolution will be stated by title.

The legislative clerk read as follows:

A resolution (S. Res. 268) providing for radio and television coverage of proceedings of the Senate during consideration of the Panama Canal Treaties.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution, which had been reported from the Committee on Rules and Administration with amendments.

Mr. ROBERT C. BYRD. Mr. President, I ask that the clerk read the amendments. They are very brief.

The legislative clerk read as follows:

On page 1, line 3, strike "and television coverage (including and making of videotapes)" and insert "coverage (including radio broadcast recordings)";

On page 2, beginning with line 1, strike through and including line 6, and insert in lieu thereof the following:

SEC. 2. Under such terms and conditions as the Committee on Rules and Administration may prescribe—

(1) radio coverage of proceedings in the Senate chamber provided for in the first section shall be made available to public and commercial radio broadcasting stations and networks; and

(2) recordings shall be made available to such stations and networks, to Members of the Senate, and to such other organizations and persons as the Committee may authorize.

On page 2, line 7, strike "and television coverage" and insert "coverage and recordings";

The amendments were agreed to.

The resolution, as amended, was agreed to, as follows:

Resolved. That the Committee on Rules and Administration be and is hereby authorized and directed to provide for radio coverage (including radio broadcast recordings) of proceedings in the Senate Chamber during consideration of the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, both signed at Washington, District of Columbia, on September 7, 1977. Such coverage shall be provided for continuously at all times while the Senate is considering the treaties, except for any time when a meeting with closed doors is ordered.

SEC. 2. Under such terms and conditions as the Committee on Rules and Administration may prescribe—

(1) radio coverage of proceedings in the Senate Chamber provided for in the first section shall be made available to public and commercial radio broadcasting stations and networks; and

(2) recordings shall be made available to such stations and networks, to Members of the Senate, and to such other organizations and persons as the Committee may authorize.

SEC. 3. The radio coverage and recordings of proceedings in the Senate Chamber under this resolution shall be carried out in such manner as the Committee on Rules and Administration shall prescribe.

Amend the title so as to read: "Resolution providing for radio coverage of proceedings of the Senate during consideration of the Panama Canal Treaties."

The title was amended so as to read.

Resolution providing for radio coverage of proceedings of the Senate during consideration of the Panama Canal Treaties.

Mr. ROBERT C. BYRD. Mr. President, does the amendment to the title strike out the words with reference to television?

The PRESIDING OFFICER. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

I move to reconsider the vote by which the resolution was agreed to.

Mr. GLENN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PANAMA DRUG TRAFFIC: NEW EVIDENCE, OLD EXCUSES

Mr. DOLE. Mr. President, nearly 4 months ago I advised the Senate of certain allegations I had received of direct involvement by Gen. Omar Torrijos and other members of his regime in drug trafficking in the United States and elsewhere. On October 13, I suggested that these charges, if true, could prove relevant to the Panama Canal Treaty issue. I feel now, as I did then, that the credibility and the personal integrity of General Torrijos and his colleagues will bear upon their reliability as Panama's guarantors of the new treaties.

Furthermore, since ratification of these proposed Panama Canal Treaties will definitely strengthen the political and financial status of the Torrijos regime, I maintain that it is important for us to know in advance if we will be bolstering a corrupt government which facilitates transport of illegal drugs to our own shores.

EFFORTS TO SECURE INFORMATION

Mr. President, I think that any Member of Congress who became aware of such allegations would feel a responsibility to call for full disclosure of relevant materials. This is what I have attempted to do during the last 15 weeks, only to find those efforts frustrated by bureaucratic roadblocks. Two full months after filing a "freedom of information request" on October 14, I received 75 pages of highly censored material from the U.S. Drug Enforcement Administration. I was advised that additional DEA files, as well as the deleted portions of the files I received, could not be provided because it could "jeopardize" national security or U.S. foreign policy interests. In late December, I filed an appeal with the Department of Justice, which is currently reviewing the case.

NEW MATERIALS SURFACE

Despite the cloak of secrecy that the executive branch has wrapped around its files on the alleged Torrijos drug connection, the matter will not simply go away. To the contrary, materials relating to the allegations have continued to surface in recent months through unofficial channels.

The latest development that I am aware of occurred on Tuesday of this week, when two copies of Drug Enforcement Administration files were delivered to my office in a plain white envelope by an unknown source. The documents appear to be authentic photostatic copies of DEA and Bureau of Narcotics and Dangerous Drugs files. Both contain agent reports which refer by name to Gen. Omar Torrijos or members of his immediate family, and implicate them in narcotics traffic going through Panama.

Mr. President, these documents raise more questions than they answer. Perhaps the reports contained within the documents are unfounded. Perhaps the documents themselves are forgeries. But when I sent similar documents to the DEA administrator on October 21 asking for confirmation of authenticity, no response was received. This is typical of the lack of cooperation that the executive branch has demonstrated so far in my efforts simply to determine whether there is any substance to these allegations.

Mr. President, I will not release the two documents which I received yesterday. I believe it is a responsibility of the U.S. Drug Enforcement Administration to make a full disclosure of its files in this regard, and I intend to pursue the matter until they do so. At the moment, I am of the opinion that "someone is trying to tell us something" about drug-trafficking information that is in the possession of the executive branch of our government. As a Member of Congress who is concerned both about the drug traffic coming into this country and about the pending Panama Canal treaties, I feel a responsibility to pursue the matter to its end.

I can say with certainty that the particular items which were delivered to my office on Tuesday by an unknown source were not contained within the 75 pages of sanitized documents which I received from DEA in December, in response to my "freedom of information request." If these documents are authentic, then they were willingly and knowingly withheld from me by the DEA. It is for that reason that I raise the question: Just what else does the executive branch know about the Torrijos drug-trafficking operations, and why is it being withheld from Members of Congress who seek to learn the truth of the matter?

Mr. President, when the Senator from Kansas visited Panama in December of last year he had an opportunity to visit with Gen. Omar Torrijos. General Torrijos seemed very disturbed that anything concerning drug traffic might become involved in the canal treaty debates, and I agreed with General Torrijos. I said the matter should be disposed of. It should not be an issue in the Panama Canal Treaty debate. General Torrijos indicated to this Senator that someone was playing games. He said, "Some agency, your own agency is playing games with you. I will send you the information."

Well, so far General Torrijos has not forwarded the material, but I have written General Torrijos. I have asked for the information. The Senator from Kansas believes we should debate the treaties on the merits. We should not have side issues.

But the Senator from Kansas also believes this may not be a side issue. And how do we know if our own agencies, our own Government will not give us the information? Why does the DEA withhold information? Why does the DEA withhold information from this Senator and others who have made the requests?

What is this national security interest that must be protected? What about the rights of Americans? What about the future of the canal itself?

So far the Senator from Kansas said today as I said on this floor many weeks ago all the Senator from Kansas asks is cooperation, some spirit, some effort, some indication, just some indication that Mr. Bensinger and the Drug Enforcement Administration are will-

ing to give us some assurance that there is not any involvement. The Senator from Kansas can only speak for himself, but if that is forthcoming this Senator will not raise that in the canal treaty debate, and I would hope that they are listening.

Mr. President, I yield the floor.

THE PRESIDENT MISLEADS THE PEOPLE ON THE PANAMA CANAL

Mr. HELMS. Mr. President, the President of the United States last night talked to the people of the United States by television and radio about the Panama Canal. He said that much of the opposition to the proposed treaties was based upon misunderstanding and misinformation. His statement is quite understandable when one contemplates the misunderstanding and misinformation disseminated by the President himself last night.

I admire the President personally, but, candidly, his statements of alleged fact were far from the truth. This Senator naturally expected that the President would strive to present his treaties in the best possible light, and that he would present favorable interpretations and conclusions. But I expected that Mr. Carter would base his statements on fact and not fiction. One is forced to the conclusion either that he was misleading the American people unintentionally, or he was misleading them intentionally. There is no alternative to those two possibilities.

Let us take just one minor statement—a minor issue really, but important in building up the myth of U.S. “guilt.” Mr. Carter said that the 1903 treaty “was not signed by any Panamanian.” The President was obviously referring to Philippe Bunau-Varilla, who negotiated the treaty with Secretary Hay of the United States. It is true that Bunau-Varilla was a Frenchman; but one of the first acts of the new Panamanian Government in 1903 was to issue full credentials to Bunau-Varilla as Panamanian Ambassador Extraordinary and Plenipotentiary. He had full powers to sign the draft, which he did. But the formal signing did not take place until December 4, 1903.

On that date, the following Panamanians placed their signatures on the treaty:

Junta members: J. A. Arango, Tomas Arias, Manuel Espinosa B.

Minister of Interior: Eusebio A. Morales.

Minister of Foreign Relations: F. V. de la Espriella.

Minister of Justice: Carlos A. Mendoza.

Minister of Treasury: Manuel E. Amador.

Minister of War and Marine: Nicanor A. de Obarrio.

Subsecretary of Public Instruction: Francisco Antonio Facio.

Needless to say, the 1903 treaty was reaffirmed in each of the treaties of 1936 and 1955, which were also signed by Panamanians, and ratified freely by the Panamanian constitutional process.

Nor must it be thought that the treaty was unfair to Panamanians or that the Senate would consent to it without persuasion. If the future was indeed in doubt, which is why Secretary Hay was attempting to persuade Senators that it was “vastly advantageous to the United States and—not so advantageous to Panama.” Secre-

tary Hay, like President Carter after him, was merely, tailoring his words to a reluctant Senate.

But even on more substantive issues, the President shaded the truth. On the issue of national security, for example, Mr. Carter was less than forthright when he said:

Throughout the negotiations, we were determined that our national security interests would be protected * * * and that our military forces would have the permanent right to defend the canal if it should ever be in danger.

It is to be assumed that he would try to interpret the ambiguous defense provisions favorably; but the fact is that the negotiations backed down from the unilateral right of military intervention, the only right that would give the canal adequate protection.

In hearings before the Senate Armed Services Committee on Tuesday of this week, former Deputy Defense Secretary William Clements testified that he had negotiated a clear-cut clause granting unilateral intervention to the United States, one that was approved by the Defense Department, the State Department, and the National Security Council.

Mr. President, in response to a question which I put to him, he stated unequivocally that General Torrijos himself had approved that clause.

The language of the clause is as follows, and I think it is important that it be in the Record:

In the event of any threat to the neutrality or security of the Canal, the parties shall consult concerning joint and individual efforts to secure respect for the Canal's neutrality and security through diplomacy, conciliation, mediation, arbitration, and the International Court of Justice or other peaceful means. If such efforts would be inadequate or have proved to be inadequate, each party shall take such other diplomatic, economic or military measures as it deems necessary in accordance with its constitutional processes.

That is why Mr. Clements testified that he is now unalterably opposed to the Carter treaties. The most crucial issue in the whole treaty had been agreed upon by all parties concerned; yet the Carter administration backed down and accepted vague and ambiguous language.

Although the President stated last night that "the treaties are supported enthusiastically by every member of the Joint Chiefs of Staff," he neglected to mention that they are enthusiastically opposed by former members of the Joint Chiefs, and by the overwhelming majority of retired military officers. It was not long ago that I placed in the Record the names of 320 high-ranking retired officers who were willing to go public in opposition to these treaties.

Moreover, the "enthusiasm" which the President detected in the JCS support was noticeably absent among the JCS representatives who testified before the Senate Armed Services hearings last week. Adm. James Holloway, Chief of Naval Operations, for example, testified that it was his military judgment that it would be better for the United States to stay in Panama indefinitely with a military presence, rather than to try to go back in if there were trouble. He testified that he supported the treaties only on balance, for the sake of diplomatic considerations.

It is interesting to note, Mr. President, that not one scintilla of this information was conveyed, insofar as this Senator knows, to

the American people by the major media of this country. Why the blackout on what the Joint Chiefs actually said?

Similarly, the President's statement that "the treaties also have overwhelming support throughout Latin America" simply is not and can not be supported either by the experience of members of the Armed Services Committee who have traveled rather widely in Latin America, or by the objective situation.

I have visited the heads of state and high ranking military officials of countries which represent at least 75 percent of the population, gross national product, and geography of Latin America, and I have yet to meet one urging us to give up the canal to Panama. The distinguished Senator from Virginia (Mr. Scott) reported a similar response. And high-ranking defense experts, such as Lt. Gen. Gordon Sumner, Chairman of the Inter-American Defense Board, testified just the other day that he has yet to find a single member of the Board, other than Panama and the United States, who favors the treaties. The economic arguments alone are enough to sway their decisions, for the canal, proportionately, is far more important to the health of their economies than to ours.

Perhaps that is why the two biggest Latin American nations, Brazil and Mexico, did not send their Presidents to the signing ceremony, Guatemala has broken diplomatic relations with Panama, because Torrijos has promised aid to the terrorists in Belize. And in 1975, Panama had to call off a scheduled meeting in Panama City of all Latin Presidents because so many of the leaders refused to come and dignify Torrijos' association with Fidel Castro.

So where is all the love and affection for Torrijos? Where is all the pressure for the United States to surrender our sovereign rights in the Canal Zone?

But perhaps the most interesting falsehood—and I regret to use that word—that Mr. Carter perpetrated last night was his denial that we own the Canal Zone. He said:

We do not own the Panama Canal Zone—we have never had sovereignty over it. We have only had the right to use it.

The Canal Zone cannot be compared with United States territory. We bought Alaska from the Russians and no one has ever doubted that we own it The Canal Zone has always been Panamanian territory. The U.S. Supreme Court and previous American Presidents have repeatedly acknowledged the sovereignty of Panama over the Canal Zone.

The fact is that no previous President of the United States has ever acknowledged Panamanian sovereignty. It is my intention to develop these facts at greater length on this floor at a more appropriate time; but suffice it to say the U.S. Supreme Court has declare many times that the Canal Zone is a U.S. possession and U.S. territory. In fact, it was the U.S. Supreme Court that actually compared our title to the zone to our title to Alaska, in *Wilson against Shaw*, 1907:

It is hypercritical to contend that the title of the United States is imperfect, and that the territory described does not belong to this Nation, because of the omission of some of the technical terms used in the ordinary conveyances of real estate The fact that there may possibly be in the future some dispute as to the exact boundary on either side is immaterial. Such disputes not infrequently attend conveyances of real estate or cessions of territory. Alaska was ceded to us 40 years ago, but the boundary between it and the English possessions was not settled until within the last 2 or 3 years. Yet no one ever doubted the title of this Republic to Alaska.

It is incredible that President Carter should choose Alaska as the basis of a comparison coming to the opposite conclusion.

In fact, we do own the Canal Zone. I have referred on this floor on other occasions to the statements of Mr. J. V. Luitweiller, of my State, who was the Secretary of the Claims Commission which settled all the property transfers when we took over the zone.

Moreover, Miss Doris McClellan, clerk of the U.S. District Court in Balboa, and daughter of the late distinguished Senator from Arkansas, whom we all revered, has assured me personally that microfilms of the deeds, both warranty and quit-claim are on file at the district court, and that the deeds themselves are in storage in Suitland, Md.

We are giving away U.S. property—property that belongs to the U.S. taxpayers. It is an act of enormous constitutional significance, because of article IV, section 3 of the Constitution. Is it possible that the President is attempting to evade the consequences of article IV by denying that the Canal Zone is, indeed, U.S. property? I hope that he is not.

Yet at the same time, he is denying that we are paying Panama to take the canal. He says that under the new treaties payments to Panama will come from tolls paid by ships which use the canal. The fact is that under the Constitution, those tolls are paid into the U.S. Treasury and belong to the taxpayers. In addition, as the Armed Services Committee hearings have brought out so dramatically in the past few days, there will be enormous deficits which will have to be made up by the taxpayers of the United States, either directly or in the form of interest foregone.

Mr. President, I am prepared to debate the treaties on the basis of fact. Men of good will can agree or disagree on implications of the treaties, or on the probable outcome of a given situation. But give us facts, Mr. President, facts that we can all agree on. If the debate on these treaties is to be meaningful, it must remain on a high level, and it must be solidly grounded in fact. I hope that the President of the United States hereafter will be more discerning in presenting the facts of the case.

Thank you, Mr. President.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

NATIONAL BLACK CAUCUS RESOLUTIONS ON THE PANAMA CANAL TREATY

Mr. KENNEDY. Mr. President, I would like to introduce into the Congressional Record resolutions on the Panama Canal treaty adopted by the National Black Caucus of Local Elected Officials (NBC/LEO) and the National Black Caucus of State Legislators (NBC/SL).

The NBC/LEO, founded in December 1970, represents more than 2,000 black local elected officials in the United States. NBC/LEO

has worked diligently to make positive change possible for black and disadvantaged people in this country.

The NBC/SL was formed in August 1977 to work toward the solution of many problems plaguing black and disadvantaged Americans. It is concerned about problems on a local, State, and national level, but recognizes the importance of responsible U.S. international leadership as well.

Both NBC/LEO and NBC/SL adopted their resolutions as an affirmation of the importance of the Panama Canal treaties to all Americans. I congratulate them on their leadership in moving these treaties forward.

At this point, I request unanimous consent that the resolutions, passed by the National Black Caucus of Local Elected Officials on December 6, 1977, and the National Black Caucus of State Legislators on November 20, 1977, be printed in the Record.

There being no objection, the resolutions were ordered to be printed in the Record, as follows:

NATIONAL BLACK CAUCUS OF LOCAL ELECTED OFFICIALS

PANAMA CANAL TREATY

Whereas, our capability to defend the canal will be enhanced under the new treaty through cooperation with the government of Panama; and

Whereas, no country large or small should agree to another nation holding parts of its territory in perpetuity as we do under the 1903 Treaty; and

Whereas, these new treaties protect the vital commerce and security interest of the U.S.A.; and

Whereas, the 1903 Treaty represents a U.S.A. foreign policy philosophy of the early 1900's, not the 1970's; and

Whereas, the new treaties are in the national interest of the U.S.A. and consistent with the traditional U.S.A. support for self determination and respect for the dignity of all nations great and small; and

Whereas, the new treaties assure a peaceful, prosperous and secure international waterway for the commerce of all nations; and

Whereas, the new treaties are firmly supported by all the nations of the hemisphere; and

Whereas, approval of these treaties will say to the world that the U.S.A. is true to its word about dealing on a fair and equitable basis with all nations. Now, therefore, be it resolved that the National Black Caucus of Local Elected Officials supports the President's proposed Panama Canal Treaties.

NATIONAL BLACK CAUCUS OF STATE LEGISLATORS

PANAMA CANAL TREATY

Whereas, our capability to defend the Panama canal will be enhanced under the new treaty through cooperation with the government of Panama; and

Whereas, no country large or small should agree to another nation holding parts of its territory in perpetuity as we do under the 1903 Treaty; and

Whereas, these new treaties protect the vital commerce and security interest of the 1900's, not the 1970's; and

Whereas, the new treaties are in the national interest of the U.S.A. and consistent with the traditional U.S.A. support for self determination and respect for the dignity of all nations great and small; and

Whereas, the new treaties assure a peaceful, prosperous and secure international waterway for the commerce of all nations; and

Whereas, the new treaties are firmly supported by all the nations of the hemisphere; and

Whereas, approval of these treaties will say to the world that the U.S.A. is true to its word about dealing on a fair and equitable basis with all nations.

Now, therefore, be it resolved that the National Black Caucus of State Legislators supports the President's proposed Panama Canal Treaties.

PANAMA CANAL TREATIES

Mr. ALLEN. I think the majority leader.

Mr. President, I would like to ask the distinguished majority leader when he plans to have laid before the Senate the Panama Canal treaties, for consideration by the Senate.

Mr. ROBERT C. BYRD. Under the rule, may I say to my distinguished friend from Alabama, Thursday would be the day on which the committee report would have been available 3 days. I would like to get unanimous consent, if I could, that we proceed on Wednesday. We had earlier planned to proceed on Wednesday, because all Senators had indicated that they could get their supplemental views, and so on, to the Foreign Relations Committee on time for the report to be printed and made available 3 days prior to Wednesday. That was not possible; Thursday is the earliest if there is objection, but if there is no objection, I would hope we could get to the consideration of the treaties on Wednesday.

Mr. ALLEN. I would say to the distinguished majority leader that I would have no objection to the matter coming up on Wednesday, or, if it were possible, today.

What does concern the Senator from Alabama, however, is that no unanimous-consent order with respect to the procedure on the treaties be made prior to the laying down of the treaties for consideration, because many of us would like to be here for the full proceedings, and would not like for unanimous-consent requests to be made prior to that time.

I have absolutely no objection to the request that the treaties be considered, but they would be considered under the rule. We do not want to agree to short-circuiting the Committee of the Whole consideration.

Will the distinguished majority leader and the distinguished minority leader agree that no requests for unanimous consent with respect to the procedure on consideration of the treaties be made prior to the treaties being laid before the Senate for consideration?

Mr. ROBERT C. BYRD. Yes, that would be very agreeable to me.

Mr. BAKER. Mr. President, if the majority leader will yield to me for just a moment, so that I may respond to the inquiry of the Senator from Alabama, that is fine with me, too. I certainly have no desire to take anyone by surprise.

There are two matters I hoped we could take care of today, and I wonder how the Senator from Alabama would feel about them. Incidentally, the Senator from Michigan (Mr. Griffin) is on his way to the floor. I have consulted with him about these matters, and he has no objection.

First, the majority leader has suggested that we abbreviate the 3-day rule by 1 day, so that the Senate could take up the matter Wednesday. I understand the Senator from Alabama has stated that he has no objection to that.

The second matter concerns controlled time. I have no desire to have a limitation of time, but this is such an emotional issue and the Senate and the country are so divided on it that I have suggested to the majority leader that possibility, and he suggested, I believe, that we put down a unanimous-consent order to control the

time, that is, to allocate half of the time each day to Senators who could yield it to Members who support their respective points of view.

I think that procedure would add to the orderly consideration of the matter, and I wonder how the Senator from Alabama would feel about it.

Mr. ALLEN. I feel that when the treaty is before the Senate, there should be no time restraints or orders for speeches, because we frequently have Senators who might be in line for speaking and not be on the floor. I think we have difficulty here in the Senate getting speeches made.

I feel that Senators should have an opportunity to be heard. I rather imagine that a procedure will be worked out, but I would not like to divide the time in any way. I think that will take care of itself, would be my judgment.

I have absolutely no objection to waiving the 3-day rule, or to waiving the 1-day requirement of having the treaty lie over for a day. I do not care about that; but I do not want to short-circuit the Committee of the Whole, because that is very important as an order of procedure; and also, the resolution of ratification could not be offered in the Committee of the Whole, whereas it could be in the full Senate, at any time, thereby cutting off amendments.

I am perfectly willing to abide by the statement of both leaders that unanimous-consent agreements will not be asked for other than those we have discussed. I would object to the second request, but not the first, on the matter being brought up.

I am hopeful that the committee report is in, and available to all Senators at this time.

Mr. ROBERT C. BYRD. The report has been printed, and is available.

Mr. ALLEN. At the time the matter is called up in executive session, at that time, if there are to be requests for immediate consideration, I would ask that that agreement be made now, rather than the request being made on Wednesday.

Mr. ROBERT C. BYRD. I have no objection.

Mr. BAKER. I have no objection to that. I thank the Senator from Alabama for his consideration.

Mr. ALLEN. I am happy to accommodate the Senator.

Mr. BAKER. And I have no objection to our proceeding on Wednesday.

Mr. ALLEN. I might, for the record, request that the distinguished majority leader alert the Vice President that his presence would be helpful as Presiding Officer at that time. I have a series of parliamentary inquiries that I would like to make concerning the procedure on the consideration of the treaties.

Mr. ROBERT C. BYRD. I may have some myself; so we will try to get the Vice President in the chair at that time.

Mr. ALLEN. I thank the distinguished Senator.

PANAMA CANAL TREATIES—EXECUTIVE N, 95-2

AMENDMENT NO. 19

(Ordered to be printed and to lie on the table.)

Mr. HATCH, as in executive session, submitted an amendment intended to be proposed by him to the Panama Canal Treaty, executive N, 95-2.

Mr. HATCH. Mr. President, the Panama Canal Treaty contains a number of provisions which provide for substantial payments to the Republic of Panama. Article III, section 5 of the treaty provides that the newly formed Panama Canal Commission shall pay the Republic of Panama \$10 million per year to reimburse it for providing certain public services in the canal operating area, such as police and fire protection, garbage collection, and street maintenance. Likewise, article XIII, section 4 of the treaty provides that the Republic of Panama shall receive from the Commission certain additional payments "to be paid out of canal operating revenues." Three separate payments are contemplated under this provision: First, an unspecified annual payment computed at a rate of thirty hundredths of a U.S. dollar (\$0.30) per Panama Canal net ton, or its equivalency, for each vessel transiting the Canal for which tolls are charged, such payment to be adjusted upwards to reflect changes in the U.S. wholesale price index; second, a fixed annuity of \$10 million; and third, a supplemental annual payment up to \$10 million, the exact amount to be determined by the amount of surplus revenues of the Commission. It is estimated that these payments to Panama will total more than \$60 million in the first year of operation, excluding the supplemental payment drawn from surplus revenues.

The language of the treaty does not indicate whether these payments to Panama shall be made in accordance with the legislative processes of Congress. Indeed, representatives of the State Department testifying before Congress have emphasized that the canal will be self-supporting under the treaty, and that all payments to Panama will be derived from operating revenues. In other words, the impression we have been given is that legislative appropriations will not be necessary because these payments will be made directly to Panama by the Commission.

Mr. President, this scheme, on its face, is constitutionally and financially defective. In the first place, it violates the Constitution. In the second place, it seems certain that there will not be sufficient revenue to cover all of these payments, in addition to the cost of the operation of the canal, and that Congress will have to make up the difference through appropriations anyway.

Article I, section 9 of the Constitution provides that—

No money shall be drawn from the Treasury but in Consequence of Appropriations made by Law.

Moreover, article I, section 7 provides that all bills for raising revenue shall originate in the House of Representatives. It is a well-established principle of our Constitution that the treaty-making power of the Chief Executive is limited by Congress power over the purse. Simply stated—and even State Department representatives acknowledge this rule—a treaty cannot appropriate funds.

TREATIES AND THE EXPENDITURES OF FUNDS

The Panama Canal Commission, according to article III, section 3 of the treaty, will "carry out its responsibilities" as "a U.S. Govern-

ment agency," that "shall be constituted by and in conformity with the laws of the United States of America." Thus the treaty contemplates that a U.S. Government agency will be making payments to a foreign government for the remainder of this century without the consent of the House of Representatives and in derogation of the appropriations processes of the House and Senate. This clearly raises an important constitutional issue. The administration's view is that this is a self-executing treaty, meaning that it takes effect as domestic law without further action by Congress. But are these provisions of the treaty providing for payments by a U.S. Government agency self-executing in light of article I, section 9, clause 7 of the Constitution, which gives Congress the exclusive power to make appropriations? The answer, I believe, is that they are not self-executing.

It is not disputed that the President's treaty-making power extends to bilateral agreements by which the United States undertakes to make payments of money. The first treaty made by the United States after the adoption of the Constitution, the Jay Treaty of 1794 with Great Britain, provided for payments of debts owed by American citizens to British creditors. The treaties with France for the acquisition of Louisiana provided for a payment of 60 million francs. Countless other examples could be cited to illustrate the principle that the Chief Executive has the authority to make treaties which obligate the United States to make payments to a foreign government. But I am not aware that any President has ever made a self-executing treaty providing for such payments.

EARLIER PRECEDENTS

Debate over the provisions of the Jay Treaty requiring the expenditure of funds is instructive in this regard. The Members of the House of Representatives did not question the right of the President to enter into such a treaty. Instead, they debated the issue of whether the House was entitled to obtain copies of the instructions given by the President to the negotiators, and whether the Congress was required to appropriate the funds necessary to carry the treaty into effect. President Washington rejected the demand of the House for copies of the instructions, but the House adopted a resolution, vigorously supported by James Madison, which provided that—

When a treaty stipulates regulations on any of the subjects submitted by the Constitution to the power of the Congress, it must depend for its execution, as to such stipulations, on a law or laws to be passed by Congress. And it is the Constitutional right and duty of the House of Representatives, in all such cases, to deliberate on the expediency or in expediency of carrying such a treaty in effect, and to determine and act thereon, as, in their judgment, may be most conducive to the public good.

Congress subsequently enacted a law making the necessary appropriations. The same principles were recognized and the same procedure was followed regarding subsequent treaties where payments were required.

In the case of Turner against Baptist Missionary Union, a Federal circuit court considered the effect of an 1863 treaty with an Indian tribe, which provided for payment of the net proceeds of the

sale of 160 acres of land to the owner of the buildings situated on the land. The court said:

A treaty under the Federal Constitution is declared to be the supreme law of the land. This, unquestionably, applies to all treaties, where the treaty-making power, without the aid of Congress, can carry it into effect. It is not, however, and cannot be the Supreme Law of the Land, where the concurrence of Congress is necessary to give it effect. Until this power is exercised, as where the appropriation of money is required, the treaty is not perfect. It is not operative, in the sense of the Constitution, as money cannot be appropriated by the treaty-making power. This results from the limitations of our government. * * * As well might it be contended that an ordinary act of Congress, without the signature of the President, was a law, as that a treaty which engages to pay money, is in itself a law. * * * It [the treaty-making power] cannot bind or control the legislative action in this respect, and every foreign government may be presumed to know that as far as the treaty stipulates to pay money, the legislative action is required. (Fed. Cas. No. 14251 (1852), 24 Fed. Cas. 345, 346).

In brief, the precedents, both political and constitutional, are well established that a treaty provision for the payment of money is not self-executing but requires an appropriation by Congress.

PAYMENT PROVISIONS OF THE NEW TREATY

This principle has been confirmed and duly respected in all previous treaties between the United States and the Republic of Panama. The treaty of 1903 provided under article XIV for an initial payment of \$10 million and an annual payment of \$250 thousand. Article VII of the 1936 treaty increased the amount of the annuity to 430,000 Baboas (B/430,000). A third treaty between the United States and the Republic of Panama in 1955 increased the annuity once again to 1,930,000 Balboas (B/1930,000). In each case, the payments were made under appropriations enacted by Congress; and it was never suggested that any of these treaties was self-executing. The current annual payment, \$2,328,000, is shown as one of three permanent appropriations in the Department of State budget for fiscal year 1978.

The present treaty, of course, calls for payments by the Commission and it would thus appear that appropriations will not be necessary because no funds will be drawn from the U.S. Treasury. This understanding of the method of payment, however, ignores a number of important considerations. As I have previously noted, article III of the proposed treaty specifies that the Panama Canal Commission, a U.S. Government agency, "shall be constituted by and in conformity with the laws of the United States." The laws of the United States governing the fiscal management of Government agencies in general are contained in title 31 of the United States Code. Executive departments and non-corporate Federal agencies are subject generally to the provisions of title 31, except the provisions of the Government Corporation Control Act. Wholly owned government corporations are subject to the provisions of the Government Corporation Control Act and to many of the other provisions of title 31 as well.

Turning to title 31, we observe that it clearly delineates the fiscal responsibilities of Government agencies generally and their dependence on appropriations to authorize the expenditure of funds. The Budget and Accounting Act of 1921, which has been incorporated into title 31, defines "department or establishment" to

include "any executive department, independent commission, board, bureau, office, agency, or other establishment of the Government," and the term "appropriations" to include funds and authorizations to create obligations by contract in advance of appropriations or "any other authority making funds available for obligation or expenditure." All moneys received from whatever source for the use of the United States are required to be paid into the Treasury (31 U.S.C. 484). Detailed provisions are made for submission of estimates for appropriations for expenditure by Government agencies (31 U.S.C. 581-752Z). Expenditures in excess of appropriations are prohibited, and all appropriations or funds made available for obligation are required to be apportioned to avoid the necessity for deficiency or supplemental appropriations (31 U.S.C. 665).

In light of these requirements, the provision of the new treaty that the payments to Panama are to be made by the Panama Canal Commission is wholly contrary to article I of the Constitution and Federal law, unless it is assumed—and the language of the treaties does not seem to support such an assumption—that such funds must first be appropriated by Congress. Presumably no one would seriously contend that the effect of the constitutional provision limiting to Congress the power to make appropriations can be circumvented by the device of providing in the treaty that a payment without appropriations is to be made by a named Government agency instead of the United States.

With respect to article III of the proposed treaty, then, it is abundantly clear, that the Panama Canal Commission cannot pay the Republic of Panama \$10 million per annum in advance of legislative appropriations authorizing such expenditures. This is also true of the additional payments made by the Commission "out of canal operating revenues" under article XIII of the treaty. Why article III provides simply for payments and article XIII provides for payments "out of canal operating revenues" is a distinction that apparently has no significance regarding constitutional and statutory requirements. The "canal operating revenues" referred to in article XIII are presumably the "tolls for the use of the Panama Canal, and other charges" which the United States—not the Panama Canal Commission—is authorized to "establish, modify, collect, and retain" by article III, section 2(c) of the treaty. These revenues, of course, are the same in kind as those that have been derived by the United States from the Panama Canal since it was first opened to commerce and which have been expended under appropriations by Congress since that time.

It may be that the purpose of making the payments "out of canal operating revenues" was to identify such payments as part of the cost of operation, in order to establish rates of tolls. Such a construction necessarily assumes, however, that revenues will be sufficient to cover both the payments to Panama and operating expenses over and above such payments. But this leaves unanswered the obvious question: What if there is a disparity between the amount of revenues and the total of such expenses? Is this deficiency to be absorbed by the U.S. Government by appropriations to cover losses, or by Panama through acceptance of less than the amount of payment stipulated by the treaty? In either case, the provision for payment out of revenues does not appear to affect the

constitutional requirement for appropriations to carry these provisions into effect.

Section 4(c) of article XIII, which provides for payment of \$10 million "out of canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission" not only runs headlong into present law requiring the agency operating the canal to pay surplus funds into the Treasury, but also substitutes Panama for the United States as the beneficiary of surplus funds. This would effectively preclude further reduction of the U.S. Government's investment in the canal. Like the provision of article XIII for annual payments based on the aggregate measurement tonnage of ships using the canal during the year, the qualifications introduced by section 4(c) relate solely to the determination of the amount of the payment. Neither provision recognizes nor makes mention of the need for congressional appropriations to authorize payment. To be sure, the payment provisions of the treaty seemingly attempt to provide permanent appropriations for the treaty payments, an objective prohibited by the constitutional rule that only Congress has the power to make appropriations.

In sum, the provisions of the proposed treaty for payment of money cannot become effective as domestic law unless Congress has, in accordance with article I, section 9 of the Constitution, appropriated the necessary funds. Under the treaties with Panama now in effect, which also provide for annual payments to Panama, revenues derived from operation of the canal are treated as public moneys and expenditures of those funds are limited to those authorized by appropriation acts of the Congress.

Neither the language of the treaties nor the testimony of State Department representatives, however, offers us any concrete, specific assurances that all of the payment provisions of the treaty will be implemented by appropriations of Congress. Although administration witnesses appearing before congressional committees have freely acknowledged that a treaty cannot appropriate funds, they have continued to insist that this is a self-executing treaty. Herbert Hansell, legal adviser to the State Department, has stated that there is "no ground" for the concern expressed by House Members that the treaty "could be regarded as a means of circumventing that constitutional provision with respect to the payments to be made to Panama under the treaty." Why? Because, he says:

It is intended that the payments to be made to Panama be financed wholly from projected revenues, so as to avoid any need to resort to general revenues.

Mr. President, in all of the testimony that I have examined in connection with this treaty, I have nowhere seen a flat assertion by any representative of the State Department or the Department of Justice that this is a non-self-executing treaty that will require congressional appropriations in order to implement the payment provisions of the treaty; and the treaty itself is silent on this subject.

For these reasons, I am submitting an amendment to the treaty which would obviate this difficulty and eliminate all uncertainty and ambiguity about the method of payment to Panama. This amendment provides simply that all revenues of the Panama Canal

Commission shall be deposited in the U.S. Treasury, and that all payments to Panama shall be based on legislative appropriations. It is wholly consistent with established constitutional precedents and laws governing Federal agencies.

PROJECTED DEFICIENCIES IN THE CANAL OPERATING COSTS UNDER THE NEW TREATY

Mr. President, it should further be noted, as I have previously indicated, that the future of the Panama Canal under this treaty, insofar as its financial structure is concerned, is rather bleak. In a recent study by Mr. W. M. Whitman, special consultant to the House Committee on Merchant Marine and Fisheries, it is estimated that the cost of operating the canal during the first year of operation under the treaty will exceed revenues by approximately \$99 million, not counting additional costs to the U.S. Treasury of \$7.7 million. Mr. Whitman's analysis is based on a tabulation provided by the Panama Canal Company, and is adjusted to reflect the same elements of cost as those shown in the 1978 budget. It also includes additional treaty costs that are not part of the Company's tabulation.

This study shows, Mr. President, it is illusory to think that the Panama Canal will be operating on a self-supporting basis, as the representatives of the State Department have insisted. Additional appropriations have to be made to make up the deficit, and cover the hidden costs of this treaty—this is not to mention the added economic burden, after the tolls increase, that the American people will have to bear under this treaty as a result of higher prices for materials, including Alaskan crude oil, that will be transiting the canal.

Whitman concludes:

If financial viability of the canal is equated to operation as a self-sustaining enterprise, the venture appears to be doomed from the first year after the treaty goes into effect. This was the thrust of the testimony of all the witnesses who urged or suggested the necessity for absorption of elements of the cost of operation by the Treasury through elimination of interest and depreciation or abandonment of the concept of recovery of the investment of the Government in the canal. There may be reasons, to support adoption of such expedients, but the policy of operating the canal on a self-sustaining basis is not one of them.

Mr. President, I urge all Senators to read this perceptive study with care, and ask unanimous consent that it be printed in the Record, together with my amendment, at the conclusion of my remarks.

There being no objection, the statement and amendment were ordered to be printed in the Record, as follows:

PANAMA CANAL TREATY PROBLEMS

The written statements and testimony presented by the various witnesses appearing at the hearing of the Panama Canal Subcommittee on November 30 and December 1, 1977, disclosed several clearly identifiable problems of some concern to the Committee and the Congress in the consideration of the Panama Canal treaties and legislation to carry them into effect, assuming they are ratified. Those problems fall into five general categories, namely:

1. The projected deficiency in canal revenues to cover operating costs;
2. The sources of funds to cover the deficiency in canal revenues;
3. The form of the Government agency to be established to operate the canal;
4. Ambiguities in treaty provisions; and

5. Constitutional issues.

1. Canal revenue deficiency.

The negotiators and other proponents of the treaty repeatedly have stressed the proposition that under the treaty the operations of the canal are to be self-supporting and that canal revenues are to be used exclusively for payment of costs of the operation without cost to the U.S. taxpayer.

The treaty provides for annual payments to Panama totalling some \$62 million in the first year of operation, exclusive of a contingent payment of an additional \$10 million to be paid to the extent canal revenues exceed expenditures. Other provisions of the treaty transferring income-producing property to Panama will reduce the revenues of the Panama Canal by some \$130 million, partially offset by a reduction of about \$50 million in canal operating costs.

An analysis of Panama Canal revenues and costs in the first year of operation under the treaty in comparison to the estimate provided in the 1978 budget program, which does not include provision for the effect of the treaty, is attached. This analysis is based on a tabulation provided by the Panama Canal Company, adjusted to reflect the same elements of cost as those shown in the 1978 budget and to include additional treaty costs, so far identified, not included in the Company's tabulation.

The analysis shows that in the first year of operation under the treaty, Panama Canal revenues will fail to cover costs of operation of the canal and related treaty costs by about \$99 million, exclusive of additional cost to the U.S. Treasury of \$7.7 million. The recovery from canal revenues of operating expenses and all other treaty related costs would require an increase in rates of tolls of more than 60 percent. If the additional costs to the Treasury of \$7.7 million, referred to above, are excluded from the calculation, the increase in rates of tolls required would be reduced to 56 percent.

Although the calculations of the insufficiency in Panama Canal revenues to cover expenses summarized above relate to the first year of operation, there is no basis for optimism that the financial results of operation will improve with the passage of time. No detailed analysis of costs and expenses for future years similar to that provided for the first year of operation under the treaty is presently available, but the conclusion to be drawn from the data so far available is that costs will rise at a rate higher than any foreseeable increase in revenues over the period of operation of the canal by the United States under the treaty.

If financial viability of the canal is equated to operation as a self-sustaining enterprise, the venture appears to be doomed from the first year after the treaty goes into effect. This was the thrust of the testimony of all the witnesses who urged or suggested the necessity for absorption of elements of the cost of operation by the Treasury through elimination of interest and depreciation or abandonment of the concept of recovery of the investment of the Government in the canal. There may be reasons to support adoption of such expedients, but the policy of operating the canal on a self-sustaining basis is not one of them.

2. Sources of funds to cover expenses of operation.

The ability of the canal to generate additional revenues required to cover canal operating expenses under the treaty lies in (1) possible increases in traffic, and (2) increases in rates of tolls.

a. Traffic increases. The factor cited most frequently as a partial solution to the financial problems of the Panama Canal under the treaty, is the anticipated increase in canal revenues from shipment through the canal of North Slope crude oil enroute from Alaska to the East Coast of the United States. The increase in Panama Canal revenue from this source has been estimated as high as \$30 million a year, but for 1978 the estimate by the Panama Canal Company is \$4 million. On the basis of the latter estimate, the deficiency of revenue in relation to costs would be reduced to \$95 million or \$103 million depending on whether the additional costs to the Treasury, noted above, are considered.

There is general agreement that the increase in revenues resulting from the movement of North Slope oil through the canal will be temporary because of the probability of use of less expensive alternatives such as pipelines. In the near time, the movement of this commodity through the canal will unquestionably improve the financial results of operation of the canal for two or three years, but it will neither eliminate the revenue deficiency in those years nor affect the long-term outlook.

The only other suggestion that canal revenues may increase to offset costs increases, even in part, is based on a presumption that historical growth of the canal will continue at the same rate or at a modified rate in the future. This logic has been rejected by most economists who insist that analysis of future individual

commodity movements on established trade routes is the only sound basis for projections of future canal traffic.

b. Tolls increases. As previously indicated, on the basis of the Panama Canal revenue figure projected in the 1978 budget, the increased operating costs resulting from the treaty would require a toll increase of from 56 percent to 60 percent to put the canal on a self-sustaining basis.

Assuming an increase in revenue of \$4 million from the movement through the canal of North Slope oil in the first year of operation under the treaty, the tolls increase would be reduced to the range of 52 percent to 57 percent.

Representatives of the shipping industry have indicated that increases in rates of tolls in the amount necessary to make the Panama Canal completely self-sustaining under the treaty are unrealistic and will price the canal out of the market because of the availability of less expensive alternatives.

Apparently, during the negotiation of the treaty there was no attempt at a systematic analysis of the potential canal revenues available for funding the cost of the various provisions eventually agreed to. The draft environmental impact statement, published by the Department of State in August 1977 (42 F.R. 43466) suggested that the assessment of the economic impact of the treaty was then impossible because of lack of data as to the costs of operation of the Panama Canal after the treaty became effective. The final EIS dated December 1977, states that "An initial toll increase in the neighborhood of 30 percent will be necessary to cover the operating costs . . . of the Canal during the new Treaty period. The exact level of toll increases will depend on such factors as:

The structure of the canal operation under the new Treaty, especially its operating cost requirements, and

The short-term impact on Canal traffic of Alaskan oil shipments." (pages 33, 34)

c. Appropriations or absorption of costs by U.S. If tolls revenues cannot be increased in an amount sufficient to make the canal self-supporting, it appears to be obvious that the deficiency in revenues will have to be made up from the U.S. Treasury, either through absorption of part of the costs or by direct appropriations.

While the proponents of the treaty have consistently adhered to the position that one of the objectives of the treaty is that the canal continue to be self-supporting, they have also simultaneously proposed that substantial costs of operation of the canal be absorbed by the U.S. Treasury through discontinuance of payment of interest on the investment of the United States in the canal, writing off the investment entirely, and treatment of various costs arising from the treaty as obligations of the Treasury rather than of the Panama Canal. Representatives of the shipping industry and others go further and also propose elimination of depreciation as a cost of operation recoverable from tolls, and payment of interest by the United States on Government funds derived from operation of the canal and deposited in the Treasury.

Interest on U.S. investment. At the Panama Canal Subcommittee hearings on November 30, 1977, the testimony of Administration witnesses indicated general unfamiliarity with the history and purpose of payment from canal revenues of interest on the investment of the United States Government in the canal. Interest was described by those witnesses as "profit" and it was suggested that elimination of the interest payment is necessary to keep the Panama Canal Commission "self-sustaining." The Deputy Assistant Secretary of the Treasury described the background of the requirement of interest payments as follows:

"One reason that payment was required in 1951 when the Canal Company was established as a self-sustaining business enterprise was to avoid allowing the users to have a subsidized toll or exclusively subsidized toll by requiring that the cost of capital be included in the toll base. That requirement will no longer be necessary because under the new arrangements, the toll will increase in order to meet the costs and requirements under the new treaty arrangements.

"Tolls will approach a more economic level and a need for interest payment as a device in effect to avoid subsidy will no longer be necessary."

The requirement that the Panama Canal Company pay interest to the Treasury on the net direct investment of the U.S. Government in the Company is found in section 62 of title 2 of the Canal Zone Code. (76A Stat. 8). This provision was originally enacted in 1948 in the legislation incorporating the Panama Railroad Company (62 Stat. 1076) pursuant to the Government Corporation Control Act (31 U.S.C. 841 et seq.), and of course applied to that corporation which had been operated as an adjunct of the Panama Canal since the time of construction of the canal. See *State ex rel Rogers v. Graves*, 299 U.S. 401 (1937).

In 1950, when responsibility for the operation of the Panama Canal was transferred to the Panama Railroad Company, which was renamed the Panama Canal

Company, the requirement for payment of interest on the Government's investment in the corporation was continued. (Act, Sept. 26, 1950 (64 Stat. 1041)). The 1950 legislation was based on recommendations of the then Bureau of the Budget, approved and forwarded to the Congress by President Truman. In reference to the requirement that the corporation pay interest to the Treasury, the report of the Bureau of the Budget stated:

"The principle that Federal business enterprises should pay a rate of return on the Government's investment equal to the cost of the money to the Treasury is now well settled. The President recommended in his 1948 budget message that corporations should be required to reimburse the Treasury for the full cost of money advanced to the corporation. There is no reason why the Panama Canal and its adjuncts should be exempted from payment of interest since they are essentially Federal business enterprises." H. Doc. 460, 81st Cong., 2d Sess., p. 8.

At the Panama Canal Subcommittee hearing on December 1, 1977, Leonard Kujawa, a partner in Arthur Andersen & Co., testifying as an expert on Panama Canal finances, confirmed that interest, as the cost of capital invested in a business, is part of the cost of operation of that business. As such, if a business operation such as the Panama Canal is to be self-sustaining, the revenues derived from the operation must be sufficient to cover interest payments on invested capital.

Conversely, as pointed out in the testimony of Comptroller General Staats, if annual interest payments are not made into the Treasury, the cash position of the Panama Canal Commission would be improved "but it would also reduce Treasury receipts and impact on the overall U.S. budget."

The amount of the interest payment to the Treasury in fiscal year 1978, shown in the 1978 budget program, is \$19.7 million.

Depreciation. The statutory formula for establishing rates of tolls for use of the canal now includes depreciation as one of the elements of costs to be recovered from tolls.

The discontinuance of depreciation on part of the assets of the canal was another expedient suggested at the hearings for reducing the upward pressure on rates of tolls brought about by the treaty. On the other hand, the Comptroller General pointed out that the property transfers provided by the treaty would necessitate increased depreciation to make possible recovery of the U.S. investment in the canal over the life of the treaty and that "For the proposed Commission to be financially self-sufficient, toll rates would have to be raised to cover these increases in depreciation costs." The Comptroller General also noted that these actions "may not be economically sound, because of the impact on toll rates and possible adverse effect on traffic and revenues." In other words, under the treaty it may no longer be possible for the Panama Canal to be self-sustaining.

The property of the United States in the Canal Zone, to be transferred to Panama under the terms of the treaty, was acquired at an original cost of about \$1 billion. The book value of the property associated with the Panama Canal, exclusive of military property, is currently \$752 million.

Other treaty costs. Costs to the U.S. Treasury resulting from the treaty that are not directly and immediately associated with operation of the canal probably could not be included in the tolls formula for payment out of revenues of the canal. These costs have not been completely identified but they appear to include appropriations required to fund part of the economic assistance program under the separate agreement accompanying the treaty, the cost of the joint study for the need for and feasibility of a sea level canal for which the treaty provides, the loss to the Treasury of the payment now being made in reimbursement of capital appropriations to the Canal Zone Government, and possibly the cost to the Civil Service Commission and military departments of employee assistance programs contemplated by the treaty.

3. Form of Government agency to be established to operate the Panama Canal.

Legislation to be enacted by the Congress must establish the Government agency to operate the canal and provide the ground rules for its operation.

Article III of the Panama Canal treaty provides that the United States will carry out its responsibilities by means of a U.S. Government agency called the Panama Canal Commission "which shall be constituted by and in conformity with the laws of the United States of America." The treaty also provides that the Panama Canal Commission "shall be supervised" by a Board composed of nine members, five of whom are to be U.S. nationals and four nationals of Panama.

From the time of completion of the canal in 1914 until 1951, the canal was operated by an independent agency called *The Panama Canal*. The Panama Canal was established and functioned in accordance with the laws of the United States generally applicable to all Government agencies, including the various laws governing the financial management of such agencies now largely incorporated in title 31

of the U.S. Code. Under those laws revenues derived from operation of the canal were paid into the Treasury, and costs of operations were paid from direct appropriations for that purpose.

In 1950, Congress transferred responsibility for operation of the canal to the Panama Railroad Company, a government agency in corporate form that had been used by the United States Government as an adjunct to the operation of the canal from the time of construction of the canal.

The corporation was renamed the Panama Canal Company and its operations were subject to the provisions of the Government Corporation Control Act as well as other applicable provisions of title 31 of the U.S. Code. Revenues from the operation of the canal and related activities are deposited in the Treasury or depository banks approved by the Secretary of the Treasury, and expenditures are authorized by the Congress in appropriation acts authorizing the use of such revenues for the purposes set out in the corporation's budget program, as modified by the Congress in the appropriation act.

The 1950 legislation transferring operation of the canal to the Panama Canal Company changed the name of the agency known as The Panama Canal to Canal Zone Government with the responsibility of providing the various services incident to the civil government of the Canal Zone. No basic change was made in the form of organization of that agency. A brief summary of the history and laws applicable to the operation of the two agencies now responsible for operation of the canal and the government of the Canal Zone is included in the separate study of the relationship of the treaty provisions to the Constitutional power of congress to make appropriations.

In establishing the government agency for operation of the canal under the new treaty, the Congress could select either the corporate form along the lines of the Panama Canal Company, the non-corporate form, following the prototype of the original Panama Canal agency, or some combination of the two. Some of the advantageous features of the corporate form, such as business-type budgeting and audit by the General Accounting Office, have been referred to by the Comptroller General. On the other hand, the corporate form is particularly useful for business operations that are truly self-sustaining, and if a substantial amount of direct or indirect subsidy is involved, the conventional unincorporated government agency offers the advantages of closer control by the Congress. Of course, if the unincorporated form of agency is selected, the legislation could incorporate provision for business-type budgets and audit by the General Accounting Office.

A related matter of concern is that of providing for the qualifications and method of appointment of members of the Board to be appointed to supervise the Panama Canal Commission. This feature of the legislation will be especially important in view of the provisions of the treaty for division of the membership between nationals of the United States and Panama.

4. Ambiguity of treaty provisions.

a. General considerations. Ambiguities in the language of the two treaties pose serious problems of interpretation that are virtually certain to become the subject of future controversy. Although the U.S. treaty negotiators have offered their explanations of the ambiguous language, those interpretations have often been at direct variance with those published by the Panamanian negotiators. In considering the significance of these diverse interpretations, the United States Government should keep in mind the enumeration of the causes of conflict between the United States and Panama, published by the Government of Panama on the occasion of the rejection by Panama of the new treaties negotiated in 1967. The concluding paragraph of Part I of the document read as follows:

"7. Last, so as not to make the list of causes of conflict interminable, we mention the greatest cause, the constant cause, the cause that has daily contributed to keep alive the resentment of Panamanians and feeds a sentiment of rebellion against the offensive presence in part of the national territory of a foreign Government which acts in an arbitrary, totalitarian and absolute manner, contemptuous toward the presence of the territorial sovereign. We refer to the invariable conduct of the Government of the United States of America of interpreting the clauses of the existing treaties in the manner most convenient to their interests and contrary to Panama's rights and imposing their arbitrary and unfair interpretations with the power in their hands, and that Panama has not been able to counteract to date, of excluding and throwing out of the Canal Zone the official presence of Panama and the enforcement of our laws." Reprinted in *Report on the Problems Concerning the Panama Canal*. Committee on Merchant Marine & Fisheries, 91st Cong., 2d Sess., p. 87.

As the quoted statement implies, the diplomatic relations of the United States and Panama have been characterized by almost continuous controversy over the construction of the language of treaties and agreements that the United States usually has regarded as plain and unambiguous. To cite only one example, Article V of the 1942 Agreement for the Lease of Defense Sites in the Republic of Panama (57 Stat. 1232) provided that the defense sites would be vacated "within one year after the date on which the definitive treaty of peace which brings about the cessation of the present war, shall have entered into effect." In 1947, Panama asserted that the surrender of Japan constituted a "definitive treaty of peace" ending the war. The United States did not accept that interpretation, but eventually yielded to pressure and vacated the sites before the peace treaty was signed. The history of this particular disagreement is set out at length in the Department of State's publication *Foreign Relations of the United States* for the years 1946 (pp. 1095, et seq.) and 1947 (pp. 881, et seq.).

b. *Payments to Panama.* Paragraph 4(a) of Article XIII of the treaty provides for payment to Panama of an annual amount of 30 cents "per Panama Canal net ton, or its equivalent, for each vessel transiting the Canal for which tolls are charged." (Emphasis supplied.) A Panama Canal net ton is clearly defined in existing laws and regulations as the basis for establishing rates of tolls for use of the canal. However, not all vessels are susceptible of measurement in Panama Canal net tons; some ships and other craft, such as warships, floating drydocks, etc., pay tolls on a displacement basis. Whether or not the phrase "or its equivalent" relates to the payment to Panama for ships that pay tolls on displacement rather than "Panama Canal" tonnage is not clear from the treaty provisions. If that is the intent of the provision, there is no criterion provided for determining what is the equivalent of a Panama Canal net ton in computing the payment to Panama. This could obviously become a matter of controversy and should be clarified before the treaty is ratified.

Paragraph 4(c) of Article XIII provides for a payment to Panama, in addition to other payments, of \$10 million per year "to be paid out of canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to the treaty."

This provision apparently contemplates determination of whether or not the payment is due on a cash basis. If so, and if "expenditures" are limited to payments actually made, excluding unpaid obligations, it could create a serious problem for the financial administration of the canal. The theory of the treaty provisions seems to have derived from the statutory provision that now requires the Panama Canal Company to pay into the Treasury annually the amount of funds in excess of the Company's requirements for working capital and for authorized plant replacement and expansion. (2 C.Z. Code 70). However, there are obvious differences between the language of the two provisions, and it is questionable whether the treaty provision would permit retention by the Panama Canal Commission of funds for working capital or plant replacement and expansion.

The precise meaning of this paragraph of the treaty would become a matter of considerable importance to the financial management of the canal under the new treaty, and its meaning should be clarified before legislation is enacted to carry it into effect.

A third ambiguity appears in paragraph 5 of Article III of the treaty which, after providing for payment to Panama of \$10 million in reimbursement for certain services, goes on to provide that at three year intervals "the costs involved in furnishing said services shall be reexamined to determine whether an adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services." (Emphasis supplied.) There is nothing in the treaty or other documents accompanying the treaty that defines what other relevant factors are for consideration in the adjustment of the amount of this payment. It was suggested at the hearing that the actual cost of services provided might be one such factor, but it would appear to be desirable to reach a firm understanding, with appropriate documentation, defining the meaning of the phrase in question.

Implicit in all the provisions for payments to Panama is an ambiguity arising from the absence of any language referring to the indebtedness of the Government of Panama to the Panama Canal Company and Canal Zone Government, now aggregating some \$8.5 million. In normal business transactions provision would be made either for set-off of this amount against the payments to Panama or for outright cancellation of the debt. Whichever result is intended, it should be clearly understood by both parties and incorporated in the legislation to carry the treaty into effect.

c. *Property transfers.* Paragraph I of Article XIII of the treaty provides that on termination of the treaty, Panama will assume total responsibility for operation of

the Panama Canal which shall be turned over in operating condition and "free of liens and debts, except as the two parties may otherwise agree."

At the end of any year of operation of the canal as a continuing business enterprise, there remain and are carried forward obligations incurred in completed periods of operation, such as unpaid employee compensation, liability for unused leave, and other accounts payable, which aggregated \$80 million in 1976, and are estimated at \$87 million in 1978.

Whether or not the quoted provision of Article XIII requires the liquidation of these liabilities before the canal is turned over to Panama is not clear, but the ambiguity should be resolved to permit orderly financial planning and management in the period intervening between the effective date and termination of the treaty.

d. Use of the canal by U.S. Government vessels. Paragraph I of Article VI of the neutrality treaty provides that vessels of war and auxiliary vessels of the United States and of Panama "will be entitled to transit the Canal expeditiously." At the hearings on the treaties this provision has been referred to as providing that warships of the United States are entitled to priority in transit in case of emergency, but other statements in Panama by the treaty negotiators have indicated that no priority of passage is involved.

The statement issued by the White House after the meeting between President Carter and General Torrijos on October 14, 1977, discussed below, confirms that the provision in question "is intended, and shall be interpreted to assure the transit of such vessels through the canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the canal rapidly."

e. Defense of the canal. Article IV of the Panama Canal treaty provides that "Each party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack, or other action which threatens the security of the Panama Canal or of ships transiting it." Article V provides specifically against intervention in the internal affairs of Panama by U.S. nationals employed by the Commission. Article II of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal provides that Panama declares the "neutrality" of the canal in order that it shall remain open to peaceful transit of vessels of all nations on terms of entire equality, and Article IV provides that the United States and Panama agree to maintain the "regime of neutrality" established by the treaty "in order that the canal shall remain permanently neutral."

In the light of all these provisions the question has been raised as to whether the United States would be authorized to take appropriate action to keep the canal open if the threat to the operation of the canal originates in Panama. The statement issued by the White House after the meeting between President Carter and General Torrijos on October 14, 1977, states that under the neutrality treaty Panama and the United States have the responsibility to assure that the Panama Canal shall be open and secure to ships of all nations and that each country "shall, in accordance with its constitutional processes, defend the canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal." The statement goes on to say, however, that this does not mean nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any U.S. action will be directed at insuring that the canal "will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama." Administration witnesses at the subcommittee hearing expressed the view that the treaty gives the United States the right to take whatever steps the United States deems necessary to maintain the neutrality of the canal, no matter what the threat may be.

f. Joint statement of October 1977. The statements issued by President Carter on October 14, and General Torrijos on October 18, for the purpose of eliminating the ambiguities in the neutrality treaty are intrinsically ambiguous in themselves.

Apparently the statements were entirely informal. On his return to Panama following his meeting with President Carter, the press reported that General Torrijos emphasized that he had not signed anything on his visit to Washington. Granting that the statement represents the personal interpretation of the treaty provisions discussed on the part of President Carter and General Torrijos, the effect of the informal unsigned statements as amplifications of the language of the treaty is at least open to question.

5. Constitutional issues.

In addition to the financial problems in operation of the Panama Canal under the new treaties, the treaty language poses two fundamental constitutional problems that are of even greater significance to the United States Government, namely, the

requirement for action by the Congress to dispose of property of the United States and to make appropriations of public funds. The treaty language purports to convey property of the United States to Panama and to provide for payments to Panama without action by the Congress as the Constitution requires. These issues are addressed at length in a memorandum on the necessity for appropriations to authorize the payments to Panama presented at the subcommittee hearings on December 1, 1977, and in extensive hearings and briefings conducted by the Committee on Merchant Marine and Fisheries in the first session of the 95th Congress. A further hearing by the Committee on the constitutional issues is scheduled in January, 1978.

W. M. WHITMAN.

Attachment.

PANAMA CANAL COSTS: FIRST YEAR OPERATION UNDER 1977 TREATY COMPARED TO 1978 BUDGET

[In thousands of dollars]

	Budget 1978	First year Treaty costs
Operating Costs, the Panama Canal:		
Revenues:		
Tolls:		
Commercial vessels	176,083	176,083
Government tolls credits	1,554	1,554
Total tolls revenues	177,637	177,637
Revenues other than tolls:		
Navigation service and control	29,962	26,247
General repair, storehouse, engineering and maintenance service	6,062	3,155
Marine terminals	24,151	1,645
Transportation and utilities	23,950	26,521
Retail and housing	47,169	5,866
Government activities	63,132	115
Other	2,351	3,068
Total revenues other than tolls	196,777	66,617
Total revenues	374,414	244,254
Costs:		
Maintenance of channels and harbors	22,563	22,603
Navigation service and control	40,732	38,316
Locks	24,759	24,759
General repair, storehouse, engineering and maintenance services	8,966	9,108
Marine terminals	19,801	1,659
Transportation and utilities	22,137	25,353
Retail and housing	51,504	6,303
Other	44,367	41,383
General and administrative	26,231	25,662
Governmental activities	85,968	22,097
Repayment of prior year's interest costs	5,273	5,273
Interest	19,706	19,706
Fixed annuity to Panama	519	10,000
Annuity based on PC net tonnage		42,471
Public service payments to Panama		10,000
Severance pay		6,093
Repatriation		1,350
Plant relocation		2,236
Early retirement of employees		8,400
Training programs		320
Elimination of tax factor in employee pay		463
Rotation of employees		509
Total operating costs	372,526	323,555
Net operating revenue (loss)	1,888	(79,301)
Capital costs, the Panama Canal	22,000	19,992
Total operating revenue (loss) and capital cost	(20,631)	(99,293)
Additional costs to Treasury:		
Depreciation on Canal Zone Government assets		2,681
Military assistance loans to Panama		5,000
Total additional costs to Treasury		7,681
First Year costs of treaty in excess of Panama Canal revenues:		
Panama Canal Commission		99,293
Treasury		7,681
Total		106,974

AMENDMENT No. 19

In paragraph 3 of article III, at the end of the text immediately above subparagraph (a), add the following: "The operating revenues of the Panama Canal Commission shall be deposited in the Treasury of the United States of America".

In the first sentence of paragraph 5 of article III, strike out "Panama Canal Commission shall reimburse" and insert in lieu thereof "United States of America shall reimburse, only after the amount of such reimbursement has been appropriated,".

In the text of paragraph 4 of article XIII immediately above subparagraph (a), strike out "Panama Canal Commission" and insert in lieu thereof "United States of America, only after such amount has been appropriated,".

In paragraph 4(a) of article XIII, strike out "Canal operating revenues" and insert in lieu thereof "the Treasury of the United States of America".

In paragraph 4(b) of article XIII, strike out "Canal operating revenues" and insert in lieu thereof "the Treasury of the United States of America".

In paragraph 4(b) of article XIII, strike out the last sentence.

In paragraph 4(c) of article XIII, strike out "Canal operating revenues to the extent that such revenues" and insert in lieu thereof "the Treasury of the United States of America, if its receipts from the Panama Canal Commission".

In the last sentence of paragraph 4(c) of article XIII, strike out "Canal operating revenues" and insert in lieu thereof "such receipts".

PANAMA CANAL OPERATION

Mr. SPARKMAN. Mr. President, I ask unanimous consent to have printed in the Record a letter and enclosure which I received from the Department of State on February 3 in reply to a request by the Committee on Foreign Relations for additional economic and financial data concerning the operation of the Panama Canal.

There being no objection, the material was ordered to be printed in the Record, as follows:

DEPARTMENT OF STATE,
February 3, 1978.

Hon. JOHN SPARKMAN,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Attached to this letter you will find some additional economic and financial data concerning the operation of the Panama Canal. We are supplying this data in response to the request made by the Committee as a result of the hearing held on January 20, 1978.

We hope that this material helps to clarify some of the questions which arose during the hearing and stand ready to supply any additional information the Committee may need.

Sincerely yours,

DOUGLAS J. BENNETT, JR.,
Assistant Secretary of State
for Congressional Relations.

ECONOMIC AND FINANCIAL IMPLICATIONS OF THE NEW PANAMA CANAL TREATIES

This paper summarizes research on the ability of the Panama Canal to be operationally self-sustaining until the end of the century and examines the implications of the Panama Canal Treaty on domestic and world commerce.

Research performed by the U.S. treaty negotiating team, by independent consultants and by various U.S. Government departments indicates that:

1. The Canal enterprise can generate sufficient revenue under the basic treaty to cover all its costs.
2. Opportunities for toll increases substantially exceed the revenues which will be required.
3. Cost savings opportunities are substantial.
4. The impact of likely toll increases on domestic and world commerce will be minimal, if not negligible.

CAN THE CANAL PRODUCE SUFFICIENT REVENUE UNDER THE NEW TREATY TO COVER COSTS?

Since 1915 toll revenues have risen from \$4 million to \$165 million in fiscal year 1977. At current toll levels they will increase to \$210 million in 1985 and to \$224 million in 1990. With a modest 25 percent toll increase, revenues would increase to \$251 million in 1985 and to \$268 million in 1990.

At the same time various estimates have been made of the Panama Canal Commission's operating costs. An exhaustive study on Panama Commission cost projects has just been prepared by Arthur Anderson & Company for the 1979-83 period. These projections conclude that Canal costs, including payments to Panama and including an inflation factor, will range between \$241 million and \$249 million in 1979 to between \$237 million and \$262 million in 1983.

The most significant impact of the new Treaties on future Canal financial operations will be the several annual payments to Panama which will be funded out of Canal operating revenues as operating Canal expenditures of the new Panama Canal Commission.

Article XIII of the Treaty specifies three annual payments to Panama from Canal revenues as an equitable return to Panama on the national resources it has provided the Canal. The first payment is calculated on the basis of 30 cents per Panama Canal ton for each vessel transiting the Canal. Five years after the Treaty goes into effect, this payment will be adjusted every two years to reflect changes in the wholesale price index. This payment should cost the Panama Canal Commission about \$45 million in fiscal year 1979. This payment is a direct result of Canal traffic and would not, of course, be paid if the Canal were not operating.

The Panama Canal Commission will also pay Panama a fixed annuity of \$10 million out of Canal operating revenues. This payment is a fixed expense of the Company and is not a function of traffic.

The Commission will also pay Panama a third annuity of up to \$10 million only to the extent the Commission has a surplus. Should the Canal's revenues not produce a surplus sufficient to cover this contingent payment, the unpaid balance would be paid from future year surpluses.

Any unpaid balance remaining at the expiration of the Treaty would not represent a liability to the United States. Since this payment is only a contingent obligation, the Panama Canal Commission is not required to reflect it in its budget or the toll base.

In addition, Article III of the Treaty which is discussed in greater detail below requires an annual payment of \$10 million for specified public services furnished by Panama in Commission operating and housing areas. This reimbursement is for public services which currently cost the U.S. Government approximately \$18 million to perform.

Governor Parfitt, speaking for the Panama Canal Company, has suggested that an initial toll increase of 19.6 percent over existing rates would be required to meet these costs. However, the Governor pointed out a similar toll increase would be necessary by 1981 even without the treaties. American Management Services Commission has suggested an initial toll increase of 25 percent. The State Department in its initial estimates and testimony had suggested a toll increase in the neighborhood of 30 to 40 percent which subsequent study indicates was excessively conservative.

A study on Canal traffic and revenue forecasts recently completed by International Research Associates offers estimates that are more optimistic than those developed by our negotiating staff during the actual treaty negotiations. The study concludes that:

(a) Tolls could be increased up to slightly over 100 percent before revenues would begin to decline.

(b) Toll rate increases ranging from 15 percent to 50 percent would result in losses of traffic, on a tonnage basis, ranging from 2.4 percent for a 15 percent increase to 11.8 percent for a 50 percent increase.

Various studies concur in the finding that an initial toll increase is well within the ability of the Canal to generate revenue through tolls.

This was our judgment during the negotiations. It is a judgment which has been supported by all subsequent analyses with which we are familiar, including the IRA study, a study of Commission costs by Arthur Anderson, and the findings of the Armed Services Committee consultant whose report was issued by the Armed Services Committee on February 1.

WHAT COST SAVINGS WILL BE AFFECTED?

Since 1951, the Panama Canal Company has been administered as a self-sustaining U.S. Government corporation. Currently, in addition to the Canal, annual costs

funded by Canal revenues include the Canal Zone Government, Canal Company retail and commercial operations, an "interest" payment to the Treasury of \$18 to \$20 million and approximately \$500,000 of the \$2.3 million annuity paid to Panama under the 1903 treaty.

In addition to the requirement to provide payments to Panama, the cost structure of the Panama Canal operation will be changed significantly by the new treaty.

The costs of the Canal Zone Government (about \$25 million per year) will disappear after a 30 month transition period. In addition, all commercial and retail facilities will no longer be part of the Canal operation. Costs of providing schools and hospitals for Canal Zone employees will be reimbursed from toll revenues, as is now the case.

The new treaty provides that the Commission pay Panama \$10 million per year in return for public services provided by Panama in the Canal operating and housing areas. This cost will be in contrast to the costs currently paid of approximately \$18 million.

The Executive Branch will specifically recommend to Congress that the legislation organizing the Panama Canal Commission not charge it with an annual "interest" payment to the Treasury of \$18 to \$20 million. Congress, however, can decide to include an interest payment in the cost base to be covered by increased tolls. The Congress should recognize that it has always been the policy of the United States to operate the Canal as a public service and that this interest charge is in some ways a departure from this concept.

Beyond these cost savings, American Management Services has reviewed planning budgets for the Panama Canal operation and has considered reductions proposed in connection with the reduced scope of activity of the Panama Canal Commission versus the Panama Canal Company. The American Management Study reported that cost reductions, even larger than those envisioned by the Company, could be made.

WHAT WILL BE THE IMPACT OF THE TREATIES ON DOMESTIC AND WORLD COMMERCE?

Since 1914, the Panama Canal has served world commerce as an important transportation route. Canal traffic has risen from 5 million Panama tons in 1915 to 123 million Panama Canal tons in fiscal year 1977. The IRA study indicates that traffic will further increase to 201.9 million tons by the year 2000.

Canal toll rates, however, have remained at low levels. They have changed very little over the years despite mammoth price changes for just about everything else. In 1914, tolls were set at \$1.20 per laden Panama Canal ton, and changed to 90 cents per laden ton in 1937. Since 1974, there have been increases in toll rates of 50 percent. Tolls today are set at \$1.29 per laden ton.

A toll increase of 20 to 30 percent over existing levels will have a minimum, if not negligible, impact on our trade and economy. A toll increase of about 30 percent will involve a transportation cost increase of less than one percent. Users of the Canal would pay only about \$50 million more in tolls per year on cargoes that have a value in excess of roughly \$50 billion, or one-tenth of one percent. In most instances, it will be the foreign buyer of U.S. commodities transiting the Canal who is the ultimate payer of Canal tolls and not the seller or shipper. Therefore, of the \$50 million, U.S. businesses and consumers will be the ultimate payers of only about \$15 million. The overall impact of this on a \$1.7 trillion economy is negligible on either our business or the purchasing power of the consumer.

Obviously, there are uncertainties with respect to Panama Canal traffic and revenue, especially after 1990. The same is true of any projection of world or national economic conditions. These uncertainties would exist whether or not we undertake a new treaty relationship with Panama. The new treaty will provide a stable environment, while the alternative of continuing the present relationship could almost certainly involve greater costs and uncertainty for shippers.

PANAMA CANAL TREATY

Mr. CANNON. Mr. President, during the past several years the question of the Panama Canal Treaty has assumed greater and greater importance. In recent months it has become an emotional issue to the extent that my constituent mail is now almost totally against ratification. I have consistently told my correspondents that I prefer to wait until we held hearings in the Senate Armed

Services Committee before making up my mind. I thought it was in our national interest to review the subject objectively so that whatever we do would be in the best interest of the United States. So you might say I am uncommitted and therefore this subject has considerable significance to me. In reviewing the material on the proposed treaties I am struck by the lopsided concessions being proposed in an attempt to obtain an agreement. I am not opposed to a new treaty if sufficient safeguards are included, but do feel some amendments are in order and am glad to see that the majority and minority leaders feel the same way.

Panama is seeking to take on vast responsibilities, in fact to take the place of the United States in running the Panama Canal which has great importance to the United States and the entire world. Accordingly, it appears proper to look at her capability to do so. The basic economy of Panama without the canal appears badly shaken. The Torrijos government seized power in 1968 when the Panamanian economy was riding the crest of a wave that began in the early 1960's. The rate of growth was an astounding 8 percent. Then in 1974 a recession started. By 1975 things started picking up elsewhere in Latin America but not in Panama. By 1977 Panama's economic growth rate had sunk from 8 percent to less than 1 percent. The national debt had risen from \$167 million in 1968 to \$1.5 billion in 1977. Almost a 1,000-percent increase in 8 years. The per capita debt had become the largest in all of Latin America. The annual interest payment on the national debt alone has reached \$150 million, almost half of the current revenue taken in by the government. The balance of payments stands at a staggering minus \$500 million, about half of their gross national product.

Financed for the past several years by loans from abroad, most of them short term, Panama has just about run out of credit. Three-fourths of the current debt will come due within the next 10 years. If it were not for the stability provided from the income of the canal, Panama would be broke. With that background I would like to highlight what we found out in recent hearings in the Senate Armed Services Committee.

We consistently hear the statement that the new treaty will cost the taxpayers nothing. That all expenses will be paid out of revenue generated by canal tolls. Well, that doesn't tell the whole story. It was my privilege to chair the Senate Armed Services Committee hearings when we looked into the financial aspects of the treaties.

The first 2 days of our hearings were principally concerned with the military implications of the proposed changes in our relationship with Panama. During the last 2 days we moved into the financial and economic aspects.

While a great deal of attention in the Senate and in public discussion has been given the neutrality treaty and to the other broad issues raised by the treaties, not enough attention has been focused on the financial arrangements. Major changes are to be made in the structure and operations of the canal enterprise, including adding large payments to Panama onto the costs of operating the waterway. We need to satisfy ourselves that these provisions are sound and that they will not lead to trouble later if the treaties are ratified.

Before delving into the question, however, I would like to bring the subject into focus. A major reason for building the canal was to promote ocean commerce for the United States. A major importance of the canal to the United States and I might add to the entire world. If it is going to continue to be important from an economic standpoint, much is at stake in the proposed new treaties, particularly in relation to the canal's future operational control.

The true economic significance of the canal has always been in the distance and time savings it affords interocean shipping. The canal cuts 7800 miles off the distance between New York and San Francisco. The days saved are also impressive. For example, a ship traveling at 15 knots can reach Los Angeles from New York in 13 days by way of the Canal. It takes more than a month around South America, through the Straits of Magellan. Savings in miles and days mean fewer ships are required for the movement of the same amount of cargo. Hence it also means reduced fuel consumption and lowered crewing costs, which is a big economic factor. So the big question is, what does the Canal mean to the United States from an economic viewpoint?

About 66 percent of all cargo that moves through the canal comes or goes to U.S. ports. Of that amount, about 34 percent is exports from the United States, 23 percent is imports into the United States, and about 9 percent is U.S. coastal trade. This will increase with the shipment of Alaskan oil to our east coast.

The canal is of great importance to South America and also we cannot overlook its importance to the Far East. A lot of westbound cargo going through the canal is headed for Japan, Australia, and New Zealand. Generally speaking the number of ships transiting the canal has increased steadily over the years reaching a peak of 14,000 in 1971. This dropped off for the next 2 years but went back up over 14,000 in 1974. Since then there has been a decline. During the period 1973 to 1976 the number of ships transiting the canal each day dropped from 39 to 33. In the meantime, operating costs increased. In 1973 the Canal Company sustained a loss for the first time in the canal's history. It has lost money every year since except for last year despite a hike in toll rates in 1974 and another in 1976. I would like to examine why this is so. Probably for the foreseeable future, foreign trade in bulk commodities like coal, oil, ore, and agricultural products will continue to be transported by ship. But there is a change going on in the technology of transportation. One need only look at the constantly increasing volume of air transportation to appreciate what is happening. We have already seen the end of express passenger ships. They have been replaced by the airplane. With the use of jumbo jets, air freight is growing at a rapid rate.

Also a development that could in time have an effect on canal traffic is the minibridge system being advanced by the U.S. railroads. This involves the movement of goods in containers across the United States on fast unitized trains operating on schedules synchronized with ship arrivals and departures at east and west coast ports. If the nation's railroads become viable again which is an AMTRAC goal, the effect of the mini-bridge concept on the canal's economic value to United States foreign trade could be substantial.

Then too, we have the era of oversized ships unable to transit the canal, like the huge oil tankers. Already there are over 1,000 vessels in the world's mercantile fleet that cannot go through the canal because of their size. In addition to oil, some carry large quantities of dry bulk commodities such as ore, coal, and grain. In total, these oversized vessels are bound to have an economic impact on the canal. Also the reopening of the Suez Canal several years back has had some effect.

So we have a problem of rising costs and no assurance of steady canal traffic. I have some concern that this issue is not being faced squarely in our treaty considerations. It does appear that unless the canal is subsidized, tolls will have to be increased further to make ends meet. We have had two increases totaling over 40 percent, one in 1974, and the other in 1976; so the question is really how much in the way of increases will the traffic bear? What is the likelihood that the Panama Canal Commission, when viewed as a business enterprise, will be self-sustaining and under what conditions can this be achieved? These are some of the issues the Armed Services Committee looked at.

Because of the committee's special concern over the financial impact of these treaties, it engaged its own outside financial consultant to make an independent appraisal. Though the time to accomplish an undertaking of this scope was extremely short, the consultant did an excellent job, and produced an interesting and provocative report.

The committee had four principal areas of interest.

First, we felt it was necessary to explore the details of the treaties' financial workings because the administration has stressed from the beginning that the treaties involve no cost to the taxpayer and no appropriated funds. It is vitally important that the Senate understand before it votes on these treaties whether that is true or not. What are the direct costs of implementing these treaties, and what are the risks that appropriated funds will be necessary to support the Panama Canal Commission during the next 22 years? What burdens will the taxpayers actually assume? In order to answer these questions we need to understand how the treaties work and what the prospects for profitable operation of the canal really are.

Second, we need to analyze more closely than has been the case thus far the provisions of the treaties relating to payments to Panama. There are ambiguities in those provisions which need to be cleared up so that the Senate can determine whether modifications of the financial provisions are necessary.

Third, is the closely related question whether these financial arrangements have the potential for increasing rather than decreasing the friction between the United States and Panama in the years to come. If the financial provisions have serious ambiguities, or if they create an operational structure that will lead to disputes about how much money the Panamanians are supposed to receive, we need to know about it. One of the major arguments in favor of the treaties has been that they will create a friendly and cooperative attitude which is crucial to canal defense and efficient operation. If that friendly and cooperative attitude will be undermined by continuing financial problems and deficits, we will have gained

little or nothing in this effort to reformulate United States-Panamanian relations.

Finally, the financial problems have a direct bearing on our ability to keep the canal open and keep it operating efficiently. If we have constructed through these treaties a financial structure that is doomed to failure then we must act now, before the treaties are approved, to prevent that structure from affecting our vital interest in free and open access to the canal.

The committee had expert witnesses to assist them in reviewing these matters. They were Maj. Gen. Harold Parfitt, Governor of the Canal Zone and President of the Panama Canal Company; Mr. Frank Nicolai of American Management Systems, who supervised the work AMS did on these problems for the Armed Services Committee; and the Honorable Elmer B. Staats, the Comptroller General of the United States.

Before reviewing what these witnesses told us I would like to itemize what we have agreed to provide to Panama in a financial way.

Panama will receive 30 cents per ton transiting the canal. Also a fixed sum of \$10 million per annum and an additional \$10 million per year if canal traffic revenue permits. In addition the United States pledges to arrange for an economic program of loans under existing statutory programs. Up to \$200 million in Export-Import Bank credits; up to \$75 million in AID housing guarantees; and \$200 million in Overseas Private Investment Corporation loan guarantees. This totals some \$300 million. Also, Panama will receive up to \$50 million in foreign military sales credits over a period of 10 years to assist in the canal's defense. The current annual payments by the United States to Panama is \$2.3 million.

Now to discuss specifics.

General Parfitt, Governor of the Panama Canal Zone, warned that the canal operation may not be self-sustaining after 1984 under the terms of the treaties being considered. He said in answer to questions from committee members that the United States would be obliged to turn over the canal to Panama in the year 2000 free of lien and debts.

If there are outstanding debts the U.S. Government will have to pay them when the canal passes into Panama's hands. The Governor said that after 1984 canal revenue probably will not support the operation of the canal or meet the U.S. obligation to pay Panama large sums of money from toll revenues.

In his estimation, this means there is a high probability that the United States will have to make up the differences between 1984 and 2000 from appropriated funds. And since the treaties require that the canal pass to Panama debt free, his testimony means that the United States would have to write off the millions of dollars owed to it by the Panama Canal Commission.

There is another item that is not clearly understood which relates to the public service fund of \$10 million a year. This amount is given to Panama for police and other services and is calculated at what it would cost the United States at American wage scales. The cost to Panama is less than half that amount a year because of their lower wages. Consequently there appears to be a \$5 million

annual Panamanian profit on the public service fund payment at U.S. expense.

In reference to canal tolls, the long period of toll rate stability in the words of Governor Parfitt has lulled many into the illusion that there was some special magic at work on the isthmus that sheltered the Panama Canal from economic pressures. To the contrary, toll rates and stability are dependent, as are prices in most businesses, on the volume of business and the rate of inflation. He said periodic increases in tolls will be required even without taking into account the impact of the new treaties. He estimated these increases would begin early in the 1980's and be necessary about every 3 years with average increases of about 10 or 11 percent.

He also warned that canal traffic is sensitive to toll increases and that there is a point of diminishing return on how high tolls can be raised to increase revenues. Increases of 50 percent would result in little additional revenue and that the maximum amount of additional revenue obtainable is about 40 percent which would require toll increases of between 75 to 100 percent to obtain.

The implication is that toll increases beyond a certain point would force traffic to use other routes like going around the cape. He foresaw no problem between 1978 through 1984 because North Slope oil from Alaska would generate enough tolls to cover all operations. But after that when oil pipelines will be traversing the United States, it appears periodic toll increases will be required.

Comptroller General Elmer B. Staats warned the committee of another potential problem in the treaties pertaining to the payment of \$10 million a year to Panama. Some Panamanians contend that the \$10 million carries over into the next year if canal receipts are insufficient to pay it the first year. This means the United States might owe Panama \$220 million at the end of the treaties if the canal does not break even or make a profit during the life of the treaties. The Department of State feels that the Canal Commission will be obligated to make the payment only to the extent that operating surpluses exist and that there will be no obligation to pay Panama any unpaid cumulative balance after December 31, 1999. There are of course other monetary implications which when considered in their totality could cost the American taxpayers well over \$2 billion.

Mr. Staats and Governor Parfitt both recommend that State's interpretation be spelled out in implementing legislation. In that regard it would help considerably if the administration presented the Senate with the information to accommodate the Senate's understanding of how the treaties are to be implemented. To date the Senate has not even been privileged to see an outline.

However, the Senate Armed Services Committee has written a report on its hearings as has the Foreign Relations Committee. The report by the Armed Services Committee is a summary of the testimony I have just commented on. It is indexed by subject matter for easy reference and makes no conclusions or recommendations, leaving that up to the judgment of each individual Senator. I commend it to my colleagues as necessary reading before making up their minds on the financial aspects of these treaties.

PANAMA CANAL

Mr. PEARSON. Mr. President, after carefully examining the strong and persuasive arguments on both sides, after listening to the testimony of some of the expert witnesses before the Senate Foreign Relations Committee and visiting Panama. I have concluded that on balance ratification of the Panama Canal Treaties is in the best interests of the United States.

These treaties have been negotiated to replace the 1903 Hay-Bunau-Varilla Treaty—a source of irritation in the relations between the United States and Panama since the day it was signed. It is important to mention that the 1903 treaty was negotiated and signed for Panama by a French citizen, Philippe Bunau-Varilla. No Panamanian ever saw the treaty before it was signed. Panama had no choice but to ratify the treaty, for failure to do so would have meant a return of the Colombian armed forces. The 1903 treaty created a canal zone which is still seen by most Panamanians as infringing upon their sovereignty. They feel that it would be analogous to another country controlling a stretch of land 10 miles long, running the full length of the Mississippi River. Panamanians have also been concerned that the 1903 treaty deprives them of the full benefit of their major natural resource—their geographic location.

Because the historical background is essential to an understanding of the issue, I am attaching a statement I issued on February 3, 1977.

Mr. President, while I feel sympathy for the sentiments of the Panamanian people, my greatest concern is the long-term security and foreign policy interests of the United States. In 1964, President Johnson announced the intention of the United States to negotiate a new treaty with Panama. Since then, each President, two Democratic and two Republican, has worked toward achieving this goal.

Presidents Johnson, Nixon, Ford, and Carter were persuaded that a new treaty relationship with Panama is more likely to serve long-term security and foreign policy interests of the United States. Above all, it would assure what is the essence of our interests—the efficiency, neutrality, accessibility, and security of the Panama Canal.

Americans are faced with a difficult choice. We do not know how well the new treaties will operate. We do not know if they take into account all contingencies. We are forced to make a choice between the uncertainty of the future against the unacceptability of the past.

The new treaties present us with risks, but Americans have always been willing to accept risks, provided they seem reasonable. I believe that these new treaties are as reasonable for our time as those risks that were assumed by Teddy Roosevelt in his time.

Another important consideration is how the new treaties would affect our relations with other Latin American countries. The other nations of Latin America have joined with Panama in urging a new treaty with the United States. In their eyes, the canal runs not just through the center of Panama but through the center of the Western Hemisphere. Indeed, the problem affects our relations with the entire Third World, since the nations of the Third World have made common cause on this issue. In March 1973, the United

Nations Security Council would have passed a resolution favoring the Panamanian position on this issue had not the United States used its veto. The other nations of the world view our position on the canal as the last vestige of a colonial past which evokes bitter memories and deep animosities. The new canal treaties provide the United States with a unique position to improve our relations with virtually all of the countries of this hemisphere, and, indeed, the people of the entire developing world.

Mr. President, before arriving at my decision to support these treaties, I listened very carefully to the opponents and to the arguments that they made. I read with great interest the vast volume of mail from my constituents in Kansas. I must admit that I, too, have been deeply troubled by many of the issues raised by opponents of the treaties. Primarily these deal with the sovereignty issue, the economic questions, the possible need for a new sea level canal, the security questions and the role of Omar Torrijos.

Mr. President, many of my constituents have written to me and asked, "We bought it, we paid for it, why give it away?" "If we give away Panama, what is to prevent us from giving away Alaska or Louisiana?"

To answer those questions, one must look at article 3 of the Hay-Bunau-Varilla treaty in which the U.S. was granted all "rights, power, and authority within the zone," as "if it were sovereign." The United States never claimed sovereignty over the Canal Zone. In fact, we continue to pay rent for the use of the Zone.

Secretary of War William Howard Taft, the future President and later Chief Justice of the Supreme Court, studied the question of sovereignty further and declared,

The truth is that while we have all the attributes of sovereignty in the construction, maintenance, and protection of the canal, the very form in which these attributes are conferred in the treaty seems to preserve the titular sovereignty over the canal zone in the Republic of Panama.

The United States did not purchase the Canal Zone as it did Alaska and Louisiana. The Hay-Bunau-Varilla treaty provided for a payment of \$10 million to Panama for treaty rights, not territory. In the Louisiana Purchase of 1803, France ceded to the United States, "forever and in full sovereignty the territory with all its rights and appurtenances." When the United States purchased Alaska, it received all rights, franchises and privileges previously belonging to Russia. In both cases, the United States received all public lands and all the inhabitants became U.S. citizens. In neither case did the United States have to pay a continuing annuity or rent or assume other obligations after taking over the territory. In addition, it should be mentioned that children born in Alaska or Louisiana are automatically U.S. citizens, while children born in the Canal Zone do not automatically become American citizens.

Mr. President, let me turn to some of the economic considerations involved. The Panama Canal Treaty changes the basic economic assumptions under which the canal has historically been operated. For the first time in history the new treaty gives long overdue recognition to the fact that the canal is Panama's primary economic resource. While Panama has benefited from the presence of the canal through salaries paid Panamanian nationals, direct purchases by the Canal Company and establishment of private,

commercial, and service industries related to the canal, the direct payment to Panama for use of the canal was held to a minimum, presently only \$2.3 million annually.

The important point to consider is that the treaty does not allocate one dime from the American Treasury to go to Panama. The entire payments to Panama specified in the treaty are all to come from canal revenues. The United States has been operating the canal "at cost." We have deliberately kept the canal's toll rates low. In effect, the United States has been subsidizing the shippers of the over 70 nations which use the canal. The canal could easily absorb the toll increases that might be needed under the new treaty. These increases would provide sufficient revenue to pay Panama the annuities pledged in article XIII.

Toll increases would have less than a 2-percent effect on the total shipping costs of items that transit the canal. The total effect on the cost to the American consumer would be even smaller. Thus, I agree with the Foreign Relations Committee which concluded that the economic effect of the new treaty on the total U.S. economy would be minimal.

Mr. President, I have received a number of letters questioning the additional economic package to Panama. This additional assistance program is not part of the Panama Canal treaties. It will be considered by separate congressional procedures. The program is based upon the desire for greater cooperation between the United States and Panama, in light of the new partnership arrangements which will result from the treaty. It must also be pointed out that this assistance program consists of loans, not grants. The bulk of the program is supported by money lent by the Export-Import Bank for American exports to Panama. In addition, this section will help U.S. manufacturers, and it will not cost the American taxpayer any money.

Mr. President, I am concerned about the future capacity of the Panama Canal and the possible necessity to enlarge it or to build a new canal. The canal is truly the "moonshot of the early 20th century." As David McCollough wrote in his excellent book, "The Path Between the Seas,"

The creation of a water passage across Panama was one of the supreme human achievements of all time, the culmination of a heroic dream of 400 years and of more than 20 years of phenomenal effort and sacrifice * * * Primarily the canal is an expression of that old and noble desire to bridge the divide, to bring people together. It is a work of civilization.

The canal is a masterpiece of design and construction. The locks have performed well from the time they were opened. Ships now transit the canal at a rate of over one per hour, every hour of the day during the year.

Ships of a size that were never dreamed of when the canal was built are now capable of transiting the canal. However, we are now building larger and larger ships, and it may become necessary to build a new canal in the future.

Section 2 of article XII of the Canal Treaty prevents the United States from building a new sea level canal in any other place other than Panama. On the other hand, it prevents Panama from negotiating with any other power to build a canal through its territory.

Mr. President, this section has received much criticism, but it was added at the insistence of the United States. President Johnson appointed the Atlantic-Pacific InterOceanic Canal Study Commission, headed by former Secretary of the Navy, Robert Anderson. In 1970, the Commission filed its voluminous report, concluding that the best route for a sea level canal would be in Panama. We did not wish Panama to negotiate with other powers to build such a canal. Thus, our negotiators insisted that the treaty include the provision giving us the first option on a sea level canal in Panama. Now, if the treaty is approved, Panama cannot allow another country to build such a waterway unless the United States grants permission. In return for this concession, we agreed not to build a canal in any other country other than Panama, which we had no intention of doing in any case.

Mr. President, I also am concerned about the defense of the canal. The defense of the Panama Canal consists of two components: internal security and external defense. Both are presently the responsibility of the U.S. Government. Internal security is primarily concerned with countering sabotage and terrorist activities. Under the new treaty the internal defense of the Panama Canal will be greatly enhanced by our cooperating with the Government of Panama.

The external defense of the canal will remain the primary responsibility of the United States during the balance of this century. Under the new Panama Canal Treaty, the Panamanian Guardia Nacional and appropriate U.S. commanders will develop plans in concert to provide for mutual defense. As past and present members of the Joint Chiefs of Staff have repeatedly pointed out, the capacity to defend the Panama Canal would be improved through cooperation with the Government of Panama. After the year 2000, the Neutrality Treaty provides for a canal open to ships of all nations in times of peace or war. However, it specifically provides that the United States and Panamanian Naval ships shall transit expeditiously and without impediments or preconditions.

Our ability to defend the canal, and our rights to do so, were further strengthened by the "Statement of Understanding" by President Carter and Omar Torrijos, which are now amendments to the treaty.

Although we can never be sure that no one will ever attack the canal, we can be sure that the United States will always be prepared to defend it.

Mr. President, I must admit that the aspect of these treaties which troubles me most is that we had to deal with the government of Omar Torrijos. I am troubled that Torrijos is a dictator. I am troubled that Panama's "human rights policies" leave a lot to be desired.

The treaties do not accomplish the impossible. They will not restructure the Government of Panama in our own image; they will not guarantee respect for human rights; they will not prevent drug smuggling through Panama into the United States; they will not insure that every Panamanian Government official will agree with the ideological line of the United States. But, while I wish the United States did not have to deal with Torrijos, we cannot pick and choose the heads of governments of other countries. We deal

with the leaders of many countries, even when we disagree with them. We should also not forget that the United States has been committed to a new Panama Canal Treaty since 1964, 4 years before Torrijos came to power.

Although we may not approve of the Torrijos regime, it is important to note that the recent plebiscite in Panama approved the treaties by a majority of over 2 to 1. Whatever the Panamanian people may think of Torrijos, they are strong in their opposition to the continuation of the Hay-Bunau-Varilla Treaty. As William Jordan, our Ambassador to Panama, testified before the Foreign Relations Committee,

This is an issue—probably the only issue—which brings Panamanians together in a kind of national unanimity that is rare in history. * * * Talk with Panamanians. You will find that whether they are rich or poor, city or campesinos, university graduates or day laborers, they are as one in their dream of a Panama that is united and sovereign, a country that is no longer divided in half by a foreign enclave.

In sum, Mr. President, I support the new treaties because they are in the best interests of the United States. They will make the canal easier to operate and easier to defend. They will assure for the United States continued access to the canal, for both military and commercial purposes. They will advance our position throughout Latin America, and, in many important respects, throughout the world. It is a signal to the world community that few actions can be taken independent of the welfare of others.

Finally, they will fulfill the expectations of every American that this country will continue to act as a world leader, proud of its heritage and willing to accept the challenges of the future. As Theodore Roosevelt stated,

The important thing is the next step. It often happens that the good conditions of the past can be regained not by going back, but by going forward. We cannot recreate what is dead; we cannot stop the march of events; but we can direct this march, and out of the conditions develop something better than the past knew.

Mr. President, I ask unanimous consent that the statement be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

HISTORICAL BACKGROUND ON THE PANAMA CANAL

To understand the present situation, it is necessary to review the events that led up to the Hay-Bunau-Varilla Treaty of 1903 and see how it came about, for it is still at the heart of the argument. Americans had been interested in a Panama Canal as early as 1826, when Secretary of State Henry Clay came out in favor of building such canal. In 1850, the United States and Britain agreed to the Clayton-Bulwer Treaty stating that both nations would cooperate in the construction of an isthmian canal; they also bound themselves never to fortify or exercise exclusive control over such a waterway.

From 1881 through 1889, the French attempted to build a canal through Panama. The French ran into insuperable medical, engineering and financial problems. More than 20,000 workers died, mostly from yellow fever. In one stretch of the Canal, the walls kept caving in as fast as they were dug. Besides the tremendous actual cost of the construction, the company building the canal was rocked by charges of high-level corruption.

The United States emerged from the Spanish-American War a Caribbean as well as a Pacific power. This changed status brought about a remarkable resurgence of interest in an isthmian canal. Although the United States had built a railroad across the isthmus, such a water passage now seemed imperatively necessary if the American people were to take full advantage of their new trade opportunities in the

Pacific, and at the same time, unfeather their fleet. During the war, the United States battleship *Oregon* had been ordered from Puget Sound to Cuban waters. It had to sail almost 13,000 miles around Cape Horn to get from the Pacific to the Atlantic; had there been a canal, the ship would have had to travel only 4,600 miles.

The first obstacle in the path of the building of the canal was diplomatic, rather than physical. In November 1901, two months after the assassination of President McKinley, Britain agreed to give up its claims to the United States. The second Hay-Pauncefote Treaty allowed the United States a free hand to build, control and fortify an isthmian canal.

In 1899, Congress appointed the Walker Commission to study whether it would be better to build the canal in Panama or Nicaragua. In November 1901, the Commission reported in favor of the Nicaraguan route, primarily on the grounds of lower costs. On January 9, 1902, the House of Representatives voted in favor of a Nicaraguan waterway (308 to 2). Shortly thereafter, Congress changed its mind and voted to support the Panamanian route, largely as a result of the efforts of William Cromwell and Philippe Bunau-Varilla. Cromwell was a member of the law firm of Sullivan and Cromwell, John Foster Dulles' law firm. The firm represented the railroad that the Americans had built across the isthmus. Bunau-Varilla represented the new Panama Canal Company successor to the French Canal Company.

Bunau-Varilla and Cromwell formed an alliance to convince the United States to opt for a canal through Panama; their price was originally \$109 million, but this was quickly reduced to \$40 million. Cromwell was most influential, especially as he had donated \$60,000 to the Republican National Committee. The Committee Chairman, Senator Mark Hanna, changed his support to a Panama route shortly after this. Bunau-Varilla astutely lobbied for the Panama route by sending each Senator a letter with the postage stamp showing volcanic action in Nicaragua. In June 1902, Congress approved the Panama route.

In 1903, Panama was still part of Colombia. The Hay-Herran Treaty in January 1903, gave the United States the Canal Zone, six miles wide, for a cash payment of \$10 million and an annual payment of \$250,000 to Colombia. The new Panama Canal Company was to receive \$40 million for their rights and property and the trans-isthmus Panama railroad.

In August 1903, Colombia rejected the pact, due to insufficient funds and the possibility that it seriously impinged upon Colombian sovereignty in Panama. Roosevelt referred to the Colombians as "insufficient bandits," "foolish and homicidal corruptionists", "contemptible little creatures", "jack rabbits", and "cat rabbits". He stated that "the blackmailers of Bogota . . . should not be permitted to permanently bar one of the future highways of civilization."

Bunau-Varilla was convicted that the time was right for Panama to revolt against Colombia. The center of the revolutionary activity was Room 1162 of the Hotel Waldorf Astoria in New York City. The revolutionists raised a "patriot" army consisting of 500 bought" Colombian troops, in addition to members of the local fire department. The leader of the revolt was Dr. Manuel Ambador, a physician who had worked for Cromwell's railroad. Dr. Ambador was presented with \$100,000, supplied by J. P. Morgan, a secret code, a Declaration of Independence, a draft of the new nation's Constitution, and the soon to be born Republic's flag, thoughtfully designed and sewn by Bunau-Varilla's wife. On November 2, 1903, the *U.S.S. Nashville* reached Colon, Panama. A day later, the revolt took place and on November 4, Panama declared its independence. An hour after the news reached Washington, the new government was recognized.

Bunau-Varilla, although a French citizen, represented the Republic of Panama in Washington. Hay sent him a draft treaty similar to the Colombian one. Two days later, Bunau-Varilla sent one back more disadvantageous to Panama, in the hope that the Senate would approve it. A day later, and only a few hours before representatives from Panama came to negotiate a treaty, the new pact was signed. Hay admitted we shall have a treaty vastly advantageous to the United States, and we must confess, not so advantageous to Panama."

The Hay-Bunau-Varilla gave the United States the right to the Canal in perpetuity"—instead of to the year 2003, which the Colombian Treaty had called for. Article II afforded the United States all the rights, power and authority within the zone . . . which the United States would possess and exercise if it were the sovereign of the Territory."

The Panamanians were disappointed with the terms and talked of rejecting the Treaty. They were warned that Colombia might try and overthrow the new government and that the United States would not help unless Panama agreed to the Treaty. With the news that Colombian gun boats were on their way to Panama, the Panamanian government ratified the Treaty in February 1904.

The European and Latin American press criticized Roosevelt, who defended himself by claiming a "mandate from civilization." In 1911, Roosevelt boasted "I took the Canal Zone and let Congress debate; and while the debate goes on, the Canal does also".

In 1914, a Treaty was signed with Colombia in which the United States "expressed sincere regret" for the Panama business and agreed to pay a \$25 million sum as compensation for the loss of Panama. Roosevelt's friends in the Senate, notably Henry Cabot Lodge, were able to defeat this Treaty. In 1921, a new Treaty paying Colombia \$25 million was accepted.

BRIEF ANALYSIS OF THE PANAMA CANAL ZONE TREATY NEGOTIATIONS

In 1903, the United States and the Republic of Panama signed the Hay-Bunau-Varilla Treaty which granted the United States a strip of land ten miles wide and fifty miles long for the purpose of constructing, operating, maintaining and defending a canal between the Atlantic and Pacific Oceans and which gave the United States rights as "if it were the sovereign" in perpetuity on Panamanian soil.

The events leading up to the 1903 Hay-Bunau-Varilla Treaty are important in order to gain a full understanding of U.S.-Panamanian relations. As President Theodore Roosevelt himself boasted in 1911, "I am interested in the Panama Canal because I started it. If I had followed the traditional conservative methods, I would have submitted a dignified state paper of probably 200 pages to Congress and the debates on it would still have been going on yet; but I took the Canal Zone and let Congress debate; and while the debate goes on the Canal does also."

The basic Treaty was revised twice. The 1936 Hull-Alfaro Treaty cancelled U.S. guarantees of Panamanian independence from Colombia and the right of the U.S. to intervene in certain internal Panamanian affairs. It also increased the annual U.S. payment to Panama from \$250,000 to \$430,000. In 1955, the Eisenhower-Remon Treaty transferred certain U.S. rights and properties to Panama and again increased the annual payment, this time to \$1.93 million.

From the Panamanian point of view the existence of a United States controlled "enclave" in the heart of their sovereign territory has become a major affront to national dignity and national sovereignty. It is virtually the only issue capable of uniting all Panamanians. Among the major grievances voiced by Panama are the existence of a United States "government within a government" in their territory, the "overwhelming presence" of U.S. civilian and military personnel and the inequitable sharing of the economic benefits derived from the Canal.

In the past, this nationalist sentiment has erupted periodically and it culminated in serious demonstrations in 1959 and again in 1964. Recognizing the vulnerability of the situation, President Johnson committed the U.S. to bilateral negotiations in 1964. By 1967, three draft treaties had been agreed upon; one, joint U.S.-Panamanian control of the Canal; two, joint construction of a new, sea-level canal; three, U.S. defense of the old and the new canal for a specified period of time. Action was never taken by either nation, attributed in part to the fact that both nations were then involved in major election campaigns. In August 1970, the government of General Omar Torrijos, in power as a result of a military coup in 1968, formerly rejected the draft treaties.

Talks resumed in 1971. In March 1973, the U.S. vetoed a U.N. Security Council resolution referring to a new Panama Canal Treaty which would "guarantee full respect for Panama's effective sovereignty over all its territories" on the grounds that the Treaty negotiations were a bilateral matter. Shortly thereafter, serious negotiations were resumed. In February 1974, Secretary of State Henry Kissinger and Panamanian Foreign Minister Juan A. Tack signed an agreement of principles as the basis for the formal negotiations. The eight principles called for an entirely new treaty with a fixed termination date, thus ending the concept of perpetuity; the return to Panama of the territory in which the Canal is located; a "just and equitable" share for Panama of the benefits from the Canal; a role for Panama in administering the Canal during the life of the new Treaty and total responsibility for its operation upon termination of the Treaty; joint protection and defense of the Canal by the two countries; the rights necessary for the United States to regulate the flow of ships through the Canal and to operate, maintain and defend it; and provisions for the future enlargement of the waterway.

PANAMA CANAL TREATIES

Mr. GRIFFIN. Mr. President, being the lone dissenter on the Foreign Relations Committee, which has favorably reported the Panama Canal treaties by a vote of 14 to 1, I have filed minority views as part of the committee's report to the Senate.

I ask unanimous consent that a copy be printed in the Record.

There being no objection, the views were ordered to be printed in the Record, as follows:

MINORITY VIEWS OF SENATOR ROBERT P. GRIFFIN

This has been one of the most difficult issues I have confronted in my 21 years in the Congress. I have long recognized that a major revision in our treaty relationship with the Republic of Panama is desirable and could be in the interests of both countries.

I recognize the importance of maintaining close and friendly relations with the people of Panama and with the people of other nations throughout the hemisphere. I am deeply conscious of, and concerned about, the impact that outright rejection of the treaties could have on our relations in the hemisphere.

Sometimes political responsibility imposes upon public officials the necessity of choosing among several undesirable courses of action. That may seem to be the dilemma that we face with these treaties.

After months of agonizing consideration, I have concluded that I cannot consent to ratification of the treaties before us. I think they are fatally flawed in a number of substantive respects. In my view they do not adequately protect the interests of the United States or of other nations that depend upon the Canal.

Furthermore, I believe the defects are so basic and so serious that they cannot be remedied by trying to rewrite the treaties on the Senate floor.

Although these treaties should not be ratified, I believe there is a course open to the Senate other than outright rejection. Despite all of his knowledge about the history of the Canal, or perhaps because of it, David McCullough, the distinguished author of *The Path Between the Seas* acknowledged before the Senate Foreign Relations Committee that he had experienced great difficulty in reaching a personal decision about the merit of these treaties. Although he finally decided, on balance, to support the treaties, when he appeared before the Committee he made this profound and perceptive point:

"... if we say 'yes' to these [treaties] in a grudging way ... [because we think] we have painted ourselves into a corner and we have to get out ... [that would be] unfortunate ... [and] just as wrong, and in some ways a greater mistake than to say 'no' in the spirit of saying 'no' because [it should be] done right—because we don't want to have to come back in 15 or 20 years and have to do it all over again."¹

Under the Constitution, of course, the Senate's role is one of "advice and consent." Instead of consenting to these treaties, I believe it would be a wiser course for the Senate to exercise only its "advice" authority. In other words, without rejecting the treaties outright, the Senate in this instance ought to advise the President to send the negotiators back to the drawing boards with instructions to persist until a more acceptable treaty can be fashioned.

As I said in a meeting of the Foreign Relations Committee, I respect our two Senate leaders and my colleagues who have reached a contrary conclusion—those who are convinced in their own minds that these treaties do serve the best interests of the nation. I salute them for having the courage of their convictions, because I believe with Edmund Burke that a senator owes his constituents his judgment and should not sacrifice it to public opinion alone.

However, I also believe that when the call on the merits of an issue is as close as this is, or as close as I perceive it to be, the judgment of the people ought not to be taken lightly. Very honestly and frankly, I have come to the conclusion that in this situation, as so often is the case, the people are right.

¹ U.S. Senate, Committee on Foreign Relations. *Panama Canal Treaties; Hearings on Executive N. 95th Congress, 1st Session, September 1977-January 1978* (hereafter cited at *Hearings*), pt. IV, p. 40.

I. THE CANAL AND U.S. SECURITY

Military experts may disagree as to the advisability of ratifying these treaties, but there is general agreement that the Panama Canal is vital to the security of the United States.

Indeed, as the Soviet Navy continues to grow larger and larger, while our own Navy shrinks, the Canal becomes more—not less—important.

If access to the Canal were denied to U.S. naval vessels, the trip from ocean to ocean would involve an 8,000 mile journey around Cape Horn—an extra 17 days for a warship traveling at 20 knots.²

In 1968 the United States had 976 naval ships. Today that figure has been cut by more than half—to 459. In 1974, when the Soviet fleet was smaller than it is today, our Joint Chiefs of Staff asserted that we need more than 800 ships to “support our current national defense strategy.”³

Furthermore, as far as U.S. naval strength is concerned, it appears that things will get worse before they get better. Writing in the January 4, 1978, issue of the *Baltimore Sun*, Charles W. Corddry wrote:

The [Carter Administration] request for shipbuilding funds in fiscal 1979 is to be cut 20 per cent below the \$5.8 billion that Congress provided for this year after doing some pruning of its own. . . . The Navy goal of expanding the fleet from its present 459 ships to more than 500 in the early 1980s now may be as elusive as the onetime target of 660 became. Officials acknowledge that the fleet will shrink further before there is an upturn in numbers.

In contrast, the Soviet Navy by 1975 had grown to 1,200 vessels—although, admittedly, their ships do not compare with ours in tonnage or combat effectiveness.⁴

The sobering fact is, however, that the rapidly expanding Soviet Navy raises real concerns about future control of the maritime “choke points” of the world—one of which is the Panama Canal.⁵

As Admiral Thomas Moorer, former Chairman of the Joint Chiefs of Staff, has testified, we do not have a two-ocean Navy. “A large majority of our war and contingency plans are totally infeasible unless one assumes that full and priority use of the canal will be available,”⁶ said Admiral Moorer.

It's true that our aircraft carriers, of which we have 13, are too large to transit the Canal. But the United States has a Navy, that is effective in both major oceans precisely because the rest of the Navy, particularly supply and support ships for the aircraft carriers, are able to shuttle between the oceans through the Canal.

Of course, we can only speculate about the real intentions of the Soviet Union and its Caribbean proxy, Cuba, with respect to the Canal. But few would argue against the proposition that it will be a tragic blow to U.S. and free world security if the Panama Canal should fall into Communist hands.

Since as far back as the 1959 Panama riots, there has been reason for concern about the covetous eye of Castro. For example, the *New York Times* wrote then about the “obvious influence Cuban revolutionaries were exerting on crowds that eventually formed mobs.” The *Times* noted:

Banners and insignia were largely dedicated to endorsement of Premier Fidel Castro and the Cuban revolutionary movement. Two Cuban newsmen were continuously in the forefront of the most violent group, urging it on toward the Canal Zone.⁷

Evidence of Cuban influence may have been less obvious in recent years, but it also is true at the moment Castro has his hands full in Africa.

On June 8, 1977, four of the nation's most respected naval leaders (Retired Admirals Robert Carney, George Anderson, Arleigh Burke and Thomas Moorer)—each of whom has served as Chief of Naval Operations—wrote to President Carter

² *Ibid.* pt. III, p. 156.

³ *Sea Power* magazine, vol. 20, No. 12, December 1977, p. 8, quotes then Chief of Naval Operations Admiral Thomas Moorer as reporting to Congress in 1969 that “a Navy of 850 ships ought to be attained by 1980.”

⁴ Paul B. Ryan, *The Panama Canal Controversy* (Stanford, Ca.: Hoover Institution Press, 1977), p. 50.

⁵ *Ibid.*

⁶ U.S. Senate, *Hearings*, pt. III, p. 8.

⁷ *New York Times*, November 30, 1959. Both U.S. Senator Mike Mansfield (Congressional Research Service [hereafter CRS], Library of Congress, *Background Documents Relating to the Panama Canal*, Prepared for the Committee on Foreign Relations, U.S. Senate, 95th Congress, 1st Session [Washington, D.C.: U.S. Government Printing Office, November 1977], p. 978), and Panama's National Police Chief (*ibid.*, p. 967), recognized a communist role in the 1949 student riots. Following the 1964 riots, Ambassador Elsworth Bunker—then U.S. Representative on the Council of the Organization of American States—called for an investigation and asserted:

and forcefully expressed concerns about the treaties then being negotiated. They wrote, in part:

* * * Contrary to what we read about the declining strategic and economic value of the Canal, the truth is that this interoceanic waterway is as important, if not more so, to the United States than ever.

The existing maritime threat to us is compounded by the possibility that the Canal under Panamanian sovereignty could be neutralized or lost depending on that government's relationship with other nations. We note that the present Panamanian government has close ties with the present Cuban government which in turn is closely tied to the Soviet Union. Loss of the Panama Canal, which would be a serious setback in war, would contribute to the encirclement of the United States by hostile naval forces, and threaten our ability to survive.*

Adequacy of the proposed treaties

During the 1976 presidential campaign, candidate Jimmy Carter told the voters: I would *never* give up complete control or practical control of the Panama Canal Zone. (Emphasis supplied)*

The treaties negotiated shortly after President Carter assumed office, and which now are before the Senate, not only turn the Canal over to Panama in the year 2000, but also they would turn practical—if not complete—control of the Canal Zone over to Panama 30 months after the treaties became effective. The treaties become effective six months following ratification, so Panama would take effective control of the Canal Zone 36 months, or three years, following ratification.

If we accept the decision to turn the Canal over to Panama in the year 2000, still our security interests require, in my view, that the treaties be rewritten to include certain fundamental safeguards:

We need more control and jurisdiction between now and the year 2000 to insure that we will be able *effectively* to operate and defend the Canal.

We must have the right, in *unambiguous* terms, beyond the year 2000 to use military force, if necessary, to protect the neutrality of the Canal against any threat—even a domestic Panamanian threat.

We need to maintain our option to negotiate for construction of a second (perhaps sea level) and *outside* of Panama, should that prove necessary because of Panamanian intransigence, or desirable because of economic or security considerations.

The Panama Canal Treaty

Of course, under the existing 1903 Treaty, the United States exercises within the 10-mile-wide strip of land known as the Panama Canal Zone:

* * * [A]ll the rights, power and authority * * * which the United States would possess and exercise if it were the sovereign of the territory * * * to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.¹⁰

Conceding that the United States is not sovereign—but has all the rights, power, and authority *as if* it were sovereign—the point is that such control is important and, in my view, essential to the effective operation and maintenance of the Canal by the United States between now and the year 2000.

Under the proposed treaty, the United States would have the responsibility to operate the Canal during the next 23 years with employees—U.S. and Panamanians—who would be subject (even while performing their duties with respect to the Canal) to the laws, the police and the courts of Panama.¹¹

Instead of solving problems, this arrangement is pregnant with the seeds of acrimony and conflict.

Under the treaty, persons employed by the Panama Canal Commission would be “employees of the United States”; they would have the right to be represented by unions and to “negotiate collective contracts.”¹² If disputes arose—and that would not be unusual in labor relations—how would they be resolved?

Under the treaty arrangement, the Commission itself would be immune from suit in the courts of Panama, and could be sued only in the U.S. District Court in

* Reprinted in Ryan, *The Panama Canal Controversy*, pp. 142–144.

* Debate between Jimmy Carter and Gerald Ford, San Francisco, Oct. 6, 1976, as quoted by United Press International, Oct. 7, 1976.

¹⁰ CRS, *Background Documents Relating to the Panama Canal*, p. 280 (Article III).

¹¹ See Article IX of the Panama Canal Treaty, and Article XIX of the Agreement in Implementation of Article III of the Panama Canal Treaty.

¹² Article X(9) (a) of the Panama Canal Treaty.

Louisiana—something of an inconvenience for employees in Panama who claim back pay for discrimination or who have any other claims against the Commission.¹³

How would the Commission enforce legal obligations undertaken by others—a union, for example? Apparently, such matters would be left to the Panamanian courts. Would they apply United States law or Panamanian law?

Panamanian civil and criminal jurisdiction would extend throughout the strip now known as the Canal Zone. One exception is provided with respect to criminal jurisdiction applicable to our military personnel who would be stationed on the four U.S. bases that would remain after ratification.¹⁴ However, even that exception would be subject to the following provision:

... (5)(c)(iii) when charged with murder, rape, robbery with violence, trafficking in drugs, or crimes against the security of the Panamanian State, the accused shall be handed over to Panamanian authorities upon their request, or if already in their custody, shall remain with them. (Emphasis supplied)¹⁵

It's no wonder that many U.S. military and civilian personnel who now work in the Zone are deeply concerned about this and other parts of the arrangement.

Outside the boundaries of our four remaining military bases, of course, U.S. military and civilian personnel would be subject at all times to arrest and prosecution by Panamanian police in Panamanian courts.¹⁶

We are assured by the State Department that arrested U.S. personnel in Panama would be protected by a "status of forces" type agreement set forth in Annex D, which is similar to agreements we have with Japan and certain NATO countries where U.S. forces are stationed.¹⁷

Annex D does recite that such U.S. citizens charged with crime in a Panamanian court would have the right to a "prompt and speedy trial," protection against involuntary confessions, self-incrimination, and the like. But the decision on what constitutes a "speedy trial" or an "involuntary confession" will be left, once again, to the Panamanian courts.

For years, Soviet citizens have been "guaranteed" human rights by the Constitution of the Soviet Union. The only problem, of course, is that officials of the Soviet Union pay no attention to them.

That allusion would be unfair and out of order if the Panamanian Government under General Torrijos had a good record of observing human rights in Panama. However, despite the fact that similar "guarantees" are set forth in the Constitution of Panama, last year the Torrijos government had the worst human rights record of any country in this hemisphere, except Cuba.¹⁸ Indeed, in this respect, Panama was rated by Freedom House as being about par with the Soviet Union.¹⁹

Our "status of forces" agreements in other situations have worked reasonably well, perhaps because the host country has wanted the continued presence of our U.S. troops. Obviously, if a NATO ally didn't appreciate our military presence, and asked us to leave—we would.

In contrast, our troops are—and would be—stationed in the Canal Zone because we have a treaty right to protect the Canal. Under the new treaty—at least in theory—our right to have troops there until the year 2000 would not depend on the continuing permission of General Torrijos or any successor.

In that kind of setting, it seems to me there is reason for concern about the adequacy of the protection in Annex D accorded U.S. citizens.

In a country where anti-Americanism has a proven political value,²⁰ and where courts may be heavily influenced by the ruler in power, one is left to wonder whether such a treaty arrangement would be used as the basis for harassing U.S. military and civilian personnel to force them out of the country.

Because many U.S. citizens (as well as some black Panamanians) who now work in the Canal Zone are deeply concerned about their human rights if the new treaty should be ratified, morale among such employees is "very poor."²¹ Many of these employees indicate that they will leave if these treaties are approved; one recent poll indicated that more than 60 percent of U.S. civilians in the Zone consider themselves in that category.²²

¹³ Article VIII(2) of the Panama Canal Treaty.

¹⁴ Article VI of the Agreement in Implementation of Article IV of the Panama Canal Treaty.

¹⁵ *Ibid.*, par. (5)(c)(iii).

¹⁶ *Ibid.*, par. (1).

¹⁷ U.S. Senate, *Hearings*, pt. I, pp. 255—257.

¹⁸ *Ibid.*, pt. I, pp. 292—294, 313.

¹⁹ *Ibid.*, pt. I, p. 294.

²⁰ See for example Ryan, *The Panama Canal Controversy*, ch. 2.

²¹ U.S. Senate *Hearings*, pt. I, p. 292.

²² *Ibid.*, pt. II, p. 285.

According to Gen. H. R. Parfitt, Governor of the Canal Zone, there are at least 1,000 highly skilled U.S. citizens whose services are absolutely essential and for whom Panamanian replacements could not be trained in the short term. In this category are 210 ship pilots, all but two of whom are U.S. citizens.²³

In view of the great importance of keeping the Canal open, it would be ironic as well as tragic if the Senate, by approving these treaties, should trigger an exodus that closes down the Canal.

The Neutrality Treaty

The "primary responsibility" of the United States to protect the Panama Canal would end with expiration of the Canal Treaty on December 31, 1999. After that date, only the second treaty—the Neutrality Treaty—would remain in effect.²⁴

Prior to the year 2000, while both treaties would be in effect, deficiencies in the Neutrality Treaty provisions for Canal security would be masked by the stronger language of the Panama Canal Treaty.

However, since the Neutrality Treaty would stand alone after termination of the Canal Treaty, its provisions must be very carefully examined now.

One key provision is Article One of the Neutrality Treaty, which recites:

The Republic of Panama declares that the Canal, as an international transit waterway, shall be permanently neutral * * * (Emphasis supplied)

Obviously, this is only a unilateral declaration by Panama—rather than a joint commitment by the two countries—and it would be difficult to base any U.S. defense move after the year 1999 on this language.

Perhaps a U.S. role after 1999 can be inferred—but certainly it was not spelled out—in the language of Article IV, which reads:

The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties.

This language, while obviously vague and ambiguous, is seized upon by many who promote the treaties as a guarantee that " * * * the United States will have the permanent right to defend the Canal from any threat."²⁵

The vague language of Article IV is further qualified by Article V, which reads:

After the termination of the Panama Canal Treaty (in 1999), only the Republic of Panama shall * * * maintain military forces * * * within its national territory. (Emphasis supplied)

Surely, a principal purpose of any treaty ought to be to prevent or settle disagreements, not create them. If the parties disagree from the outset on the meaning of important provisions, a treaty is doomed to failure—even if it is ratified.

On the vital issue of the right of the United States under Article IV to intervene and defend the neutrality of the Canal with military force, if necessary, major disagreements have existed between U.S. and Panamanian negotiators, and those disagreements have continued even after the signing of the treaties.

We owe it to ourselves—and to our children who would have to suffer the consequences of our mistakes—to understand the depth of these disagreements and their grave implications for the future if left unresolved.

Accordingly, it is not only instructive but essential to scrutinize and compare carefully the public statements of American and Panamanian officials on this crucial point.

For example, on July 29, 1977, chief Panamanian negotiator Romulo Escobar told a Panama City press conference:

* * * we can tell you that the draft neutrality pact between our two countries does not make the U.S. a guarantor of * * * neutrality * * * U.S. intervention within the neutrality pact would take place only if another power attacked Panama.²⁶

On August 19, after negotiations were completed and the treaties had been initiated, Dr. Escobar reported to the Panamanian National Assembly: 30We did not give in either to the Americans' insistence that the United States and Panama jointly declare the neutrality of the Canal. We said the declaration of the Canal's neutrality was an act relating to Panama's sovereignty, and that it would have to be a unilateral declaration. * * * [W]ith the neutrality pact, we are not giving the

²³ *Ibid.*, pt. I, p. 312; pt. III, p. 462.

²⁴ Articles IV(2) and II(2) of the Panama Canal Treaty.

²⁵ President Jimmy Carter, letter to Members of Congress, Aug. 12, 1977, attachment, p. 1.
²⁶ Foreign Broadcast Information Service (FBIS), *Latin America Daily Report* (Springfield, Va.; U.S. Department of Commerce), Aug. 1, 1977.

United States the right of intervention. What we are giving is an assurance that the Canal will be permanently neutral. * * *

When the Committee began hearings on these treaties on September 26, 1977, this interpretation was called to the attention of the U.S. negotiators and the Secretary of State. The following exchange transpired:

Senator CASE. A point has been made that the Panamanian negotiators are telling the Panamanians that this does not give the United States the right to intervene in protecting the neutrality of the canal. * * * I wish you would corroborate me in this as to our right to intervene as opposed to our power to do it.

[Ambassador Linowitz nods affirmatively.]

Secretary VANCE. * * * I think our right to do so is clear, and there can be no question about it.²⁹

Later, when asked about the Escobar statement, Ambassador Linowitz told the Committee:

We know of these statements. We are disturbed by them. We have discussed them with our Panamanian colleagues. I don't think you will hear such statements again.³⁰

The Ambassador's words were not prophetic. Only four days later another member of the Panamanian negotiating team, Carlos Lopez-Guevara, said on Panamanian television:

I have heard it said that the United States has the right to intervene in Panama after the year 2000. It is sad to see highly responsible officials in the United States say that this neutrality treaty grants the right of intervention. It is sad to note this inconsistency * * * because there is nothing in this treaty to serve as a basis for such a claim.³¹

An effort to end some of the ambiguity was made on October 14, 1977, when President Carter and General Torrijos issued an unsigned Joint Statement of Understanding, which read in part:

Under the Treaty [of Neutrality] * * * Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal * * *

This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.³²

While clearly an improvement over the actual treaty text, the Joint Statement itself was not without its own ambiguities.

As if to emphasize this, on the day the statement was released, General Torrijos provided an interpretation not inconsistent with the earlier position taken by Dr. Escobar. According to the *Washington Star*:

Torrijos left Washington yesterday afternoon. In a brief airport news conference, the general said through an interpreter that he did not agree to anything that would permit a foreign country to intervene in Panama. Any leader who would permit such a thing, he continued, should not be trusted.

Torrijos indicated that the United States had a right to defend the canal if attacked by a great power.

Linowitz was later asked about this qualification, which had been attributed to Torrijos in news accounts.

The U.S. negotiator said that as the language of the statement of understanding indicated, the United States had a right to defend the canal against any threat or aggression from whatever quarter.³³

²⁹ U.S. Senate Hearings, pt. III, pp. 478-479.

³⁰ *Ibid.*, pt. I, p. 30.

³¹ *Ibid.*, pt. I, p. 56. Subsequently (*ibid.*, p. 57). Senator Baker asked if the negotiators could obtain a statement in writing from the Panamanian Government saying that the Escobar remarks at the August 22, 1977, press conference "is not the position of the Panamanian Government." Ambassador Linowitz responded: "We will try. We will ask for it." I am advised by Committee staff that no statement was provided.

³² *Ibid.*, pt. II, p. 233.

³³ CRS, *Background Documents Relating to the Panama Canal*, p. 1620.

³⁴ *Washington Star*, Oct. 15, 1977, p. A-4.

The situation was further complicated when General Torrijos arrived back in Panama and remarked, "I haven't even signed an autograph"—at least implicitly suggesting that the unsigned statement was of questionable legal validity.³³

Four days after the release of the joint Statement of Understanding, Dr. Escobar discussed it at a press conference. Far from conceding that it represented a different interpretation of U.S. rights after 1999 than the one he had provided earlier, he asserted that "what they have said is what has been said all along."³⁴ Of particular interest, the Panamanian chief negotiator stated:

Why did the problem arise? Because some Senators in the United States maintained that the language used in Article IV effectively gave the United States the right of defense against attacks on the Panama Canal in violation of the Neutrality Treaty. They extended this to mean that, as a consequence of this right of defense, they had the right to intervene in the Republic of Panama.

On the other hand, ever since the first public and official explanation in our country on 19 August, we said . . . that the scope of this right of defense at no time could be extended to mean the right to intervene within the Republic of Panama.³⁵

Surprisingly, the suggestion that the dispute had been caused by members of the United States Senate, rather than by the Panamanian negotiator, was endorsed the next day by Ambassador Linowitz. Reversing his earlier position that Dr. Escobar had misstated the terms of the treaty, Mr. Linowitz told the Foreign Relations Committee on October 19:

We believe that there never was disagreement between the responsible chiefs of state of both countries as to what the treaties meant. Had the issue not been raised here, sir, we don't think it would have been necessary to have this statement of understanding.³⁶

Nevertheless, the next day, by contrast, Ambassador Linowitz continued to assure the Committee that the U.S. had the right to protect the neutrality of the Canal *even from a Panamanian threat*.

He had this exchange with Chairman Sparkman:

The CHAIRMAN. * * * Will the statement limit our response to a threat to the neutrality of the Canal from the Government or people of Panama?

Ambassador LINOWITZ. No, sir. There is no limitation in this statement with reference to the action which the United States may undertake to counter any threat or aggression against the canal and its neutrality.³⁷

Later during that hearing, the same issue was raised by Senator Stone:

Senator STONE. The problem is that the Joint Statement says "internal." If the Panamanians say this is an internal dispute we have going here, do we then have the right to intervene?

Ambassador LINOWITZ. If the issue is maintaining an open, secure, and accessible canal, the United States is authorized to take such actions as it thinks necessary, and there is no qualification limitation as to where that threat comes from. * * *

Since there is no limitation, it obviously would not exclude any action which involves a Panamanian threat to the canal.³⁸

That same day, however, this interpretation was questioned by the American Law Division of the Library of Congress' Congressional Research Service, which concluded:

* * * [T]he Carter-Torrijos statement, while guaranteeing each party the right to act against threats directed at the Canal, also specifies that the U.S. may not intervene in the internal affairs of Panama. *It is not altogether clear that the statement would permit the United States to intervene in the event that the aggression or threat should result from Panamanian action.* (Emphasis supplied)³⁹

The following day, October 20—three days before Panama's national plebiscite on the proposed treaties—General Torrijos addressed the Panamanian people on nationwide radio and television.

He said that prior to the release of the Joint Statement he talked with President Carter, who assured him that the United States has no interest in intervening in the peaceful existence of Panama. According to Torrijos, President Carter said:

Tell your people * * * that in case the Canal is attacked or threatened, or if the free circulation or transit * * * is endangered, we do want to have the right to support that people so that their principal natural resource is not blocked.

³³ *Washington Post*, Oct. 16, 1977, p. A-12.

³⁴ U.S. Senate, *Hearings*, pt. I, p. 461.

³⁵ *Ibid.*, pt. I, p. 457.

³⁶ *Ibid.*, pt. I, p. 465. See also pp. 31, 473.

³⁷ *Ibid.*, pt. I, pp. 454-455.

³⁸ *Ibid.*, pt. I, p. 481.

³⁹ *Congressional Record*, Oct. 27, 1977, p. E. 6652. See also U.S. Senate, *Hearings*, pt. III, p. 637, for a similar opinion by Columbia Law School Professor Hans Smit.

Torrijos continued:

Then I told him: "Well, that is the way I see it, too. I feel you are obliged—obliged—to come and defend us if our military or defense capacity is insufficient compared with the attacking force."

He said: "Well, that is where the difference lies. You say obliged, but here I have to sell this as having the right to do so. We feel the same, we are saying the same thing."⁴⁰

Repeatedly, General Torrijos assured his Panamanian radio and TV audience that the role of the United States under the Neutrality Treaty was to defend the Canal from foreign aggression if requested by Panama. Thus, he said:

"* * * [I]f we are attacked by superior forces, the United States is obligated to come to our defense."

"* * * [I]t is necessary for the United States to be committed so that *when we ring the bell here, when we push the button*, a bell rings over there, and the United States comes in defense of the Panama Canal." * * *

I repeat, *we push the button*, the bell rings, and the United States is obligated to come to our defense." (Emphasis supplied)⁴¹

This statement by General Torrijos highlights yet another crucial disagreement between the two negotiating teams. Specifically, can a determination that the Canal's neutrality has been threatened or violated be made unilaterally by the United States, or is U.S. action dependent upon a prior agreement with Panama that neutrality is in jeopardy?

Nearly two months earlier, during an August 22 press conference, Dr. Escobar said:

The neutrality pact does *not* provide that the United States will say when neutrality is violated. That is not provided there. There is an article which reads that Panama and the United States will maintain the neutrality pact with the purpose that the Canal remain open peacefully for all ships of all flags of the world. That is all it says. *It does not say that it falls to the United States to decide when neutrality is violated or not.* (Emphasis supplied)⁴²

On September 26, this position was challenged by Ambassador Linowitz, who—in his prepared statement to the Committee on Foreign Relations—asserted:

Under the treaty the United States is in a position to assure that the Canal's permanent neutrality is maintained and there is *no limitation* on our ability to take such action as we may deem necessary in the event the Canal's neutrality is threatened or violated from any source." * * *

But the key point is that it is for the United States to make the determination as to how we should respond and how we should defend our rights under the Canal's regime of permanent neutrality.

"* * * We are under no obligation to consult with or seek approval from any other nation or international body before acting to maintain the neutrality of the canal nor does the treaty in any other way limit our ability to act. (Emphasis supplied.)"⁴³

Once again, following the October 14 Carter-Torrijos "understanding," it became clear that the two sides still had not reached agreement. On October 18, Dr. Escobar told a press conference:

"There is no exact method of interpretation on how violations of the neutrality treaty will be determined." * * * The general treaty includes an article which states that in case of a discrepancy between the two sides concerning the interpretation of an article, they will reach an agreement between themselves or, if necessary, they will appoint an arbiter to decide the issue. This is the general way these situations are handled."⁴⁴

On this record, it is painfully obvious that the United States and Panama have been in disagreement—and still disagree, despite the October 14 Carter-Torrijos "understanding"—on at least two major points:

Our Administration tells the American people that the United States will have the right to defend the Canal after the year 2000 against *any* threat to its neutrality, including an internal threat from within Panama. But spokesmen for Panama assert that the United States will have such a right only if the Canal is threatened by a *foreign* power.

Our Administration tells the American people that the U.S. can determine *unilaterally* when such a right to defend the Canal can be exercised. But Panamanian spokesmen insist that U.S. forces can come in only when requested or when the action is agreed to by Panama.

⁴⁰ *FBIS, Latin America Daily Report*, Oct. 21, 1977, p. N-3.

⁴¹ *Ibid.*, p. N-10.

⁴² *Ibid.*, Aug. 24, 1977.

⁴³ U.S. Senate, *Hearings*, pt. I, pp. 26-27.

⁴⁴ *Ibid.*, pt. I, pp. 461-462.

We would be living in a fool's paradise to assume that these contradictory interpretations will simply go away if the treaty is ratified. Indeed, we would be most fortunate if they did not come back to haunt us in a most agonizing way.

If, at some future time, we genuinely believed that the neutrality of security of the Canal is being threatened by a third party—and Panama, for whatever reason, disagrees—what would we do?

Or if we became convinced that Panama itself (or forces within Panama) were violating the Canal's neutrality or endangering its security—and we could not persuade Panama to change its course—what would we do?

Would we feel compelled to stand by and watch while the Panama Canal fell into hostile hands?

Or would we be justified in using military force to protect the Canal even in the face of Panamanian protest or, perhaps, outright resistance and military confrontation?

These questions are not easy, and there are no simple answers. It is essential that we avoid being placed in such a dilemma—by resolving in advance of ratification such ambiguities and misunderstandings, which contain the seeds of future agony.

If we fail—or if we try to paper over serious deficiencies and disagreements for short-term political expediency—we could be buying ourselves a one-way ticket to another Vietnam.

II. THE NEW CANAL OPTION

If the security and economic interests of the United States are to be protected, we should *not* relinquish our option to negotiate for construction of a second canal (possibly a sea level canal in a country *other* than Panama).

That's exactly what we would do under Article XII of the proposed Canal Treaty, which reads in part:

(b) During the duration of this Treaty, the United States of America *shall not negotiate with third States* for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree. (Emphasis supplied)

In exchange for our commitment *not* to build a new canal in any other country, what would we get in return under the proposed treaty?

The Administration says we would get a commitment that Panama will not collaborate with any other nation to build a second canal in Panama.⁴⁶ Whether that would be a fair exchange is open to serious question. But beyond that, there are three important points to be made: (1) the language of the new treaty does *not* say that; (2) we already have such a guarantee under the existing 1903 treaty; and (3) the existing guarantee would be wiped out if we were to ratify the proposed treaty.

In exchange for our clear and unambiguous commitment *not* to build a new canal in any other country, Panama would be "bound" by the following language in Article XII:

* * * during the duration of the Treaty, both parties commit themselves to *study* jointly the feasibility of a sea level canal in the Republic of Panama, and *in the event* they determine that such a waterway is necessary, they shall negotiate terms agreeable to both parties for its construction. (Emphasis supplied)

It isn't necessary to take a high school course in business law to realize that, under such language, Panama would be obligated only to "study" and to "negotiate." There is no clear and unambiguous commitment there—or anywhere else in the treaty—that would preclude Panama's joining with a nation other than the United States to construct a second, or sea level, canal in Panama.

Subsection 2(a) of Article XII does say that—

No new interoceanic canal shall be constructed in the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two parties may otherwise agree.

At worse, this language is meaningless. At best, it is fuzzy and ambiguous.

If Panama acts "in accordance with" the treaty, it is under no prohibition with respect to the construction of a second canal. It is required only to "study jointly" and to "negotiate" with the United States concerning the Canal.

Under this language, it might be claimed that the United States has sort of a "first option"—but it is a pretty weak claim under the language employed.

Even though the existing Canal is not obsolete, we must look toward the day when it will no longer be adequate.

The dream of a sea level canal—without locks—ought to be more than a dream in an era when men and women are going to the moon.

⁴⁶ *Ibid.*, pt. I, pp. 46-47.

Studies have indicated that the least expensive place to build a second canal would be in Panama. But, for political and other reasons, it might be very wise to construct the second canal in another country—even though it might cost a few billion dollars more.

Furthermore, perhaps such a canal should be built under the auspices of the Organization of American States or some other arrangement of international interests.

In a study published under the auspices of the Council on Foreign Relations in 1967, Immanuel J. Klette surveyed various canal options and concluded that, if nuclear excavation were prohibited, the preferable route for a new canal would be the Nicaragua-Costa Rica route.⁴⁶ He observed:

Although the cost of construction bears on the final choices, it should not be the prime factor in making decisions on a new canal. A waterway which is less expensive in dollars may be the most expensive in political consequences.⁴⁷

As we move toward a new treaty relationship with Panama, we should not ignore the value of competition—economic, political, and even diplomatic.

Holding open even the possibility of building a new canal outside of Panama—an option foreclosed by the proposed treaty—could be very important and useful in our relations with Panama.

After all, for the foreseeable future, Panama's economic survival is dependent on the Panama Canal. As Professor Edwin C. Hoyt observed several years ago in the *Virginia Journal of International Law*:

If Panama is too intransigent, she may lose the [sea level] canal to one of these other countries. This would be an economic disaster for Panama.⁴⁸

Furthermore, if a canal were constructed elsewhere in Latin America, Panama would be forced to keep its own tolls competitive or risk losing most of the traffic to its almost certainly more modern rival.

A major conference on Panama sponsored by Georgetown University's Center for Strategic Studies in 1967 reached a number of conclusions, one of which was:

Though the Republic of Panama seems technically to be the best place for a future canal facility, the United States should not abandon the right to approach other countries for possible canal location in the event that future political conditions exclude the project from Panama.⁴⁹

Under the circumstances, it is difficult to conclude that Article XII of the proposed Canal treaty serves the best interests of the United States.

III. SOME ECONOMIC CONCERNS

Importance of the Canal

When he testified before the Committee, Ambassador Sol Linowitz asserted that the Canal has "to a substantial extent become economically obsolescent."⁵⁰ That is the view of many who support the treaties.

Of course, it is true that modern-day "supertankers" are too large to transit the Canal. But it also is true that none of the coastal ports of the United States is able to accommodate the supertankers.

A variety of facts and statistics can be summoned to suggest that the Canal is rapidly losing its economic importance to the United States. Sometimes the point is buttressed by noting that the number of commercial U.S.-flag vessels transiting the Canal has decreased substantially during the past two decades.⁵¹

But the fact is that most cargo going to or from U.S. ports is carried in vessels that are not U.S.-flag carriers. The tonnage of U.S. cargo transiting the Canal actually has increased during the last two decades by more than 300 per cent.⁵²

Careful analysis underscores that the Panama Canal remains economically very important, both to the United States and to world commerce in general.

⁴⁶ Immanuel J. Klette, *From Atlantic to Pacific: A New Interocean Canal*, (New York: Harper and Row, 1967), pp. 125-127.

⁴⁷ *Ibid.*, p. 129.

⁴⁸ Hoyt, 6 *Virginia Journal of International Law* 289, at 300. See also David G. Hanrahan, "Legal Aspects of the Panama Canal Zone—In Perspective," 45 *Boston University Law Review* 64, (1965) at 86-87: "Confronted with the possibility of not being chosen for the sea level canal site and resulting economic disaster, Panama cannot afford to be inflexible in reaching an agreement." Writing in the *Washington Star* (Dec. 16, 1977), Prof. William C. Davis argued: "What we need most is flexibility to negotiate—to play off one country against another. With this leverage, we should be able to construct a new canal at reasonable costs."

⁴⁹ Center for Strategic Studies, Georgetown University, *Panama: Canal Issue and Treaty Talks* (Washington, D.C.: Special Report Series, No. 3, March 1967), p. ix.

⁵⁰ U.S. Senate, *Hearings*, pt. I, p. 26.

⁵¹ *Ibid.*, pt. I, p. 339.

⁵² *Ibid.*, pt. I, p. 339, 356.

Consider a few statistics

Between 1948 and 1976, cargo tonnage moving through the Canal increased almost 400 per cent.⁵⁵ That upward trend continued during fiscal year 1977.⁵⁶

About 93 per cent of the world fleet of 27,000 ships of 1,000 gross registered tons and over are capable of transiting the Canal.⁵⁷

At least 96 per cent of U.S. merchant ships and more than 98 per cent of our naval vessels can use the Canal.⁵⁸

At least 57 per cent of all the tonnage passing through the Canal is shipped from, or is destined for, United States ports.⁵⁹

The Canal is particularly important to producers and consumers of certain American commodities—for example, Alaskan oil shipped through the Canal to refineries on the East and Gulf Coasts, and farm products bound for foreign and domestic markets. Twenty per cent of all U.S. farm exports pass through the Canal.

A study by the U.S. Maritime Administration concluded if the Canal were closed the price of U.S. exports would be increased by \$932 million and the price of imports would be increased by \$583 million.⁶⁰

While the Canal is important to the United States, relatively speaking, it is even more important to some other countries. For example, Japan probably is more dependent on the Canal than is the United States,⁶¹ and several Latin American nations rely on the waterway for more than half of their foreign commerce.⁶²

Not only is the Canal economically important, but also transits are projected to increase in the years to come. Canal Zone Governor H. R. Parfitt has testified that transits probably will increase about 40 per cent by the year 2000.⁶³

Self-sustaining or profitmaking

While the United States (along with much of the rest of the world) certainly has benefitted from the existence of the Panama Canal, it has not been—and never was intended by the United States to be—a profit-making venture. On the contrary, according to calculations by Arthur Anderson & Company, unrecovered U.S. investments in the Panama Canal and the Canal Zone Government has exceeded \$3 billion.⁶⁴

In his recent book, *The Panama Canal Controversy*, Paul Ryan wrote:

The United States government, in a strictly bookkeeping sense, has never made a profit on the Panama Canal and in fact, beginning in the 1970s, has lost money on its operation. It was President Theodore Roosevelt's goal that the international waterway be devoted to the common good of mankind, and for over sixty years ships of all nations enjoyed safe, secure transit and paid the same low tolls.⁶⁵

In fact, the refusal of the United States to view the Canal as an economically profitable venture has been a cause of some friction in our relations with Panama.

Former Assistant Secretary of State and Ambassador Thomas C. Mann has observed:

The main thing to be said is that Panama and the U.S. have entirely different concepts about the role of the Canal. Panama has always aspired to sole control . . . for the purpose of maximizing revenues from the Canal to it; for the purpose of charging all that the traffic will bear for the right of transit. The United States . . . has had two objectives: first, to keep transit tolls as low as possible so as not to add to the cost of goods that must transit the Canal; second, ability of the United States ships to transit the Canal in peace and in war and on a non-discriminatory basis.⁶⁶

This difference of approach was even reflected in testimony by Transportation Secretary Brock Adams, who told the Committee that after the year 2000 he thought the Panamanians "will try to get out of the [Canal] passage their operating

⁵⁵ U.S. Congress, House Committee on Merchant Marine and Fisheries, Panama Canal Subcommittee, *U.S. Interest in Panama Canal*, Hearings, 95th Cong., 1st Sess., Serial No. 95-10, July 1977, p. 11.

⁵⁶ *Ibid.*, p. 12.

⁵⁷ *Ibid.*, p. 10.

⁵⁸ *Ibid.*

⁵⁹ U.S. Senate, *Hearings*, pt. I, pp. 341-343. Ryan (*The Panama Canal Controversy*, p. 92), gives a figure of 70 percent.

⁶⁰ U.S. Congress, *U.S. Interest in Panama Canal*, p. 8.

⁶¹ U.S. Senate, *Hearings*, pt. I, p. 341.

⁶² U.S. Congress, *U.S. Interest in Panama Canal*, p. 11.

⁶³ *Ibid.*, pp. 10, 12.

⁶⁴ *Ibid.*, p. 64.

⁶⁵ Ryan, *The Panama Canal Controversy*, p. 79.

⁶⁶ Quoted in *ibid.*, p. 105.

costs and to obtain the amounts of money that will not only cover it but give them a profit."⁶⁵

If Panama should try to extract a profit from the Canal, perhaps it would not be surprising.

Since General Torrijos came to power in 1968, Panama's national debt has grown from \$167 million to about \$1.5 billion—an increase of nearly 900 percent—giving the country the dubious honor of having the highest per capita debt in Latin America.⁶⁶

Between 1975 and 1977, under General Torrijos' leadership, the interest on Panama's debt has increased from \$138 million to \$243 million—a jump of more than 75 percent in just two years.⁶⁷

Nowhere in the treaties does Panama make a commitment to maintain the Canal—least of all out of revenues. We are left to hope that, in its own self-interest, it would do so. But a future government of Panama might well decide that the tolls would be better used for social programs than for the cost of maintaining the Canal—maintenance which is enormously expensive as well as highly technical.⁶⁸

Financing canal operations

Some who seek to sell the new treaties to the American people have portrayed the economic provisions as painless and cost-free.

They assert that tolls from the Canal will cover not only its operating costs, without subsidy by American taxpayers, but also the cost of specified payments, which the treaties categorically require the United States to make to Panama.

On the first day of Senate hearings, for example, Secretary of State Cyrus Vance assured the committee that "the treaties require no new appropriations, nor do they add to the burdens of the American taxpayers."⁶⁹

Similarly, President Carter, in his fireside chat on February 1, 1978, gave this assurance:

Are we paying Panama to take the Canal? We are not. Under the new treaties payments to Panama will come from tolls paid by ships which use the Canal.⁷⁰

The best that can be said for such simplistic assurances is that they are optimistic to the point of naivete.

Current payments made to Panama under the existing treaty amount to \$2.3 million a year. Under the new Canal treaty, our annual payments would be increased by about 3,000 per cent.⁷¹

Just what would go into this 3,000 per cent increase?

The annual payment from tolls would go up from \$2.3 million to \$50 million to \$70 million.⁷²

The treaty calls for a fixed annuity of another \$10 million.⁷³

In addition, the treaty provides up to \$10 million more to be paid out of revenues if they exceed expenses.⁷⁴

Beyond that, we would pay \$10 million a year to Panama for police, fire and other municipal services—and these costs can be negotiated upward every three years.⁷⁵

Outside these provisions of the treaty, if Congress concurs with President Carter's commitment, Panama will receive various types of loans, guarantees and credits

⁶⁵ U.S. Senate, *Hearings*, pt. I, p. 368.

⁶⁶ Ryan, *The Panama Canal Controversy*, p. 84. Testimony before the Committee on January 19, 1978, Professor Richard Falk quoted Cornell historian Walter LaFeber as having concluded: "Only large Canal revenues could rescue the government debt . . . [and] even with those revenues could be insufficient." (*Hearings*, pt. IV, p. 62).

⁶⁷ Department of State, response to questions submitted by Committee, dated Dec. 21, 1977, pp. 39-40.

⁶⁸ See for example Denison Kitchel, *The Truth About the Panama Canal* (New Rochelle, New York: Arlington House, 1978), pp. 141-142.

⁶⁹ U.S. Senate, *Hearings*, pt. I, p. 12.

⁷⁰ *New York Times*, Feb. 2, 1978.

⁷¹ The original annuity was established at \$250,000 by Article XIV of the 1903 Treaty. This was amended to \$430,000 by Article VII of the 1936 Treaty, and again to \$1.93 million by the 1955 Treaty. Because the payments were designated in Panamanian balboas, instead of U.S. dollars, subsequent devaluations of the American dollar have raised the annuity to \$2,328,200.

⁷² Article XIII (4)(a) of the Panama Canal Treaty. The actual payment under this provision will vary dependent upon the total tonnage transiting the waterway. Because the payment is indexed to the U.S. inflation rate, this payment can be expected to increase at regular intervals in the years to come.

⁷³ *Ibid.*, paragraph (4)(b).

⁷⁴ Article III(5) of the Panama Canal Treaty.

⁷⁵ Article XIII (4)(c) of the Panama Canal Treaty.

totaling about \$300 million over the next 10 years—plus \$50 million worth of military hardware.⁷⁶

All this is beyond the fact that we would be giving Panama the Canal itself and all related facilities (valued well in excess of \$1 billion), and giving them the Panama Railroad—all without any reimbursement or recompense.

Notwithstanding all of this, President Carter told the American people on December 28: "We wanted a treaty that did not put a financial burden on the American taxpayer, and we got it."⁷⁷

In theory—but only in theory—these treaty obligations will be paid out of Canal revenues. But it is clear that until the year 2000 the United States is obligated to meet these financial commitments with appropriated funds, if necessary, should revenues from tolls fall short.

Since Article III (2)(d) of the Panama Canal Treaty grants to the United States until the year 2000 the right to "[e]stablish, modify, collect and retain tolls for the use of the Panama Canal," some may assume that such authority will be sufficient to avoid the need for appropriations.

Unfortunately, even with control of the checkbook, we have to face some stark realities.

During a 60-year period prior to 1974, there was never an increase in the toll charge for transiting the Canal.

Since 1974, however, because of the escalating costs of operating and maintaining the Canal, there have been two toll increases, totaling about 50 per cent.⁷⁸

If the treaties are ratified, even Administration witnesses concede that tolls will have to be hiked again—immediately—by 25 to 40 per cent.⁷⁹ Other experts predict that the increase will be as much as 46 per cent.⁸⁰

In a report prepared for the House Panama Canal Subcommittee in December, 1977, W. M. Whitman, an expert on the economics of the Canal, presented this disturbing analysis:

In the first year of operation under the treaty, Panama Canal revenues will fail to cover costs of operation of the canal and related treaty costs by about \$99 million. [This] would require an increase in rates of tolls of more than 60 per cent * * *. * * * [T]he conclusion to be drawn from the data so far available is that costs will rise at a rate higher than any foreseeable increase in revenues over the period of operation of the Canal by the United States under the Treaty.

Constraints on our ability to raise tolls to keep pace with rising costs are both political and economic.

In view of the great emphasis placed by Administration spokesmen on the value of this treaty as a "positive action * * * in our relations with Latin America,"⁸¹ one must wonder how much thought has been given to the possible reactions in Latin America to such gigantic toll increases.

One would have expected, and our Latin American neighbors must have hoped, that before the Administration agreed to a treaty that would drive tolls up so dramatically in order to cover such a huge increase in our annual payments to Panama, more consideration would have been given to the 1977 resolution of the Organization of American States—adopted last June by a vote of 19 to 0 (with the U.S. abstaining and Panama not voting). The OAS resolution:

Reaffirms the principle that Panama Canal tolls should *only* reflect the operational cost of the waterway. (Emphasis supplied.)⁸²

Neither should we ignore the fact that the Panama Canal is not a monopoly. Other trade routes exist, and their appeal will increase as Canal tolls are raised.

Consider these excerpts from the prepared testimony to the House Panama Canal Subcommittee by Leonard J. Kujawa, a partner in Arthur Anderson & Company who since 1962 has been a consultant on various financial and accounting matters to the Panama Canal Company:

To those that argue that Panama Canal tolls can be increased significantly with no effect on traffic, I would say "prove it in the market place." * * *

⁷⁶ "Note Regarding Economic and Military Cooperation," addressed to Panamanian Ambassador Gabriel Lewis Galindo and signed by Cyrus Vance, reprinted in Department of State, *Documents Associated With the Panama Canal Treaties*, (Washington, D.C.: Bureau of Public Affairs, Selected Documents No. 6B, 1977), p. 57.

⁷⁷ *Weekly Compilation of Presidential Documents*, Jan. 2, 1978, p. 1949.

⁷⁸ U.S. Senate, *Hearings*, pt. I, p. 296; U.S. Congress, *U.S. Interest in Panama Canal*, p. 93.

⁷⁹ U.S. Senate, *Hearings*, pt. I, pp. 276, 43.

⁸⁰ M. W. Whitman, letter to Department of State dated Sept. 28, 1977.

⁸¹ U.S. Senate, *Hearings*, pt. I, p. 11.

⁸² *Ibid.*, pt. II, p. 294; U.S. Congress Committee on Merchant Marine and Fisheries, *New Panama Canal Treaty*. Hearing on the Agreement in Principle with Respect to the Proposed Panama Canal Treaties of 1977, Series No. 95-13, 95th Congress, 1st Session, aug. 17, 1977, p. 13.

Tolls must be adjusted moderately and prudently or there can be severe dislocations that would set into motion irrevocable economic consequences. In a short term, tolls could be increased very substantially creating economic hardship for the users who, in the short term, would have available few alternatives. However, such action would have serious long-term consequences. * * *

* * * [I]n the long term, an imprudent toll increase could sour traffic growth and set in motion irreversible decisions. Loss of traffic coupled with growth of costs could result in higher unit costs and the need for further toll increases, producing a vicious cycle that would result in eventual financial collapse.⁵³

Thus, despite the Administration's soothing reassurances, there is every reason to believe that even increased Canal tolls will not cover required treaty payments to Panama and sharply escalating operating costs, particularly after 1984 when it is likely that North Slope oil will bypass the Canal. In that unhappy—but likely—event, the American taxpayer will once again be stuck with the bill.

IV. OTHER CONCERNS

Beyond the points already discussed, there are a number of other disturbing concerns.

Although the Canal would be turned over to Panama under the proposed treaties in the year 2000, no firm obligation is undertaken by Panama to operate and maintain the Canal thereafter.

Notwithstanding testimony by Secretary of State Vance that Panama's obligation to do so is "clear,"⁵⁴ Panamanian negotiator Romulo Escobar has categorically stated that " * * * Panama could not be tied down to keeping open a canal which was not earning revenues."⁵⁵

For the United States, Ambassador Linowitz concluded:

We did disagree with them on the position they asserted and therefore that (commitment) was not included in the Treaty. The position we took was should such a circumstance arise, we would have to talk with one another.⁵⁶

There is only one ambiguous phrase in Article II that could even be used as the basis for implying an obligation on Panama to keep the Canal open after 2000. But our negotiators have conceded the point in statements such as that made by Ambassador Linowitz. This sets the stage for Panama after the year 2000 (particularly if we are precluded in the interim from building a second canal) to demand that the United States continue to subsidize the operation and maintenance of the Canal.

2. Would Panama be able to nationalize or expropriate the Canal shortly after ratification of the treaties—without waiting until the year 2000 to take control?

Under the existing 1903 Treaty, the U.S. has all rights, power and authority *as if* it were sovereign. Panama, under the existing treaty, cannot claim the sovereign power of eminent domain.

The proposed treaty would "wipe out" the 1903 Treaty and all the powers of sovereignty would become vested in Panama once the treaties are ratified.⁵⁷ We already have seen that the United States would have no clear right to intervene if the canal were the subject of a take-over by Panama itself.

The Suez comparison is worth some reflection. One month after the British withdrew from the Suez Canal Zone in 1956, the Suez Canal Company was nationalized and Egypt kept the canal profits. And it also kept the canal—and kept it closed to Israeli shipping—despite treaty commitments, war with Israel, attack by Britain and France, condemnation by the United States, and a 1948 U.N. resolution demanding Israeli access to the canal.

While no forecast of similar action by Panama is intended, our negotiators might have avoided this risk by calling upon Panama, as an act of good faith, to surrender (in the terms of the proposed treaties) any right to nationalize or expropriate the Canal during the period between now and the year 2000.

3. In testimony before the Committee by a panel of international law scholars, concerns were expressed that the new treaties are not compatible with the Revised Charter of the Organization of American States.⁵⁸

⁵³ U.S. Congress, *U.S. Interest in Panama Canal*, pp. 66–67, 70.

⁵⁴ U.S. Senate, *Hearings*, pt. I, p. 60.

⁵⁵ *Ibid.*, pt. I, pp. 59–60.

⁵⁶ *Ibid.*, pt. I, p. 61.

⁵⁷ Article II(a) of the Panama Canal Treaty.

⁵⁸ U.S. Senate, *Hearings*, pt. IV, pp. 92–93. Article 20 of the Revised OAS Charter reads: "The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly on any grounds whatever."

It was maintained that, at a minimum, the OAS Charter appears to make even more ambiguous and uncertain any claim under the Neutrality Treaty by the United States of a right to protect the Canal against a threat from within Panama. At the very least, legal conflicts between the OAS Charter and the proposed Neutrality Treaty appear to give Panama a basis for arguing that any introduction of U.S. military forces on Panamanian soil would violate Article 20 of the OAS Charter.

In light of all the problems of interpretation to be found within the four corners of the treaties themselves, this additional cause for uncertainty is not exactly needed.

4. Were these treaties negotiated in haste under the pressure of a time deadline? Because the treaties contain so much ambiguous language and so many provisions of doubtful merit, it is appropriate to ask such a question. And, unfortunately, there is reason for some concern.

On February 10, 1977, shortly after he took office, President Carter named Sol Linowitz to represent the United States as negotiator for the Panama Canal treaties. But, strangely, Mr. Linowitz was appointed only on a temporary basis—for a six month period. Under the law,⁸⁸ an appointment on this basis does not require confirmation by the Senate. Such an appointment operates to bypass the usual scrutiny by a Senate committee of a nominee's qualifications and possible conflicts of interest.

If hearings had been held, the Senate would have learned that Mr. Linowitz was serving as director of a New York bank that participated in making huge loans, still outstanding, to the Torrijos government of Panama.⁸⁹ Furthermore, the committee might have cleared the air with respect to allegations that Mr. Linowitz formerly represented the Marxist Allende government of Chile, and was required in connection therewith to register as an agent of a foreign government.⁹¹

Because the Senate is an integral part of the treaty-making process under the Constitution, it was unwise and something of an affront to the Senate for the Administration not to submit a treaty negotiator's name for confirmation. Utilizing such a short circuit procedure did not build Senate confidence in the treaty negotiations, and it also denied Mr. Linowitz the opportunity he should have had to explain away any possible conflicts of interest.

Mr. Linowitz, who was appointed on February 10, had six months—until August 10—to negotiate a new treaty without having his name submitted to the Senate for confirmation.

Interestingly enough, it was on August 10 that negotiators for the two countries finally announced their agreement in principle on new treaties relating to the Panama Canal.

CONCLUSION

Clearly, as submitted to the Senate by the President, these treaties are fatally flawed.

Any new treaty relationship built upon the ambiguities of the treaties now before us would be doomed to failure from the start.

It is argued by some that defects in the treaties can be remedied by adopting a series of amendments.

Along with David McCullough, I believe that how we say "no" in this situation is very important in terms of our future relations with the people of Panama.

To adopt amendments that make substantive changes in the text of the treaties is one way of saying "no." As the late Professor L. Oppenheim has pointed out: " * * * the proposal of an amendment to a treaty on the part of the Senate amounts to a proposal of a new treaty * * * ."⁹²

Footnotes continued from last page

This is modified by Article 22, which provides: "Measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation of the principles set forth in Articles 18 and 20." (Emphasis supplied.)

Since the 1903 Treaty qualifies as an "existing" treaty, action taken to defend the Canal under its provisions is less likely to be in conflict with the OAS Charter than action under any new treaty.

⁸⁸ See Article II, Section 2 of the Constitution, and Section 501(c) of the Foreign Service Act of 1946, as amended.

⁸⁹ See for example, *Congressional Record*, February 22, 1977, pp. S. 2819-2824.

⁹⁰ See for example Reed Irvine, "Treaty Negotiator Was Allende Agent," *Bethesda (Md.) Advertiser*, Jan. 1, 1978.

⁹¹ L. Oppenheim, *International Law* (London: Longmans, Green and Co., Eighth Edition, 1955), Volume I, p. 912, note 1. See also Prof. Elmer Plischke, *Conduct of American Diplomacy* (N.Y.: D. Van Nostrand, 3d ed.), p. 394, who writes: "Amendments * * * constitute actual textual

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If the Senate tries to make substantive changes in the text of the treaties—and particularly if General Torrijos should decide later to “accept” them without holding another plebiscite—the foundation would be laid for future Panamanian claims that the treaties are invalid because in their final form they were not properly ratified in accordance with Panama’s constitution.²³

In my judgment, the appropriate course for the Senate is to withhold its “consent”—and instead to “advise” the President to persist in negotiations until acceptable treaties can be fashioned.

ROBERT P. GRIFFIN.

GENERAL TORRIJOS TELEVISION ADDRESS

Mr. GRIFFIN. Mr. President, in my minority views which accompany the report of the Committee on Foreign Relations on the Panama Canal treaties (Ex. Rept. 95—12), I have quoted from an October 20, 1977, television and radio address to the Panamanian people delivered by Gen. Omar Torrijos.

Because it was delivered after the October 14 joint statement of understanding released by General Torrijos and President Carter, and shortly before the October 23 Panamanian plebiscite, I believe this lengthy speech provides important insight into the interpretations which General Torrijos and future Panamanian leaders are likely to give to key provisions of these treaties. And, as I have pointed out in my minority views, some of those interpretations are very disturbing.

In order that my colleagues will have access to the full text of the remarks delivered by General Torrijos on that occasion, I ask unanimous consent that a translation thereof by the Foreign Broadcast Information Service, provided by the Department of State, be printed in the Record.

There being no objection, the transcript was ordered to be printed in the Record, as follows:

TORRIJOS ADDRESSES NATION PRIOR TO TREATY PLEBISCITE

(Nationwide radio and TV conversation with the nation by Chief of Government Gen. Omar Torrijos at the Televisora Nacional TV studios in Panama City with Mario Valasquez as moderator—live.)

(Moderator) General Torrijos, welcome to Televisora Nacional, welcome to Panamanian television. For us it is a source of great pride and pleasure that you should be in our studios tonight to have this conversation with the Panamanian people—this friendly conversation, by which you show great interest in sending a message, in communicating your impressions of your trip to Europe. Would you be so kind, General Torrijos, to talk to us first about your trip to Europe? I understand that this was the first time that a Panamanian chief of government, a Panamanian ruler, has made a trip to Europe while in office.

(Answer) This is true. Following my return to the country after a trip of almost 20,000 km, I wish to use this media to resume our dialog, in which we have been engaged for 9 years. Our trip was very interesting. The traveler was not General Torrijos, but he was the representative of a people with a cause. When in the various countries I was addressed and the national anthem was played, I felt, in my deepest soul, that the national anthem was not being played for Omar, but the national anthem was being played for 1.7 million Panamanians who, through their struggle, through their principles, through many sacrifices, decided to end a shame-

Footnotes continued from last page

changes and, as such, even if acceptable to the President, require renewed negotiations to induce other signatories to accept them . . . Technically, of course, the Senate cannot amend a treaty, but it merely suggests changes which it requires to be incorporated before it will grant its consent to ratification.

²³ See Article 274 of the *Constitution of Panama 1972* (Washington, D.C.: General Secretariat Organization of American States, 1974, p. 44), and Articles II(1) of the Panama Canal Treaty and VIII of the Treaty Concerning the Parliament Neutrality and Operation of the Panama Canal.

ful colonialist enclave and decided that international public opinion should never consider us a colony.

I was proud because now the name of Panama has been incorporated among those of the dignified countries of the world. I was proud because all the attention shown to me was attention which I was receiving on your behalf, and I was proud because our country is being heard at the highest levels, and it is being heard as a country which has issued a cry to the world, a cry which has been heard by the moral leaders of the most powerful and highly industrialized countries of the world.

I emerged from my meetings with optimism. I was optimistic because I went there with the timidity of one who is unfamiliar with this great world. I felt optimistic because in each of these leaders I found sincere support, an in-depth knowledge of our cause, and a profound conviction that the Panamanian people had exhausted all peaceful means of solving a problem. I received congratulations, which I hereby extend to you. I received congratulations from those great leaders because they say that Panama, despite its small geographical size, has given a very significant example—the use of peaceful means to resolve a problem, the use of negotiations as a means of settling a problem of great significance to the world. I had been very confused, and I had had the impression that this was a bilateral problem between Panama and the United States.

I return with a more complete idea of the significance of this problem. Leaders like German Chancellor Schmidt told me: Look, Torrijos, for me and for Germany, but especially for me, the problem of the canal is not just a matter of free, innocent passage for our tonnage; it is as much a sentimental matter for me as it is for you. I was raised in Hamburg, one of Germany's main ports, and even as a child, ever since I could move around the wharves, I saw ships which were coming from or going to Panama.

So that name has a sentimental meaning for me, as it does for your people. I congratulate you. Do not feel alone and never believe that this treaty will not be ratified. I say that it cannot fail to be ratified because it is a problem of such significance to world shipping that it is not possible to commit the irresponsible act of refusing to ratify it for your people. And it is such an important matter, other leaders told me, that it would be disastrous for world trade if the intransigence of those who do not understand the true importance of this should be allowed to endanger the innocent passage of ships of all the world's flags that transit the canal.

I return with great optimism. I am very optimistic because I had felt that the problem was local. The problem has an umbrella, a universe that is much larger than we thought, and the support of these men is much more extensive than I expected.

On returning from Europe, I had a meeting with President Carter, a meeting which was much commented upon in this country, and justly so because, as a result of a standing operating procedure in history the booby traps always come at the end. It is always at the end that the Panamanian people are asked to sign receipts for intervention, to sign receipts which are degrading, or to sign receipts which disguise the perpetual presence of a foreign power in our territory. There were those who advised me: Omar, do not go. Do not go because those people are very smart, very clever, very smart and very clever and they make you unknowingly sign something that could reverse all that we have won. I went. I paid no attention to this advice. I paid no attention to this advice, first of all, because I divine, I discover, I visualize, and I see in Carter—when I talk with Carter I realize that I am talking of a man who has turned his back on intervention, that I am facing a man of high moral character. We met, and what he proposed was quite acceptable for my signature, but I did not wish to sign it precisely because I represent 1.7 million inhabitants and I did not wish there to be the slightest doubt regarding my actions. And I did not wish anyone to believe that, by deceit, flattery or attention, I could be made to accept something which our people do not accept.

However, those who think this way—this way of thinking is the product of the exaggerated foreign presence in the Canal Zone, because to think this way is to underestimate or underrate the ability of the Panamanians.

Listen, I regard myself just as smart as those people, and those people are so smart they can detect a lame man even if he is sitting. [laughter] They can detect a lame man even if he is sitting, those people are so smart. Nevertheless, I talked to him and he told me the following very respectfully. He speaks quite a bit of Spanish and if one talks to him slowly he understands. There they use the term a four-eye meeting, a six-eye meeting, and eight-eye meeting because the interpreter's eyes are innocent eyes, they do not count. We held a four-eye meeting with the interpreter. And he said to me: Torrijos, we have made a commitment. We made a

commitment and signed it. The commitment was that we would sell the same product on different markets. I said, that is correct. [Then he added] but it turns out we are not selling the same product. When Romulo—they know Romulo's name, he handles it very well—when Romulo says that we go indiscriminately anywhere we please and when Linowitz says that, regardless of any pact or signature, we [always] follow our national interests, both of them are hurting us because that was not the intention of what we signed.

Tell your people, but please tell them that neither the United States nor this government has any interest in intervening in the peaceful existence of that nation. And I said: Would you affirm this, Mr. President. [He answered] I affirm this to you as many times as you want. We have no interest in intervening in your internal, intimate or domestic life, in your political form or in the way of being of the Panamanians. But tell them also that in case the canal is attacked or threatened, or if the free circulation or transit of 15,000 ships per year now, 26,000 in 2000, is endangered, we do want to have the right to support that people so that their principal natural resource is not blocked.

When I told him: Well, that is the way I see it, too. I feel you are obliged—obliged—to come and defend us if our military or defense capacity is insufficient compared with the attacking force.

He said: Well, that is where the difference lies. You say obliged, but here I have to sell this as having the right to do so. We feel the same, we are saying the same thing.

So we drafted a declaration. We drafted one in the United States and we drafted one here. It is a declaration which guarantees and explains. It explains because he was elected in a country of 200,000 [as heard] inhabitants who felt a certain moral loathing because their fatherland, the United States, had turned into the world's international policeman, because they have young people on their way back from interventions, because it is a youth which feels moral loathing and repugnance for what happened in Santo Domingo, for what happened in Vietnam and for what happened in Playa Giron. It is a youth [he corrects himself] it is a country on its way back from such interventions and he did not want for a single moment . . . he said: Explain this to them well, but explain it to them in the way I am explaining it to you. I do not want the Panamanian people to think for a single moment that I am disguising here a receipt to intervene in their peaceful existence or way of life. That is signable and I [Torrijos] believe I should have signed it, but I did not do so to avoid misinterpretations.

We then parted. Both of us felt very happy. He told me: Have faith, have faith because moral causes always prevail. Your cause is moral and so is my attitude in listening to a moral attitude. I know I am capable of convincing my people that they have been taught a distorted story and that, as a result of this, many of them have come to feel that Panama exists under the same moral or geographical condition as Alaska or Louisiana, but that is my problem and I can assure you that I can resolve that problem.

When I asked him what were the possibilities that the treaty would be rejected, he answered: Do not think negatively, Torrijos, do not think negatively. The only thing is that I do not want you to pressure me or tell me to sign it Monday, Tuesday, or tomorrow. Give me some time and this treaty will be signed.

I told him, a treaty awaiting to be ratified represents hope, but a rejected treaty is a provocation. And he said, that is right, that is the way I see it, too.

On arriving here and as a good observer of my people—I feel that I am a man who understands your feeling, who understands my people's intimate truth, because there are two types of truths, public truths and intimate truth, and I understand intimate truth, that truth which you will express in the plebiscite. I understand it and I come pretty close to understanding almost perfectly—I realized that the issue was being viewed differently here.

Instead of talking about the real present, they were talking about the legal future. What does the real present mean?

The real present means that there is an enclave there, that bases have to be built and that those military bases have teeth, claws, cannons and a large capacity for retaliation. That is the real present. The real present means that because the country is divided by that enclave we have not been able to perfect our independence and place our flag there, the visible symbol of our sovereignty. The real symbol of our sovereignty is the right of every Panamanian to attend a school or hold a job, the right of every Panamanian mother not to be abandoned to her own resources, and her right to have the state provide herewith a job and her child with an education. That is the real present. We often forget this.

The new treaty—although I never like to mix the economic aspects with the issue of sovereignty, I must also admit that sovereignty means not being dependent; that sovereignty means having a job, that sovereignty means to continue providing our school age children with decent classrooms. I must admit that in this aspect we have not been sovereign. We have not been fulfilling certain sacred principles of sovereignty, and one can easily make a mistake and confuse pseudonationalistic feelings with real nationalistic feelings. In this we have had many pseudonationalistic factors. Let us look at things as nationalists. As nationalists we see that thousands are jobless; as nationalists we see that Colon is demanding and awaiting a response; as nationalists we see that farmers want the Canal Zone market incorporated into their sales market whenever there is superproduction. That is being nationalistic. There we see a part, an important aspect, of real sovereignty. Panamanian farmers want the Canal Zone incorporated into their market because at present there is such contempt * * * the 1903 treaty is so bad that under it [Americans in the Canal Zone] are authorized to bring in tomatoes from California.[laughter].

Those are tomatoes from California that are brought here on ships and when they arrive here how could they taste like a Los Santo tomato? They do not. However, there are some people who despise our people so much that they prefer to eat a tasteless and colorless tomato rather than a tomato produced in the hills of Volcan, or Boquete, or in the warm lands of Herrera, Los Santo and Nata. These are things we have to explain to you, and we have to explain them to you because these are things which form part of the dismantling and gradual turnover that the treaty establishes, that the treaty authorizes, we will replace milk from the Netherlands with milk from Panama and Australian meat with Panamanian meat. All these things will solve the situation of thousands and thousands of jobless persons in our country.

So, instead of thinking about those great elegant legal theories, let us think about the real future of our fatherland. Do not think that in the year 2001 there will be a ruler who will be the reincarnation of Theodore Roosevelt. No, gentlemen, the course of history is as irreversible as the course of a river. No one can tell a river to return to the mountains. Rivers flow to the sea because this is their natural and historic path. The course of history cannot be stopped. Those who think that history can be stopped, those having these legal shortcircuits are not aware of the reality of our people. They are not thinking about the reality of our people, because we have a different situation. Our people are a nation that feels, that thinks and that is urging me to solve their needs. Sovereignty is part of life. It can be touched, but it cannot be eaten. Sovereignty is also an obligation on the part of the government to give all Panamanians a decent job, to give all Panamanian children a health program that will begin to take care of them before they are born and continue taking care of them until they die. This is sovereignty. This is the real present. This is real sovereignty.

It is also being said that the treaty should not be approved because we are going to misuse the annuity of 80 million [balboas]. I do not know why. 80 million will not hurt. We need it. These people are claiming 80 million for their development. 80 million can be used to create 40,000 jobs, each paying 200 balboas. So what do they want? For us to keep 2 million? I do not understand.

There is something of which we must be aware: There are Panamanians who are not thinking only of occupying the zone, but of occupying it to plunder it. They are mistaken. Those who think that filth will replace cleanliness, that anarchy will replace order, and that disrespect will take the place of respect, those who are working so that there will not be free and innocent transit for all the nations of the world are working from the position of those who do not want us to administer the canal. They are working together.

I have just returned from a trip around the world. The world has much faith and knows a great deal about Panama. The leaders do. They trust that Panama has the capacity to manage the canal with common sense.

Somebody told me: Torrijos, you have shown great political maturity. Your presence here is evidence of the great political maturity of your people. Your people have accepted a negotiated solution. Probably I will not be alive in the year 2000 to see it, but this, one of those leaders told me is the greatest altruistic action a ruler can perform.

When I told this same thing to another leader, he told me: What do you mean? What is this about you not being around in the year 2000? You are still young. In the year 2000 I will be 70 or 71 years old, if I do not hide the years and if I keep continuing. He said: You will still be strong at that time. I said: No. Statistics say that the average lifespan in our country is 64 years. He then asked: Do you believe

in statistics? And I said: Yes, I believe in my country's statistics because they are accurate.

However, there is need for mixing the credo with punishment. As somebody once said you should mix the credo with rocks and faith with the whip. [sentence as heard] Those thinking about entering the zone to plunder * * * and I am talking about all Panamanians—including myself—we are going to leave Gamboa prison open in order to lock them up right there, so that they may taste it. We are going to let them try out the jail there so that they can correctly use the jail if they try to use the Canal Zone incorrectly.

The treaty states that there will be loans of up to 50 million balboas for the National Guard. This scares even me, but what the people do not know is that a study by the staff has made three recommendations: First, this 50 million must not be used to increase the National Guard's capacity for reprisal, movement or firepower. Second recommendation: If we want to continue having, or make possible, peaceful coexistence among our people, the National Guard should never have a percentage greater than 50 percent of the number of teachers in the country. That is, the National Guard can only be half as large as the total number of teachers in the country. This means that if we have 30,000 teachers, there can be a maximum of 15,000 guards. But if there are 100,000 teachers, we will not have 50,000 guards because that would be too many.

The third recommendation is that in the Canal Zone the policing of the installations can be perfectly carried out with only an additional 300 guards. However, the staff recommends that, although 300 guards are sufficient, we should have 500 in order to further distribute jobs.

However, these 500 guards must be high school graduates and bilingual, and they must have no military training, but detective training and training in criminal investigation for crimes that could occur around a canal, and training in the problems that result from the movement of 15,000 ships a year. However, they also recommend that these Panamanian graduates include men and women—because there is much discrimination against women in this country. We will see to it that the new system will not discriminate much against women. Women can direct traffic perfectly well. We will give these 500 graduates the opportunity to work and to study in order not to cut short their careers so they can go on to the university.

When we think about obtaining that 50 million in 10 years, I am in fact thinking about a war, but about the war we have now, a war whose mission it is to have helicopters and planes not for combat but for transportation to take a medical team at any time to any part of the country; that is, we are thinking about a structure that would correspond to that kind of war and that type of mission.

When we think about equipping the National Guard we are not thinking about tanks. We are thinking about attack tractors, tractors to attack the land, about cranes and machinery with which to attack and punish, to punish the river which has killed so many children on their way to school, to punish it with a bridge. This is the type of war we think about, to develop a National Guard with a strong civic action at the service of the people. We do not need too many rifles. We only require the number necessary to guarantee peaceful coexistence and we do not believe that we are—and never want to be—a repressive government. We are not thinking about flamethrowers, but about guns that spread seed killer. We are not thinking about destructive war machinery, but we are thinking about machinery to destroy ignorance, machinery that will promote development.

Are we in a hurry to sign the treaty for economic reasons? What reason would we have to hurry? The economic problems do exist. I will not deny this. The money we have spent and owe has been invested. You have seen it. The country has progressed a lot in 9 years and it could have progressed more, it could have progressed more. We are aware of this. We now have a country and government that are well equipped, well organized, a government that not only has ideas but has turned the ideas into projects and the projects will be turned into work.

We have been negotiating for 13 years. There has been no hurry. Nine of those 13 years correspond to our government. Understand me well, I want this nation to continue having confidence in me. No one makes me sign anything under pressure. I would prefer to disappear from the world of the living rather than permit the humiliation of my people with my signature. I am not looking for that. There has been no pressure of any kind. What has happened is that a series of circumstances arose in which the correlation of force was a correlation of moral forces, because a President Carter emerged who is ashamed to apply force to a weak country, who feels shame and listens to his country youth who do not want to return to the battlefields of Vietnam, because there was understanding and because I also matured a lot politically. Previously I was very intransigent. I wanted the gringos to

leave on Monday. However, a negotiation is a compromise. It is not a cosmetic document, it is not a precious document, but it is a working instrument. Note that working instruments are designed to be effective, not to be pretty. I am satisfied with this instrument we have designed because this instrument guarantees that gradually the enclave will disappear and guarantees that more than 1,000 square kilometers will be incorporated in 3 years; that is, 30 full moons, 3 sugar harvests, 3 holy weeks—in 3 years all these square kilometers are incorporated into the geography of national dignity.

What do I mean by that? I mean that the police disappear immediately and our police, who could be the son of Nino, the son of (Pincho) or whoever, go in. However, the Panamanian policeman will be paid better because his responsibility will be much greater since he will be protecting vital installations and since we must set an example of guaranteeing with our responsibility the support that the world has given us. We must keep order and these policemen will have to be well prepared and specialized. We have National Guardsmen, many National Guardsmen with a high degree of professionalism and who speak English. However, they must speak one, two or three languages, at least.

Therefore, there has been no hurry. That has not been the ingredient. The ingredient has been those who gave me their support, all those who gave me their support, because this very local cause was first converted by us into a national cause, then into a hemispheric cause and finally we turned it into a world cause and we have to act with responsibility in reply to the support that the world has given us.

(Question) I would like to make an observation. You have made a general presentation of the prospects for our development, not only economic but also political and administrative and governmental, assuming that the treaties become effective. Since you have just returned from Washington and spoke to President Carter, you are bringing back the experience and situation of Washington. I would like to ask you, what would happen or what would be the reaction of your government or the Panamanian people if the United States were to reject the treaties?

(Answer) First of all, I returned very convinced, not only due to Carter's opinion, but due to the opinion of the world's leaders who told me that this problem is not yours alone, but it is also our problem. We see the canal in a worldwide frame of reference, not in a local one. This problem goes far beyond the country or the electoral district of a senator. Nevertheless, in asking President Tito this question [words indistinct] he said don't worry man, how could they not approve this. It would be such an irresponsible act that it is inconceivable in this day and age of history to commit such an irresponsible act.

Nevertheless, let us be pessimistic. Let us assume that it will not be approved in spite of the pressure—not pressure of force but pressure to convince—which all the leaders of the world will exercise in support of Carter. All these things could happen, (I asked him the same question you asked). He said: Well, undoubtedly I completely agree with you that when all the paths for a peaceful solution are closed to a nation, it is completely justified to undertake a violent path. However, Torrijos, that does not justify that if it is rejected today you will take the violent path on Monday. You have to convince all the leaders of the world that you are right. You have to convince all the world's leaders that you are right and that it is the Senate's intransigence that endangers free transit, not you with a guerrilla movement or a unilateral decision. If you do not convince them, they will blame you and they will say that with your intransigence, by feeling and thinking, you have affected free transit, you have converted the transit of 8 hours into a transit of 30 days. Therefore, it is up to you to take a plane and go to talk to all the heads of state of the world. This could take you almost a year. You must convince them so that whenever this people must take another course because all the peaceful routes have been closed to it, it will have 150 spokesmen in the world and we will have not only moral support but even material support. I say 150 because this is the number of countries existing in the world.

(Question) General Torrijos, there is another matter which has been in the news during this period of intense debate in the country.

It refers to the possibility of building a sea-level canal. The opponents of the treaty claim that, by means of the treaty, Panama is mortgaging its future and granting the United States a series of rights for the building of a sea-level canal at its discretion. I would like you, General, in this talk with the Panamanian people, to explain to us really what is the nature of the agreement existing in the treaties regarding the possibility of building a sea-level canal.

(Answer) This is correct. If there was not so much suspicion—but I see it not as suspicion about me because the people know me, but it is traditional distrust

because the people always look for the bad parts—if it were not for this suspicion we would be working already with the United States on the updating and adaptation of the studies for a sea-level canal. However, since this is not a matter in dispute, nor must it be solved in the treaty, I have not wanted to bring it up or accept that it be brought because if we accept this it could mean that attention will be sidetracked to the sea-level canal and the U.S. reactionary forces could say: Let us leave the situation as it is and wait for the sea-level canal.

However, there is a great deal of interest in the United States. In the treaty we give priority, not exclusiveness, for the building of a sea-level canal. The United States is given the first option. We commit ourselves to jointly study what the construction methods and route shall be, keeping in mind that it will use conventional means—that is, the atomic bomb cannot be used in building the sea-level canal.

The senator from Alaska is the one most interested in this sea-level canal because Alaska has become a great source of petroleum with possibilities that go far beyond the petroleum produced in the continental U.S. territory. The Alaska senator said: Omar, if you sign this letter I can get from the Senate 7 million balboas so that jointly with you—when I say you I am thinking about who I am going to appoint, I am thinking of the Polytechnical Institute, I am thinking of the best trained Panamanian minds in ecology, in engineering, in canal problems—let us begin to make this study now. This study should cost 7 million: 3 million for ecology, 3 million for engineering and another for something else.

I brought this matter up because some may say: He has not solved the treaty problems as yet and he is getting involved in another problem. I do not want our people to think—and our people know this—that a second marriage is the triumph of hope over experience.

(Question) General, if you have no objection, there is a matter to which I would like to return. It deals with the economic aspects of the treaty, especially the prospects of economic development in the country by means of the use of the annuity. My insistence is based on the fact that in general the country is confronting a series of economic problems, and economic factors are very important. I understand that the people are very interested in knowing how the return of the canal will reflect on the well-being of their families.

(Answer) This is a fact. This is what I say: It means the sovereignty of the Panamanian, the sovereignty of the moment, the true sovereignty. The treaty brings many economic benefits. From \$2 million it passes to \$80 million. There are aid plans. They are not gifts. I am very distrustful and do not accept generosity or gifts of any kind. He who accepts a gift runs the risk of being deprived of it later. The treaty includes loans which will almost allow us to solve the housing problem in the country. I feel that I have been foiled when after 9 years I have not been able to solve the problem of giving every Panamanian family a roof over their heads.

This economic injection—it is not a gift, but it is like collecting an earned salary—brings with it loans for the Agricultural Development Bank which has so much influence in our agriculture. It brings loans for irrigation and it returns the docks and drydocks. When I was in Sweden I contracted with a Swedish concern for the greatest utilization of the drydocks which are now not being used. They are among the installations to be returned. It also has the economic advantage that we can, in an organized, orderly and planned manner, build housing projects that are not as far away as Cerro Batea and the Chagres, which is detrimental to the family economy because what they save in housing they will spend on transportation. They are too far from the marketing and working centers. It also means that every North American who retires must be replaced by a Panamanian. It sees a prosperous economic horizon and I also see that there is the hope of solving our problems. It is a real hope, not a false one. It is a positive and not a fictitious hope. I see this people having the basic things which every government must provide.

(Question) General, as in the case of the economic aspect about which I feel very pleased because of the new concept and emphasis you have given this matter, I want to bring up the matter of neutrality because during these 6 weeks of debate it has been the central point of debate and it seems that the neutrality pact, the treaty dealing with permanent neutrality and the canal's operation, has become the Achilles heel of these documents. I would like for you, tonight in this talk with the Panamanian people, to explain more thoroughly how we should understand neutrality, what it represents for our country, what degree of mortgage, if any, it represents for our sovereignty and how it affects our development as an independent nation.

(Answer) This is correct. What does neutrality mean? It means that Panama commits itself to the free transit of all ships of all flags of the world, without

charging one more than the other. It means that Panama takes on the obligation of maintaining the geographic basin at the service of this shipping, because the canal can be very well defended, but if we did not keep the geographic basin at the service of this shipping, navigation would be impossible because there would be no water. And no matter how good a sailor the captain of a ship may be, he cannot navigate without water. It means that Panamanians, no matter how much we may fight internally, must respect the fact that this strategic belt is at the service of humanity, and that this strategic belt is our main natural resource, which has to bear the burden of the development of future generations.

What happens, then? There are those who allege that this must be weighted against what can happen in 23 years, that what we have signed is a receipt for intervention. This is not true, I would be irresponsible if I were to sign a receipt that permits intervention in Panama, but I would be equally irresponsible if I failed to leave future generations the certainty that, if their country is attacked by forces which are superior to our capacity to respond, the United States is obligated to come to our defense.

I do not want the money, the assets, the economic benefits generated by the canal to be spent totally for weapons. It would be irresponsible to spend it all on weapons because all the weapons we could buy would be useless against the weapons which other countries have. I do not want The Netherlands to say in the future that they have the right—and there is a basis—to intervene in Panama. Those who wish to intervene always find a basis to do so: that is, tomorrow the Nordic countries could say: The first people to arrive in Panama were the Vikings, and we have the right to that strategic waterway. Spain could say: Columbus was there, so it belongs to us. Others near here, because we looked at them with disapproval, could say: You have disrespect for our flag and we are going to intervene there.

I do not want the security and tranquility of future generations to be dependent on the number of tanks that another country may have. We will maintain the force necessary to insure peaceful coexistence, but if we are attacked by superior forces, the United States is obligated to come to our defense. And when I said that we remain under protective umbrella, I say it without shame. I feel no shame because I do not wish to escape the threat of a lizard only to be threatened by a shark. This is the way it is. I do not wish to escape the threat of one kind of snake only to be threatened by another kind of snake. No, sir! What I want is for this to be really neutral and for the whole world to respect the isthmus as a peaceful place where all flags are welcome and which has opened its depth, for the benefit of humanity.

However, since at times this respect . . . it is necessary for the United States to be committed so that when we ring the bell here, when we push the button, a bell rings over there, and the United States comes in defense of the Panama Canal.

(Question) General, certain comments have been made regarding the influence to which the National Guard could be subjected because of the mechanism of joint defense provided in the treaty for the next 23 years, an influence which, of course, would be exerted by the United States, by the U.S. troops. Some critics of the treaty call this the Americanization of the National Guard. As chief of government, and also as commander in chief of the National Guard, what do you have to say about this?

(Answer) The people think that joint defense means being in the same barracks, that we are going to send all our combat troops, our guards, the Tigres, the Diablos Rojos, the Massemontes [National Guard units], all the companies to the Canal Zone. This is not so. They are going to remain at their posts. In the event of an attack on the Canal Zone, the troops which are in Chiriqui, the troops in Tinajita, the troops which are here, come from their duty stations, and if the attack is superior to our capacity for response, I repeat, we push the button, the bell rings, and the United States is obligated to come to our defense. On the other hand, when one says Americanization, it seems as if they are disrespecting our nature. Why do they not think—if our guards were really going to be there—that perhaps we would Panamanianize the Gringo soldiers?

There is one thing that I wish to be very clear, that is that every one will remain at this post, and that guard duty will be carried out by 500, 600 or 400 guards, whether men or women, who are specialized in police surveillance of the canal. This is so because we have to maintain standards of respect which are somewhat higher than usual, but without repressing anyone. When the guardsman, the policeman, the policewoman, the traffic officer is a compatriot, he can reprimand one for a violation, cite one for a violation, but not oppress, which is what is happening at present. They (the U.S. forces) do not reprimand; they repress and oppress.

(Question) General, you were out of Panama for almost 3 weeks. You returned 1 week ago, and, of course, you have rapidly been able to sound out the level of the

debate which will culminate in the plebiscite on Sunday. What comments, what message, do you have for the Panamanian people with regard to the plebiscite on Sunday?

(Answer) Mario, here is a document which it might be appropriate to read now, or else I will read it later, so that the people can see—there is talk about what Torrijos signed.

(Question) Let us read it now.

(Answer) Here President Carter commits himself, and he confirmed what he said.

(I said:) Look, Mr. President, you are not going to intervene in our domestic affairs, [and he said]: I told you that this is not my intention. Read it, read the document, so that people do not think that I went around signing things, that I hid this or that. Let the people know that when they go to vote on 23 October, everything will have been said. There is nothing, absolutely nothing, hidden.

(Velasquez) Very well, General, with pleasure. It concerns the joint Carter-Torrijos declaration agreed upon in Washington on Friday, which states as follows: In accordance with the treaty concerning the permanent neutrality and the functioning of the Panama Canal—the neutrality treaty—Panama and the United States have the responsibility of insuring that the canal will remain secure and open to the ships of all nations. The correct interpretation of this principle is that each of the two countries in accordance with its respective constitutional procedures, will defend the canal against any threat to the regime of neutrality and will consequently have the right to act in the event of an aggression or threat to the canal or the peaceful transit of ships through the canal. It does not mean, nor will it be interpreted to mean, that the United States has the right to intervene in Panama's internal affairs. Any action by the United States will be designed to insure that the canal will remain open, secure and accessible, and will never be directed against the territorial integrity or the political independence of Panama. The neutrality treaty provides that warships and auxiliary vessels of the United States and Panama will have the right to transit the canal expeditiously. This was the intention, and it will be so interpreted, of guaranteeing the passage of these ships through the canal as rapidly as possible, without obstacles, with simplified processing and, in the case of necessity or emergency, they may go to the head of the line of ships in order to transit the canal quickly. This is the end of the quote from the joint declaration.

(Torrijos) This is what we all want. There was a problem about whether they would go first. All warships will be first in line. I do not wish to see warships around here. Those warships have guns which point everywhere. They point everywhere, and when warships are in line, I would prefer to let a ship carrying copper wait rather than delay a ship which has such destructive power, because if that ship is attacked near here because it did not transit quickly, it (?harms) the country. So let it leave quickly, let it leave quickly. This is the interpretation. And I would sign this right here if you want. If Carter asks, I would sign this because this is what our youth, our generations want. And this is the peace which I am going to take to my grave—that I do not leave a canal which is greatly coveted by the whole world without knowing that a great power is obligated to come to its defense.

Finally, in closing, I would like to ask our people, now that we are incorporating the entire country under a single flag and now that our cause is only a few days from an overwhelming triumph, I would not like to see a country united under one flag, with a single geography, but with the Panamanian family divided. I ask you not to promote hatred. Let us not encourage bad blood. If in the heat of discussion—it had to be heated since it is such a hot topic—I have offended anyone, I sincerely ask them to forgive me. I do not want to leave a country united under one flag but with a divided Panamanian family. Thank you very much.

PANAMA CANAL TREATIES

Mr. MATHIAS. Mr. President, the Senate debate regarding the ratification of the Panama Canal treaties will begin shortly. Like so many of my colleagues, I have spent the months since the treaties were signed carefully examining the issues raised by them. As part of this examination, I wrote to Secretary of State Cyrus Vance requesting the administration's position on what appear to me to be the major questions raised by the treaties. On December 5, 1977, I received a very detailed response to my letter.

As we embark on this debate, I think it important that my colleagues have the benefit of this exchange. Accordingly, Mr. President, I ask unanimous consent that my letter and the administration's response be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

NOVEMBER 3, 1977.

HON. CYRUS R. VANCE,

Secretary of State, Department of State, Washington, D.C.

DEAR MR. SECRETARY: I am writing in reference to the proposed Panama Canal Treaties.

I have examined with great interest the testimony you and other Administration officials gave to the Senate Foreign Relations Committee regarding these treaties. This testimony, together with that given by opponents of the treaties, has been very helpful in clarifying the issues. The major questions have been delineated.

I attach a list of what I think, from my perspective as a Maryland Senator, are the major questions regarding these treaties. I would appreciate having the Administration's views on these questions. I intend to share both my questions and your responses with my constituents.

With best wishes.

Sincerely,

CHARLES McC. MATHIAS, JR.,
U.S. Senator.

Attachment.

QUESTIONS REGARDING THE PANAMA CANAL TREATIES

GENERAL SUGGESTIONS

1. Sovereignty—Is the Panama Canal Zone part of the United States as has been suggested by some people? What "right" do we presently have to the Panama Canal?
2. Cost and Benefit to U.S.—How much money has the United States invested in the Panama Canal since 1903, and what benefits have we derived from this investment?
3. Future Costs—Besides the many physical assets of the Canal Zone, what other economic benefits would Panama receive under the Treaty and at what cost to the American taxpayer and consumer?
4. Commercial Value—What are U.S. commercial interests in the Canal? How will U.S. commerce be affected by expected increases in toll rates?
5. Port of Baltimore—How might the volume of traffic to or from the Port of Baltimore be affected by expected toll increases?
6. Canal Operation—Once the U.S. has departed, what evidence is there that the Canal would continue to be efficiently operated?
7. Government of Panama—In dealing with the Torrijos government, are we dealing with a regime whose word and human rights record is suspect?
8. Strategic Significance—What is the strategic and diplomatic importance of the Canal? What will the strategic value be in the year 2000 when the last of our troops will be gone?
9. National Security Interests—On what basis does the Administration contend that the national security interests of the United States are best safeguarded by ratification?
10. Risks of Non-ratification—What, if any, are the risks run by the United States if we do not ratify this Treaty?
11. Alternatives—What are the feasible alternatives to ratification of the treaties?

SPECIFIC QUESTIONS

Panama Canal Treaty

1. Need for modernization (Article XII)—Why is it in the national interest to give Panama a veto over our construction of a canal through a third country?
2. Financial (Article XIII)—The Panama Canal has operated at a loss in recent years. What evidence does the Administration have that the greatly expanded payments to Panama incorporated into the Treaty can be met out of Canal revenues?

Neutrality Treaty

1. Article IV—What specific rights will the United States have to intervene in Panama after the year 2000? What is the Panamanian interpretation of these rights?

2. Article VI—What is meant by the word “expeditiously”? Does it mean priority passage of the Canal by our warships? What is the Panamanian interpretation of this word?

3. What legal weight, if any, can be attached to the statement issued by the White House at the time of General Torrijos' recent meeting with President Carter?

4. Are U.S. obligations under the neutrality treaty consistent with other U.S. obligations—for example, the Rio Pact and the OAS and UN Charters?

DEPARTMENT OF STATE
Washington, D.C., December 5, 1977.

Hon. CHARLES MCC. MATHIAS, Jr.
U.S. Senate

DEAR SENATOR MATHIAS: Secretary Vance has asked me to reply to your letter of November 23 concerning the Panama Canal Treaties.

I am enclosing a response to the specific questions you raised and some related materials. We are happy to have been able to respond to your inquiry and hope the attached information will be helpful.

Sincerely,

DOUGLAS J. BENNETT, Jr.,
Assistant Secretary for Congressional Relations.

Enclosures: Material as stated.

QUESTIONS AND ANSWERS ON THE PANAMA CANAL TREATIES

1. Sovereignty—Is the Panama Canal Zone part of the United States as has been suggested by some people? What “right” do we presently have to the Panama Canal?

The enclosed statement entitled “Panama Canal Treaty Negotiations—Legal Status of the Canal Zone” describes our treaty rights in Panama. In brief, we have authority as if sovereign in the Canal Zone. We have never had sovereignty, which remains with Panama.

As a result of our treaty rights, the United States controls a strip of territory ten miles wide, coast to coast. It exercises exclusive jurisdiction over 550 square miles. Within this area we operate not only the Canal but a government on Panamanian soil. The Canal Zone Government maintains a police force, courts, and jails to enforce U.S. laws, which apply equally to all persons, including Panamanians. We maintain seven military areas. For all these rights we pay Panama an annuity of \$2.3 million.

The status of the Canal Zone is different from that of territory over which the United States has sovereignty such as Alaska or the areas included in the Louisiana Purchase. In the treaty for the Louisiana Purchase the United States was explicitly granted full sovereignty over the “territory with all its rights and appurtenances.” The purchase of Alaska involved a similar cession of territory. In neither transaction was provision made—as in the 1903 Treaty with Panama—for a continuing annual payment or for a continuing relationship on the matters covered by the agreements.

2. Cost of Benefits to U.S.—How much money has the United States invested in the Panama Canal since 1903, and what benefits have we derived from this investment?

Partly because accounting procedures for the Canal enterprise during its history have varied, there has been uncertainty over what would be an appropriate figure for the total United States investment in the Canal. In an effort to clarify this matter, we have asked the Treasury to review total United States expenditures on and receipts from the Canal since its inception. The final figures are not yet available, but a preliminary calculation indicates that over the entire period since 1903 expenditures have exceeded receipts by \$130 million. We expect to have a definitive figure shortly and will forward it to you together with explanatory material.

The benefits of the Canal to the United States are in the time and money it saves our vessels when they move between the Atlantic and Pacific. That is why we built

it, and that is why we continue to care about its future. We have operated the Canal more as a public service than as a business. The Canal's tolls have been set as low as has been compatible with meeting costs. As a result, shipping of all nations, not just our own trade, has benefited from the waterway.

3. Future Costs—Besides the many physical assets of the Canal Zone, what other economic benefits would Panama receive under the Treaty and at what cost to the American taxpayer and consumer?

An enclosed fact sheet outlines the payments Panama will receive under the new Canal agreement. We believe these payments represent a reasonable economic settlement and one which is in the interest of the United States. The annuity payments (first paragraph of the fact sheet) are to be drawn entirely from canal revenues and thus do not require the use of United States tax revenues. The public service payment (second paragraph of the fact sheet) reimburses Panama for services to be provided to the Panama Canal Commission. These services are presently provided by the Canal Zone Government at a cost of \$18 million annually—or \$8 million more than we will be paying Panama for these services at the start of the new treaty. The loans, guarantees, and credits contained in the economic cooperation program (third paragraph of the fact sheet) are within existing authorized programs. The only appropriation required will be \$50 million to a reserve fund for the Foreign Military Sales credits. Thus, the cooperation program will for the most part impose no additional burdens on the taxpayer.

4. Commercial Value—What are United States commercial interests in the Canal? How will United States commerce be affected by the expected increases in toll rates?

Roughly 70 percent by tonnage of the cargo passing through the Canal is either going to or coming from United States ports; however, this cargo amounts to only about 12 percent of total United States waterborne trade by tonnage and is an even smaller portion of our total foreign trade.

As noted in our answer to Question 3, the Canal Treaties will provide increased payments to Panama from Canal revenues. They will also entail a number of changes in the Canal administration that will increase some operating costs and decrease others. The net effect of these changes on Canal operating costs will, we estimate, require that toll rates be increased about 30 percent when the treaties go into effect in order that the Canal can continue—as at present—to be financially self-sufficient. On the basis of studies that have been made, we do not anticipate that a 30 percent toll increase will be a burden to world shipping or the American consumer. In this connection, it is of interest to note that toll were increased 50 percent between 1974 and 1976 and that the overall economic effect of these increases in the United States was small.

5. Port of Baltimore—The expected toll increase in the neighborhood of 30 percent resulting from the treaties should not affect the volume of traffic to and from the port of Baltimore. About 20 percent of all cargo handled in Baltimore transits the Canal—24 percent of all general cargo. In most cases, a 30 percent toll increase would not cause diversion to alternative routes or commodities. Where this might result, the cargo would continue to be handled at the port in spite of a different route.

For example, the bulk of this trade is destined for the Far East. If the tolls were to rise substantially, traffic might be diverted around the Cape of Good Hope or through the Suez Canal. This is already the case with an increasing amount of Appalachian coal destined for the Orient. From either Norfolk or Baltimore, it is shipped around the Cape of Good Hope on ships of up to 125,000 tons at a cost that is comparable to the shipping of coal through the canal on smaller ships, and any increase in Panama Canal tolls would accelerate this trend. But, by either route, the volume of coal leaving the port of Baltimore is unaffected. Therefore, even if the toll increase resulting from the treaty changes transportation routing from the East to the Orient, the Port of Baltimore would continue to handle the traffic.

In the case of Baltimore's trade with the west coast of Latin America, the traffic would not be diverted by a toll increase and therefore the Port of Baltimore would not be adversely affected. General cargo is the largest category of trade originating from the port destined for Latin America. Our sensitivity studies show that a 30 percent increase would have a minimal impact on the average additional transport cost (for example, approximately \$3.00 on a new automobile). This is not enough of an increase to cause diversion to alternative routes.

6. Canal Operation—Once the United States has departed, what evidence is there that the Canal would continue to be efficiently operated?

More than 70 percent of the work force is Panamanian. The Treaty provides for training programs and on-the-job experience for Panamanians at all levels of the

operation during the period of United States control. We believe that this period of twenty years provides ample time to prepare Panamanian personnel to operate the Canal.

By the time the treaty expires, there should be well-qualified Panamanians to fill all the positions related to Canal operation.

7. Government of Panama—In dealing with a regime whose word and human rights record is suspect?

In general, Panamanian enjoy life, liberty and security of person. Secretary Vance stated in his testimony before the Senate Foreign Relations Committee on September 26:

"The Panamanian Government has in the past been charged with abusing the civil and political rights of some of its citizens and we have discussed this issue with that Government. The closer relations between our two governments that will grow out of the new treaties will provide a more positive context in which to express such concerns, should it be necessary to do so in the future."

I am enclosing the full text of this statement and a copy of the Department's Human Rights Report which was part of the Congressional presentation document for the FY 1978 Security Assistance Program.

8. Strategic Significance—What is the strategic and diplomatic importance of the Canal? What will the strategic value be in the year 2000 when the last of our troops will be gone?

The position of the Joint Chiefs of Staff has been that the Panama Canal is a major defense asset, the use of which enhances United States capability for timely reinforcement of United States forces. Its strategic military advantage lies in the economy and flexibility it provides to accelerate the shift of military forces and logistic support by sea between the Atlantic and Pacific Oceans and to overseas areas. The strategic value of the canal is not expected to change substantially through the life of the new canal treaty and beyond. The United States military interest in the Canal, however, is in its use, not ownership. We need to be able to depend on the Canal when we need to move ships or cargo. This requires an arrangement that guarantees, as much as is possible, free passage at all times. It means making sure that:

The canal system is not physically put out of use by sabotage or by inept operation.

Ships passing through are safe from attack.

9. National Security Interests—On what basis does the Administration contend that the national security interests of the United States are best safeguarded by ratification?

While the Panama Canal and the Canal Zone can be defended, even in a hostile environment, the continuous operation of the Canal could not be ensured in that environment. The canal complex is susceptible to varying degrees of sabotage and the Canal Zone is vulnerable to attack from forces or weapons located outside the area of United States jurisdiction.

The political environment, therefore, is a very important factor in canal defense. The preferred defense of the Canal would be in conjunction with a friendly Panama. Thus a new Canal treaty, by fostering a friendly and cooperative relationship with Panama, would be most conducive to effective canal defense.

10. Risks of Non-ratification—What, if any, are the risks run by the United States if we don't ratify this Treaty?

It is fair to say that after 13 years of negotiating, if the treaties were rejected, our relations with Panama would be shattered, our standing in Latin America damaged significantly, and the security of the Canal itself placed in jeopardy.

11. Alternatives—What are the feasible alternatives to ratification of the Treaties?

a. No action.—

This option assumes that the *status quo ante* can be preserved. However, a decision not to press ahead with the treaty does not mean that the existing situation in Panama would continue indefinitely. Nationalists and extremist political forces in Panama are pressing for immediate and drastic changes in the Canal's status, and discontent in Panama will become stronger and more forceful if frustrated by the absence of a treaty.

b. Postponement.—

Postponement would satisfy neither those Panamanians who support the Treaty nor the Treaty's opponents, who want Panama to take possession of the Canal immediately. Thus, postponement would create an unstable situation, whose consequences would eventually be similar to those of taking no action.

SPECIFIC QUESTIONS

1. Article XII.—

For the duration of the Panama Canal Treaty, the United States and Panama are committed to deal exclusively with each other concerning the possible construction of any new canal. Paragraph I of Article XII states that both countries will conduct a joint feasibility study, and if the two countries conclude that a sea-level canal is necessary, will negotiate mutually acceptable terms and conditions for its construction.

Panama has agreed that no new canal will be built in its territory during the treaty period without the agreement of the United States, and in return, we have agreed not to negotiate for the right to construct an interoceanic canal elsewhere in the hemisphere.

We believe the agreement not to negotiate elsewhere is not detrimental to United States interests. On the contrary, this arrangement has assured us exclusive rights to participate in a sea-level canal along the only really suitable routes. The 1970 United States study of possible alternative routes for a sea-level canal concluded that from the standpoint of engineering feasibility and cost, sites in Panama are far more suitable for a sea-level canal than sites in any other country. For example, the estimated cost for constructing a canal with conventional explosives on the Nicaragua route was \$11 billion, compared with \$2 billion for a Canal in Panama.

2. Article XIII.—

While it is true that the Canal Company has been operating at a deficit for the last few years, we anticipate the Company will show a slight profit this year. Traffic is increasing, and with the advent of North Slope oil from Alaska, we expect this trend to accelerate.

In addition, under the terms of the new treaties, the Canal Zone Government will be dismantled and some of the Company's activities will revert to Panama. This will reduce expenditures and lower operating costs. We anticipate that a toll increase in the neighborhood of 30 percent will be necessary to meet our treaty obligations. It should be possible to hold toll increases at reasonable levels, although increases will, as in the past, be necessary from time to time to cover increases in operating costs due to inflation or other reasons.

Neutrality treaty

1. Article IV.

2. Article VI.—

There is no disagreement between the United States and Panama as to the meaning of Articles IV and VI. In October, both governments issued a statement of understanding which reaffirmed their interpretations of the meaning of these provisions. Enclosed is that statement and a paper on the Defense and Neutrality of the Panama Canal under the new treaties.

3. What legal weight does the understanding have?

Such statements are often made which are signed by neither party but represent their views. Our legal interpretation is that it is an agreed statement by both parties, and is the definitive interpretation of those two articles.

4. Consistency with Rio Pact, OAS and UN Charters.

The Neutrality Treaty is entirely consistent with this provision. It authorizes the use of force for the sole purpose of maintaining the neutrality of the Panama Canal. It does not authorize, and the United States would not consider the use of, armed force against the territorial integrity or independence of Panama or in any other manner inconsistent with the purposes of these Charters.

PANAMA CANAL TREATY NEGOTIATIONS

I. Legal Status of the Canal Zone.—

The legal status of the Panama Canal Zone is a question of considerable interest in the context of current negotiations with Panama for a new canal treaty. The position of the United States Government concerning this matter is as follows:

Article II of the 1903 Treaty grants to the United States "the use, occupation and control" of the Canal Zone, and Article III authorizes the United States to exercise therein "all the rights, power and authority . . . which it would possess and exercise if it were the sovereign of the territory . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority."

The question is often posed as to whether this grant of rights had the effect, under international law, of transferring the territory comprising the Canal Zone

from Panamanian sovereignty to that of the United States. In other words, is the international legal status of the Canal Zone that of Panamanian or of United States territory?

It is clearly established under international law that a state may grant to a foreign state the right to exercise exclusive sovereign powers within portions of its territory without effecting a cession of its own sovereignty over that territory. For example, during the latter part of the 19th Century China's leases of naval bases to France, Germany and Russia included grants to the lessees of rights to exercise sovereign powers within the leased areas. (I MacMurray, *Treaties and Agreements with and Concerning China, 1894—1919*, at 112, 119, and 128.) Similarly, Article III of the U.S.-Cuba Agreement of February 16, 1903, relating to Guantanamo Naval Station provides:

"While on the one hand the United States recognizes the continuance of the ultimate sovereignty of the Republic of Cuba over the above described areas of land and water, on the other hand the Republic of Cuba consents that during the period of the occupation by the United States of said areas under the terms of this agreement the United States shall exercise complete jurisdiction and control over and within said areas * * *" (TS418; 6 Bevans 1113.)

A more recent example of one nation being granted sovereign rights within the territory of another is found in Article III of the Treaty of Peace with Japan (3 UST 3169; TIAS 2490) which authorized the United States to "exercise all and any powers of administration, legislation and jurisdiction over the territory and inhabitants of (the Ryukyu and Daito islands)" while Japan retained what Secretary Dulles termed "residual sovereignty"¹ over those areas. (The rights of the United States under Article III were terminated by the US-Japan Treaty of June 17, 1971).

With respect to the Canal Zone, the United States has consistently recognized that Panama retains "titular" sovereignty over the area.

"* * * The truth is that while we have all the attributes of sovereignty necessary in the construction, maintenance, and protection of the Canal, the very form in which these attributes are conferred in the treaty (of 1903) seems to preserve the titular sovereignty over the Canal Zone in the Republic of Panama . . . (Letter from Secretary of War William H. Taft to President Theodore Roosevelt, January 12, 1905.)

In essence, while the United States required extensive treaty rights to use the Canal Zone and to exercise sovereign powers within it, the area technically remains part of the territory of the Republic of Panama.

"The rights of the United States in the Panama Canal Zone offer an example of the most complete transfer of jurisdiction over a territory without its being a cession in the technical international law sense * * *" (Vali, *Servitudes of International Law*, 2d ed., 1958, 254.)

This distinction between the right to exercise jurisdiction within the Zone area and its international status was recognized in Article III of the Treaty of Friendship and Cooperation of March 2, 1936 (53 Stat. 1807; TS 945), which refers to the Zone as "territory of the Republic of Panama under the jurisdiction of the United States."

Perhaps the most clear description of the nature of the rights the U.S. acquired in the 1903 treaty is that of M. Phillipe Bunau-Varilla, the principal drafter of the document:

"I decided to grant to the United States, *in the interior of the zone, all rights, power, and authority that she would have if she were sovereign, to the entire exclusion of the use of any such rights, power and authority by the sovereign Republic of Panama.*

The United States, without becoming the sovereign, received the exclusive use of the rights of sovereignty, while respecting the sovereignty itself of the Panama Republic." (Italics in original.) (Bunau-Varilla, *From Panama to Verdun* (1940 158).)

With respect to the domestic law of the United States, the Canal Zone has been treated in various ways for the purpose of defining the applicability to the Zone of specific legislative provisions. For example, the Canal Zone is considered to be an organized territory of the U.S. for purposes of extradition (37 Stat. 48 USC 1330). On the other hand, it is treated as foreign territory for purposes of customs duties (33 Stat. 843, 19 USC 126) and its ports are considered foreign ports for purposes of the transportation of mail (*Luckenbach Steamship Co. v. U.S.* 280 U.S. 173 (1930)).

Thus, U.S. domestic legislation and court decisions would not appear to provide a basis for any definitive conclusions with respect to the international status of the Canal Zone, nor are they intended to. Rather, such definitions are made for the sole

¹ Conference for the Conclusion and Signature of the Treaty of Peace with Japan: Record of Proceedings 78 (Department of State Pub. 4392, 1951.)

purpose of extending the effect of a specific provision of U.S. law to the Canal Zone or of exempting the Zone from its application.

The often cited case of *Wilson v. Shaw* (204 U.S. 24 1907) must be considered in this context. That case was taken to the Supreme Court by a taxpayer who maintained that the Federal Government could not continue to expend funds lawfully for the Construction of an interoceanic ship canal in Panama. He sought an injunction against any further expenditures on the grounds that the U.S. did not have a sufficient legal interest in the Canal Zone to authorize the expenditure of tax money there. The Supreme Court held that the Federal Government did have broad enough power to encompass expenditure of funds for the construction of the Canal and refused to issue an injunction. In speaking of the legal interest of the U.S. in the Zone, the Court said,

"It is hypercritical to contend that the title of the United States is imperfect, and that the territory described does not belong to this Nation, because of the omission of some of the technical terms used in ordinary conveyances of real estate."

Thus, the Supreme Court did equate the Canal Zone with territory belongings to the United States, but in the context of establishing the authority of the Federal Government to expend funds and to engage in construction work in the Zone. As noted above, the Court has subsequently held the Zone to be foreign territory for other purposes (*Luckenbach Steamship Co. v. U.S.* (280 U.S. 173 1930)), and such interpretations of the status of the Canal Zone under domestic U.S. law for the purpose of determining the applicability of specific statutes therein are not determinative as to its international status.

PANAMA CANAL TREATY—ECONOMIC ARRANGEMENTS FACT SHEET

1. Annuity Provisions (Article XIII).—

The new Panama Canal Commission shall pay Panama the following three annual payments exclusively out of Canal operating revenues:

a. 30 cents per Panama Canal ton transiting the canal. (This rate will be readjusted during biennial periods on the basis of the wholesale price index of total manufactured goods of the U.S. beginning 5 years after entry into force of the treaty.);

b. \$10 million; and

c. Up to \$10 million to the extent Canal operating revenues exceed expenditures.

2. Payments for Public Services (Article III).—

The new Panama Canal Commission and its U.S. citizen employees will be exempted from taxation by Panama. The Commission shall reimburse Panama \$10 million for the cost of municipal public services; i.e., police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection. Every three years that cost will be reexamined to determine whether an adjustment of the payment should be made.

3. Economic Cooperation Outside the Treaty.—

Outside the treaty, the United States has pledged its best efforts commitment to provide Panama with an economic program to promote its economic stability and development under existing statutory programs. Each element of the program would provide non-concessional loans, credits or guarantees and would require private sector participation. The economic cooperation program over 5 years would include:

Up to \$200 million in Export-Import Bank credits;

Up to \$75 million in A.I.D. Housing Guarantees; and

\$20 million in Overseas Private Investment Corporation loan guarantees.

Panama will also receive up to \$50 million in foreign military sales credits over a period of 10 years, under existing statutory programs, to improve Panama's ability in the Canal's defense.

HUMAN RIGHTS REPORT

I. POLITICAL SITUATION

Panama is a republic governed under the provisions of a constitution which entered into force October 11, 1972. The present government came into power in 1968 following a coup. Organized opposition by political parties is not permitted. A transitory provision of the 1972 Constitution grants General Omar Torrijos broad powers as Chief of Government for a six-year period.

Torrijos has based his government on broad support within Panama, and has made a number of concessions to both the left and the right to assure the continuation of this support.

II. LEGAL SITUATION

The Constitution guarantees equality before the law. It guarantees a hearing before a competent authority within 24 hours of detention, and writ of habeas corpus. Warrants are required before a search can be undertaken. The Constitution also guarantees freedom of movement, religion, assembly and expression. These guarantees are generally observed.

Justice is generally administered fairly and without regard to race, social class or wealth.

III. OBSERVANCE OF INTERNATIONALLY RECOGNIZED HUMAN RIGHTS

A. Integrity of the person

Article 3: Panamanians enjoy the guarantee of life, liberty, and security of person. A very few exceptions have occurred where individuals engage in political activities which the Government considers inimical. Nearly all of the exceptions involving arbitrary imprisonment occurred prior to 1972. The noteworthy exceptions in recent years occurred when 14 participants in the January 1976 political protests and three persons who allegedly fomented riots in September 1976 were exiled.

Article 5: There is no evidence that the Panamanian Government makes a practice of arbitrary imprisonment, torture, or murder for political purposes. A "Panamanian Committee for Human Rights" has published an anonymously-authored pamphlet alleging brutality on the part of the Government. There is no independent corroboration of the allegations and it appears that nearly all of the alleged incidents are believed to have occurred during the 1968-71 period.

Article 8: In general, Panamanians can obtain an effective remedy from the courts if their rights are violated. Exceptions to this are more frequent for political opponents of the Government.

Article 9: The Government has exiled opponents who it felt threatened its existence. This occurred most recently in January and September 1976, when the government summarily exiled 17 prominent Panamanians. Although this latest group was composed primarily of lawyers and businessmen, opponents who have been exiled represent the full political spectrum including radicals on the left and leaders of the Communist party (PDP). Some exiled persons have been permitted to return to Panama after a time.

Article 10: The practice of *amparo* (habeas corpus), which requires that a hearing to determine charges and rights be held within twenty-four hours after arrest, is generally observed in Panama.

Article 11: Panamanians have reasonable assurance of obtaining a fair trial in the vast majority of civil and criminal cases. The guarantee of a fair trial might not be observed in a case with important political considerations, however.

B. Other important freedoms

The Government does not condone discrimination although some evidence of it remains in Panama's racially-mixed population. In general, Panamanians can move freely within the country and may travel abroad without restrictions. Property rights are respected.

There is freedom of religion. Freedom of assembly is observed. However, political organization and activity are limited. Organized open political opposition is not tolerated. The media are monitored by the government. While strict censorship is not imposed, editors and others in positions of responsibility are made aware of what will be tolerated by the government; and editors of one newspaper chain, which is owned primarily by high officials of the GOP, take guidance from the Government. While radio criticism of the GOP has occasionally been sharp, criticism appearing in the press is aimed primarily at low-level officials and at failures in the implementation of policies rather than broadside attacks on top leadership.

IV. OTHER HUMAN RIGHTS REPORTING

The Amnesty International Report on Torture, published in 1973, states that the most serious allegations of torture in Panama date from before 1970, but notes allegations of single instances in 1971 and 1972. The Amnesty International Report 1975-76 does not contain a section on Panama.

Freedom House describes Panama as "not free".

THE DEFENSE AND NEUTRALITY OF THE PANAMA CANAL UNDER THE NEW TREATIES

The new Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal provide the framework for the United States permanently to protect the security of the Panama Canal and to assure its operation in accordance with the general principle of transit by the vessels of all nations on a nondiscriminatory basis. The arrangements under which the United States will assure the security and neutrality of the Canal are in two forms: those which apply until 2000, while the United States operates, maintains and defends the Canal, and those which apply permanently thereafter.

PANAMA CANAL TREATY

The arrangements in the Panama Canal Treaty for the protection and defense of the Canal until 2000 are based on the concept of a combined defense with Panama. However, under Article IV of the Treaty, the United States assumes primary responsibility to protect and defend the Canal throughout the period of United States operation of it. Panama has agreed further in Article IV that the United States may act unilaterally against a threat to the Canal from any source.¹ While the United States has undertaken in Article IV to attempt to maintain its military force in Panama at a level no greater than that in the Canal Zone at the entry into force of the Treaty (at present approximately 9300), the United States may increase that force as it deems necessary for the defense of the Canal. In addition, the Treaty and its related agreements grant to the United States the rights until the year 2000 to use the specified defense sites and military installations necessary for the protection and defense of the Canal.

Article IV further provides for close coordination and cooperation between the United States Forces and the Panamanian National Guard. This will be carried out through the military Combined Board established in the Treaty. It is anticipated that during the Treaty term the Panamanian Forces will assume an increasing degree of operational responsibility in the combined plans the Combined Board will develop for Canal defense.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

Assurance of permanent access to the Canal for the United States after 1999 is provided by the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (Neutrality Treaty). This treaty enters into force simultaneously with the Panama Canal Treaty and does not terminate regardless of the termination of any other treaty or agreement between the two countries. The United States and Panama, during their respective periods as Canal operator, must operate the Canal in accordance with the regime of neutrality which is established in the Treaty. Thus, after 2000, Panama is obligated to the United States to afford access to the Canal to United States vessels, in accordance with these same provisions, including the right for its military vessels to transit the Canal at the head of the line of vessels waiting to transit when the United States considers it necessary. Panama will have the same obligation as regards any other canal constructed in Panama.

THE REGIME OF NEUTRALITY

The Treaty establishes a "regime of neutrality"—general rules for operation of the Canal and the transit of vessels—that are set out in the Treaty. The basic principle of this regime, stated in Article II of the Treaty, is that "both in time of peace and time of war the Canal will remain secure and open to peaceful transit by vessels of all nations on terms of entire equality without discrimination against any nation concerning conditions or charges of transit."

In addition to establishing the basic premise of non-discriminatory operation of the Canal, this statement sets forth two important general principles for the future. First, it makes clear that the security of the Canal is a vital element of its regime of neutrality. Secondly, it contains the basic commitment of both Parties to maintain the Canal open.

RULES OF NEUTRALITY

The regime of neutrality also contains specific standards for the operation of the Canal. These include commitments that it shall be operated efficiently and that the

¹ "Each Party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it."

conditions of transit and the applicable rules and regulations shall be just, equitable, reasonable and limited to those necessary for safe navigation and efficient operation of the Canal (Article III Section 1 (a)). There is a further requirement that tolls and other charges for transit and related services must be just, reasonable, equitable and consistent with the principles of international law. (Article III Section 1(c)).

Special provision is made for the transit of military vessels without inspection, and irrespective of the type of armament they carry or how they are powered. (Article III Section 1(e)). Under this provision, military vessels which may be nuclear powered or armed are assured of the right to transit the Canal permanently without inspection. The Treaty permits such vessels to transit the Canal at all times, irrespective of any belligerent status they may have. However, the waters of the Canal would extend only for about three miles, as they do at present.² While a general blockade of the Canal outside these waters would not be permissible, belligerents of the United States navigating the high seas would be fair game.

One of the most significant elements of this regime of neutrality is Panama's commitment that after 1999 only Panama will operate this Canal or any other canal ever constructed in Panama (Article V and Article I). Panama has also agreed that it alone will maintain military forces or military installations within its territory after the termination of the Panama Canal Treaty (Article V).

Article VI of the Neutrality Treaty provides certain limited exceptions to the general principle of non-discriminatory transit established in Article II. The first exception is that U.S. and Panamanian military vessels may transit the Canal expeditiously regardless of "their internal operation, means of propulsion, origin, destination, armament or cargo carried."

It is agreed that this special right of transit assures United States and Panamanian military vessels the quickest transit possible which will include, when necessary, the scheduling of their transit at the head of the line of vessels waiting to transit. The provision for expeditious passage is stated as an explicit exception but is not inconsistent with the general implementation of the principle of non-discrimination under the 1903 Convention in which certain vessels, e.g., passenger vessels and vessels carrying perishable cargos, may be scheduled ahead of waiting vessels when circumstances warrant.

The second exception to the general principle of non-discrimination is that the Canal operator is authorized to provide toll-free transit to the troops, vessels of war and materials of war of Colombia. This provision allows the United States, as Canal operator, to accord it such preferential transit in order to fulfill the United States' obligation to Colombia under the 1914 Thompson-Urrutia Treaty. After 1999 Panama is authorized to extend such preferential treatment to Costa Rica, its other neighboring country, as well.

The inclusion in the regime of neutrality of authorization for Panama to make this exception to the general principle of nondiscrimination for Costa Rica after 1999 highlights the fact that the Neutrality Treaty constitutes a permanent commitment from Panama to the United States to operate the Canal always in accordance with this regime; no changes in the regime could be made in the future unless the United States were to agree.

An important additional aspect of the Neutrality Treaty is its assurance in Article I that this "same regime of neutrality shall apply to any other international waterway that may be built either partially or wholly in the territory of the Republic of Panama." This means that the assurances of efficient operation and non-discriminatory access contained in the Treaty would continue in effect for any new Canal in Panama irrespective of when or by whom it may be constructed. (Under Article XII of the Panama Canal Treaty, the United States has a veto over any sea-level canal construction in Panama until the year 2000.)

MAINTENANCE OF THE REGIME OF NEUTRALITY

In Article IV of the Treaty, Panama and the United States agree to maintain permanently the regime of neutrality for this Canal and for any other canal which may ever be built in Panama with United States participation in construction or financing.³ Panama and the United States have issued a statement of interpretation clarifying the meaning of this Article. The statement recognizes that this Article commits both parties to defend the Canal permanently against any threat to the regime of neutrality established in the Treaty. Accordingly, either party would have the right to take whatever action it would deem necessary, including military action

² See map attachment to the Annex of the Neutrality Treaty.

³ The definition of "Canal" in Annex A includes the existing Canal and any other interoceanic canal in Panama in which the United States participates in construction or financing.

in appropriate circumstances, to defend the Canal against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

However, the United States would not have the right, nor would it intend, to intervene in the political processes or internal affairs of Panama. The statement thus makes clear that any United States action would be directed at insuring that the Canal will remain open, secure and accessible, and would not be directed against the political independence or territorial integrity of Panama.

While this provision commits the parties to maintain the Canal's neutrality, the means either party would use to accomplish that objective would be entirely within its discretion. A wide range of measures would be available. It is clearly understood, as noted in the statement of interpretation, that any decision by the United States to use military force in a particular circumstance, would be made in accordance with its Constitutional processes.

PROTOCOL TO THE NEUTRALITY TREATY

Following the ratification of the Panama Canal Treaties, a protocol to the Neutrality Treaty would be opened for accession by all nations of the world in accordance with a resolution to be sponsored by the United States and Panama in the Organization of American States. The nations acceding to this Protocol will associate themselves with the objectives of the regime of neutrality described above, and will promise that they will respect that regime and that the vessels of their registry will observe its rules. The Protocol also recognizes that the maintenance of the established regime of neutrality will ensure access to the Canal permanently on a basis of entire equality.

[From the Congressional Record—Senate, Feb. 7, 1978]

THE PANAMA CANAL TREATIES

Mr. ALLEN. Mr. President, on yesterday I respectfully requested the majority leader and the minority leader to request respectfully the attendance of the distinguished Vice President when the Panama Canal treaties are laid before the Senate on tomorrow. I stated that I plan to make parliamentary inquiries as to the Senate procedure with respect to consideration of these treaties.

I feel that the Vice President and the leaders should be informed of the inquiries I intend to make, and, therefore, for the benefit of the Vice President, the Parliamentarian, the joint leadership, the Members of the Senate, and concerned citizens, I shall send to the desk and I shall ask unanimous consent that there be printed in the Record the parliamentary inquiries that I plan to make on tomorrow. There are 17 inquiries, and I feel that when the Vice President gives answers to these parliamentary inquiries we will have the proper guidelines for the Senate in the consideration of these treaties. This will be one of the few times in some 50 years, I am informed, that the rules of the Senate will be used in connection with the consideration of treaties. Usually we have requests made that it be considered that all parliamentary steps have been taken down to the resolution of ratification and then we proceed to approve the treaty.

The rules, of course, provide that treaties shall first be considered in the Committee of the Whole and a set procedure is provided by the rules. That procedure will be followed with respect to this treaty. But there are still a number of questions that need a ruling, I feel in advance, by the Vice President, so we will know just the proper procedure.

So I send these inquiries to the desk and ask unanimous consent that they be printed in the Record.

There being no objection, the inquiries were ordered to be printed in the Record, as follows:

PARLIAMENTARY INQUIRIES OF MR. ALLEN AS TO SENATE PROCEDURE FOR
CONSIDERATION OF PANAMA CANAL TREATIES

1. Are there not two treaties before the Senate in the Committee of the Whole involving the Panama Canal? And will it not be necessary to complete action on one through the Resolution of Ratification before action can be commenced on the other?

2. Are the amendments to Articles IV and VI of the Neutrality Treaty referred to in the Report of the Senate Foreign Relations Committee "amendments reported by the Committee" as such term is used in Senate Rule XXXVII, or will such amendments be the amendments only of the Senators who introduce and sponsor them?

3. It is not in order without unanimous consent, is it, for a Resolution of Ratification to be proposed as to a treaty until the following procedure has taken place with respect to a treaty:

- A. Consideration and report by Committee of the Whole to the full Senate;
- B. Consideration by the Senate of action by the Committee of the Whole;
- C. Consideration of other amendments; and
- D. Lying over for one day.

4. In considering each treaty by Articles, as the Rules provide, with Committee amendments, if any, to be considered first, would it not be necessary to consider amendments from the floor of the Senate as to an Article and to have a vote on such Article before amendments of any sort to the next succeeding Article could be offered or considered in the Senate?

5. If Calendar No. 1—the Neutrality Treaty is approved and Calendar No. 2—the Panama Canal Treaty is not approved by the Senate, would not the action on the Neutrality Treaty be thereby vitiated, since it is not to go into effect until the expiration of the term of Calendar No. 2—the Panama Canal Treaty.

6. For cloture to be invoked as to the treaties, would not a separate cloture motion and a separate cloture vote by at least 60 Senators on each motion be required?

7. If cloture is sought on one treaty and voted by the Senate, would it not be necessary to complete action on the clotured treaty before there could be a cloture vote on the second treaty?

8. At what point will the preamble of the treaties be before the Senate for consideration and for possible amendment and for action by the Senate?

UNANIMOUS CONSENT REQUEST

I ask unanimous consent that the "Documents Implementing the Panama Canal Treaty" and the "Other Documents" identified on page 221 of the Report of the Committee on Foreign Relations (Executive Report No. 95-12) be identified in like manner in the record at this point as predicate for my next two parliamentary inquiries.

9. Since most of the actual agreements between the United States and Panama are provided in the documents set forth in the record pursuant to the foregoing unanimous consent request, are such documents before the Senate for consideration and for vote thereon and for possible amendment prior thereto?

10. If amendments to a treaty or treaties inconsistent with the provision of the documents set forth in the record pursuant to the foregoing unanimous consent request are agreed to by the Senate, would not such amendments so adopted supplant or supercede the inconsistent provisions of such documents?

11. Executive N contains in the case of the Panama Canal Treaty an annex and an agreed minute. Additionally, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, also within Executive N, has two annexes, each having a map attachment. At what point will the annexes, minutes, and associated attachments within Executive N be before the Committee of the Whole for consideration and possible amendment?

12. If amendments to a treaty or treaties are agreed to by the Senate and are inconsistent with the provisions contained in Executive N of the annexes, their attachments, or the agreed minute, would not such amendments so adopted supplant or supercede the inconsistent provisions in such annexes, attachments, or agreed minute?

13. Subject to the limitations that might be imposed by cloture, are not each article and each amendment to an article debatable?

14. Are not amendments offered to a treaty amendable in like manner as amendments to bills in legislative session? Are perfecting amendments to portions of the treaty sought to be amended in order?

15. In the absence of cloture, must amendments to articles be germane to the article under consideration?

16. Since both the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal are made in duplicate, in the English and Spanish languages, both texts being declared equally authentic, are the Spanish texts of both treaties before the Senate for consideration? If they are not, when will the Spanish language texts be presented to the Senate for consideration and comparison with the English language texts for purposes of ascertaining any discrepancies between them?

17. If the President transmits two treaties to the Senate under cover of one message and the same are received by the Senate and docketed as one executive message, if no action is taken in committee to change the manner in which the documents were transmitted, would not such documents remain in the order transmitted when reported to the Senate for consideration in the Committee of the Whole? In other words, does the Executive Clerk have authority to rearrange the documents submitted by the President?

Mr. ALLEN. I yield the floor, Mr. President.

DISCRIMINATION IN PANAMA

Mr. BAKER. Mr. President, last fall I wrote to Mr. Benjamin L. Hooks, the executive director of the NAACP, to express my concern about reports that had appeared in the media describing

extensive government discrimination against the black population of Panama.

Mr. Hooks responded with a most thoughtful letter reporting, ironically, not institutionalized discrimination by the Panamanian Government but discrimination by the Canal Zone Company and Canal Zone Government. Moreover, he expressed the strong support of the NAACP for ratification of the treaties.

I believe the letter well worth the consideration of my colleagues and ask, Mr. President, that it be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
New York, N.Y., November 10, 1977.

Hon. HOWARD H. BAKER, Jr.,
*Office of the Minority Leader,
Senate Office Building,
Washington, D.C.*

DEAR HOWARD: I have been out of the office hence the delay in responding to your letter of September 8 regarding the extent of discrimination against Blacks in Panama.

The NAACP has an active branch in Panama in the Canal Zone which was organized to address many of the concerns of the local population regarding the extent of discrimination in Panama. Our branch has reported that the Panama Canal Company and Canal Zone government have maintained unjust discriminatory practices in employment, housing and schools against Blacks and Panamanian citizens which has resulted in inferior living conditions and schools for Panamanians.

Based on our local branch's investigation, the NAACP adopted a resolution at its 66th Annual National Convention in 1975 strongly condemning the discrimination in employment and segregation in schools and housing in the Canal Zone and supporting the merging of the dual housing and educational systems. Since that time, our branch has continued to wage a campaign against the discriminatory practices.

The NAACP has taken a position, which I am personally and officially in favor of, that the Panama treaties should be ratified and I hope you can see your way clear to support that position.

In the mainstream of Black thought, it is felt that ratification of the treaties would be the embodiment of international cooperation and a positive and important instrument of peace and goodwill inasmuch as colonialism has long been a threat to international peace, freedom and the liberty of people of color.

Before I attended the White House Briefing on Panama, it was my personal opinion that the treaties should be ratified. Since that briefing, based on what we heard from General Brown and Secretary Brown, we believe that there is no real conflict in the ratification of the treaties and our military position.

I am reminded of a very serious meeting some years ago involving coal miners and the President was going to call out the National Guard. John L. Lewis is reported to have said, "You can't dig very much coal with bayonets."

Again, I am sorry for the delay in getting this letter to you. I really thought that I had already sent it and just discovered that I had not.

Sincerely,

BENJAMIN L. HOOKS,
Executive Director.

PANAMA CANAL TREATIES

AMENDMENTS NOS. 20 AND 21

Mr. ROBERT C. BYRD. Mr. President, today I am submitting on behalf of the distinguished minority leader, Mr. Baker, the distinguished chairman of the Foreign Relations Committee, Mr. Spark-

man, the distinguished ranking minority member of the Foreign Relations Committee, Mr. Case, the distinguished minority whip, Mr. Stevens, the distinguished majority whip, Mr. Cranston, and 72 other Senators, making a total of 78 Senators, two amendments to the Panama Canal treaties which we feel represent a fundamental and essential improvement in strengthening the documents.

Since I first had the opportunity to review the treaties in September, it has been apparent to me that it would be necessary to clarify and guarantee two very important points:

First. The right of the United States to take action to defend the canal and to assure that it will remain open after the year 2000 open for neutral use; and

Second. Expeditious, or "head-of-the-line," passage through the canal for U.S. military vessels in time of need or emergency.

The critical importance of these two issues clearly emerged in the hearings on the treaties before the Foreign Relations Committee.

A detailed study of the treaties, the public debate across the Nation, and a careful analysis of the hearings, have led us to conclude that articles IV and VI of the Neutrality Treaty should be amended accordingly.

We feel article IV should be amended to insure that the United States shall have the unchallenged right to take action on its own, if necessary, to defend the canal against any aggression directed against the canal or the peaceful transit of vessels.

Furthermore, article VI should be amended to provide that U.S. war and auxiliary vessels shall have the unquestionable right in the case or need to go to the head of the line in order to transit the canal rapidly.

These two amendments will formalize into the text of the treaties, if these amendments are adopted, the statement of understanding agreed to by President Carter and by Gen. Omar Torrijos, the Panamanian leader, October 14, 1977.

It is important that this statement of understanding was agreed to and publicized in General Torrijos, televised address to his people prior to the October 23, 1977, Panamanian plebiscite on the treaties.

Mr. President, these amendments have the bipartisan endorsement of the Senate leadership, together with Senator Sparkman, chairman of the Foreign Relations Committee, and Senator Case, ranking member of the committee, as well as the cosponsorship of 74 others of our colleagues, as I say, making a total of 78 Senators who are sponsoring these amendments.

It is our belief that these two amendments will clear up any uncertainty surrounding the critical issues of the United States' right to defend the canal, as well as priority passage through the canal in time of emergency or need.

Mr. President, in addition to these 78 sponsors of this amendment, there are Senators who have indicated that they will support the amendment but for various reasons of their own they preferred not to join at this time as co-sponsors of the amendments.

Mr. President, I send the amendments to the desk and I ask unanimous consent that they be printed in the Record as in executive session and that the list of co-sponsors also be shown.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. Robert C. Byrd, (for himself, Mr. Allen, Mr. Anderson, Mr. Baker, Mr. Bartlett, Mr. Bayh, Mr. Bentsen, Mr. Biden, Mr. Brooke, Mr. Bumpers, Mr. Burdick, Mr. Case, Mr. Chafee, Mr. Chiles, Mr. Church, Mr. Clark, Mr. Cranston, Mr. Danforth, Mr. DeConcini, Mr. Domenici, Mr. Durkin, Mr. Eagleton, Mr. Ford, Mr. Garn, Mr. Glenn, Mr. Goldwater, Mr. Gravel, Mr. Hansen, Mr. Hart, Mr. Haskell, Mr. Hatch, Mr. Paul G. Hatfield, Mr. Hathaway, Mr. Heinz, Mr. Hollings, Mr. Huddleston, Mrs. Humphrey, Mr. Inouye, Mr. Jackson, Mr. Javits, Mr. Kennedy, Mr. Laxalt, Mr. Leahy, Mr. Lugar, Mr. Mathias, Mr. Matsunaga, Mr. McClure, Mr. McGovern, Mr. Metzenbaum, Mr. Morgan, Mr. Moynihan, Mr. Muskie, Mr. Nelson, Mr. Nunn, Mr. Packwood, Mr. Pearson, Mr. Pell, Mr. Percy, Mr. Randolph, Mr. Ribicoff, Mr. Riegle, Mr. Roth, Mr. Sarbanes, Mr. Sasser, Mr. Schmitt, Mr. Schweiker, Mr. Sparkman, Mr. Stafford, Mr. Stevens, Mr. Stevenson, Mr. Stone, Mr. Talmadge, Mr. Thurmond, Mr. Tower, Mr. Wallop, Mr. Weicker, Mr. Williams, and Mr. Young) submitted two amendments intended to be proposed by them, jointly, to Executive N, 95-1, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

AMENDMENT No. 20

At the end of Article IV, insert the following:

"A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

"This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

AMENDMENT No. 21

At the end of the first paragraph of Article VI, insert the following:

"In accordance with the Statement of Understanding mentioned in Article IV above: The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly."

Mr. ROBERT C. BYRD. And Mr. President, the amendments will be printed overnight, will they not?

The PRESIDING OFFICER. The Chair advises that it will be.

Mr. ROBERT C. BYRD. I thank the Chair.

THE AMERICAN CONTRIBUTION TO PANAMA'S PROSPERITY

Mr. HATCH. Mr. President, one of the most frequently repeated arguments in support of the proposed Panama Canal Treaties is the claim that Panama is a "colonial enclave" and a victim of U.S. "exploitation." This argument, reminiscent of Marxist dialectics, fails to take into account the fact that Panama has received very

substantial benefits because of U.S. investments in the zone, to say nothing of American largesse in terms of foreign aid. Contrary to the false impressions created by the State Department, these benefits amount to a solid contribution to every major facet of Panama's economy.

A recent letter appearing in the Baltimore Sun does much towards elucidating, in a dispassionate and factual manner, this little publicized aspect of our relationship with Panama. I ask unanimous consent that the letter, by Mr. Martin D. Tullai of Brooklandville, Md., be printed in the Record for the benefit of my colleagues.

There being no objection, the letter was ordered to be printed in the Record, as follows:

[From the Baltimore Sun, Jan. 23, 1978]

AMERICAN BENEVOLENCE IN PANAMA

Sir: As the U.S. Senate prepares to face its moment of truth regarding the Panama Canal Treaties, there seems to be a revival of the absurd contention that the U.S. has been the aggressive exploiter of Panama. Myths like this, repeated often enough, die hard. And one would be remiss to allow them to stand without refutation, for a dispassionate appraisal of the facts reveals otherwise.

Although no more than a pestilential swamp in 1903, Panama is today a fairly prosperous nation almost entirely due to our generosity and monies that poured into the region because of the canal. Panama has been and still is the greatest single beneficiary of the canal enterprise. Harold R. Parfitt, governor, Panama Canal Zone, has testified that, "the presence of the Panama Canal has infused much money into the Panamanian economy, and is responsible for the high standard of living in that part of Central America." This claim is not difficult to substantiate. Consider some facts:

(1) There is an inflow to the economy of Panama of between \$240 million and \$250 million annually. In addition, it receives an annuity of \$2,328,000. The initial annuity was set at \$250,000. In 1936, this was increased to \$430,000, it was raised again in 1955 to \$1,930,000. Today it stands at the aforementioned \$2,328,000.

This is not a rental fee as some have mistakenly construed. It was an annuity designed to assume the annual franchise payment which the Panama Railroad formerly paid to Colombia. It did not affect the status of the Canal Zone, but was the obligation of the railroad to Colombia. This obligation was not assumed by the United States which paid Panama the annuity or "compensation." This is not a rental or lease—these words do not appear in the treaty, but significantly, the term "grants" appears 19 times.

(2) The canal is larger than any other single source of employment in Panama. About 10,000 people—72 per cent of the total work force of the Panama Canal Company and the Canal Zone Government—are Panamanian nationals, thousands more work for the U.S. military.

(3) Panama has the highest per capita income in all of Central America (\$1,375) and stands fourth of 19 nations in all of Latin America. It has twice the per capita wealth of Colombia, the nation from whom she declared her independence.

(4) The U.S. has favored Panama with more per capita foreign aid than any other country in the world. Between 1947 and 1973, this amounted to \$342 million.

(5) American businessmen have contributed to Panama's economy with investments approximating \$250 million.

(6) Until 1975, Panama had one of the lowest inflation rates in Latin America.

(7) In addition to direct economic boosts, Panama has gained much from a variety of beneficent projects. These include a bridge and highway across the Canal, built at U.S. expense to link the two parts of Panama; the country's deep water ports are U.S. built and operated; its principal international airfield was U.S. built, the U.S. constructed its transisthmian road and railroad; Panama's water supply comes largely from reservoirs and purification systems constructed by the U.S. its sanitation system was primarily the result of U.S. efforts; and U.S.-owned merchant ships flying Panama's flag of convenience add to her economic well-being, just as tourism, attracted by the Canal, adds many dollars to the merchants' coffers.

(8) The picture of health and social statistics is also quite striking. After the French failure, due largely to tropical fevers, U.S. physicians and scientists conquered the endemic, devastating diseases. They sanitized Panamanian swamps and

established an extremely effective health system. Some results of these programs point up their successes:

Panama's infant mortality per 1,000 live births in 1970 was 3.0—lowest in all of Latin America, Argentina's being 60.1, Brazil's 85 to 95, Bolivia's 159.0 and Haiti's 149.1; Panamanians have the fourth best life expectancy in Latin America—66.5 years; at 5.3 per thousand, its mortality rate in 1974 was the second lowest in Latin America; Panama's literacy rate of 84.0 stands fifth in all of Latin America—well above fourteen other nations of that region.

These obvious benefits have made Panama, despite its unstable and dictatorial government, one of the most favored nations in all of Latin America. Far from being exploited, it is evident that Panama's well-being has been greatly enhanced by the American presence in the Canal Zone. The canal is Panama's greatest single revenue source.

Hanson Baldwin, noted military expert and writer for the *New York Times*, has declared: "The exploitation myth is just that: a propaganda ploy fostered by Panama's politicians, by Castro's Cuba and by the Soviet bloc to help force the United States out of the zone. It has no basis in fact."

MARTIN D. TULLAI.

PROFESSOR BERGER'S REPLY TO LOUIS POLLAK

Mr. HATCH. Mr. President, as my colleagues are aware, I have submitted an amendment to the Panama Canal Treaties which provides that these agreements shall enter into force only after both houses of Congress have enacted legislation authorizing the transfer of Canal Zone territory and property to the Republic of Panama.

This amendment is necessary because there are, in my judgment, no adequate precedents to support the assumption that the Chief Executive has the authority to dispose of U.S. territory by treaty alone. The testimony of State Department and Justice Department representatives, as well as constitutional scholars appearing before congressional committees, has persuaded me that the territorial clause of the Constitution, which gives Congress exclusive power over the disposal of U.S. territory, would be violated if the House of Representatives is bypassed regarding the transfer of the zone to Panama.

Especially noteworthy in this regard is the testimony of the eminent constitutional scholar, Raoul Berger, whose searching analysis shows, beyond peradventure, that these treaties, as presently drafted, seek to expand the treaty-making powers of the Chief Executive beyond the limits of the Constitution—see *Congressional Record*, January 26, 1978, pages S596-S599.

On January 30, 1978, however, my distinguished colleague from Iowa (Mr. Clark) called to the Senate's attention an interesting paper, written by Dean Louis Pollak of the University of Pennsylvania Law School, which purports to demonstrate the fallacies of Berger's testimony. Unmoved and unshaken, Professor Berger finds that Dean Pollak's critique simply confirms his own belief that there is no constitutional basis for the extraordinary exercise of Presidential power that is contemplated under these treaties.

Professor Berger has favored me with a copy of his reply to Pollak's paper which I would like to share with my colleagues. Of particular significance is Berger's observation that the Pollak paper has added confusion to the controversy by misstating the constitutional issue. As Senator Clark pointed out one of Pollak's

important conclusions is "that the discussion in the Constitutional Convention of 1787 confirms the settled understanding of our treaty-makers and of the Supreme Court that territory belonging to the United States may be ceded by treaty." This conclusion detracts little from the strength of Berger's analysis, of course, for the simple reason that no one—including Berger—has denied that the treaty power extends to the disposal of U.S. territory. The real issue, as Berger explains, is whether the Chief Executive has the power to dispose of U.S. territory by a self-executing treaty, thereby circumventing Congress.

Mr. President, I believe that any Senator who fairly and impartially studies the constitutional question that is before us, and subjects the different interpretations of the precedents offered by Berger and Pollak to an objective and forthright analysis, will conclude that the weight of authority clearly supports the view that these transfers under the treaties cannot take effect until Congress has approved them.

To assist the Senate in its consideration of this matter, Mr. President, I ask unanimous consent that Raoul Berger's response to Dean Pollak's paper be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

MEMORANDUM

To: Senator Dick Clark.

From: Raoul Berger.

Re Panama Canal Treaty: Dean Louis Pollak's Reply.

Date: February 1978.

Dean Louis Pollak has favored me with a copy of his critique of my statement before the Subcommittee on the Separation of Powers addressed to you under date of January 19, 1978. I am honored by his expressions of esteem, and his sentiments are warmly reciprocated. High regard for his attainments, however, may not inhibit the expression of scholarly differences on a great constitutional issue; it requires careful study of the alleged infirmities that have persuaded him that I am in error.

At the outset I must disclaim the version of the issue that he attributes to me, namely that the Panama cession "cannot be effectuated by treaty, but only by statute." My objection is to a "self-executing" treaty because Article IV of the Constitution requires Congress' consent to the disposition.

The starting point of analysis must be the Constitution itself not what others have said about it. A great British scholar, W. S. McKechnie, faced by contrary opinion by respected scholars, stated, "the truth of historical questions does not depend on the counting of votes or the weight of authority" but rather on the historical record.¹ So too, in the construction of the Constitution, the document is always here to speak for itself. On this score I cannot improve upon John C. Calhoun, then a Congressman, whose remarks in the House respecting the treaty power are quoted *in extenso* by Dean Pollak, stating that Calhoun explained "with more precision than either [Marshall or Story] achieved, the scope of the treaty power and the constraints which other parts of the Constitution impose upon its exercise." Said Calhoun: "Whatever limits are imposed in those general terms ought to be the results of the construction of the instrument." The treaty power Calhoun continued is competent "to regulate all subjects" that require "the consent of another nation."

provided, and here are its true limits, such regulations are not inconsistent with the Constitution. If so they are void. No treaty can * * * *do that differently which is directed to be done in a particular given mode.* (emphasis added).

Quoted Pollak 7-8. In terms of the present issue, a treaty may not "dispose" of the Panama Canal without the consent of Congress because Article IV confers that power on Congress.

Here Calhoun applies a rule of construction—the specific governs the general—upon which the administration has refrained from comment, and which remains

¹ See footnotes at end of article.

unmentioned by Dean Pollak: "A broad statutory provision will not apply to a matter specifically dealt with in another part of the same act."² Then there is the complementary rule—express mention implies exclusion of the unmentioned—or as held by the Supreme Court, "When a statute limits a thing to be done in a particular mode, it includes the negative of any other mode."³ Although the exclusion of the treaty power was not before the Court, it tacitly ratified the application of the foregoing rules when it stated that Article IV "*implies an exclusion of all other authority over the property which could interfere with this right*" * * *⁴

From the beginning such rules of construction were respected; Justice Story recommended the "excellent summary of the rules for construing statutes" in Bacon's Abridgment.⁵ If there is any doubt as to the legislative intent—Deputy Assistant Attorney General Ralph E. Erickson testified in 1971 (before Panama became a political issue) that the issue "is not altogether free from doubt."⁶—such rules serve as a guide to construction. Such "doubt" counsels against invasion of a power explicitly conferred on Congress; a clear case for the "concurrent power" is needed in the teeth of the express grant.

The treaty power is given to the President "with the advice and consent of the Senate." Without question the House is thereby excluded from participation in treaty making. By parity of reasoning, the "Congress shall have power to dispose" equally bars its exercise by the President and Senate. It is no adequate answer to say, as does Dean Pollak, that the "Congress shall have power" phrase "syntactically, does not preclude concurrent jurisdiction in the President and Senate as treaty makers," (Pollak 4), for grammatical syntax must yield to established canons of construction which show that Article IV "implies an exclusion of all other authority." One who disputes the results to which traditional canons lead has the burden of proof to show they are inapplicable.

Dean Pollak leads off with an appeal to John Marshall's remarks as a young Congressman on the Jay Treaty. In considering these and other treaty remarks, it is constantly necessary to distinguish between the treaty making process and any subsequent exercise of power by the House. That distinction was clearly drawn by Marshall. Washington had submitted the treaty for ratification to the Senate along with some instructions to the Minister who had negotiated it; but he refused them to the House on the ground that it had no right to participate in treaty making.⁷ Among the objections by the House, to quote Albert Beveridge's "Life of John Marshall," invoked by Dean Pollak, were that though the "treaty regulated commerce * * * the House had not been consulted," that though "the raising and expending of public money must originate in the House," it had been ignored. The question raised, said Beveridge, was "whether a commercial treaty, or an international compact requiring an appropriation of money * * * could be made without the concurrence of the House as well as the Senate."

To this Marshall replied that it was "'more in the spirit of the Constitution' for the National House to refuse support after ratification than to have a treaty 'stified in embryo' by the House passing on it before ratification."⁸ Exclusion of the House from treaty making did not mean for Marshall that the House would be denied its function after ratification. Dean Pollak reads this as a "tactical concession" that was "not at odds with Marshall's constitutional definition of the potential scope of the treaty power." (Pollak 3n). If this was merely a "tactical concession" then his entire statement was a political "tactic", for Marshall gave no clue as to when he spoke as politician and when as constitutional sage.

Attorney General Griffin B. Bell conceded in his statement before the Senate Foreign Relations Committee, September 29, 1977, pp. 4-5, that the Senate and President may not "bypass the power of Congress and in particular the House of Representatives" in the "raising of revenue or expenditure of funds." What distinguishes "all bills * * * shall originate in the House" from "The Congress shall have power to dispose?" The thinness of the distinction is underlined by the State Department's concession that "treaties may [not] impose taxes."⁹ Nothing in the Article I, 8(1) "The Congress shall have power to lay and collect taxes" distinguishes it from the Article IV "The Congress shall have power to dispose."

JUDICIAL DECISIONS

Boundary dispute cases

The "boundary dispute" cases invoked by the administration are tacitly abandoned by Dean Pollak, presumably because, as he quotes Justice Story:

"In the case of a contested boundary, there is no pretence to say that an ascertainment of the true boundary involves the question of cession (Pollak, Appendix A, p. 3).

This was the ground upon which I dismissed those cases.

But Dean Pollak's reference to Story was for the purpose of showing his awareness "that the treaty power includes authority to cede American Territory. * * *" Governor Edward Everett of Massachusetts had written Story with respect to the Northeastern boundary, that in his words presented "a question not of ceding an admitted portion of Maine, but of ascertaining the boundary between the British territory and ours." (Pollak, Appendix, p.1) As we have seen, Story concurred in this view. Everett sought Story's advice regarding a resolution by the Massachusetts legislature "That no power delegated by the Constitution to the government of the United States authorizes them to cede to any foreign nation any territory lying within the limits of either of the States of the Union." Id., (emphasis added).

Of course, Story rejected this drastic restriction, and added that Marshall "was unequivocally of opinion, that the treaty-making power did extend to cases of cession of territory, though he would not undertake to say that it could extend to all cases. * * *" Id. 3. Presumably what Marshall had in mind were the boundary disputes that called for settlement in his time. I would not deny that the President and Senate may enter into a treaty for the cession of territory; what is disputed is whether such a treaty may be "self-executing," without the subsequent consent of Congress under Article IV. Nor can Story's letter be read to repudiate the statement in his Commentaries that "The power of Congress over the public territory is clearly exclusive and universal."¹⁰

Indian treaty cases

(1) Dean Pollak follows the administration view of *Jones v. Meehan*, 175 U.S. 1, 10 (1899), quoting "that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress." (Pollak 10). But there the grant was made by the tribe, not the United States. The treaty had "set apart from the tract hereby ceded [by the tribe] a reservation of six hundred and forty acres" for an individual Indian, and the issue was what kind of title did he take. The Court, as I showed, quoted from an opinion of Attorney General Roger Taney:

"These reservation are *excepted* out of the grant made by the treaty, and *did not therefore pass with it*; consequently the title remains as it was before the treaty, that is to say, the lands reserved are still held under the original Indian title."

The Court held that "the reservation, unless accompanied by words limiting its effect, is equivalent to a present grant of complete title in fee simple."¹¹ Dean Pollak states that "the Taney opinion * * * was discussed by the Court and rejected as not controlling." (Pollak 11n). Only a not relevant portion of the opinion was held not controlling, the Taney clause immediately following the above quotation: "and therefore 'the Indian occupants *cannot convey them to individuals*, and no valid cession can be made of their interest but to the United States.'" (emphasis added).

Within a year of Taney's opinion, said the Court, Congress in a new Act "omitted the prohibition, contained in former statutes, of purchase or lease from 'any Indian'" and adopted an "altered form." Hence the Court concluded that "Congress did not intend that there should thenceforth be a general restriction upon the *alienation* by individual Indians of sections of land *reserved to them* respectively by a treaty with the United States. 175 U.S. at 12-13 (emphasis added.) In short, only that portion of Taney's opinion that denied to individual Indians the right to alienate their property was deemed "not controlling," because superseded by an Act of Congress; the power of Indian tribes to "reserve" portions of ceded property to individual Indians was left untouched.

It is not necessary to go into the Court's discussion of the nature of the reserved title, e.g. was it legal or equitable, arising from the fact that Indian lands were held in common; there were no individual titles. Suffice it to set out the Court's quotation from *Doe v. Wilson*, 25 How. 457, 463-464 (1859):

"The Pottawatomie nation was the owner of the possessory right of the country ceded, and all the subjects of the nation were joint owners of it. The reservees took by the treaty, directly from the nation, the Indian title." 175 U.S. at 15.

The continued validity of Taney's statement that title "reserved" to individual Indians does not pass to the United States may be gathered from *Francis v. Francis*, 203 U.S. 233, 238 (1906), which cites *Jones v. Meehan* for the proposition that when a treaty makes "a reservation of a specified number of sections of land * * * the treaty itself converts the reserved land into individual property."

(2) Apparently Dean Pollak concurs with my reading of *Percheman v. United States*, 32 U.S. (7 Pet. 0 51 (1833)). *Percheman* was cited by Attorney General Bell to show that "the Court held self-executing certain clauses of the Florida Treaty with Spain which related to the regulations of property rights in newly acquired terri-

tory."¹³ Those were property rights of individuals, not of the United States, and therefore irrelevant to Article IV. The treaty secured to private individuals grants that theretofore had been made to them by the Spanish King, being akin to "reserves" of the Indian treaties. Dean Pollak agrees that "Marshall held that the Treaty of Spain of 1819 had of its own force confirmed the titles of *pre-treaty owners* of Florida land ceded to the United States by the treaty." (Pollak 12n.; emphasis added).

But Dean Pollak states that ("*Percheman* held that the interpretation of the 1819 treaty approved in *Foster v. Neilson*, 27 U.S. (2 Pet.) 253 (1829) (a case relied on by Mr. Berger * * *) was in error," Id. I cited *foster* for the statement that "the ratification and confirmation which are promised must be by the act of the Legislature," i.e. Congress. *Percheman* held that no ratification was required because the Court discovered that the Spanish counterpart version of the treaty dispensed with all ratification, a fact not known to the *Foster* Court. 32 U.S. at 89. This does not repudiate the *Foster* holding that if ratification is required, it falls to Congress.

(3) There is no need to belabor Dean Pollak's mention of *Holden v. Joy*, 84 U.S. 211, 247 (1872), for Attorney General Bell granted that at best it was a "strong dictum," noting that "The Court conceded that the question was immaterial in the case because Congress has actually implemented and ratified that particular treaty."¹⁴ Although Dean Pollak relies on dicta running in his favor, he rejects as dicta judicial statements that the Congressional power to dispose is "exclusive." (Pollak 14). In fact the latter are not dicta, but were essential to decision as I shall prove by Dean Pollak. He recognizes that *Sioux Tribe v. United States*, 316 U.S. 317 (1942), "properly held presidential power over federal lands to be subordinate to the Congressional power," consequently the Court's reference to Congress "exclusive" power was immediately relevant to decision, not dictum. So too, *Wisconsin Central R.R. Co. v. Price*, 33 U.S. 496, 504 (1890), which stated that Article IV "implies an exclusion of all other authority over the property . . ." held, according to Dean Pollak, "state authority over federal lands to be subordinate to Congressional authority," again relevant to decision. Such holdings were earlier expressed by Justice Story as a general principle: "The power of Congress over the public territory is clearly exclusive and universal. * * *"¹⁵ True, that principle has yet to be applied to the treaty power (as is equally true of Dean Pollak's citations), but it derives not from dicta but from statements essential to decision, whereas *Holden v. Joy* concededly is pure dictum. For this reason, I consider the cases I cite as more worthy of credence than the dictum of *Holden v. Joy*.

(4) Repeatedly Dean Pollak dwells on the "classic exposition," the "classic formulation of the [treaty] power in *Geofroy v. Riggs*, 133 U.S. 258, 267 (1890)." (Pollak 4n., 12). That case had not the slightest bearing on the effect of Article IV for it had nothing to do with either the disposition or regulation of government property. Under a treaty providing for reciprocal rights of inheritance by citizens of the respective countries, it was held that a Frenchman could take land by descent in the District of Columbia. In Dean Pollak's view, "*Geofroy v. Riggs* is a particular illustration of the capacity of treaties to regulate matters delegated to Congress: That case applied to rights of inheritance in the District of Columbia, notwithstanding that Article I, 8(17) confers the power of 'exclusive legislation in all cases whatsoever' relating to the District." (Pollak 12n.). That still does not stretch to "regulation" by treaty of United States property and therefore in nowise diminishes Congress' power to dispose of it. Moreover, the treaty of 1853 conferred the right only in States "whose existing laws permit it" (the Court held the District a State for purposes of the treaty), and though the Act of March 7, 1887, forbade ownership of land in the District to aliens, it excepted the disposition of lands "secured by existing treaties" to them,¹⁶ which the Court held included realty "acquired by inheritance." 133 U.S. at 272. Thus the treaty did not pretend to override local law to the contrary, and Congress had consented to application of the treaty to inheritance by Frenchmen.

(5) Finally, Dean Pollak summons *Missouri v. Holland*, 252 U.S. 1416 (1920), for the proposition that the treaty makers can "empower Congress to enact legislation going beyond its specifically enumerated grants of power." (Pollak 18). That, with all due respect, is a startling proposition. For the Founders, in the words of George Nicholas in the Virginia Ratification Convention, held that no treaty can be "inconsistent with the delegated powers,"¹⁷ let alone confer additional, undelegated powers. Lee assured that Convention that "When a question arises with respect to the legality of any power, exercised or assumed by Congress [the question will be] * * * is it enumerated in the Constitution? * * * It is otherwise arbitrary and unconstitutional."¹⁸ The reservation of undelegated powers to the people by the Tenth Amendment was not made subject to treaty; additional power requires a

grant from the people by amendment. Madison, chief architect of the Constitution, said, "Had the power of making treaties, for example, been omitted, however necessary it might have been, the defect could only have been lamented, or supplied by an amendment to the Constitution."¹⁸

For present purposes it suffices that *Missouri v. Holland* had nothing to do with the disposition or regulation of United States property. It arose out of a State challenge to a treaty with Great Britain for the protection of migratory birds which annually traversed parts of United States and Canada. Justice Holmes stated that "The whole question is whether it is forbidden by some invisible radiation from the general terms of the Tenth Amendment." Since, he held, "Wild birds are not in the possession of any one; and possession is the beginning of ownership,"¹⁹ the State could assert no property interest, and by the same reasoning, neither could the United States *Missouri v. Holland* is therefore wholly irrelevant to the power by treaty to dispose of property of the United States.

THE LEGISLATIVE HISTORY

Here I ruefully confess error in one particular, though it does not vitiate my basic analysis. Dean Pollak correctly charges me with an erroneous inference drawn from the Morris-Sherman remarks, which were not in fact "subsequent" to the discussion of the treaty power." (Pollak 16-17). I myself had caught the error and confessed it before the House Committee on Merchant Marine on January 18, 1978, a copy of which statement is attached hereto. As I there explained (p. 11):

"When [the Attorney General's statement before the Foreign Relations Committee] reached me late of a Saturday afternoon, as appears in my own Senate statement, I had only about two days to prepare my comments before having them typed and forwarded to the Senate Committee. Pressure of time conduces to oversights, and I was mistaken respecting a time sequence and in following the Attorney General's erroneous identification of a motion made by Williamson and Spaight with one he attributed to Sherman and Morris. Leisure for reflection and further research has since enabled me to correct such inaccuracies and to sharpen my analysis."

Such oversights are regrettable, even though induced by undue pressure of time and accentuated by lack of secretarial service and a corps of research assistants such as the administration can devote to the task.

The Attorney General was guilty of a similar oversight in emphasizing a remark on the treaty power by George Mason during a debate on whether the Senate could share in originating revenue bills.²⁰ For Mason spoke *before* the Article IV progenitor had been proposed and referred to the Committee on Detail, and of course before the resultant "disposition" provision was debated.²¹ M. Farrand, Records of the Federal Convention of 1787, 297, 321, 324, 466 (1911). Manifestly Mason's earlier remark hardly expressed the view that the treaty power overrode the as yet unborn "power to dispose."

There is no need to repeat the fresh analysis on more thorough research that is set forth at pages 12-17 of my attached statement before the House Committee on Merchant Marine. Throughout, all that was under discussion was the performance of the Senate's own "advice and consent" function, whether it should turn on more or less than a two-thirds vote, without a hint of desire to curtail the House function under Article IV. It was one thing to insist that the Senate, in the performance of its own function, must act by a two thirds vote, and something else again to court the wrath of those who placed their faith in the more democratic House and were already displeased by the exclusion of the House from treaty making, by further reducing its role under Article IV. There is not, I repeat, the slightest hint in the history of an intention to do so. More is required to deprive the Article IV language of its clear meaning.

It remains to comment on Dean Pollak's rejection of my reminder that what the President seeks today with the "advice and consent" of the Senate he may next time seek to accomplish single-handedly by executive agreement. (Pollak 19n.) Doubtless you are familiar with the rapid proliferation of executive agreements in recent years, a label pasted on a treaty to avoid the necessity of submission to the Senate.²² When Senator J. William Fulbright was chairman of the Foreign Relations Committee, he complained that the State Department submitted treaties for "the most trivial matters" but declined to submit them for agreements respecting Spanish bases and the like. As he ironically told Secretary of State Rogers, "something as important as stationing troops and the payment of millions of dollars is proper for an executive agreement."²³

Dean Pollak dismisses my concerns "about the aggrandizement of executive authority" as "not pertinent—indeed, they may properly be termed impertinent—

when a President, acting in meticulous conformity with the procedure specified in the Constitution, has asked the Senate to fulfill the partnership role in making of treaties which the President expressly contemplates." (Pollak 19n.)

Since fulfillment of that "partnership role" (for which I broke more than one lance) was many times frustrated by attaching the "executive agreement" label to treaties, I may be pardoned for being skeptical about the rake's reform. Permit me to close with the words of Alexander Hamilton, the great proponent of expansive presidential power:

An agent cannot new model his own commission. A treaty cannot transfer the legislative power to the executive department.²³

FOOTNOTES

¹ W. S. McKechnie, *Magna Carta* 135 (1905).

² *Le Page v. United States*, 146 F. 2d 536, 538 (8th cir. 1945); see also *Ginsberg & Son v. Popkin*, 285 U.S. 204, 208 (1932); *Swiss Natl. Ins. Co. v. Miller*, 289 Fed. 570, 574 (D.C. Cir. 1923).

³ *Botany Worsted Mills v. United States*, 278 U.S. 282, 289 (1929) (emphasis added). *T.I.M.E. v. United States*, 359 U.S. 464, 471 (1959): "we find it impossible to impute to Congress an intention to give such a right to shippers under the Motor Carriers Act when the very sections which established that right in Part I [for railroads] were wholly omitted in the Motor Carrier Act."

⁴ *Wisconsin Cent. R.R. Co. v. Price County*, 133 U.S. 496, 504 (1890) (emphasis added); *Sioux Tribe of Indians v. United States*, 316 U.S. 317, 326 (1942); *Swiss Natl. Ins. Co. v. Miller*, 289 Fed. 571, 574 (D.C. Cir. 1923).

⁵ 1 J. Story, *Commentaries on the Constitution of the United States*, 305 n.2 (5th ed. 1905).

⁶ Hearings before the House Subcommittee on the Panama Canal on "Treaties Affecting the Operation of the Panama Canal (92d Cong. 2d Sess.) p. 95 (December 2, 1971).

⁷ Berger, *Executive Privilege v. Congressional Inquiry*, 12 U.C.L.A. L.Rev. 1044, 1085-86 (1965).

⁸ 2 A. Beveridge, *Life of John Marshall*, 133-135 (1916).

⁹ Hearings on the Panama Canal Treaty before the Senate Committee on Separation of Powers (95th Cong. 1st Sess.) Part II, p. 25 (July 9, 1977).

¹⁰ *Supra* n. 5, 2 story at p. 200.

¹¹ *Jones v. Meehan*, 175 U.S. 1, 12, 21 (emphasis added).

¹² Statement before the Senate Foreign Relations Committee, September 29, 1977, p. 10.

¹³ *Id.* 9.

¹⁴ *Supra* n. 5 at 200.

¹⁵ 133 U.S. at 267-271. The 1887 Act prohibited alien ownership of land in the District of Columbia "Provided that the prohibition of this section shall not apply to cases in which the right to hold or dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries." 24 Stat. 476. Like Dean Pollak, I had mistakenly assumed that "local law withheld the right." My statement before the Senate Subcommittee on the Separation of Powers, November 13, 1977, p. 8.

¹⁶ 3 J. Elliot, *Debates in the Several State Conventions on the Adoption of the Federal Constitution* 507 (2d ed. 1836).

¹⁷ *Id.* 186. For additional citations, see R. Berger, *Congress v. The Supreme Court* 13-15 (1969).

¹⁸ 2 Annals of Congress 1900-1901 (February 2, 1791).

¹⁹ 252 U.S. at 433-434.

²⁰ *Supra* n. 12 at 6.

²¹ Professor Philip Kurland asked, "Should the Constitution really be read to mean that by calling an agreement an executive agreement rather than a treaty, the obligation to secure Senate approval is dissolved." Kurland, *The Impotence of Reticence*, 1968 Duke L.J. 619, 626.

²² These and other citations are set out in R. Berger, *Executive Privilege: A Constitutional Myth* 142 (1974): A detailed discussion of executive agreements will be found at pp. 140-162.

²³ "Letters of Camillus," 6 A. Hamilton, *Works* 166 (Lodge ed. 1904).

ORDER OF PROCEDURE—PANAMA CANAL TREATIES

Mr. ROBERT C. BYRD. Mr. President, I would hope that our respective cloakrooms would urge Senators who have special orders to be in the Chamber and ready to proceed with their statements under the orders. It is important that no later than 12:15 p.m. today, if at all possible, the Senate proceed with its consideration of the first treaty on the Executive Calendar. National public radio is geared up to broadcast the proceedings and has been told the proceedings will begin then.

There will be a rollcall vote today on the adoption of the conference report, after which the Senate will go into executive session to consider the first treaty.

To accommodate public radio and network feeding off the audio transmission I would hope that Senators who wish to present speeches will present them so that the Senate will be able to proceed at that time.

The ACTING PRESIDENT pro tempore. The Senator from Tennessee.

Mr. BAKER. Mr. President, might I ask the distinguished majority leader if he can indicate to me the probable course of our proceeding today.

Mr. ROBERT C. BYRD. Mr. President, I would anticipate that when the Senate goes into executive session, of course, Mr. Sparkman, the chairman of the Committee on Foreign Relations, should have the opportunity to address himself to the first treaty, and then Mr. Case, the ranking minority member, should have the opportunity to address the treaty.

However, I would also anticipate that the distinguished Senator from Alabama (Mr. Allen) may wish to propound some parliamentary inquiries right at the very beginning, when we go into executive session, so as to help clarify the rules and to be sure of our guidelines.

I may want to propound some inquiries, because, after all, this is the first time in 55 years that the Senate will have operated under the Committee of the Whole procedure, requiring the reading of a treaty article by article. It will be a new experience for all Senators today in the Chamber.

I would say that parliamentary inquiries will be discussed first. The Vice President will be in the chair to respond to those inquiries. They may very well consume 1 hour at the most. After that, I would hope that the two proponents will proceed, and then perhaps those opposed to the treaties.

I believe the distinguished minority leader is prepared to state the names of Senators who will proceed on his side.

Mr. BAKER. The majority leader is correct. I think this is eminently a practical and equitable approach. While there is no limitation on time or control of time, I think this gives a fair shot to everybody on the opening day.

On behalf of the opponents, it is my understanding that the distinguished Senator from Nevada (Mr. Laxalt) and the distinguished Senator from Michigan (Mr. Griffin) will wish to make statements today in response, presumably, to the opening state-

ments by Senator Sparkman and Senator Case, the chairman and the ranking member of the Foreign Relations Committee.

Might I ask the distinguished majority leader further whether he, as majority leader, has plans to speak today or tomorrow in advance of the general debate.

Mr. ROBERT C. BYRD. My plan is not to speak today.

I would think that once those four Senators I have named have spoken, there may be other Senators, depending upon what the time situation is at the moment, who will want to address their remarks to the treaties today.

I would imagine that the debate will resume tomorrow at 10 or 11 in the morning and last until 6 or 7 in the evening, and on Friday from about 9 in the morning until 5 in the afternoon. We will want to attempt to proceed in a way which will allow Senators to gain recognition when and as they can. Our respective sides would be well advised to attempt to keep things moving. Many times we do have Senators who are in the Chamber but are not ready to speak. We should keep in mind that we have audio transmission to inform the public as to the debate on the treaties.

In the first 2 or 3 days, I would think we can lay out at the beginning of the day the names of a few of the speakers who will deliver remarks on that day.

Mr. BAKER. I agree with the majority leader. I might say, by way of information to my colleague, that yesterday, during the regular weekly luncheon meeting of the Republican policy group, I indicated that we have both opponents and proponents on both sides of the aisle in this case. For my part, I wanted it known that I wished to serve both sides in trying to arrange the details of our procedure. Whether for or against the treaties, those on my side of the aisle should advise me of their wishes in this respect. I would be happy to advise the majority leader to see if we can keep a steady flow of debate rather than start and stop as sometimes occurs.

Mr. ROBERT C. BYRD. While we are waiting for the first speaker, I should say at this point it will be in order, once we are in executive session, to have amendments proposed on each article as that article is reached in its sequence, and votes could occur on such amendments or the tabling motions of such amendments. So there is a possibility of rollcall votes today, tomorrow, and Friday.

I should rather think that for the most part the time in the remainder of this week will likely be consumed in debate.

Mr. BAKER. I thank the majority leader. I join him in that estimate. I think that will provide for an orderly transition into the general and sustained debate on these matters after we return from our Lincoln Day nonlegislative period.

Mr. President, I thank the majority leader for taking the time today to answer these inquiries and to volunteer a good schedule of activities for this week, so that everyone can make his plans. I am sure all Senators will find that very helpful.

REPORT OF DELEGATION STUDYING THE PANAMA CANAL TREATIES
AND OTHER MATTERS OF INTEREST TO THE UNITED STATES (SEN.
DOC. NO. 95-80)

Mr. BAKER. Mr. President, pursuant to Senate Resolution 179 adopted at the end of the session last year, it was my privilege to lead a delegation of Senators to Panama and certain other Latin American countries. I am today filing a report of that trip, and I ask unanimous consent that the report on the trip be printed as a Senate document.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. BAKER. I thank the majority leader for his indulgence.

EXECUTIVE SESSION

TREATY CONCERNING THE PERMANENT NEUTRALITY
AND OPERATION OF THE PANAMA CANAL

The VICE PRESIDENT. Under the previous order, the Senate will now go into executive session to proceed to the consideration of Executive N, which the clerk will report.

The legislative clerk read as follows:

Executive N, 95th Congress, 1st Session, treaty concerning the permanent neutrality and operation of the Panama Canal.

The VICE PRESIDENT. Under the rule, the treaty will now be considered as in Committee of the Whole, article by article.

Are there amendments to article I?

Mr. ROBERT C. BYRD. Mr. President, may we have order in the Senate?

The VICE PRESIDENT. The Senate will be in order.

Mr. ROBERT C. BYRD. Mr. President, I believe that it might be well for certain rules and precedents to be clarified at the beginning of the debate. I think it will facilitate a better understanding on the part of all Senators and on the part of the press, as well as the people in the communications media, if this is done.

I read from a committee print of the role of the Senate in treaty ratification, a staff memorandum to the Committee on Foreign Relations, U.S. Senate:

The Committee of the Whole procedure requiring the reading of a treaty article by article has not been used in recent memory. A quick search of the Record indicates this procedure was last followed in 1922, during the Senate's consideration of the treaty with Japan concerning the disposition of certain islands in the Pacific.

While we have been in Committee of the Whole on occasions, I take it from the reading of this text that the reading of a treaty article by article in the Committee of the Whole has not occurred in the last 55 years.

I address a question to Senators at this point as to whether or not there will be any objection—and I take it that I know the answer already—to waiving the requirement of the rule that articles be read in sequence during the procedures in the Committee of the Whole.

Mr. ALLEN. Mr. President, I will object to any consideration other than the consideration that the rule require that they be considered article by article. I certainly would have no objection—and I am sure there would be no objection in the Senate—to merely waiving the full reading of the treaty, provided it is understood that that in no way interferes with the consideration article by article.

Mr. ROBERT C. BYRD. The Senator has answered my question, and there would be an objection to waiving the requirement that the articles be read in accordance with the rule, article by article and in sequence. So I will not propound that request, since it would be a request in vain, and I respect the distinguished Senator from Alabama for his insistence upon following the procedures precisely as the rule would require. However, I take the floor at this time to suggest—if we may have the indulgence of the distinguished chairman of the Foreign Relations Committee and the ranking member thereof, Mr. Sparkman and Mr. Case, respectively—that we attempt at the beginning to establish a full clarification of certain rules and precedents. I am sure Mr. Allen is prepared to proceed to do this, and so am I, and there may be others.

So if we may go ahead with this procedure before we have the opening statements by the chairman and the ranking member, I would suggest just that.

I thank the Chair.

Mr. ALLEN addressed the Chair.

The VICE PRESIDENT. The Chair recognizes the Senator from Alabama (Mr. Allen).

Mr. ALLEN. Mr. President, I express my appreciation to the distinguished majority leader for allowing me to proceed at this time. I also express my appreciation to my distinguished senior colleague, Mr. Sparkman, and the distinguished minority leader, Mr. Baker, and the ranking Republican member of the Foreign Relations Committee, Mr. Case, for allowing me to proceed at this time.

On Monday, I did express the hope that the Vice President would be in the chair at the time Executive N is laid before the Senate for consideration, in order that we might clear the air as to some of the complex phases of the rules governing consideration of treaties.

I must say, Mr. President, that I have not in the past drawn much comfort from rulings of Vice Presidents on parliamentary procedure. But I feel that the answers to these parliamentary inquiries will be so clear and the answer so indicated by the rules that we can have a full understanding and a proper guideline for consideration of these matters and that we will not from time to time have to raise points of order as to procedure.

My chief reason for feeling that the matter should be considered in the Committee of the Whole is that the rules provide a definite procedure for consideration of a treaty in the Committee of the Whole—that is, that the treaty must be considered article by article, that amendments must be offered to that article; whereas, the committee amendments, if any, would have precedence before a vote can be taken on a succeeding article, or, before amendments can be offered to a succeeding article, all amendments to the first article must be considered and there must be a final vote on that article.

Further, while the matter is in the Committee of the Whole, no resolution of ratification could be offered. That would have to come after the matter is considered by the Senate and lies over 1 day.

With the indulgence of the Chair and the Members of the Senate, I should like to propound parliamentary inquiries to the Chair. At the request of the Chair, I did reduce these inquiries to writing, in order that the questions might be studied by the Chair and by the Parliamentarian.

Mr. President, are there not two treaties before the Senate in the Committee of the Whole involving the Panama Canal? And will it not be necessary to complete action on one through the Resolution of Ratification before action can be commenced on the other?

The VICE PRESIDENT. If the Senator means there are two treaties in the Panama Canal package, the answer is "yes." If he means that the two treaties will be before the Senate at the same time, the answer is "no."

As to the second part of his question, it will not be necessary to complete action on one before action can be commenced on the other. The Senate could, if it chose, go to the second treaty before completing action on the first.

Mr. ALLEN. I understand.

I might state to the Chair that I believe an effort will be made, after the recess, to reverse the order set by the committee and the leadership for consideration of these treaties and go back to the order in which the treaties were sent to the Senate by the President under Executive N. It may well be that that would be the first vote that the Senate takes on these treaties.

Are the amendments to articles IV and VI of the Neutrality Treaty referred to in the report of the Senate Foreign Relations Committee "amendments reported by the committee" as such term is used in Senate Rule XXXVII, or will such amendments be the amendments only of the Senators who offer and sponsor them?

The VICE PRESIDENT. If called up, these will be the amendments of the Senators who introduce and sponsor them.

Mr. ALLEN. I thank the Chair. I might state that I am a cosponsor of the leadership's resolution. I feel that that would be an improvement on the treaty. However, being a cosponsor of the leadership resolution, I feel that I am free to point out defects and shortcomings in the leadership amendments, and it will be my purpose and the purpose of other Senators of like mind to seek to improve on the leadership amendments, even though we may be cosponsors. I do not feel that approval of the leadership amendments would be decisive of the issue at all, because I believe that is overlooking the basic thrust of the treaties and the shortcomings and the ill-advised nature of the treaties themselves.

Mr. President, it is not in order without unanimous consent, is it, for a resolution of ratification to be proposed as to a treaty until the following procedure has taken place with respect to a treaty:

(a) Consideration and report by the Committee of the Whole to the full Senate;

(b) Consideration by the Senate of the action by the Committee of the Whole;

(c) Consideration of other amendments; and finally

(d) Lying over for 1 day?

The VICE PRESIDENT. The Senator is correct, with one caveat. After the Senate has completed the amendatory process on a treaty, the treaty does not have to lie over 1 day. The resolution of ratification cannot be presented until the next day, except by unanimous consent.

Mr. ALLEN. Yes. I believe I predicated my question "if it is not with unanimous consent." Without unanimous consent that would not be the case; is that correct, Mr. President?

The VICE PRESIDENT. The Senator is correct.

Mr. ALLEN. I thank the Chair.

In considering each treaty by articles, as the rules provides, with committee amendments, if any, to be considered first, would it not be necessary to consider amendments from the floor of the Senate as to an article and to have a vote on such article before amendments of any sort to the next succeeding article could be offered or considered in the Senate?

The VICE PRESIDENT. Amendments to the treaty are first considered article by article, but each article itself is not acted on. There is no vote on the article as such.

Mr. ALLEN. Would the Chair kindly repeat that? I did not quite understand the Chair.

The VICE PRESIDENT. Amendments to treaties are considered article by article, but each article itself is not acted on. There is no vote on the article as such.

Mr. ALLEN. But all amendments are considered; all amendments from the floor are considered before the Senate turns to the next succeeding article?

The VICE PRESIDENT. The Senator is correct.

Mr. ALLEN. I thank the Chair. If Calendar No. 1—the Neutrality Treaty—is approved, and Calendar No. 2—the Panama Canal Treaty—is not approved by the Senate, would not the action on the Neutrality Treaty be thereby vitiated, since it is not to go into effect until the expiration of the term of Calendar No. 2, the Panama Canal Treaty?

The VICE PRESIDENT. Under the precedents of the Senate, the Chair does not interpret the legal effect of Senate action. The Chair accordingly does not find it appropriate to answer the Senator's inquiry.

Mr. ALLEN. I thank the Chair for his nonanswer to my inquiry.

For cloture to be invoked as to the treaties, would not a separate cloture motion and a separate cloture vote by at least 60 Senators on each motion be required?

The VICE PRESIDENT. If the Senator means that cloture will have to be invoked once on each treaty, he is correct.

Mr. ALLEN. I thank the Chair. If cloture is sought on one treaty and voted by the Senate, would it not be necessary to complete action on the clotured treaty before there could be a cloture vote on the second treaty?

The VICE PRESIDENT. The Senator is correct.

Mr. ALLEN. At what point will the preamble of the treaties be before the Senate for consideration and for possible amendment, and for action by the Senate?

The VICE PRESIDENT. There are no preambles to the treaties as such. If the Senator refers to the declaration of the signatory

powers as to their understanding and intent of the "Panama Canal Treaty" made at the time it was signed, the Chair would state that this in the past has been held by the Senate not to be part of the treaty and not subject to amendment.

Mr. ALLEN. In other words, the introductory language, then, could make any statement whatsoever and the Senate would have no right to review and correct?

The VICE PRESIDENT. My answer would remain the same.

Mr. ALLEN. I ask unanimous consent that the "Documents Implementing the Panama Canal Treaty" and the "Other Documents" identified on page 221 of the report of the Committee on Foreign Relations (Executive Report No. 95-12) be identified in like manner in the Record at this point as predicate for my next two parliamentary inquiries. I am sure the Chair is familiar with those.

The VICE PRESIDENT. Without objection, it is so ordered.

There being no objection, the lists were ordered to be printed in the Record, as follows:

DOCUMENTS ASSOCIATED WITH THE PANAMA CANAL TREATIES

CONTENTS

Documents implementing the Panama Canal Treaty

Agreement in Implementation of Article III of the Panama Canal Treaty

Annex A, Annex B, Annex C, and Agreed Minute.

Agreement in Implementation of Article IV of the Panama Canal Treaty

Annex A, Annex B, Annex C, Annex D, and Agreed Minute.

Maps of the Land and Water Areas for the Operation and Defense of the Panama Canal, Referred to in the Agreements in Implementation of Articles III and IV of the Panama Canal Treaty [The maps are not printed here. The map atlas is deposited in the archives of the Department of State where it is available for reference.]

Exchange of Notes Relating to Postal Services.

Exchange of Notes Relating to Use of Commissary and Post Exchange Facilities.

Letter Describing Application of the Wholesale Price Index Referred to in Paragraph 4 (A) of Article XIII of the Panama Canal Treaty.

Letter Regarding Termination of Article XVII of the United States-Panama Air Transport Services Agreement.

Other documents

Agreement on Certain Activities of the United States of America in the Republic of Panama.

Agreement Pursuant to Article VI of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

Note Regarding Economic and Military Cooperation.

Exchange of Notes Relating to Air Traffic Control Services.

Note Regarding the Establishment of the Panama Bureau of the United States Foreign Broadcast Information Service.

Exchange of Notes Relating to the Gorgas Memorial Institute of Tropical and Preventive Medicine, Incorporated, and to the Gorgas Memorial Laboratory.

Exchange of Notes Relating to Scientific Activities in Panama of the Smithsonian Tropical Research Institute.

Exchange of Notes Relating to Custodianship of the Barro Colorado Native Monument by the Smithsonian Tropical Research Institute.

Mr. ALLEN. I thank the Chair. Since most of the actual agreements between the United States and Panama are provided in the documents set forth in the Record pursuant to the foregoing unanimous-consent request, are such documents before the Senate for

consideration and for vote thereon, and for possible amendment prior thereto?

The VICE PRESIDENT. Only the body of the treaty, including all of its articles, annexes thereto, protocols to it, et cetera, is before the Senate for consideration and therefore amendable.

The treaty before the Senate has two annexes and one protocol, which would fall into that category. The second treaty has one annex and 1 minute.

Mr. ALLEN. Anyway they would be amendable?

The VICE PRESIDENT. The Senator is correct.

Mr. ALLEN. Following the Chair's reasoning to its logical conclusion, then, it would be possible, in a treaty, to say that the United States and another country agreed to a treaty which is set forth in a separate agreement between the Presidents, and therefore the Senate would have no right to change that, shall I say, side agreement?

The VICE PRESIDENT. The Senate would, of course, have the choice to ratify it or not.

Mr. ALLEN. Have what?

The VICE PRESIDENT. The right to ratify it or not.

Mr. ALLEN. I see. But that would be a legitimate exercise of the treaty power, then, of the executive; is that correct?

The VICE PRESIDENT. The Presiding Officer prefers not to rule on hypothetical questions.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield for clarification?

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. The Senator earlier asked that the documents in the Panama Canal Treaty and the earlier documents identified on page 221 of the report of the Committee on Foreign Relations be included in the record as a predicate for his next two parliamentary inquiries.

Mr. ALLEN. Not the documents themselves, I say to the distinguished majority leader; merely the page I am referring to. I did not want to encumber the record.

Mr. ROBERT C. BYRD. Will the Senator identify the pages again?

Mr. ALLEN. It is on page 221 of the Foreign Relations Committee report.

Mr. ROBERT C. BYRD. And going to what page?

Mr. ALLEN. Just the one page, the numbered items.

Mr. ROBERT C. BYRD. I see. So, then, according to the Chair's response, the texts of the treaties beginning on page 201—I am putting the response a bit differently—the texts of the treaties beginning on page 201 and ending on page 220, including the annexes, the protocols, and the single minute, would be in totality all that would be before the Senate for debate and amendment?

The VICE PRESIDENT. Will the Senator restate that?

Mr. ROBERT C. BYRD. As I understand the Chair's answer to the question propounded by the distinguished Senator from Alabama (Mr. Allen), all that would be before the Senate for its consideration would not include the documents implementing the Panama Canal Treaties, but would only include the text of the treaties themselves, the annexes thereto, the protocol and the one minute.

The VICE PRESIDENT. The Senator is correct.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. ALLEN. I thank the distinguished majority leader.

If amendments to a treaty or treaties inconsistent with the provisions of the documents set forth in the record pursuant to the foregoing unanimous consent request are agreed to by the Senate, would not such amendments so adopted supplant or supersede the inconsistent provisions of such documents?

The VICE PRESIDENT. Once again, the Senator is asking for an interpretation of the Senate's actions, which the Chair does not find it appropriate to indulge in.

Mr. ALLEN. Yet an amendment varying the terms of such other documents would be in order, would it not?

The VICE PRESIDENT. Amendments to matters before the Senate are in order at the proper time.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. ALLEN. Yes, sir.

Mr. ROBERT C. BYRD. But amendments to "other documents," to use the Senator's phraseology, would not be appropriate?

The VICE PRESIDENT. That is correct. The Chair has been very specific on that in response to an earlier inquiry.

Mr. BAKER. Mr. President, will the Senator yield to me briefly?

Mr. ALLEN. Yes, sir.

Mr. BAKER. Mr. President, I want to make sure I fully understand the ruling of the Chair and the inquiries by the majority leader and the Senator from Alabama.

It is my impression, then, that only those matters described in the committee report from page 201 to 220 are before the Senate and are available for action by the Senate?

The VICE PRESIDENT. The Senator is correct.

May I repeat that part of my earlier ruling that spells it out?

The treaty before the Senate has two annexes and one protocol, which are subject to amendment. The second treaty has one annex and one minute subject to amendment, and that minute was inadvertently left out of the committee's report.

The amendable portions of the treaty are described in the ruling just given.

Mr. ROBERT C. BYRD. Will the distinguished minority leader yield on this very point?

Mr. BAKER. I am very happy to yield.

Mr. ROBERT C. BYRD. While the Chair has stated that the minute was omitted from the Foreign Relations Committee report on the Panama Canal Treaties, actually, what is before the Senate is the document, the Panama Canal Treaties message from the President of the United States, September 16, 1977, 95th Congress, 1st session, Executive N, which does include the minute which was inadvertently left out of the committee's report.

The VICE PRESIDENT. The Senator is correct.

Mr. BAKER. Mr. President, I thank the majority leader.

Will the Senator from Alabama permit me one more clarifying question?

Mr. ALLEN. Yes.

Mr. BAKER. The effect of these statements, then, and the ruling of the Chair, as I understand it, is that those documents described on page 221 of the report of the Committee on Foreign Relations,

under the heading, "Selected Documents" would not be available for action of the Senate, such as maps of the land and water areas for the operation and defense of the Panama Canal, and so on.

The VICE PRESIDENT. If they are not within the material that was earlier listed in my ruling, they would not be subject to amendment.

Mr. BAKER. I thank the Chair.

I thank the Senator from Alabama.

Mr. STEVENS. Will the Senator from Alabama yield to me for one inquiry?

Mr. ALLEN. I am glad to.

Mr. STEVENS. I ask the Chair, has the Senator from Alabama, then, inquired as to the status of the agreement and implementation of article III of the Panama Canal Treaty that appears on page 223 of the committee documents, what the status of that is as far as the Senate is concerned?

The VICE PRESIDENT. It is not a matter before the Senate for consideration. I, of course, would not be in a position to respond to what the status is.

Mr. ALLEN. I thank the Senator for his clarifying inquiry.

Mr. STEVENS. I thank the Senator from Alabama.

Mr. ALLEN. I say to the distinguished Senator from Alaska that the effect of the ruling is that most of the provisions having to do with the implementation of the canal treaties are an untouchable document. It just lies over there in limbo, so to speak, but cannot be touched by the Senate.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield on that point?

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. I must respectfully state that I do not agree with the distinguished Senator in his last statement. They could be dealt with by reservations and understandings when the resolution of ratification is presented and, in addition, when the implementing legislation is before the House and the Senate.

Mr. ALLEN. I understand that point.

I say to the distinguished majority leader that I had previously asked the Chair if amendments to the treaty might be offered that would be inconsistent with these provisions and would they not supplant those provisions. He declined to answer.

Certainly, amendments embodying provisions at variance with these other documents would be in order, just as the Senator points out, reservations and understandings.

The point the Senator from Alabama is making is that the agreements themselves are not subject to amendment, under the response of the Chair.

Mr. ROBERT C. BYRD. I agree with the distinguished Senator from Alabama.

Mr. ALLEN. Mr. President, Executive N contains in the case of the Panama Canal Treaty an annex and an agreed minute. Additionally, the treaty concerning the permanent neutrality and operation of the Panama Canal, also within Executive N, has two annexes each having a map attachment. At what point will the annexes, minutes, and associated attachments within Executive N

be before the Committee of the Whole for consideration and possible amendment?

The VICE PRESIDENT. The two annexes and one protocol to the first treaty, and the one annex and one minute to the second treaty, will be before the Senate as in Committee of the Whole in sequence after the articles of each treaty have been considered for amendment.

Mr. ALLEN. I thank the Chair.

My next question has already been answered by the Chair, having to do with amendments offered to the treaties that might supplant the provisions of the other document. He has already responded to that.

Subject to the limitations that might be imposed by cloture, Mr. President, are not each article and each amendment to an article debatable?

The VICE PRESIDENT. The Senator is correct.

Mr. ALLEN. Are not amendments offered to a treaty amendable in like manner as amendments to bills in legislative session?

The VICE PRESIDENT. The Senator is correct.

Mr. ALLEN. Are perfecting amendments to portions of the treaty sought to be amended in order?

The VICE PRESIDENT. The Senator is correct. If I may respond further, the treaty is amendable in two degrees.

Mr. ALLEN. Did the Chair complete its ruling?

The VICE PRESIDENT. Yes. The answer is "Yes," the treaty is amendable in two degrees.

Mr. ALLEN. In like manner as a bill?

The VICE PRESIDENT. The Senator is correct.

Mr. ALLEN. Mr. President, In the absence of cloture, must amendments to articles be germane to the article under consideration?

The VICE PRESIDENT. No, unless cloture is invoked there is no rule of germaneness.

Mr. ALLEN. I thank the Chair.

Since both the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal are made in duplicate, in English and Spanish languages, both texts being declared equally authentic, are the Spanish texts of both treaties before the Senate for consideration?

The VICE PRESIDENT. No, under the precedents, only the English text is before the Senate for consideration.

Mr. ALLEN. What assurance then would the Senate have that the document in Spanish corresponded to the treaty as finally agreed to or to which the advice and consent of the Senate is given?

The VICE PRESIDENT. The only treaty being recommended for ratification by the Senate is that before us in English.

Mr. ALLEN. I will not argue with the Chair on that point, only to point out a number of discrepancies and different meanings are set forth in the Spanish text from the understanding of the English language.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield?

Mr. ALLEN. I yield.

Mr. ROBERT C. BYRD. Is it not true that the Senate often has treaties before it for giving of its advice and consent for ratification thereof which are in various languages and in every case it is only the English text that is before the Senate?

The VICE PRESIDENT. The Senator from West Virginia is correct. This is a long-standing precedent and tradition of the Senate.

Mr. ALLEN. I might say, parenthetically, we had some trouble with interpretations of the English language and I was just wondering who would interpret, who would put into Spanish the wording of the English treaty as completed here in the Senate.

I might inquire if Mr. Torrijos possibly might be the interpreter? I say that parenthetically, and I do not ask for a ruling on the question.

If they are not both before the Senate, when will the Spanish language texts be presented to the Senate; when, if at all, will the Spanish language texts be presented to the Senate for consideration and comparison with the English language texts for the purpose of ascertaining any discrepancies between them?

The VICE PRESIDENT. Again, under the precedents, the Spanish language texts will not be before the Senate for consideration.

Mr. ALLEN. I thank the Chair.

One final question: If the President transmits two treaties to the Senate under cover of one message and the same are received by the Senate and docketed as one executive message, if no action is taken in committee to change the manner in which the documents were transmitted, would not such documents remain in the order transmitted when reported by the committee to the Senate for consideration in the Committee of the Whole? In other words, is not really the Panama Canal Treaty before the Senate rather than the Neutrality Treaty?

The VICE PRESIDENT. If the Senator will propound the additional question, then I will answer it?

Mr. ALLEN. I ask: In other words, is not the Panama Canal Treaty rather than the Treaty on Neutrality, the treaty that should properly be before the Senate at this time?

The VICE PRESIDENT. The reporting committee can determine the sequence in which they are placed on the Executive Calendar.

Mr. ALLEN. Even though they were submitted by the President in the reverse order?

The VICE PRESIDENT. That is the position of the Presiding Officer. For example, the committee need not report them at all.

Mr. ALLEN. I might state that I agree with the President on his order of presentation of these treaties to the Senate, and I hope that in time we will have an opportunity to consider first the Panama Canal Treaty, because I do not believe we should be considering what takes place in the year 2000 before we decide whether or not the canal shall be given away. But I think there will be an appropriate time when that motion can be made, and I might say to the distinguished majority leader, I feel that even if we are proceeding now on the Neutrality Treaty we have lost no time, there will be no lost motion if the Senate should move to proceed to the Panama Canal Treaty first because I understand that only general opening speeches will be made at this time.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

Mr. ALLEN. I thank the Senator.

Mr. ROBERT C. BYRD. I understand we will reserve until after the nonlegislative day period his making the motion to proceed to the Panama Canal Treaty in preference to the Neutrality Treaty, which is presently before the Senate.

I think I should compliment the Committee on Foreign Relations at this time for its having reported out first the Neutrality Treaty. I think that that treaty contains questions which Senators would want to have answered before they vote on the Panama Canal Treaty. In other words, I do not think that Senators would want to vote to relinquish control of the Panama Canal after the year 2000 without first being assured that our war vessels and auxiliary vessels would indeed go to the head of the line in the case of need or emergency and without first also being assured that there is no question about the right of the United States after the year 2000 once it has relinquished control of the canal to act against any aggression or any action that would impair the open access or impede the use of the canal.

So I think that was the rationale for the committee's action. I think it was appropriate and I would hope that the Senate would support the committee and the joint leadership at such time as that motion is made.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. Mr. President, I am a member of the Foreign Relations Committee and in that capacity and also as one of the joint leadership I join with Senator Byrd in not only requesting that the Foreign Relations Committee consider reporting treaties in this manner and in this sequence for the reasons that the distinguished Senator from West Virginia has enumerated, but for another and very personal reason to me—that is my previous announcement that unless the Neutrality Treaty is amended in certain respects I would not find it possible to support the Panama Canal Treaty. So for my part, at least, I wanted to see that issue resolved before we proceed to the question of the Panama Canal Treaty itself.

Mr. ALLEN. Mr. President, will the Senator yield a moment, please?

Mr. ROBERT C. BYRD. I yield.

Mr. ALLEN. I would like to express my appreciation to the Chair for his response to these questions. I believe that it does set a framework for proper and expeditious, I might say, consideration of the treaties.

The VICE PRESIDENT. I thank the Senator from Alabama, particularly for propounding his questions in writing in advance.

Mr. ALLEN. I thank the Chair.

Mr. BAKER addressed the Chair.

The VICE PRESIDENT. The Senator from Tennessee.

Mr. BAKER. I would like to express my appreciation to the distinguished Senator from Alabama. Someone asked me once, "Don't you wish you knew the rules as well as the distinguished junior Senator from Alabama?" And I guess I do. But I never cease to be amazed and gratified by his grasp of not only the rules themselves and the precedents of the Senate, but his feel for the totality of our

procedure; and I think he has contributed immeasurably to the orderliness of our procedure.

Mr. ALLEN. I thank the Senator.

Mr. BAKER. Mr. President, I would like at this time, if I may, to make a request on behalf of the distinguished Senator from Michigan (Mr. Griffin). It has been called to my attention that the committee report which contains, of course, his minority views, has rather extensive typographical errors. I believe that this has been cleared with the majority leader. I ask unanimous consent, Mr. President, that there be a star print of the report of the Committee on Foreign Relations carrying the corrections.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, will the Senator qualify his request by simply asking for a star print of the views of Mr. Griffin? I think this would constitute a considerable saving of taxpayer money.

Mr. BAKER. I think not only will it constitute a savings but I think the Senator from Michigan would prefer that procedure. As a matter of fact, he originally had requested that his views might be printed separately.

Mr. GRIFFIN. In any event I say to the leader that would be satisfactory to the Senator from Michigan.

Mr. BAKER. I thank the Senator.

Mr. President, I revise my request so that there may be a star print separately bound of the views of the distinguished Senator from Michigan.

Mr. ROBERT C. BYRD. Mr. President, I am now informed that there are also errors in the committee report aside from the errors in the reported views of the distinguished Senator from Michigan, so I withdraw my suggestion that I earlier made to the distinguished minority leader and ask that the entire report be reissued as a star print.

Mr. BAKER. Mr. President, that is fine.

Mr. SPARKMAN. Mr. President, I say that is correct, and I am just on my feet to make that request.

Mr. ROBERT C. BYRD. I thank the distinguished Senator.

The VICE PRESIDENT. Without objection, it is so ordered, and the Chair will suggest that the omitted minute be added to that report as well.

Mr. BAKER. Mr. President, I revise my request to include the omitted minute.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. BAKER. Two other housekeeping matters. I ask unanimous consent, Mr. President, that Allison Rosenberg of Mr. Percy's staff and Caroline Randel of Senator Hansen's staff may have privileges of the floor during consideration of these.

The VICE PRESIDENT. Without objection, it is so ordered.

Several Senators addressed the Chair.

The VICE PRESIDENT. The Senator from West Virginia.

Mr. ROBERT C. BYRD. I yield to the distinguished Senator from South Carolina.

The VICE PRESIDENT. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I ask unanimous consent that Mr. John Napier, of the Judiciary staff; Mr. Ed Kenney and Ken Fish,

of the Armed Services staff, be granted privilege of the floor during consideration and voting on these treaties.

The VICE PRESIDENT. Without objection, it is so ordered.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. I yield to the Senator from New Jersey.

Mr. CASE. I make the same request, Mr. President, in respect to Michael Kraft of my staff.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield to the Senator from Oklahoma.

Mr. BELLMON. Mr. President, the same request for Martin James of my staff.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield to the Senator from Nevada.

Mr. CANNON. The same request for Frank Krebs of my staff.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield to the Senator from Vermont.

Mr. LEAHY, Mr. President, I ask the same request for Marty Franks and Robert Paguin, of my staff, throughout deliberations and voting.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield to the Senator from Nevada.

Mr. LAXALT. Mr. President, I make the same request on behalf of the following: Dr. John Bacher and Tom Carter of Senator Hayakawa's staff, Bob Turner of Senator Griffin's staff, Steve Perles of Senator Stevens' staff, Mark Edelman of Senator Danforth's staff, Margaret Lynch and Sylvia Castellanos of Senator McClure's staff, Peter Lakeland of Senator Javits' staff, Bob Downen of Senator Dole's staff. Al Dreschler and Margo Carlisle of my own staff.

The VICE PRESIDENT. Without objection it is so ordered.

Mr. ROBERT C. BYRD. I yield to the Senator from Maryland.

Mr. SARBANES. Mr. President, I make the same request for Clifford Hackett of my staff.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield to the chairman of the committee.

Mr. SPARKMAN. I ask unanimous consent that the following staff members of the Committee on Foreign Relations be granted privilege of the floor throughout the debate on the two Panama Canal treaties: Norvill Jones, Robert Dockery, George W. Ashworth, Robert Barton, Michael Glennon, Ralph McMurphy, Joel Johnson and Ralph Nurnberger; and Bruce Van Voorst, of Senator Clark's office.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield to the Senator from Idaho.

Mr. CHURCH. Mr. President, the same request for Ira Nordlicht of my staff.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield to the Senator from New Hampshire.

Mr. McINTYRE. Mr. President, I ask unanimous consent that David LaRoche, of my staff, be granted privilege of the floor during discussions of the treaties.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield to the Senator from Kentucky.

Mr. HUDDLESTON. Mr. President, the same request for Jane Mathias, of Senator Ford's staff, and Carolyn Fuller, of my staff.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield to my namesake, the distinguished Senator from Virginia.

Mr. HARRY F. BYRD, JR. Mr. President, the same request for Jack F. Davis, of my staff, and Christopher Lehman, of my staff.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield to the Senator from North Carolina.

Mr. HELMS. Mr. President, I make the same request on behalf of Senator Hatch for Dr. Jim McClellan, and on behalf of myself for Dr. James P. Lucier.

I thank the Senator.

The VICE PRESIDENT. Without objection it is so ordered.

Mr. ROBERT C. BYRD. I yield to the Senator from Kansas.

Mr. DOLE. Mr. President, I thank the majority leader.

As I understand it, we have introduced amendments 20 and 21. I guess, any time prior to the consideration of those amendments, that cosponsors will be accepted.

I only point out that it is like cosponsoring one's own amendment since they are very much like amendments 7 and 8 of the Senator from Kansas' proposed language.

Mr. ROBERT C. BYRD. The Senator from Kansas is to be complimented for his leadership in this matter.

Mr. President, I yield to the distinguished Senator from Indiana.

Mr. LUGAR. Mr. President, the same request for Mark Lubbers of my staff.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. I yield to the Senator from Alabama.

Mr. ALLEN. Mr. President, in order that we might have room for Senators here in the Chamber while this debate is going on. I make no request for assistants whatever.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that various requests that have been propounded and agreed to not interrupt in the Record the Chair's responses to parliamentary inquiries, first, from the Senator from Alabama, the very distinguished Senator from Alabama (Mr. Allen), and now from myself.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, would not cloture, if invoked on a treaty, be effective throughout the entire deliberations—including Committee of the Whole, actions in the Senate, and covering the resolution of ratification.

The VICE PRESIDENT. The Senator from West Virginia is advised that cloture if invoked on a treaty, pertains to all aspects of the treaty, the Committee of the Whole and action on both the treaty and the resolution of ratification.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, is a reservation, declaration, or understanding to the resolution of ratification considered to be an amendment in the first degree?

The VICE PRESIDENT. Yes; a reservation, declaration, or understanding is amendable in one degree.

Mr. ROBERT C. BYRD. Mr. President, once the Senate concurs in an amendment adopted in the Committee of the Whole, the amended language would not then be open to further amendment, would it?

The VICE PRESIDENT. The Senator is correct. The amended language would not then be open for further amendment.

Mr. SCOTT addressed the Chair.

Mr. ROBERT C. BYRD. But prior to the concurrence of the Senate to the amendment adopted in the Committee of the Whole, perfecting amendments to that amendment and substitute amendments to that amendment would be in order, would they not?

The VICE PRESIDENT. The Senator is correct.

Mr. SCOTT. Will the Senator yield briefly for clarification?

Mr. ROBERT C. BYRD. Yes.

Mr. SCOTT. Mr. President, I would pose the question that after the consideration of the treaty, as in the Committee of the Whole, the treaty will be before the Senate for consideration, and amendments can be offered at that time which have not been offered when considered as the Committee of the Whole?

The VICE PRESIDENT. The Senator is correct, as was pointed out by the Senator from West Virginia.

Mr. ALLEN. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. ALLEN. When the distinguished majority leader spoke of the reservation, I assume he meant reservations to the treaty, rather than to the resolution of ratification, did he not?

Mr. ROBERT C. BYRD. No, no, no, because I referred to the reservations, the resolutions of ratification only.

Mr. ALLEN. Very well.

May I then propound an inquiry?

Mr. ROBERT C. BYRD. May I say that it is my understanding no reservations can be offered to the treaty. Amendments are offered to the treaty.

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. Reservations are offered to the resolution of ratification.

The VICE PRESIDENT. The Senator is correct.

Mr. ALLEN. But a clarifying inquiry, though, obviously, a reservation to the resolution of ratification could not be offered until it had been presented to the Senate after the procedure that has been outlined heretofore.

The VICE PRESIDENT. The Senator is correct. Reservations are not in order until after the presentation of the resolution of ratification.

Mr. ALLEN. I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, when the proceedings had as in Committee of the Whole are reported to the Senate, is an amendment adopted in the Committee of the Whole considered to be an amendment in the first degree even though it may have been a second degree amendment in the Committee of the Whole?

The VICE PRESIDENT. The Senator is correct. It is considered an amendment in the first degree.

Mr. ROBERT C. BYRD. Mr. President, once the resolution of ratification has been presented to the Senate for consideration, if it

contains amendments to the treaty previously adopted, is that part of the resolution of ratification open to amendment?

The VICE PRESIDENT. No, it is not.

Mr. ROBERT C. BYRD. Mr. President, are any amendments to a treaty in order after the resolution of ratification has been presented to the Senate for action, that is, after all decisions on amending a treaty shall have been reduced to the form of a resolution of ratification and presented to the Senate?

The VICE PRESIDENT. No. Once the resolution of ratification has been presented, amendments to the treaty are no longer in order.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. ALLEN. That would not preclude reservations which are presented at the time the resolution of ratification is before the Senate.

The VICE PRESIDENT. The Senator is correct.

Mr. ALLEN. Amendments, no; the reservations, yes. Is that correct?

The VICE PRESIDENT. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, after the amending process of a treaty "as in the Committee of the Whole" has been completed, what is the procedure for reporting the treaty back to the Senate?

In the House, when the House resolves itself into a Committee of the Whole, the Speaker steps down from the chair and a Member of the House takes the chair, to preside during the Committee of the Whole; and when the Committee of the Whole rises, the appointed Representative goes down from the chair, the Speaker reassumes his position, and the Member who presided over the Committee of the Whole then reports to the Speaker as to the consequences of the actions of the Committee of the Whole.

In the Senate, what is the procedure for reporting the treaty back to the Senate?

The VICE PRESIDENT. The Senate does not technically resolve itself into the Committee of the Whole, but it does, under the rules, consider the treaty as in the Committee of the Whole. Therefore, it is reported back by the Chair, who states this question: "Will the Senate concur in the amendments made in the Committee of the Whole?"

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. President, would a proposed reservation, regardless of the subject matter, be subject to a point of order as not being in fact a reservation but an amendment, in reality, to the treaty?

The VICE PRESIDENT. In the past, this question has always been submitted to the Senate for its decision *ab initio*, and the Senate has decided that such a point of order will lie if the proposed reservation is really in fact an amendment of the treaty. But the decision is for the Senate.

Mr. ROBERT C. BYRD. Mr. President, I have one final question at this point.

When a treaty is being considered as in the Committee of the Whole for amendments, is it in order to offer an amendment that would amend more than one article of the treaty, or must an

amendment be confined to the article that has been before the Senate?

The VICE PRESIDENT. It is only in order to offer an amendment to the article then pending before the Senate.

Mr. ROBERT C. BYRD. I thank the Chair.

Mr. ALLEN. Mr. President, I merely wish to reassert the Chair's ruling that the amendment does not have to be germane. One could not seek to amend article I by also amending articles II and III. But if one makes no reference to the other articles, it would be in order, inasmuch as there would be no rule of germaneness.

The VICE PRESIDENT. The Senator is correct. Unless cloture is invoked.

Mr. ALLEN. I understand.

Mr. ROBERT C. BYRD. My question was that the same amendment cannot go to two articles.

The VICE PRESIDENT. The Senator is correct.

Mr. ROBERT C. BYRD. Mr. President, I express my gratitude to the Chair, the distinguished Vice President of the United States, for assuming the Chair at this time, in recognition of his constitutional duty to preside over the Senate and at a time when it is important that these guidelines be clearly made a part of the record, in view of the additional fact that we are about to proceed on a very historic debate; and I express my personal thanks to him for the excellent responses to the parliamentary inquiries.

I also thank the distinguished Senator from Alabama for the thoughtfulness and foresight he has demonstrated, which is characteristic of him, and for his service in presenting the parliamentary inquiries which will help to guide us all in our deliberations in the days ahead.

Mr. ALLEN. I thank the distinguished majority leader.

Mr. CANNON. Mr. President, in the hearings before the Armed Services Committee on the economic aspects concerning the canal, witnesses testified that treaty implementing legislation is the key determinant of the financial viability of the proposed Panama Canal Commission and thus the determinant as to whether there is or is not any burden on the American taxpayer.

My question is this: If implementing legislation is not considered by Congress prior to the ratification of the proposed treaties, would such implementing legislation have any legal effect, binding effect, on the treaties themselves?

The VICE PRESIDENT. Under the traditions of the Senate, the Presiding Officer does not interpret or render a legal opinion, and I therefore must refrain from responding to the question.

Mr. CANNON. I thank the Chair.

Mr. ROBERT C. BYRD. Mr. President, I think it only fair to all Senators to state at this time that the joint leadership would expect the Senate to be engaged in the debate and consideration of these treaties for a period of several weeks. I hope that final action can occur within 4 or 5 weeks. But, at best, it is going to be necessary for Senators to be on the floor as much as possible, to listen to the debates, and to be prepared to address their remarks to the treaties.

National Public Radio is reporting the developments of the debate. It will do so from the beginning of the debate until 5

o'clock in the afternoon, at the time of the presentation of the news. I believe that for the first 2 or 3 days of this week, it may be that National Public Radio will be going from gavel-to-gavel and will not be cutting off the audio transmission of the debate at 5 o'clock. Later in the evening there will be a condensation of the developments of the day by National Public Radio, and the networks will be feeding off audio feeds from those audio transmissions that are emanating throughout the country by National Public Radio.

What I am saying is this: If we chew up a lot of time in quorum calls, this is not accommodating the public; because it is for the purpose of informing the public as to the pros and cons of these treaties that the Senate has consented for the first time to audio transmission of the debates. Moreover, it will delay the Senate in its final action. It is hoped that Senators will be here on the floor and will be ready to make their statements.

For these reasons, the minority leader and I have come to the conclusion, based on our conversations with members of the committee and other Members, that during the debates on these treaties, it will be difficult to secure consent for committees to meet during the session of the Senate, except to deal with circumstances of an emergency nature. Of course, committees, under the Standing Rules, have the first 2 hours of the Senate session to meet without consent, and they can meet before the Senate goes into session.

I ask my distinguished friend, the minority leader, if he joins me in adjuring Senators to be on the floor as much as possible, alerting committee chairmen and subcommittee chairmen to the necessity of objecting to requests for meetings of committees and subcommittees while this historic debate is underway.

Mr. BAKER. Mr. President, if the Senator will yield, the majority leader is entirely right, and I fully agree with him.

As I advised him earlier in private conversation, I told the regular weekly Republican policy luncheon yesterday, that it was my purpose to object to all except the most extraordinary requests for committees to meet during the session of the Senate. Not only is it necessary in terms of the importance and the divisiveness of this debate but also because there will be many times when committees might otherwise be engaged in consideration of matters that would cause a real problem for Members of the Senate. Committees might be considering something of extraordinary importance that should not take Members away from this floor.

So I served notice yesterday—and I reiterate today—that I will view carefully any request for committees to meet during the session of the Senate, and I intend to object to all except the most remarkable ones.

I point this out to the majority leader, also: We may have a problem with respect to staff members on the floor. I just asked the desk to give me a compilation of the unanimous-consent requests that already have been entered, and there are 44 staff members in addition to the 50 or 55 that ordinarily have access to the floor. Now there are going to be more staff than Senators.

I do not know how we can address that problem, but I say to my friend and colleague, the majority leader, that I think we have a

real problem. I believe we should give some thought to how we can thin out the ranks of staff during the course of this debate.

Mr. ROBERT C. BYRD. I say to the minority leader, in response to that question, that the Sergeant at Arms, I believe, ordinarily attempts to rotate staff people to the extent that if there are more than can be accommodated in the seating arrangement at the rear of the Chamber, some are asked to go to the gallery to which I am pointing, which has been set aside for staff.

The minority leader has raised an important and pertinent question, and we will have to deal with that if it gets to be a problem.

I promised my distinguished senior colleague to say that during today and tomorrow and Friday, it is hoped that the Senate will, for the most part, be engaging in debate on the treaties. This does not mean that a Senator cannot make a motion or cannot offer an amendment to the first article; and, of course, motions to table would be in order. There possibly could be rollcall votes.

However, insofar as the treaties are concerned—I have discussed this with Senator Allen and others—I believe that it would be the general feeling of Members that if we could confine these 3 days to the opening debates, with an understanding that no Senator is being deprived of his rights, we might anticipate debate only on the treaties.

This does not mean that following the debate on the first treaty on a given day there might not be a conference report that could be called up, either preceding or following the debate, and that a rollcall vote might occur on that conference report. But as to the treaties themselves, I say to my senior colleague that I am disposed to urge that we confine our activities to the debate on the treaties rather than to votes in regard thereto.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. BAKER. I think that is a good arrangement, and I fully subscribe to it.

On the question of staff, I think the only thing we can or should do at this point is to urge that we use care and some discretion as to when we bring staff to the floor. Otherwise, we are going to be inundated with staff members.

I would add one other thing: These two seats in the center aisle in the front row are historic seats and traditionally belong to the majority leader and the minority leader. It implies in most cases that there is a difference of opinion between these two seats.

So I advise the majority leader that, except as to the distinguished Senator from New Jersey (Mr. Case), who is the ranking and senior Republican on the Foreign Relations Committee, during the presentation of his statement, I have invited those who oppose the treaties to take this place, so that they can conduct their opposition from this position.

Mr. ROBERT C. BYRD. Mr. President, I have asked the distinguished chairman of the committee to sit in the chair which is normally held by the majority leader but which also customarily is relinquished to the managers of bills and treaties. I hope the chairman will accept my invitation to take that chair throughout the deliberation on the treaties.

Ordinarily, I am not on the minority side of the aisle, as I am now; so I ask the pardon of the members of the minority for my intruding on their side of the aisle.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. ALLEN. Mr. President, I commend the distinguished majority leader on his statements as to the conduct of the debate. I certainly approve and endorse his suggestion that Senators be on the floor not only to listen to the debate but also to be prepared to participate in the debate.

And I hope that it will not be necessary to make a single request for a quorum call. I believe it is possible to go through an entire day without this frequently used device being resorted to. I believe that, if Senators are attentive to the debate and are here to participate in the debate, it will not be necessary to have a quorum call.

The distinguished majority leader has said that he is hopeful that we can complete action on the treaties in some point of time up to 5 weeks. I would hope that we will be able to dispose of the treaties before then.

I anticipate no filibuster, I say to the distinguished majority leader. That does not mean that the issue will not be fully and carefully discussed and the whole issue brought before the Senate and before the American people. But I do believe that the people want a vote on this issue.

I do not believe that the public opinion would support and I do not believe that any overly extended debate will be successful unless it does have the backing of the people. I do not believe the people want this issue decided by an over-extension of debate.

So certainly, as far as the Senator from Alabama and those of like mind here in the Senate in opposition to these treaties, we do not intend to delay unduly the consideration of these treaties. We do not expect to delay it by quorum calls or unnecessary delays of any sort. We are not going to have debates, as far as the Senator from Alabama is concerned, by delay. We are going to try to consider the merits and demerits of these and have votes on substantive amendments and then I feel that we will be ready to vote on the main issue. But there are a number, I would say in the nature of dozens, of substantive amendments that should be discussed and should be brought before the Senate and should be brought before the country, because this is an issue that is so important to the entire country and all of the people of the United States.

So I am hopeful we can have a full and free debate but that debate not extend beyond the point where the full issue is presented to the Senate so that action can then be taken.

Mr. ROBERT C. BYRD. Mr. President, I thank the Senator.

I also wish to thank the chairman and the ranking minority member for their indulgence in allowing us to proceed before they make their opening statement.

They have been courteous and thoughtful as is customary.

The VICE PRESIDENT. The Chair recognizes the Senator from Alabama.

Mr. SPARKMAN. Mr. President, first let me say I want to express my appreciation to the majority leader and to the minority leader

for the very fine manner in which they have cooperated with the Committee on Foreign Relations. Of course, Senator Baker is a member of the committee himself and he participated in all of the hearings and the voting and performed a wonderful job.

Senator Byrd appeared before our committee, testified forcefully, and was very helpful to us in our considerations.

I have a statement that I want to present as the opening statement in this debate.

Mr. President, the Committee on Foreign Relations has reported favorably the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal with recommendations to each. The committee reached its decision after long and careful consideration of the issues and the viewpoints of all concerned. I have no hesitation in recommending strongly that the Senate give its advice and consent to these treaties as reported by the committee.

Prior to reaching a decision on the treaties, the Committee on Foreign Relations held 15 days of hearings and heard 92 witnesses including 17 Members of the Congress, representatives of the executive branch, shipping interests and canal users and retired military officers. These hearings were conducted with the goal of gaining as much information and as many views as possible. Every effort was made to allow individuals with different positions to present their cases. I am proud of what I think was fair and objective consideration of the real issues, the dedication and hard work exhibited by the members of the committee and the harmony with which our consideration was conducted. I do not know how such an important proceeding could have been conducted more equitably.

In addition to the numerous hearings held by the committee, 10 members of the committee traveled to Panama and the canal in recent months. These committee members, and others in the Senate including our distinguished majority and minority leaders went to Panama to gain firsthand knowledge about the canal, its future and our relations with Panama.

I was in Panama last month, and I returned impressed by the basic goodwill of the Government and people of Panama toward the United States. I feel that when problems that have festered for many years are resolved by the ratification of these treaties, the United States and Panama will be able to cooperate well in operating and protecting the canal in their mutual interest.

Five volumes of hearings and an extensive report have been issued by the committee in connection with these treaties. I urge every Member of the Senate to review this information, but especially the committee's report. We considered and discussed the issues raised by those in opposition to the treaties, and the report details the committee's determinations on these issues and responses to them. However, I would like briefly to outline the major questions the committee examined.

First, the committee considered the need for a new treaty relationship with Panama to govern the operation of the Panama Canal. The committee was convinced that the surest way to place our position in Panama and in Latin America and the canal itself in jeopardy was to cling blindly to the 1903 Treaty.

The 1903 treaty was negotiated and ratified under circumstances that could be called questionable at best. The treaty was negotiated and signed for Panama by a Frenchman more interested in the welfare of the French Canal Co., of which he was a major stockholder, than in the newly formed Republic of Panama. When the Panamanians objected to the treaty, the threat of withdrawal of the U.S. military presence left them no choice but to ratify.

Since 1903, the treaty relationship and especially the U.S. control over the Canal Zone has been a constant source of conflict. As Secretary of State Hay said in a letter to Senator Spooner, the 1903 treaty is—

Vastly advantageous to the United States, and we must confess, with what face we can muster, not so advantageous to Panama * * * you and I know too well how many points there are to which a Panamanian patriot could object.

The objections by Panamanians have not since decreased, but, instead, have intensified. The objections have been presented to the United States on countless occasions, to international bodies and, tragically, in demonstrations resulting in the death of United States and Panamanian citizens. It is inconceivable when looking at this record that the United States can reasonably hope to cling to the 1903 treaty and also maintain the cooperative environment essential to the operation of the canal.

Mr. President, I should like to interject right here that I have recently read two very interesting books on the Panama Canal. One was entitled "The Patch Between the Seas." The other was "The Story of the Panama Canal."

I found them both interesting. But there was one thing pointed out in these books with which I was absolutely amazed, and that was the number of treaties there have been involving the Panama Canal and its precincts. The history goes way back to the DeLesseps Co. of France and its arrangement with Colombia. There were even efforts and treaties long before that. It has been a long, long trail.

(Mr. SARBANES assumed the chair.)

Mr. SPARKMAN. The outdated Hay-Bunau-Varilla Treaty of 1903 not only seriously hinders an effective relationship with Panama, but it is a major problem in our long term relationships with the other Latin American and third world nations. Even nations that have been our traditional allies recognize that the 1903 Treaty has no place in the modern world. When the U.N. Security Council met on the Panama Canal issue in 1973, the best the United States could do was to get Great Britain to abstain while the United States vetoed a resolution critical of the continuation of the 1903 Treaty.

During the committee's hearings, even the most vocal critics of the proposed treaties did not contend that the 1903 Treaty should govern canal operation into the future without some modification. The Committee on Foreign Relations agrees that modification is necessary, and has determined that the treaties under consideration offer the best solution that could be negotiated to deal with our difficulties with the 1903 Treaty.

The committee would like to make it clear that regardless of the questionable circumstances surrounding the negotiation and ratification of the 1903 Treaty, the United States has no reason to

apologize for the manner in which it constructed and has operated the canal. The canal is truly a wonder of science and engineering. I am particularly proud of the great contribution in the area of disease control made by my fellow Alabamian, Col. William Crawford Gorgas. Without his work in the control of tropical diseases, the canal might not have been built, or the death toll would have been many times higher. Not only did the United States succeed in conquering the engineering and health problems, but we have compiled an admirable record in operating the canal as an international public utility at the lowest possible rates.

I may say that we take pride in the work done in connection with the laying out, the engineering, the construction of the canal in addition to the fine work that I mentioned done by Dr. Gorgas.

Next, the committee asked what was the most important interest of the United States in the canal and answered that use by our naval vessels and commercial shipping was the most critical interest of the United States. Use of the canal, and not ownership of the canal or jurisdiction over the Canal Zone, far outweighs any claims of sovereignty. Repeatedly during our hearings this view was stressed by military leaders and witnesses from the Departments of Transportation and Commerce who are directly concerned with naval and commercial traffic through the canal. Secretary of Defense Brown said:

The first requirement includes free and unimpeded use of the Canal both by our Navy and by our merchant ships. Free use of the Canal is essential to assure optimum ability to shift our forces and materiel rapidly between the Atlantic and Pacific Oceans.

General Brown, Chairman of the Joint Chiefs of Staff, added:

U.S. military interests in the Panama Canal are in its use, not its ownership.

After addressing the question of our major interest in the canal, the committee turned to the issue of how this interest could best be protected. The committee found that the long-term interest of the United States would be ill-served by maintenance of the present badly outdated treaty of 1903 since that treaty has been the cause of rancor ever since it went into effect. We must face the fact that the Panama Canal lies right in the middle of another nation, and logic compels us to realize that a cooperative environment in that nation is far more beneficial than an arrangement that has already cause violence on several occasions. Under the proposed treaty relationship, Panama will have a greater stake in the canal, and, thus, a greater interest in seeing that it remains open for the use of the ships of the United States and the world.

Secretary of Defense Brown said during the committee's hearings:

Whether or not we will have that use depends on a good many things. It depends upon whether in extremes we have a military force capable of assuring that it is kept open, but it also depends importantly on the attitudes of the Panamanians. It is easy to damage a lock so that the Canal's operation is shut down for a brief period. It is easy to do that over and over again. What do we want? Do we want a situation where we may have to use force over and over and over again in order to preserve the operability of the Canal or do we want a situation where the people of Panama see themselves correctly as having an important stake in keeping the Canal operating? Well, clearly the latter is the preferable situation.

The committee believes the proposed treaties represent the best agreements obtainable; that they were carefully negotiated; and that they will protect our interest in the use of the canal.

Mr. President, I should like here to pay a compliment to our two chief negotiators of these treaties, Ambassador Bunker and Ambassador Linowitz. We heard from them at length. We felt that they had done a remarkably good job in negotiating these treaties.

The committee then considered the ability of the United States to take action to defend the canal should the need occur. Until the year 2000, the United States clearly has the primary responsibility for canal defense, and the Panama Canal Treaty provides for these defense responsibilities. However, the committee looked at the long range defense question as it will be affected by the neutrality treaty. The committee is confident that the Neutrality Treaty, as clarified by the joint statement issued by President Carter and General Torrijos and the committee's recommended amendment based on this statement, provides ample authority for the United States to act to protect its interest in the use of the canal. Also, our interest in priority use of the canal during times of need of emergency is fully protected.

Charges that the United States will be giving away the canal and the taxpayers will be paying Panama to take it were examined by the committee. The committee does not believe that such is the case. All annuity payments to Panama will come from canal operating revenues and not from the tax dollars of Americans.

The increased payments reflect, at last, adequate compensation to Panama for the use of its territory and natural resources, especially water.

It takes 52 million gallons of fresh water to send just one ship through the canal. With over 13,000 transits per year at present and many more than that by 2000, it should be easy to see that Panama contributes much to the successful operation of the canal.

The payments to Panama will aid in the maintenance of a progressive, free enterprise economy in Panama, which will contribute to Panama's ability to cooperate in operating the canal. The payments, also, will be a major incentive to Panama to see that the canal remains open and operates efficiently.

The committee also wanted to know the effects of these treaties on the economy of the United States. Our findings are that the treaties and the toll increase of approximately 30 percent that will be necessary will have a negligible effect on the U.S. economy. A 30 percent increase in tolls will have a very minimal influence in the cost of goods shipped through the canal. The U.S. merchant fleet will not be placed at a further disadvantage, since all ships will pay the same tolls. The canal will retain its advantageous position in comparison to alternative routes or methods of shipment.

Along with our interest in the use of the canal goes an interest in seeing that it is operated effectively. The Panama Canal Treaty fully provides for effectiveness through the transition period leading to operation of the canal by Panama in the year 2000. During this period of over 20 years, the United States will continue to operate the canal through the Panama Canal Commission to be established as an agency of the U.S. Government, and the neces-

sary rights and authority for U.S. operation are provided. Secretary of the Army Alexander assured the committee that:

In short, Mr. Chairman, the Treaty will provide us with all the rights necessary to adequately care for both the Panamanian and U.S. citizens of our dedicated work force.

Mr. Chairman, under the Treaty we would retain all the specific rights necessary to efficiently operate the Canal and adequately care for our employees.

Until sufficient numbers of Panamanians can be trained to assume the operation of the canal in 2000, and possibly after that date, American employees will be needed. As noted by Secretary Alexander in the statement I just quoted, the treaties provide the rights necessary to care for the American employees.

Although some workers will be displaced; efforts will be made to retain workers in their positions, preference will be given for other U.S. Government jobs to those displaced and early optional retirement will be provided. For those Americans who will be employed by the Commission or our Armed Forces, adequate housing and appropriate health and educational facilities will be available. In addition, these employees and their dependents will be covered by status of forces type agreements to protect their interests.

After our lengthy and close examination of the foregoing points and others directly related to the treaties at hand, the Committee on Foreign Relations has concluded that the treaties meet the needs of the United States and that the Senate should give its advice and consent to their ratification with the recommendations reported by the committee.

Now, I would like to comment on some basic principles the committee used in its scrutiny of these treaties which I hope the Senate will also recognize.

These treaties will not resolve every issue in the relations between the United States and Panama such as human rights, Panama's relations with Cuba, the internal policies of Panama or the form of Panama's government. The treaties were not negotiated for these purposes, and it would be illogical to expect that any treaty could accomplish such a broad program, or that it should be expected to do so.

The committee did not focus its attention on extraneous issues or nonissues; and I feel the Senate would be making a serious mistake if it allowed itself to get bogged down in useless debate on matters not directly related to the real purpose of the treaties. The Senate could debate for days issues such as what sovereign interest the United States has in the Canal Zone; but debate of this type would add little to what must be a political decision of whether these treaties best serve the long-term interests of the United States.

No treaty arrangement to govern the operation of the canal could possibly remove every doubt or deal with every contingency. Our consideration of the treaties must not become confused by "what if's" or "may be's." The committee has determined that the treaties represent a workable, specific structure for future canal operations and defense with sufficient latitude to deal with changed circumstances or contingencies that may develop.

I am confident that my colleagues will join in meaningful and responsible consideration of these important treaties and that the

Senate's final decision will be based on rational analysis of the interests of the United States.

At this point, I would like to say again that I am proud of the work done by the Committee on Foreign Relations and of the manner in which the Panama Canal treaties were handled. I sincerely thank all the members of the committee, and especially Senator Case, the ranking minority member, Senator Church, the ranking majority member, and Senator Sarbanes, the chairman of the Subcommittee on Western Hemisphere Affairs, for their splendid cooperation.

Mr. President, I ask unanimous consent that the text of the treaties and integral related documents, excerpts from the committee report, and certain other relevant materials be printed in the Record at the conclusion of my remarks.

The PRESIDING OFFICER. Without objection it is so ordered. (See exhibit 1.)

Mr. SPARKMAN. Mr. President, I conclude simply with this statement. I presume it is known that after the committee spent all of this time in getting all of the evidence, hearing from all of the people interested in the canal treaties, and considering all the arguments pro and con, the committee voted 14 to 1 to report the treaties. I will say this, Mr. President it is recognized, of course, that treaties come under the jurisdiction of the Foreign Relations Committee regardless of what other reports or what other information may come out.

EXHIBIT 1

I. PANAMA CANAL TREATY

The United States of America and the Republic of Panama.

Acting in the spirit of the Joint Declaration of April 3, 1964, by the Representatives of the Governments of the United States of America and the Republic of Panama, and of the Joint Statement of Principles of February 7, 1974, initialed by the Secretary of State of the United States of America and the Foreign Minister of the Republic of Panama, and

Acknowledging the Republic of Panama's sovereignty over its territory.

Have decided to terminate the prior Treaties pertaining to the Panama Canal and to conclude a new Treaty to serve as the basis for a new relationship between them and, accordingly, have agreed upon the following:

ARTICLE I

ABROGATION OF PRIOR TREATIES AND ESTABLISHMENT OF A NEW RELATIONSHIP

1. Upon its entry into force, this Treaty terminates and supersedes:

(a) The Isthmian Canal Convention between the United States of America and the Republic of Panama, signed at Washington, November 18, 1903;

(b) The Treaty of Friendship and Cooperation signed at Washington, March 2, 1936, and the Treaty of Mutual Understanding and Cooperation and the related Memorandum of Understandings Reached, signed at Panama, January 25, 1955, between the United States of America and the Republic

(c) All other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama, concerning the Panama Canal which were in force prior to the entry into force of this Treaty; and

(d) Provisions concerning the Panama Canal which appear in other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama which were in force prior to the entry into force of this Treaty.

2. In accordance with the terms of this Treaty and related agreements, the Republic of Panama, as territorial sovereign, grants to the United States of America, for the duration of this Treaty, the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve,

protect and defend the Canal. The Republic of Panama guarantees to the United States of America the peaceful use of the land and water areas which it has been granted the rights to use for such purposes pursuant to this Treaty and related agreements.

3. The Republic of Panama shall participate increasingly in the management and protection and defense of the Canal, as provided in this Treaty.

4. In view of the special relationship established by this Treaty, the United States of America and the Republic of Panama shall cooperate to assure the uninterrupted and efficient operation of the Panama Canal.

ARTICLE II

RATIFICATION, ENTRY INTO FORCE, AND TERMINATION

1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, six calendar months from the date of the exchange of the instruments of ratification.

2. This Treaty shall terminate at noon, Panama time, December 31, 1999.

ARTICLE III

CANAL OPERATION AND MANAGEMENT

1. The Republic of Panama, as territorial sovereign, grants to the United States of America the rights to manage, operate, and maintain the Panama Canal, its complementary works, installations and equipment and to provide for the orderly transit of vessels through the Panama Canal. The United States of America accepts the grant of such rights and undertakes to exercise them in accordance with this Treaty and related agreements.

2. In carrying out the foregoing responsibilities, the United States of America may:

(a) Use for the aforementioned purposes, without cost except as provided in this Treaty, the various installations and areas (including the Panama Canal) and waters, described in the Agreement in Implementation of this Article, signed this date, as well as such other areas and installations as are made available to the United States of America under this Treaty and related agreements, and take the measures necessary to ensure sanitation of such areas;

(b) Make such improvements and alterations to the aforesaid installations and areas as it deems appropriate, consistent with the terms of this Treaty;

(c) Make and enforce all rules pertaining to the passage of vessels through the Canal and other rules with respect to navigation and maritime matters, in accordance with this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules;

(d) Establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment;

(e) Regulate relations with employees of the United States Government;

(f) Provide supporting services to facilitate the performance of its responsibilities under this Article;

(g) Issue and enforce regulations for the effective exercise of the rights and responsibilities of the United States of America under this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules; and

(h) Exercise any other right granted under this Treaty, or otherwise agreed upon between the two Parties.

3. Pursuant to the foregoing grant of rights, the United States of America shall, in accordance with the terms of this Treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America.

(a) The Panama Canal Commission shall be supervised by a Board composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America in a timely manner.

(b) Should the Republic of Panama request the United States of America to remove a Panamanian national from membership on the Board, the United States of America shall agree to such a request. In that event, the Republic of Panama shall propose another Panamanian national for appointment by the United States of America to such position in a timely manner. In case of removal of a Panamanian member of the Board at the initiative of the United States of America, both Parties will consult in advance in order to reach agreement concerning such removal, and the Republic of Panama shall propose another Panamanian national for appointment by the United States of America in his stead.

(c) The United States of America shall employ a national of the United States of America as Administrator of the Panama Canal Commission, and a Panamanian national as Deputy Administrator, through December 31, 1989. Beginning January 1, 1990, a Panamanian national shall be employed as the Administrator and a national of the United States of America shall occupy the position of Deputy Administrator. Such Panamanian nationals shall be proposed to the United States of America by the Republic of Panama for appointment to such positions by the United States of America.

(d) Should the United States of America remove the Panamanian national from his position as Deputy Administrator, or Administrator, the Republic of Panama shall propose another Panamanian national for appointment to such position by the United States of America.

4. An illustrative description of the activities the Panama Canal Commission will perform in carrying out the responsibilities and rights of the United States of America under this Article is set forth at the Annex. Also set forth in the Annex are procedures for the discontinuance or transfer of those activities performed prior to the entry into force of this Treaty by the Panama Canal Company or the Canal Zone Government which are not to be carried out by the Panama Canal Commission.

5. The Panama Canal Commission shall reimburse the Republic of Panama for the costs incurred by the Republic of Panama in providing the following public services in the Canal operating areas and in housing areas set forth in the Agreement in Implementation of Article III of this Treaty and occupied by both United States and Panamanian citizen employees of the Panama Canal Commission: police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection. The Panama Canal Commission shall pay the Republic of Panama the sum of ten million United States dollars (\$10,000,000) per annum for the foregoing services. It is agreed that every three years from the date that this Treaty enters into force, the costs involved in furnishing said services shall be reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.

6. The Republic of Panama shall be responsible for providing, in all areas comprising the former Canal Zone, services of a general jurisdictional nature such as customs and immigration, postal services, courts and licensing, in accordance with this Treaty and related agreements.

7. The United States of America and the Republic of Panama shall establish a Panama Canal Consultative Committee, composed of an equal number of high-level representatives of the United States of America and the Republic of Panama, and which may appoint such subcommittees as it may deem appropriate. This Committee shall advise the United States of America and the Republic of Panama on matters of policy affecting the Canal's operation. In view of both Parties' special interest in the continuity and efficiency of the Canal operation in the future, the Committee shall advise on matters such as general tolls policy, employment and training policies to increase the participation of Panamanian nationals in the operation of the Canal, and international policies on matters concerning the Canal. The Committee's recommendations shall be transmitted to the two Governments, which shall give such recommendations full consideration in the formulation of such policy decisions.

8. In addition to the participation of Panamanian nationals at high management levels of the Panama Canal Commission, as provided for in paragraph 3 of this Article, there shall be growing participation of Panamanian nationals at all other levels and areas of employment in the aforesaid Commission, with the objective of preparing, in an orderly and efficient fashion, for the assumption by the Republic of Panama of full responsibility for the management, operation and maintenance of the Canal upon the termination of this Treaty.

9. The use of the areas, waters and installations with respect to which the United States of America is granted rights pursuant to the Article, and the rights and legal

status of United States Government agencies and employees operating in the Republic of Panama pursuant to this Article, shall be governed by the Agreement in Implementation of this Article, signed this date.

10. Upon entry into force of this Treaty, the United States Government agencies known as the Panama Canal Company and the Canal Zone Government shall cease to operate within the territory of the Republic of Panama that formerly constituted the Canal Zone.

ARTICLE IV

PROTECTION AND DEFENSE

1. The United States of America and the Republic of Panama commit themselves to protect and defend the Panama Canal. Each Party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it.

2. For the duration of this Treaty, the United States of America shall have primary responsibility to protect and defend the Canal. The rights of the United States of America to station, train, and move military forces within the Republic of Panama are described in the Agreement in Implementation of this Article, signed this date. The use of areas and installations and the legal status of the armed forces of the United States of America in the Republic of Panama shall be governed by the aforesaid Agreement.

3. In order to facilitate the participation and cooperation of the armed forces of both Parties in the protection and defense of the Canal, the United States of America and the Republic of Panama shall establish a Combined Board comprised of an equal number of senior military representatives of each Party. These representatives shall be charged by their respective governments with consulting and cooperating on all matters pertaining to the protection and defense of the Canal, and with planning for actions to be taken in concert for that purpose. Such combined protection and defense arrangements shall not inhibit the identity of lines of authority of the armed forces of the United States of America or the Republic of Panama. The Combined Board shall provide for coordination and cooperation concerning such matters as:

(a) The preparation of contingency plans for the protection and defense of the Canal based upon the cooperative efforts of the armed forces of both Parties.

(b) The planning and conduct of combined military exercises; and

(c) The conduct of United States and Panamanian military operations with respect to the protection and defense of the Canal.

4. The Combined Board shall, at five-year intervals throughout the duration of this Treaty, review the resources being made available by the two Parties for the protection and defense of the Canal. Also, the Combined Board shall make appropriate recommendations to the two Governments respecting projected requirements, the efficient utilization of available resources of the two Parties, and other matters of mutual interest with respect to the protection and defense of the Canal.

5. To the extent possible consistent with its primary responsibility for the protection and defense of the Panama Canal, the United States of America will endeavor to maintain its armed forces in the Republic of Panama in normal times at a level not in excess of that of the armed forces of the United States of America in the territory of the former Canal Zone immediately prior to the entry into force of this Treaty.

ARTICLE V

PRINCIPLE OF NON-INTERVENTION

Employees of the Panama Canal Commission, their dependents and designated contractors of the Panama Canal Commission, who are nationals of the United States of America, shall respect the laws of the Republic of Panama and shall abstain from any activity incompatible with the spirit of this Treaty. Accordingly, they shall abstain from any political activity in the Republic of Panama as well as from any intervention in the internal affairs of the Republic of Panama. The United States of America shall take all measures within its authority to ensure that the provisions of this Article are fulfilled.

ARTICLE VI

PROTECTION OF THE ENVIRONMENT

1. The United States of America and the Republic of Panama commit themselves to implement this Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama. To this end, they shall consult and cooperate with each other in all appropriate ways to ensure that they shall give due regard to the protection and conservation of the environment.

2. A Joint Commission on the Environment shall be established with equal representation from the United States of America and the Republic of Panama, which shall periodically review the implementation of this Treaty and shall recommend as appropriate to the two Government ways to avoid or, should this not be possible, to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the Treaty.

3. The United States of America and the Republic of Panama shall furnish the Joint Commission on the Environment complete information on any action taken in accordance with this Treaty which, in the judgment of both, might have a significant effect on the environment. Such information shall be made available to the Commission as far in advance of the contemplated action as possible to facilitate the study by the Commission of any potential environmental problems and to allow for consideration of the recommendation of the Commission before the contemplated action is carried out.

ARTICLE VII

FLAGS

1. The entire territory of the Republic of Panama, including the areas the use of which the Republic of Panama makes available to the United States of America pursuant to this Treaty and related agreements, shall be under the flag of the Republic of Panama, and consequently such flag always shall occupy the position of honor.

2. The flag of the United States of America may be displayed, together with the flag of the Republic of Panama, at the headquarters of the Panama Canal Commission, at this site of the Combined Board, and as provided in the Agreement in Implementation of Article IV of this Treaty.

3. The flag of the United States of America also may be displayed at other places and on some occasions, as agreed by both Parties.

ARTICLE VIII

PRIVILEGES AND IMMUNITIES

1. The installations owned or used by the agencies or instrumentalities of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements, and their official archives and documents, shall be inviolable. The two Parties shall agree on procedures to be followed in the conduct of any criminal investigation at such locations by the Republic of Panama.

2. Agencies and instrumentalities of the Government of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements shall be immune from the jurisdiction of the Republic of Panama.

3. In addition to such other privileges and immunities as are afforded to employees of the United States Government and their dependents pursuant to this Treaty, the United States of America may designate up to twenty officials of the Panama Canal Commission who, along with their dependents, shall enjoy the privileges and immunities accorded to diplomatic agents and their dependents under international law and practice. The United States of America shall furnish to the Republic of Panama a list of the names of said officials and their dependents, identify in the positions they occupy in the Government of the United States of America, and shall keep such list current at all times.

ARTICLE IX

APPLICABLE LAWS AND ENFORCEMENT

In accordance with the provisions of this Treaty and related agreements, the law of the Republic of Panama shall apply in the areas made available for the use of the United States of America pursuant to this Treaty. The law of the Republic of Panama shall be applied to matters or events which occurred in the former Canal

Zone prior to the entry into force of this Treaty only to the extent specifically provided in prior treaties and agreements.

2. Natural or juridical persons who, on the date of entry into force of this Treaty, are engaged in business or non-profit activities at locations in the former Canal Zone may continue such business or activities at those locations under the same terms and conditions prevailing prior to the entry into force of this Treaty for a thirty-month transition period from its entry into force. The Republic of Panama shall maintain the same operating conditions as those applicable to the aforementioned enterprises prior to the entry into force of this Treaty in order that they may receive licenses to do business in the Republic of Panama subject to their compliance with the requirements of its law. Thereafter, such persons shall receive the same treatment under the law of the Republic of Panama as similar enterprises already established in the rest of the territory of the Republic of Panama without discrimination.

3. The rights of ownership, as recognized by the United States of America, enjoyed by natural or juridical private persons in buildings and other improvements to real property located in the former Canal Zone shall be recognized by the Republic of Panama in conformity with its laws.

4. With respect to buildings and other improvements to real property located in the Canal operating areas, housing areas or other areas subject to the licensing procedure established in Article IV of the Agreement in Implementation of Article III of this Treaty, the owners shall be authorized to continue using the land upon which their property is located in accordance with the procedures established in that Article.

5. With respect to buildings and other improvements to real property located in areas of the former Canal Zone to which the aforesaid licensing procedure is not applicable, or may cease to be applicable during the lifetime or upon termination of this Treaty, the owners may continue to use the land upon which their property is located, subject to the payment of a reasonable charge to the Republic of Panama. Should the Republic of Panama decide to sell such land, the owners of the buildings or other improvements located thereon shall be offered a first option to purchase such land at a reasonable cost. In the case of non-profit enterprises, such as churches' and fraternal organizations, the cost of the purchase will be nominal in accordance with the prevailing practice in the rest of the territory of the Republic of Panama.

6. If any of the aforementioned persons are required by the Republic of Panama to discontinue their activities or vacate their property for public purposes, they shall be compensated at fair market value by the Republic of Panama.

7. The provisions of paragraphs 2-6 above shall apply to natural or juridical persons who have been engaged in business or non-profit activities at locations in the former Canal Zone for at least six months prior to the date of signature of this Treaty.

8. The Republic of Panama shall not issue, adopt or enforce any law, decrees, regulation, or international agreement or take any other action which purports to regulate or would otherwise interfere with the exercise on the part of the United States of America of any right granted under this Treaty or related agreements.

9. Vessels transiting the Canal, and cargo, passengers and crews carried on such vessels shall be exempt from any taxes, fees, or other charges by the Republic of Panama. However, in the event such vessels call at a Panamanian port, they may be assessed charges incident thereto, such as charges for services provided to the vessel. The Republic of Panama may also require the passengers and crew disembarking from such vessels to pay such taxes, fees and charges as are established under Panamanian law for persons entering its territory. Such taxes, fees and charges shall be assessed on a nondiscriminatory basis.

10. The United States of America and the Republic of Panama will cooperate in taking such steps as may from time to time be necessary to guarantee the security of the Panama Canal Commission, its property, its employees and their dependents, and their property, the Forces of the United States of America and the members thereof, the civilian component of the United States Forces, the dependents of members of the Forces and the civilian component, and their property, and the contractors of the Panama Canal Commission and of the United States Forces, their dependents, and their property. The Republic of Panama will seek from its Legislative Branch such legislation as may be needed to carry out the foregoing purposes and to punish any offenders.

11. The Parties shall conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State, and who are not domiciled therein, may elect to serve their sentences in their State of nationality.

ARTICLE X

EMPLOYMENT WITH THE PANAMA CANAL COMMISSION

1. In exercising its rights and fulfilling its responsibilities as the employer, the United States of America shall establish employment and labor regulations which shall contain the terms, conditions and prerequisites for all categories of employees of the Panama Canal Commission. These regulations shall be provided to the Republic of Panama prior to their entry into force.

2. (a) The regulations shall establish a system of preference when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission. The United States of America shall endeavor to ensure that the number of Panamanian nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established for foreign enterprises under the law of the Republic of Panama.

(b) The terms and conditions of employment to be established will in general be no less favorable to persons already employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, than those in effect immediately prior to that date.

3. (a) The United States of America shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

(b) The United States of America will establish training programs for Panamanian employees and apprentices in order to increase the number of Panamanian nationals qualified to assume positions with the Panama Canal Commission, as positions become available.

(c) Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working for the Panama Canal Company immediately prior to the entry into force of this Treaty.

(d) The United States of America shall periodically inform the Republic of Panama, through the Coordinating Committee, established pursuant to the Agreement in Implementation of Article III of this Treaty, of available positions within the Panama Canal Commission. The Republic of Panama shall similarly provide the United States of America any information it may have as to the availability of Panamanian nationals claiming to have skills and qualifications that might be required by the Panama Canal Commission, in order that the United States of America may take this information into account.

4. The United States of America will establish qualification standards for skills, training and experience required by the Panama Canal Commission. In establishing such standards, to the extent they include a requirement for a professional license, the United States of America, without prejudice to its right to require additional professional skills and qualifications, shall recognize the professional licenses issued by the Republic of Panama.

5. The United States of America shall establish a policy for the periodic rotation, at a maximum of every five years, of United States citizen employees and other non-Panamanian employees, hired after the entry into force of this Treaty. It is recognized that certain exceptions to the said policy of rotation may be made for sound administrative reasons, such as in the case of employees holding positions requiring certain non-transferable or non-recrutable skills.

6. With regard to wages and fringe benefits, there shall be no discrimination on the basis of nationality, sex, or race. Payments by the Panama Canal Commission of additional remuneration, or the provision of other benefits, such as home leave benefits, to United States nationals employed prior to entry into force of this Treaty, or to persons of any nationality, including Panamanian nationals who are thereafter recruited outside of the Republic of Panama and who change their place of residence, shall not be considered to be discrimination for the purpose of this paragraph.

7. Persons employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, who are displaced from their employment as a result of the discontinuance by the United States of America of certain activities pursuant to this Treaty, will be placed by the United States of America, to the maximum extent feasible, in other appropriate jobs with the Government of the United States in accordance with United States Civil Service regulations. For such persons who are not United States nationals, placement efforts will be confined to

United States Government activities located within the Republic of Panama. Likewise, persons previously employed in activities for which the Republic of Panama assumes responsibility as a result of this Treaty will be continued in their employment to the maximum extent feasible by the Republic of Panama. The Republic of Panama shall, to the maximum extent feasible, ensure that the terms and conditions of employment applicable to personnel employed in the activities for which it assumes responsibility are no less favorable than those in effect immediately prior to the entry into force of this Treaty. Non-United States nationals employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty who are involuntarily separated from their positions because of the discontinuance of an activity by reason of this Treaty, who are not entitled to an immediate annuity under the United States Civil Service Retirement System, and for whom continued employment in the Republic of Panama by the Government of the United States of America is not practicable, will be provided special job placement assistance by the Republic of Panama for employment in positions for which they may be qualified by experience and training.

8. The Parties agree to establish a system whereby the Panama Canal Commission may, if deemed mutually convenient or desirable by the two Parties, assign certain employees of the Panama Canal Commission, for a limited period of time, to assist in the operation of activities transferred to the responsibility of the Republic of Panama as a result of this Treaty or related agreements. The salaries and other costs of employment of any such persons assigned to provide such assistance shall be reimbursed to the United States of America by the Republic of Panama.

9. (a) The right of employees to negotiate collective contracts with the Panama Canal Commission is recognized. Labor relations with employees of the Panama Canal Commission shall be conducted in accordance with forms of collective bargaining established by the United States of America after consultation with employee unions.

(b) Employee unions shall have the right to affiliate with international labor organizations.

10. The United States of America will provide an appropriate early optional retirement program for all persons employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of this Treaty. In this regard, taking into account the unique circumstances created by the provisions of this Treaty, including its duration, and their effect upon such employees, the United States of America shall, with respect to them:

(a) determine that conditions exist which invoke applicable United States law permitting early retirement annuities and apply such law for a substantial period of the duration of the Treaty;

(b) seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided for by law.

ARTICLE XI

PROVISIONS FOR THE TRANSITION PERIOD

The Republic of Panama shall reassume plenary jurisdiction over the former Canal Zone upon entry into force of this Treaty and in accordance with its terms.

1. In order to provide for an orderly transition to the full application of the jurisdictional arrangements established by this Treaty and related agreements, the provisions of this Article shall become applicable upon the date this Treaty enters into force, and shall remain in effect for thirty calendar months. The authority granted in this Article to the United States of America for this transition period shall supplement, and is not intended to limit, the full application and effect of the rights and authority granted to the United States of America elsewhere in this Treaty and in related agreements.

2. During this transition period, the criminal and civil laws of the United States of America shall apply concurrently with those of the Republic of Panama in certain of the areas and installations made available for the use of the United States of America pursuant to this Treaty, in accordance with the following provisions:

(a) The Republic of Panama permits the authorities of the United States of America to have the primary right to exercise criminal jurisdiction over United States citizen employees of the Panama Canal Commission and their dependents, and members of the United States Forces and civilian component and their dependents, in the following cases:

(i) for any offense committed during the transition period within such areas and installations, and

(ii) for any offense committed prior to that period in the former Canal Zone. The Republic of Panama shall have the primary right to exercise jurisdiction over all other offenses committed by such persons, except as otherwise provided in this Treaty and related agreements or as may be otherwise agreed.

(b) Either Party may waive its primary right to exercise jurisdiction in a specific case or category of cases.

3. The United States of America shall retain the right to exercise jurisdiction in criminal cases relating to offenses committed prior to the entry into force of this Treaty in violation of the laws applicable in the former Canal Zone.

4. For the transition period, the United States of America shall retain police authority and maintain a police force in the aforementioned areas and installations. In such areas, the police authorities of the United States of America may take into custody any person not subject to their primary jurisdiction if such person is believed to have committed or to be committing an offense against applicable laws or regulations, and shall promptly transfer custody to the police authorities of the Republic of Panama. The United States of America and the Republic of Panama shall establish joint police patrols in agreed areas. Any arrests conducted by a joint patrol shall be the responsibility of the patrol member or members representing the Party having primary jurisdiction over the person or persons arrested.

5. The court of the United States of America and related personnel, functioning in the former Canal Zone immediately prior to the entry into force of this Treaty, may continue to function during the transition period for the judicial enforcement of the jurisdiction to be exercised by the United States of America in accordance with this Article.

6. In civil cases, the civilian courts of the United States of America in the Republic of Panama shall have no jurisdiction over new cases of a private civil nature, but shall retain full jurisdiction during the transition period to dispose of any civil cases, including admiralty cases, already instituted and pending before the courts prior to the entry into force of this Treaty.

7. The laws, regulations, and administrative authority of the United States of America applicable in the former Canal Zone immediately prior to the entry into force of this Treaty shall, to the extent not inconsistent with this Treaty and related agreements, continue in force for the purpose of the exercise by the United States of America of law enforcement and judicial jurisdiction only during the transition period. The United States of America may amend, repeal or otherwise change such laws, regulations and administrative authority. The two Parties shall consult concerning procedural and substantive matters relative to the implementation of this Article, including the disposition of cases pending at the end of the transition period and, in this respect, may enter into appropriate agreements by an exchange of notes or other instrument.

8. During this transition period, the United States of America may continue to incarcerate individuals in the areas and installations made available for the use of the United States of America by the Republic of Panama pursuant to this Treaty and related agreements, or to transfer them to penal facilities in the United States of America to serve their sentences.

ARTICLE XII

A SEA-LEVEL CANAL OR A THIRD LANE OF LOCKS

1. The United States of America and the Republic of Panama recognize that a sea-level canal may be important for international navigation in the future. Consequently, during the duration of this Treaty, both Parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama, and in the event they determine that such a waterway is necessary, they shall negotiate terms, agreeable to both Parties, for its construction.

2. The United States of America and the Republic of Panama agree on the following:

(a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty, or as the two Parties may otherwise agree; and

(b) During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

3. The Republic of Panama grants to the United States of America the right to add a third land of locks to the existing Panama Canal. This right may be exercised at any time during the duration of this Treaty, provided that the United States of

America has delivered to the Republic of Panama copies of the plans for such construction.

4. In the event the United States of America exercises the right granted in paragraph 3 above, it may use for that purpose, in addition to the areas otherwise made available to the United States of America pursuant to this Treaty, such other areas as the two Parties may agree upon. The terms and conditions applicable to Canal operating areas made available by the Republic of Panama for the use of the United States of America pursuant to Article III of this Treaty shall apply in a similar manner to such additional areas.

5. In the construction of the aforesaid works, the United States of America shall not use nuclear excavation techniques without the previous consent of the Republic of Panama.

ARTICLE XIII

PROPERTY TRANSFER AND ECONOMIC PARTICIPATION BY THE REPUBLIC OF PANAMA

1. Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree.

2. The United States of America transfers, without charge, to the Republic of Panama all right, title and interest the United States of America may have with respect to all real property, including nonremovable improvements thereon, as set forth below:

(a) Upon the entry into force of this Treaty, the Panama Railroad and such property that was located in the former Canal Zone but that is not within the land and water areas the use of which is made available to the United States of America pursuant to this Treaty. However, it is agreed that the transfer on such date shall not include buildings and other facilities, except housing, the use of which is retained by the United States of America pursuant to this Treaty and related agreements, outside such areas;

(b) Such property located in an area or a portion thereof at such time as the use by the United States of America of such area or portion thereof ceases pursuant to agreement between the two Parties.

(c) Housing units made available for occupancy by members of the Armed Forces of the Republic of Panama in accordance with paragraph 5(b) of Annex B to the Agreement in Implementation of Article IV of this Treaty at such time as such units are made available to the Republic of Panama.

(d) Upon termination of this Treaty, all real property, and non-removable improvements that were used by the United States of America for the purposes of this Treaty and related agreements, and equipment related to the management, operation and maintenance of the Canal remaining in the Republic of Panama.

3. The Republic of Panama agrees to hold the United States of America harmless with respect to any claims which may be made by third parties relating to rights, title and interest in such property.

4. The Republic of Panama shall receive, in addition, from the Panama Canal Commission a just and equitable return on the national resources which it has dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal, in accordance with the following:

(a) An annual amount to be paid out of Canal operating revenues computed at a rate of thirty hundredths of a United States dollar (\$0.30) per Panama Canal net ton, or its equivalency, for each vessel transiting the Canal, after the entry into force of this Treaty, for which tolls are charged. The rate of thirty hundredths of a United States dollar (\$0.30) per Panama Canal net ton, or its equivalency, will be adjusted to reflect changes in the United States wholesale price index for total manufactured goods during biennial periods. The first adjustment shall take place five years after entry into force of this Treaty, taking into account the changes that occurred in such price index during the preceding two years. Thereafter successive adjustments shall take place at the end of each biennial period. If the United States of America should decide that another indexing method is preferable, such method shall be proposed to the Republic of Panama and applied if mutually agreed.

(b) A fixed annuity of ten million United States dollars (10,000,000) to be paid out of Canal operating revenues. This amount shall constitute a fixed expense of the Panama Canal Commission.

(c) An annual amount of up to ten million United States dollars (10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any year do not

produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

ARTICLE XIV

SETTLEMENT OF DISPUTES

In the event that any question should arise between the Parties concerning the interpretation of this Treaty or related agreements, they shall make every effort to resolve the matter through consultation in the appropriate committee established pursuant to this Treaty and related agreements, or, if appropriate, through diplomatic channels. In the event the Parties are unable to resolve a particular matter through such means, they may, in appropriate cases, agree to submit the matter to conciliation, mediation, arbitration, or such other procedure for the peaceful settlement of the dispute as they may mutually deem appropriate.

Done at Washington, this 7th day of September, 1977, in duplicate, in the English and Spanish languages, both texts being equally authentic.

For the Republic of Panama:

OMAR TORRIJOS HERRERA,
Head of Government of the Republic of Panama.

For the United States of America:

JIMMY CARTER,
President of the United States of America.

ANNEX

PROCEDURES FOR THE CESSATION OF TRANSFER OF ACTIVITIES CARRIED OUT BY THE PANAMA CANAL COMPANY AND THE CANAL ZONE GOVERNMENT AND ILLUSTRATIVE LIST OF THE FUNCTIONS THAT MAY BE PERFORMED BY THE PANAMA CANAL COMMISSION

1. The laws of the Republic of Panama shall regulate the exercise of private economic activities within the areas made available by the Republic of Panama for the use of the United States of America pursuant to this Treaty. Natural or juridical persons who, at least six months prior to the date of signature of this Treaty, were legally established and engaged in the exercise of economic activities in the former Canal Zone, may continue such activities in accordance with the provisions of paragraphs 2-7 of Article IX of this Treaty.

2. The Panama Canal Commission shall not perform governmental or commercial functions as stipulated in paragraph 4 of this Annex, provided, however, that this shall not be deemed to limit in any way the right of the United States of America to perform those functions that may be necessary for the efficient management, operation and maintenance of the Canal.

3. It is understood that the Panama Canal Commission, in the exercise of the rights of the United States of America with respect to the management, operation and maintenance of the Canal, may perform functions such as are set forth below by way of illustration:

- a. Management of the Canal enterprise.
- b. Aids to navigation in Canal waters and in proximity thereto.
- c. Control of vessel movement.
- d. Operation and maintenance of the locks.
- e. Tug service for the transit of vessels and dredging for the piers and docks of the Panama Canal Commission.
- f. Control of the water levels in Gatun, Alajuela (Madden) and Miraflores Lakes.
- g. Non-commercial transportation services in Canal waters.
- h. Meteorological and hydrographic services.
- i. Admeasurement.
- j. Non-commercial motor transport and maintenance.
- k. Industrial security through the use of watchmen.
- l. Procurement and warehousing.
- m. Telecommunications.
- n. Protection of the environment by preventing and controlling the spillage of oil and substances harmful to human or animal life and of the ecological equilibrium in areas used in operation of the Canal and the anchorages.
- o. Non-commercial vessel repair.
- p. Air conditioning services in Canal installations.
- q. Industrial sanitation and health services.

r. Engineering design, construction and maintenance of Panama Canal Commission installations.

s. Dredging of the Canal channel, terminal ports and adjacent waters.

t. Control of the banks and stabilizing the slopes of the Canal.

u. Non-commercial handling of cargo on the piers and docks of the Panama Canal Commission.

v. Maintenance of public areas of the Panama Canal Commission, such as parks and gardens.

w. Generation of electric power.

x. Purification and supply of water.

y. Marine salvage in Canal waters.

z. Such other functions as may be necessary or appropriate to carry out, in conformity with this Treaty and related agreements, the rights and responsibilities of the United States of America with respect to the management, operation and maintenance of the Panama Canal.

4. The following activities and operations carried out by the Panama Canal Company and the Canal Zone Government shall not be carried out by the Panama Canal Commission, effective upon the dates indicated herein:

(a) Upon the date of entry into force of this Treaty:

(i) Wholesale and retail sales, including those through commissaries, food stores, department stores, optical shops and pastry shops;

(ii) The production of food and drink, including milk products and bakery products;

(iii) The operation of public restaurants and cafeterias and the sale of articles through vending machines;

(iv) The operation of movie theaters, bowling alleys, pool rooms and other recreational and amusement facilities for the use of which a charge is payable;

(v) The operation of laundry and dry cleaning plants other than those operated for official use;

(vi) The repair and service of privately owned automobiles or the sale of petroleum or lubricants, including the operation of gasoline stations, repair garages and tire repair and recapping facilities, and the repair and service of other privately owned property, including appliances, electronic devices, boats, motors, and furniture;

(vii) The operation of cold storage and freezer plants other than those operated for official use;

(viii) The operation of freight houses other than those operated for official use;

(ix) Commercial services to and supply of privately owned and operated vessels, including the construction of vessels, the sale of petroleum and lubricants and the provision of water, tug services not related to the Canal or other United States Government operations, and repair of such vessels, except in situations where repairs may be necessary to remove disabled vessels from the Canal;

(x) Printing services other than for official use;

(xi) Maritime transportation for the use of the general public;

(xii) Health and medical services provided to individuals, including hospitals, leprosariums, veterinary, mortuary and cemetery services;

(xiii) Educational services not for professional training, including schools and libraries;

(xiv) Postal services;

(xv) Immigration, customs and quarantine controls, except those measures necessary to ensure the sanitation of the Canal;

(xvi) Commercial pier and dock services, such as the handling of cargo and passengers; and

(xvii) Any other commercial activity of a similar nature, not related to the management, operation or maintenance of the Canal.

(b) Within thirty calendar months from the date of entry into force of this Treaty, governmental services such as:

(i) Police;

(ii) Courts; and

(iii) Prison system.

5. (a) With respect to those activities or functions described in paragraph 4 above, or otherwise agreed upon by the two Parties, which are to be assumed by the Government of the Republic of Panama or by private persons subject to its authority, the two Parties shall consult prior to the discontinuance of such activities or functions by the Panama Canal Commission to develop appropriate arrangements for the orderly transfer and continued efficient operation or conduct thereof.

(b) In the event that appropriate arrangements cannot be arrived at to ensure the continued performance of a particular activity or function described in paragraph 4 above which is necessary to the efficient management, operation or maintenance of the Canal, the Panama Canal Commission may, to the extent consistent with the other provisions of this Treaty and related agreements, continue to perform such activity or function until such arrangements can be made.

AGREED MINUTE TO THE PANAMA CANAL TREATY

1. With reference to paragraph 1(c) of Article I (Abrogation of Prior Treaties and Establishment of a New Relationship), it is understood that the treaties, conventions, agreements and exchanges of notes, or portions thereof, abrogated and superseded thereby include:

(a) The Agreement delimiting the Canal Zone referred to in Article II of the Inter-oceanic Canal Convention of November 18, 1903 signed at Panama on June 15, 1904.

(b) The Boundary Convention signed at Panama on September 2, 1914.

(c) The Convention regarding the Colon Corridor and certain other corridors through the Canal Zone signed at Panama on May 24, 1950.

(d) The Trans-Isthmian Highway Convention signed at Washington on March 2, 1936, the Agreement supplementing that Convention entered into through an exchange of notes signed at Washington on August 31 and September 6, 1940, and the arrangement between the United States of America and Panama respecting the Trans-Isthmian Joint Highway Board, entered into through an exchange of notes at Panama on October 19 and 23, 1939.

(e) The Highway Convention between the United States and Panama signed at Panama on September 14, 1950.

(f) The Convention regulating the transit of alcoholic liquors through the Canal Zone signed at Panama on March 14, 1932.

(g) The Protocol of an Agreement restricting use of Panama and Canal Zone waters by belligerents signed at Washington on October 10, 1914.

(h) The Agreement providing for the reciprocal recognition of motor vehicle license plates in Panama and the Canal Zone entered into through an exchange of notes at Panama on December 7 and December 12, 1950, and the Agreement establishing procedures for the reciprocal recognition of motor vehicle operator's licenses in the Canal Zone and Panama entered into through an exchange of notes at Panama on October 31, 1960.

(i) The General Relations Agreement entered into through an exchange of notes at Washington on May 18, 1942.

(j) Any other treaty, convention, agreement or exchange of notes between the United States and the Republic of Panama, or portions thereof, concerning the Panama Canal which was entered into prior to the entry into force of the Panama Canal Treaty.

2. It is further understood that the following treaties; conventions, agreements and exchanges of notes between the two Parties are not affected by paragraph 1 of Article I of the Panama Canal Treaty:

(a) The Agreement confirming the cooperative agreement between the Panamanian Ministry of Agriculture and Livestock and the United States Department of Agriculture for the prevention of foot-and-mouth disease and rinderpest in Panama, entered into by an exchange of notes signed at Panama on June 21 and October 5, 1972, and amended May 28 and June 12, 1974.

(b) The Loan Agreement to assist Panama in executing public marketing programs in basic grains and perishables, with annex, signed at Panama on September 10, 1975.

(c) The Agreement concerning the regulation of commercial aviation in the Republic of Panama, entered into by an exchange of notes signed at Panama on April 22, 1929.

(d) The Air Transport Agreement signed at Panama on March 31, 1949, and amended May 29 and June 3, 1952, June 5, 1967, December 23, 1974, and March 6, 1975.

(e) The Agreement relating to the establishment of headquarters in Panama for a civil aviation technical assistance group for the Latin American area, entered into by an exchange of notes signed at Panama on August 8, 1952.

(f) The Agreement relating to the furnishing by the Federal Aviation Agency of certain services and materials for air navigation aids, entered into by an exchange of notes signed at Panama on December 5, 1967 and February 22, 1968.

(g) The Declaration permitting consuls to take note in person, or by authorized representatives, of declarations of values of exports made by shippers before cus-

toms officers, entered into by an exchange of notes signed at Washington on April 17, 1913.

(h) The Agreement relating to customs privileges for consular officers, entered into by an exchange of notes signed at Panama on January 7 and 31, 1935.

(i) The Agreement relating to the sale of military equipment, materials, and services to Panama, entered into by an exchange of notes signed at Panama on May 20, 1959.

(j) The Agreement relating to the furnishing of defense articles and services to Panama for the purpose of contributing to its internal security, entered into by an exchange of notes signed at Panama on March 26 and May 23, 1962.

(k) The Agreement relating to the deposit by Panama of ten percent of the value of grant military assistance and excess defense articles furnished by the United States, entered into by an exchange of notes signed at Panama on April 4 and May 9, 1972.

(l) The Agreement concerning payment to the United States of net proceeds from the sale of defense articles furnished under the military assistance program, entered into by an exchange of notes signed at Panama on May 20 and December 6, 1974.

(m) The General Agreement for Technical and Economic Cooperation, signed at Panama on December 11, 1961.

(n) The Loan Agreement relating to the Panama City water supply system, with annex, signed at Panama on May 6, 1969, and amended September 30, 1971.

(o) The Loan Agreement for rural municipal development in Panama, signed at Panama on November 28, 1975.

(p) The Loan Agreement relating to a project for the modernization, restructuring and reorientation of Panama's educational programs, signed at Panama on November 19, 1975.

(q) The Treaty providing for the extradition of criminals, signed at Panama on May 25, 1904.

(r) The Agreement relating to legal tender and fractional silver coinage by Panama, entered into by an exchange of notes signed at Washington and New York on June 20, 1904, and amended March 26 and April 2, 1930, May 28 and June 6, 1931, March 2, 1936, June 17, 1946, May 9 and 24, 1950, September 11 and October 22, 1953, August 23 and October 25, 1961, and September 26 and October 23, 1962.

(s) The Agreement for enlargement and use by Canal Zone of sewerage facilities in Colon Free Zone Area, entered into by an exchange of notes signed at Panama on March 8 and 25, 1954.

(t) The Agreement relating to the construction of the interAmerican highway, entered into by an exchange of notes signed at Panama on May 15 and June 7, 1943.

(u) The Agreement for cooperation in the construction of the Panama segment of the Darien Gap highway, signed at Washington on May 6, 1971.

(v) The Agreement relating to investment guaranties under sec. 413(b) (4) of the Mutual Security Act of 1954, as amended, entered into by an exchange of notes signed at Washington on January 23, 1961.

(w) The Informal Arrangement relating to cooperation between the American Embassy, or Consulate, and Panamanian authorities when American merchant seamen or tourists are brought before a magistrate's court, entered into by an exchange of notes signed at Panama on September 18 and October 15, 1947.

(x) The Agreement relating to the mutual recognition of ship measurement certificates, entered into by an exchange of notes signed at Washington on August 17, 1937.

(y) The Agreement relating to the detail of a military officer to serve as adviser to the Minister of Foreign Affairs of Panama, signed at Washington on July 7, 1942, and extended and amended February 17, March 23, September 20 and October 8, 1962.

(z) The Agreement relating to the exchange of official publications, entered into by an exchange of notes signed at Panama on November 27, 1941 and March 7, 1942.

(aa) The Convention for the Prevention of Smuggling of Intoxicating Liquors, signed at Washington on June 6, 1924.

(bb) The Arrangement providing for relief from double income tax on shipping profits, entered into by an exchange of notes signed at Washington on January 15, February 8, and March 28, 1941.

(cc) The Agreement for withholding of Panamanian income tax from compensation paid to Panamanians employed within Canal Zone by the canal, railroad, or auxiliary works, entered into by an exchange of notes signed at Panama on August 12 and 30, 1963.

(dd) The Agreement relating to the withholding of contributions for educational insurance from salaries paid to certain Canal Zone employees, entered into by an exchange of notes signed at Panama on September 8 and October 13, 1972.

(ee) The Agreement for radio communications between amateur stations on behalf of third parties, entered into by an exchange of notes signed at Panama on July 19 and August 1, 1956.

(ff) The Agreement relating to the granting of reciprocal authorizations to permit licensed amateur radio operators of either country to operate their stations in the other country, entered into by an exchange of notes signed at Panama on November 16, 1966.

(gg) The Convention facilitating the work of traveling salesmen, signed at Washington on February 8, 1919.

(hh) The Reciprocal Agreement for gratis nonimmigrant visas, entered into by an exchange of notes signed at Panama on March 27 and May 22 and 25, 1956.

(ii) The Agreement modifying the Agreement of March 27 and May 22 and 25, 1956 for gratis nonimmigrant visas, entered into by an exchange of notes signed at Panama on June 14 and 17, 1971.

(jj) Any other treaty, convention, agreement or exchange of notes, or portions thereof, which does not concern the Panama Canal and which is in force immediately prior to entry into force of the Panama Canal Treaty.

3. With reference to paragraph 2 of Article X (Employment with the Panama Canal Commission), concerning the endeavor to ensure that the number of Panamanian nationals employed in relation to the total number of employees will conform to the proportion established under Panamanian law for foreign business enterprises, it is recognized that progress in this regard may require an extended period in consonance with the concept of a growing and orderly Panamanian participation, through training programs and otherwise, and that progress may be affected from time to time by such actions as the transfer or discontinuance of functions and activities.

4. With reference to paragraph 10(a) of Article X, it is understood that the currently applicable United States law is that contained in Section 8336 of Title 5, United States Code.

5. With reference to paragraph 2 of Article XI (Transitional Provisions), the areas and installations in which the jurisdictional arrangements therein described shall apply during the transition period are as follows:

(a) The Canal operating areas and housing areas described in Annex A to the Agreement in Implementation of Article III of the Panama Canal Treaty.

(b) The Defense Sites and Areas of Military Coordination described in the Agreement in Implementation of Article IV of the Panama Canal Treaty.

(c) The Ports of Balboa and Cristobal described in Annex B of the Agreement in Implementation of Article III of the Panama Canal Treaty.

6. With reference to paragraph 4 of Article XI, the areas in which the police authorities of the Republic of Panama may conduct joint police patrols with the police authorities of the United States of America during the transition period are as follows:

(a) Those portions of the Canal operating areas open to the general public, the housing areas and the Ports of Balboa and Cristobal.

(b) Those areas of military coordination in which joint police patrols are established pursuant to the provisions of the Agreement in Implementation of Article IV of this Treaty, signed this date. The two police authorities shall develop appropriate administrative arrangements for the scheduling and conduct of such joint police patrol.

II. TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The United States of America and the Republic of Panama have agreed upon the following:

ARTICLE I

The Republic of Panama declares that the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty. The same regime of neutrality shall apply to any other international waterway that may be built either partially or wholly in the territory of the Republic of Panama.

ARTICLE II

The Republic of Panama declares the neutrality of the Canal in order that both in time of peace and in time of war it shall remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality, so that there will be no discrimination against any nation, or its citizens or subjects, concerning the conditions or charges of transit, or for any other reason, and so that the Canal, and therefore the Isthmus of Panama, shall not be the target of reprisals in any armed conflict between other nations of the world. The foregoing shall be subject to the following requirements:

(a) Payment of tolls and their charges for transit and ancillary services, provided they have been fixed in conformity with the provisions of Article III (c);

(b) Compliance with applicable rules and regulations, provided such rules and regulations are applied in conformity with the provisions of Article III;

(c) The requirement that transiting vessels commit no acts of hostility while in the Canal; and

(d) Such other conditions and restrictions as are established by this Treaty.

ARTICLE III

1. For purposes of the security, efficiency and proper maintenance of the Canal the following rules shall apply:

(a) The Canal shall be operated efficiently in accordance with conditions of transit through the Canal, and rules and regulations that shall be just, equitable and reasonable, and limited to those necessary for safe navigation and efficient, sanitary operation of the Canal;

(b) Ancillary services necessary for transit through the Canal shall be provided;

(c) Tolls and other charges for transit and ancillary services shall be just, reasonable, equitable and consistent with the principles of international law;

(d) As a pre-condition of transit, vessels may be required to establish clearly the financial responsibility and guarantees for payment of reasonable and adequate indemnification, consistent with international practice and standards, for damages resulting from acts or omissions of such vessels when passing through the Canal. In the case of a vessel owned or operated by a State or for which it has acknowledged responsibility, a certification by that State that it shall observe its obligations under international law to pay for damages resulting from the act or omission of such vessels when passing through the Canal shall be deemed sufficient to establish such financial responsibility;

(e) Vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the Canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected, as a condition of transit, to inspection, search or surveillance. However, such vessels may be required to certify that they have complied with all applicable health, sanitation and quarantine regulations. In addition, such vessels shall be entitled to refuse to disclose their internal operation, origin, armament, cargo or destination. However, auxiliary vessels may be required to present written assurances, certified by an official at a high level of the government of the State requesting the exemption, that they are owned or operated by that government and in this case are being used only on government noncommercial service.

2. For the purposes of this Treaty, the terms "Canal," "vessel of war," "auxiliary vessel," "internal operation," "armament" and "inspection" shall have the meanings assigned them in Annex A to this Treaty.

ARTICLE IV

The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties.

ARTICLE V

After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory.

ARTICLE VI

1. In recognition of the important contributions of the United States of America and of the Republic of Panama to the construction, operation, maintenance, and protection and defense of the Canal, vessels of war and auxiliary vessels of those nations shall, notwithstanding any other provisions of this Treaty, be entitled to

transit the Canal irrespective of their internal operation, means of propulsion, origin, destination, armament or cargo carried. Such vessels of war and auxiliary vessels will be entitled to transit the Canal expeditiously.

2. The United States of America, so long as it has responsibility for the operation of the Canal, may continue to provide the Republic of Colombia toll-free transit through the Canal for its troops, vessels and materials of war. Thereafter, the Republic of Panama may provide the Republic of Colombia and the Republic of Costa Rica with the right of toll-free transit.

ARTICLE VII

1. The United States of America and the Republic of Panama shall jointly sponsor a resolution in the Organization of American States opening to accession by all States of the world the Protocol to this Treaty whereby all the signatories will adhere to the objectives of this Treaty, agreeing to respect to regime of neutrality set forth herein.

2. The Organization of American States shall act as the depositary for this Treaty and related instruments.

ARTICLE VIII

This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Panama Canal Treaty, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Panama Canal Treaty, six calendar months from the date of the exchange of the instruments of ratification.

Done at Washington, this 7th day of September, 1977, in duplicate, in the English and Spanish languages, both texts being equally authentic.

For the Republic of Panama:

OMAR TORRIJOS HERRERA,

Head of Government of the Republic of Panama.

For the United States of America:

JIMMY CARTER,

President of the United States of America.

ANNEX A

1. "Canal" includes the existing Panama Canal, the entrances thereto and the territorial seas of the Republic of Panama adjacent thereto, as defined on the map annexed hereto (Annex B), and any other interoceanic waterway in which the United States of America is a participant or in which the United States of America has participated in connection with the construction or financing, that may be operated wholly or partially within the territory of the Republic of Panama, the entrances thereto and the territorial seas adjacent thereto.

2. "Vessel of war" means a ship belonging to the naval forces of a State, and bearing the external marks distinguishing warships of its nationality, under the command of an officer duly commissioned by the government and whose name appears in the Navy List, and manned by a crew which is under regular naval discipline.

3. "Auxiliary vessel" means any ship, not a vessel of war, that is owned or operated by a State and used, for the time being, exclusively on government non-commercial service.

4. "Internal operation" encompasses all machinery and propulsion systems, as well as the management and control of the vessel, including its crew. It does not include the measures necessary to transit vessels under the control of pilots while such vessels are in the Canal.

5. "Armament" means arms, ammunitions, implements of war and other equipment of a vessel which possesses characteristics appropriate for use for warlike purposes.

6. "Inspection" includes on-board examination of vessel structure, cargo, armament and internal operation. It does not include those measures strictly necessary for measurement, nor those measures strictly necessary to assure safe, sanitary transit and navigation, including examination of deck and visual navigation equipment, nor in the case of live cargoes, such as cattle or other livestock, that may carry communicable diseases, those measures necessary to assure that health and sanitation requirements are satisfied.

ANNEX B

PROTOCOL TO THE TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF
THE PANAMA CANAL

Whereas the maintenance of the neutrality of the Panama Canal is important not only to the commerce and security of the United States of America and the Republic of Panama, but to the peace and security of the Western Hemisphere and to the interests of world commerce as well;

Whereas the regime of neutrality which the United States of America and the Republic of Panama have agreed to maintain will ensure permanent access to the Canal by vessels of all nations on the basis of entire equality;

Whereas the said regime of effective neutrality shall constitute the best protection for the Canal and shall ensure the absence of any hostile act against it;

The Contracting Parties to this Protocol have agreed upon the following:

Article I

The Contracting Parties hereby acknowledge the regime of permanent neutrality for the Canal established in the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and associate themselves with its objectives.

ARTICLE II

The Contracting Parties agree to observe and respect the regime of permanent neutrality of the Canal in time of war as in time of peace, and to ensure that vessels of their registry strictly observe the applicable rules.

ARTICLE III

This Protocol shall be open to accession by all states of the world, and shall enter into force for each State at the time of deposit of its instrument of accession with the Secretary General of the Organization of American States.

THE LEGAL ADVISER,
DEPARTMENT OF STATE,
Washington, February 8, 1978.

Hon. JOHN J. SPARKMAN,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: We have been asked to provide lists of (1) the documents constituting the Panama Canal treaties that are before the Senate for its advice and consent, (2) documents implementing the Panama Canal Treaty, and (3) documents which are not implementing agreements and concern activities of the United States Government in Panama not directly related to the Panama Canal Treaty. Following are the requested lists:

1. Documents Associated with the Panama Canal Treaties that are Before the Senate for Its Advice and Consent.

Panama Canal Treaty:

Text

Annex

Agreed Minute

Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal:

Text

Annex A

Annex B

Protocol to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

2. Documents Implementing the Panama Canal Treaty.

Agreement in Implementation of Article III of the Panama Canal Treaty.

Annex A

Annex B

Annex C

Agreed Minute

Agreement in Implementation of Article IV of the Panama Canal Treaty:

Annex A

Annex B

Annex C

Annex D

Agreed Minute

Maps of the Land and Water Areas for the Operation and Defense of the Panama Canal Referred to in the Agreements in Implementation of Article III and IV of the Panama Canal Treaty.

Exchange of Notes Relating to Postal Services.

Exchange of Notes Relating to Use of Commissary and Post Exchange Facilities.

Letter Describing Application of the Wholesale Price Index Referred to in Paragraph 4(A) of Article XIII of the Panama Canal Treaty.

Letter Regarding Termination of Article XVII of the United States—Panama Air Transport Services Agreement.

3. Documents Which are not Implementing Agreements and Concern Activities of the United States Government in Panama not Directly Related to the Panama Canal Treaty. ,

Agreement on Certain Activities of the United States of America in the Republic of Panama.

Agreement Pursuant to Article VI of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere.

Note Regarding Economic and Military Cooperation.

Exchange of Notes Relating to Air Traffic Control Services.

Note Regarding the Establishment of the Panama Bureau of the United States Foreign Broadcast Information Service.

Exchange of Notes Relating to the Gorgas Memorial Institute of Tropical and Preventive Medicine, Incorporated, and to the Gorgas Memorial Laboratory.

Exchange of Notes Relating to Scientific Activities in Panama of the Smithsonian Tropical Research Institute.

Exchange of Notes Relating to Custodianship of the Barro Colorado Native Monument by the Smithsonian Tropical Research Institute.

Sincerely,

HERBERT J. HANSELL.

DEPARTMENT OF STATE,
Washington, D.C., February 8, 1978.

HON. JOHN SPARKMAN.

Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: This is in response to a request from your staff for clarification regarding the content of certain documents published in connection with the Senate's consideration of the Panama Canal Treaties.

First, the "Agreed Minute" to the Panama Canal Treaty constitutes an integral part of that Treaty and was accordingly bound together with the signed original text. The Agreed Minute was contained in the initial reproduction of the Treaty provided to members of the Senate by the Department, and in various public documents subsequently published by the Department. Unfortunately, the particular printing reproduced at pages 201-220 of the Committee's recent report (Exec. Rept. No. 95-12) did not include the Agreed Minute, and we regret any inconvenience this may have caused the Committee.

Second, we understand that some confusion has developed as a result of a printing error appearing on page 38 of the Committee print of the President's transmittal message (Exec. N). That document incorrectly identifies the Protocol to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal as "Annex B". "Annex B" to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal is in fact comprised of the maps which appear at pages 216-218 of the Committee's report, which correctly identifies them as such.

Sincerely,

DOUGLAS J. BENNET, Jr.
*Assistant Secretary
for Congressional Relations.*

EXCERPTS FROM THE REPORT OF THE COMMITTEE ON FOREIGN RELATIONS ON THE
PANAMA CANAL TREATIES (SEN. EX. REPT. 95-12)

II. COMMITTEE RECOMMENDATIONS

On January 26, the Committee concluded its hearings on the proposed Panama Canal agreements. Senator Robert C. Byrd, the Majority Leader, appeared before

the Committee and testified in support of the agreements. In concluding his prepared statement, the Majority Leader addressed the Chair, and expressed "the hope that this Committee, in its recommendations to the Senate, will provide guidance as to how best to meet the concerns that many of us have about the treaties. * * *" He also cautioned the Committee not to create a situation that "would undercut all that has been done to move us toward a successful resolution of this matter."

Following the Majority Leader's presentation, Chairman Sparkman suggested to the Committee that it approve the following course of action:

"Under the circumstances, it seems like it would be the best procedure for the committee to make its recommendations to the Senate on amendments, reservations, or understandings in the committee report, but not as specific proposals in the resolution of ratification. As I understand it, that is in conformity with the wishes of the Majority Leader and the Minority Leader, I believe.

"This will allow the committee to make its views known to the Senate on specific amendments, reservations and understandings, and at the same time permit all members of the Senate to have maximum participation in the shaping of the Senate's action on these treaties. There will, of course, be recorded votes in the committee on any major proposal presented, and these votes will be recorded in the committee report.

"I recognize that this procedure is unusual, and I may say that as a matter of fact I myself would have much preferred following the more usual route. But we are in an unusual situation and we do have the well-expressed views from the Majority Leader and the Minority Leader. For that reason and since it is an unusual problem I think a departure from the standard committee procedure is justified if that is necessary to enable the Senate best to work its will on such an important issue."

This procedure had been discussed earlier with the Senate leadership and members of the Committee. Following its formal presentation to the Committee, Senator Case moved its adoption and the Committee approved it without objection.

The Committee does not view the procedure as a precedent-setting departure from established practice. Quite the contrary—the Committee views the procedure as unique, but one which is necessitated because the situation posed by the consideration of the Panama Canal treaties is in many ways unique.

This point was made clear in the following exchange between Senator Pell and the Majority Leader on January 26:

Senator PELL. Thank you, Mr. Chairman.

I have no questions and no real statement except to say that I hope this procedure would not become a precedent. I recognize the political imperatives that call for every member of the Senate to vote in order to show his position to his own constituents at home on the matter. * * *

Senator BYRD. * * * this will not be a precedent.

With the inclusion of the recommendations listed below, the Committee's support for the treaties is virtually unanimous—with 14 members supporting ratification and only one opposing.

Because the Committee firmly believes that ratification of the treaties will best serve our national interests, it agrees to depart from standard practice and to include its recommendations in the Committee's report instead of in the resolutions of ratification.

In the Committee's view, the ultimate purpose is to serve the national interest by gaining ratification of the treaties in a manner that is fully acceptable and legally binding on both parties. To achieve this objective, two-thirds of members of the Senate present and voting must consent to ratification. In the Committee's opinion, the likelihood of securing this vote will be enhanced substantially by permitting the full Senate to work its will on the treaties and the resolutions of ratification without any formal encumbrances on them.

In taking this course of action, however, the Committee by no means intends to denigrate the importance of the specific recommendations listed below. Indeed, the Committee's strong support for the treaties is based, in large part, upon the recommendation approved overwhelmingly by the Committee. Without them, particularly the amendments to the neutrality treaty, many members of the Committee might have considerable reluctance in urging the Senate to ratify this agreement. But the Committee explicitly did condition its favorable recommendation with respect to the resolution of ratification accompanying the Panama Canal Treaty upon the Senate's approval of the resolution of ratification accompanying the Treaty Concerning the Permanent Neutrality and Operation of the Canal.

Conversely, the Committee believed it undesirable to make any recommendations beyond the ones it approved. During its mark-up sessions, members of the Committee considered all of the amendments, reservations and understandings which had

been introduced up to that point, plus additional measures offered by the members themselves. It either rejected or set aside all of them except for two amendments and four understandings (two of which are identical). The two amendments approved by the Committee serve to incorporate the language of the Carter-Torrijos communique into the neutrality agreement.

The adoption of these Committee amendments made many other amendments moot, such as those offered by Senator Hollings, and Senator Dole, and Senator Bentsen. Their amendments were designed for the same purpose and each of the Senators along with the Majority and Minority Leaders—deserve much of the credit for underscoring the importance of this issue. The Committee wishes to express its gratitude to all of them.

All of the other measures presented for consideration were rejected by the Committee. In the Committee's view, this action was necessary because the adoption of any of them would serve only to cripple the treaties and to render them unacceptable. Additionally, approval of any of these provisions would seriously raise the prospect of requiring the Government of Panama to hold another plebiscite. In the Committee's view, it is desirable to avoid such a requirement to the maximum extent possible. The recommendations listed below accord with this view and do not run the risk of requiring another Panamanian plebiscite. The Committee's opinion in this regard is based on conversations with General Torrijos and other Panamanian officials, plus spokesmen from our own executive branch.

A. Amendment incorporating in article IV of the Neutrality Treaty the rights of defense set forth in Carter-Torrijos joint statement

The Committee recommends that article IV of the Neutrality Treaty be amended by adding at the end thereof the following:

A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against peaceful transit of vessels through the Canal.

"This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

(See statement of intent regarding recommendation B, below.)

B. Amendment incorporating in article VI of the Neutrality Treaty the rights of priority passage set forth in the Carter-Torrijos joint statement

The Committee recommends that article VI of the Neutrality Treaty be amended by adding at the end thereof the following:

In accordance with the Statement of Understanding mentioned in Article IV above: "The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly."

STATEMENT OF INTENT

The Committee's intent in recommending the adoption of these two amendments to the Neutrality Treaty is that the Carter-Torrijos Joint Statement of October 14, 1977, be made an integral part of the treaty with the same force and effect as those treaty provisions submitted to the Senate initially for its advice and consent.

The Committee had originally voted to include the Joint Statement in a single amendment which would have added as a new article IX to the treaty. Upon being advised by the State Department—contrary to previous advice—that this placement could require a new Panamanian plebiscite, the Committee voted to reconsider the

proposed article IX and voted instead to recommend the addition of that same material, in two parts, to articles IV and VI. This did not represent a "flip-flop"; in each instance the substantive wording was identical to that of the Joint Statement, and each provision—whether placed in one article or in two—would have had precisely the same legal effect, being equally binding internationally. The difference is purely one of cosmetics. If a negligible change in form, with no change whatever in substance, could obviate the need for a new plebiscite—an eventuality which could complicate vastly the ratification process—then the Committee concluded that it would happily oblige.

The meaning of these amendments, which together constitute the entire Joint Statement, is plain. The first amendment relates to the right of the United States to defend the Canal. (It creates no automatic obligation to do so. See p. 74 of this report.) It allows the United States to introduce its armed forces into Panama whenever and however the Canal is threatened. Whether such a threat exists is for the United States to determine on its own in accordance with its constitutional processes. What steps are necessary to defend the Canal is for the United States to determine on its own in accordance with its constitutional processes. When such steps shall be taken is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act if it deems proper against any threat to the Canal, internal or external, domestic or foreign, military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate.

The above-described rights are not affected by the second paragraph of the amendment, which provides that the United States has no "right of intervention . . . in the internal affairs of Panama," and which prohibits the United States from acting "against the territorial integrity or political independence of Panama." The Committee notes, first, that these provisions prohibit the United States from doing nothing that it is not already prohibited from doing under the United Nations Charter, which proscribes "the threat or use of force against the territorial integrity or political independence of any state" (article 2(4)). The Committee never supposed that the United States, in entering into the Neutrality Treaty, intended to obtain powers that it had previously renounced. The Committee thus does not believe that the provision in question substantively alters existing United States commitments to Panama.

Second, the prohibitions set forth in the second paragraph do not derogate from the rights conferred in the first. The Joint Statement recognizes that the use of Panamanian territory might be required to defend the Canal. But that use would be for the sole purpose of defending the Canal—it would be purely incidental to the Canal's defense; it would be strictly a means to that end, rather than an end in itself; and it would not be carried out for the purpose of taking Panamanian territory. The concepts of the territorial integrity and political independence of Panama are, in short, an integral part of the treaty, so that action directed at preserving the regime of neutrality set forth in the treaty would never be directed against Panama's territorial integrity or political independence.

For these reasons, use of Panamanian territory to defend the Canal would clearly be permissible under the portion of the Joint Statement incorporated in Article IV. This is made clear in an opinion presented to the Committee by the Department of Justice (hearings, part 1, p. 332):

"A legitimate exercise of rights under the Neutrality Treaty by the United States would not, either in intent or in fact, be directed against the territorial integrity or political independence of Panama. No question of detaching territory from the sovereignty or jurisdiction of Panama would arise. Nor would the political independence of Panama be violated by measures calculated to uphold a commitment to the maintenance of the Canal's neutrality which Panama has freely assumed. A use of force in these circumstances would not be directed against the form or character of composition of the Government of Panama or any other aspect of its political independence; it would be solely directed and proportionately crafted to maintain the neutrality of the Canal."

Finally, even if a conflict were somehow to arise between the two paragraphs, because the United States has the right to act against "any . . . threat directed against the Canal," there is no question that the first would prevail. The rights conferred therein are stated in absolute terms and must therefore be construed as controlling.

The meaning of the recommended amendment to article VI is equally clear. This provision—extracted verbatim from the Joint Statement—confers upon United States warships and auxiliary vessels the right to go "to the head of the line" in an "emergency". What constitutes an emergency, and when one exists, is for the

United States and the United States alone to determine. The provision could hardly be more explicit.

Like the recommended amendment to article IV, this amendment, if adopted by the Senate, will become an integral part of the treaty, of the same force and effect as all other provisions. The Committee is informed by the Department of State that the Government of the Republic of Panama has concluded that no new plebiscite will be required for the approval of the two amendments. Together, they comprise the verbatim text of the Joint Statement, which was read by General Torrijos to the people of Panama live on national television three days before the October 23 plebiscite. (See p. 478 of part 1 of the hearings for a list of Panamanian newspapers in which the Joint Statement appeared prior to the holding of the plebiscite.) It thus is clear that the Panamanian people were fully apprised of the Joint Statement prior to the plebiscite, and were accorded a full opportunity to consider its provisions before approving the treaties.

C. Understanding regarding the requirement to conclude a prisoner transfer agreement (article IX (11), Panama Canal Treaty).

The Committee recommends that the resolution of ratification to the Panama Canal Treaty be amended by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "subject to the following understanding:

"Any agreement concluded pursuant to article IX, paragraph 11 with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both parties"

STATEMENT OF INTENT

Article IX (11) of the Panama Canal Treaty provides as follows:

"11. The Parties shall conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State, and who are not domiciled therein, may elect to serve their sentences in their State of nationality."

The Committee intends, through the above understanding regarding this provision, to make clear (1) that any agreement negotiated on this subject be submitted to the Senate as a treaty for its advice and consent to ratification; and (2) that should the Senate not give its advice and consent to the ratification of such an agreement, the United States will not be in violation of this provision.

As paragraph 11 of article IX is drafted, it can be construed as authority for the President to enter into a prisoner transfer agreement with Panama as an executive agreement. This, in the Committee's judgment, would be undesirable; United States practice with respect to such agreements, limited though it is, has been that they be concluded as treaties. Sound policy reasons underlie this procedure. Prisoner transfer arrangements are significant international agreements; they involve important foreign policy judgments regarding the criminal justice systems and human rights practices of the countries proposed as parties to such arrangements. The Treaty Clause requires that, normally significant international commitments be made with the concurrence of two-thirds of the Senate. Acting on the basis of his sole constitutional authority, the President would be without the power to enter into such an agreement. By removing any possibility that this provision may be relied upon as a source of authority for the conclusion of such an agreement, and by requiring that the agreement be entered into "in accordance with the constitutional processes" of the United States, this addition to the resolution of ratification will state the understanding of the Senate that any such agreement must be submitted to the Senate as a treaty, which is the mode contemplated by our "constitutional processes".

The understanding will, moreover, clarify the international commitment undertaken by the United States in this provision. As paragraph 11 has been drafted, it could be construed as requiring the United States to enter into a prisoner transfer agreement, and would thereby place the United States in violation of this treaty should the United States elect not to do so. Obviously, the authority of the Senate to advise and consent to a treaty is meaningless if it is required to be given; the authority to disapprove is implied if our "constitutional processes" are to be upheld. The effect of the reference to "constitutional processes" is thus to make clear that a right of choice is maintained. Although this understanding should not be interpreted as suggesting a disinclination to advise and consent to such a treaty, paragraph 11 should not be construed, pursuant to it, as circumscribing the authority of the Senate to exercise the full measure of its constitutional discretion.

D. Understanding regarding the prohibition against certain negotiations (article XII (2) (b), Panama Canal Treaty).

The Committee recommends that the resolution of ratification of the Panama Canal Treaty be amended by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "subject to the following understanding:

"The United States does not construe article XII, paragraph 2, clause b as precluding the President from exercising his constitutional authority to confer with any State regarding an interoceanic canal route or option in the Western Hemisphere; but, pursuant to such provision, the United States will not conclude with a third State a treaty for the rights to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties to the Panama Canal Treaty agree."

STATEMENT OF INTENT

Subparagraph (b) of article XII(2) of the Panama Canal Treaty provides as follows:

"(b) During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree."

The Committee intends, through the above understanding regarding this provision, to make clear that the provision may not be construed as precluding a future President from exercising his constitutional power to confer with other governments. "[H]e [the President] alone negotiates," the Supreme Court has said. "Into the field of negotiation, the Senate cannot intrude; and Congress itself is powerless to invade it." *United States v. Curtiss-Wright Corp.*, 299 U.S. 304, 319 (1936). A President may voluntarily commit himself not to enter into certain negotiations, but he cannot circumscribe the discretion of his successors to do so, just as they may not be limited in so doing by treaty or by law. As this Committee said in 1816, the President "must necessarily be most competent to determine when, how, and upon what subjects negotiation may be urged with the greatest prospect of success." U.S. Senate, Reports, Committee on Foreign Relations, vol. 8, p. 24. The recommended understanding would resolve this constitutional difficulty without doing violence to the substantive provisions of the treaty, the purpose of which, in the Committee's judgment, is to ensure that the United States not, during the duration of the treaty, enter into an agreement to construct an interoceanic canal on any other route in the Western Hemisphere without the agreement of Panama.

E. Understanding requiring the inclusion of Senate actions in the instrument of ratification of the Neutrality Treaty.

The Committee recommends that the resolution of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal be amended by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "subject to the following understanding:

"The President shall include all amendments, reservations, understandings, declarations, and other statements incorporated by the Senate in its resolution of ratification respecting this Treaty in the instrument of ratification exchanged with the Government of the Republic of Panama."

(See statement of intent regarding recommendation F, below.)

F. Understanding requiring the inclusion of Senate actions in the instrument of ratification of the Panama Canal Treaty.

The Committee recommends that the resolution of ratification of the Panama Canal Treaty be amended by striking out the period at the end thereof and inserting in lieu thereof a comma and the following: "subject to the following understanding:

"The President shall include all amendments, reservations, understandings, declarations and other statements incorporated by the Senate in its resolution of ratification respecting this Treaty in the instrument of ratification exchanged with the Government of the Republic of Panama."

STATEMENT OF INTENT

The Committee intends, through the above understandings which it recommends be added to the resolutions of ratification of each treaty, to make clear that any material included by the Senate in its resolution of ratification for each treaty be included in the instrument of ratification for that treaty given to the government of the Republic of Panama

This understanding has its origins in assertions made by representatives of the Department of State, following Senate approval in 1976 of the resolution of ratification respecting the Treaty of Friendship and Cooperation Between the United States and Spain, that the President possessed the authority to exclude from the instrument of ratification respecting that treaty the five-part declaration attached by the Senate to that resolution of ratification. (Members of this Committee advised that, in their judgment, no such discretion existed; a declaration was incorporated by reference in the instrument of ratification, although its text was set forth in an annex to the instrument.)

It remains the position of the Committee that the President is without such authority. Although the Treaty Clause of the Constitution does not expressly address this question, neither does it expressly authorize the Senate to condition its advice and consent to treaties. Traditional United States practice has nevertheless been that the Senate may grant its approval conditionally, just as traditional United States practice has been that, when conditions are attached, those conditions are transmitted as an integral part of the instrument certifying Senate and Presidential approval. That such conditions must be so included is as much a part of customary constitutional law in this country as the right of the Senate to grant conditional consent.

Accordingly, it is not the intent of the Committee to recommend the inclusion of an understanding such as this as a part of the resolutions of ratification respecting future treaties. The Committee was pleased to receive the assurance of the Department of State that the United States instruments of ratification of the Panama Canal Treaties would include all amendments of the treaties and of the resolutions of ratification that the Senate includes in the resolutions of ratification (letter from Douglas J. Bennet, Assistant Secretary for Congressional Relations, to John J. Sparkman, Chairman, Committee on Foreign Relations, January 26, 1978; hearings, part 5). The Committee does not doubt the Administration's good faith; it hopes that future presidents will adhere to this Administration's position, and thus wishes to establish no precedent with the recommended understandings. Nevertheless, the Committee believes that these understandings should be added to the resolutions of ratification respecting both treaties as a firm demonstration that the Senate will not countenance any interference with its constitutional prerogative of advice and consent and will take steps to counteract such interference on the part of any future Administration.

G. Summary—Recommended resolution of ratification

The Committee recommends that the Senate adopt the following resolutions of ratification, which incorporate the six recommendations of the Committee, described above:

RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein). That the Senate advise and consent to the ratification of the Treaty Concerning the Permanent Operation and Neutrality of the Panama Canal, together with the Annexes and Protocol relating thereto, done at Washington on September 7, 1977 (Ex. N. Ninety-fifth Congress, first session), subject to the following—

(1) amendments:

(A) Article IV of such Treaty is amended by adding at the end thereof the following:

A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

"This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible and it

shall never be directed against the territorial integrity or political independence of Panama."

(B) Article VI of such Treaty is amended by adding at the end thereof the following:

In accordance with the Statement of Understanding mentioned in Article IV above: "The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly."; and

(2) understanding:

The President shall include all amendments, reservations, understandings, declarations and other statements incorporated by the Senate in its resolution of ratification respecting this Treaty in the instrument of ratification exchanged with the Government of the Republic of Panama.

RESOLUTION OF RATIFICATION

Resolved (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of the Panama Canal Treaty, together with the Annex and Agreed Minute relating thereto, done at Washington on September 7, 1977 (Ex. N, Ninety-fifth Congress, first session), subject to the following understandings:

"(1) Any agreement concluded pursuant to article IX, paragraph 11 with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both parties.

"(2) The United States does not construe article XII, paragraph 2, clause b as precluding the President from exercising his constitutional authority to confer with any State regarding an interoceanic canal route or option in the Western Hemisphere, but, pursuant to such provision, the United States will not conclude with a third State a treaty for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties to the Panama Canal Treaty agree.

"(3) The President shall include all amendments, reservations, understanding, declarations, and other statements incorporated by the Senate in its resolution of ratification respecting this Treaty in the instrument of ratification exchanged with the Government of the Republic of Panama."

The Committee recommends that these resolution of ratification be adopted without further change. The two amendments and four understandings set forth above, in the Committees' judgment, more than adequately protect both the national security interests of the United States and the constitutional prerogatives of the Senate.

In the event the Senate concludes that some additional change is necessary, the Committee strongly urges (1) that such material be incorporated in the resolutions of ratification as an understanding, interpretation, declaration, or some similar designation; and (2) that that material not alter the rights, duties and obligations contained in the treaties. Any material so incorporated in the Senate's resolutions of ratification will have precisely the same force and effect, under both domestic and international law, as material included in the text of the treaties themselves. Any amendment to the text of the treaties, however, is virtually certain to require a new Panamanian plebiscite—which the Committee-recommended amendments will not. As noted above, these amendments incorporate the language of the Carter-Torrijos Joint Statement of October 14. That Joint Statement was widely publicized and made available to the Panamanian electorate prior to the plebiscite. No further modifications were contemplated at that time and none was presented to the voters of Panama when they cast their ballots on October 23.

While the Committee does not believe that the Senate should, to avoid the need for a new Panamanian plebiscite, alter the substance of any new material which it believes the national interest of this country requires, it does believe that the Senate can and should take into account the form in which such material is added, since that form, even though legally inconsequential, could mean the ultimate success or failure of the ratification of these treaties.

COMMITTEE COMMENTS

There are a number of reasons why the Committee decided by vote of 14 to 1 to support ratification of the Panama Canal agreements. At the top of the list is the Committee's firm judgment that the proposed agreements promise to serve the national interest—and to serve it well. Underscoring this judgment is the fact that the treaties now before the Senate are the product of 14 years of negotiations.

Indeed, in the course of the past 14 years, 4 successive Administrations—two Republican and two Democratic—have endeavored to negotiate a new treaty relationship acceptable to both Americans and Panamanians. Success has been long in coming, but of this there can be no doubt: The pending Panama treaties are the product of a continuity of shared purpose and reflect the best traditions of a bipartisan foreign policy.

Though some may wish to believe otherwise, the proposed agreements are not the sole product of the Carter Administration. Nor are they the sole product of the Nixon years, which produced the Kissinger-Tack negotiating guidelines of February 1974. Nor are they the sole product of the 1967 draft treaties, which subsequently foundered on the rocks of nationalism. Nor are they the sole product of the agreements reached in September 1965 between President Johnson and President Robies. Nor are they the sole product of the Johnson Administration's decision in December 1964 to negotiate "an entirely new treaty on the existing Panama Canal." Nor are they the sole product of the rioting and bloodshed that erupted in Panama in January 1964 and that cost the lives of 20 Panamanians and 4 Americans. Nor are they the sole product of the 1958 and 1959 flag-raising incidents * * * the 1955 treaty * * * the 1950 Act to Reorganize the Panama Canal Enterprise * * * the war years and the defense site negotiations * * * the 1936 Hull-Alfaro Treaty * * * the demise of the 1926 agreement * * * the Thompson-Urrutia Treaty of 1921 and the payment of \$25 million in "canalimony" to Colombia * * * the opening of the Canal in 1914 * * * the events of 1903 * * * Roosevelt, Hay, Cromwell—and Philippe Bunau-Varilla * * * the Hay-Pauncefote agreement * * * Ferdinand DeLesseps * * * the Clayton Bulwer Treaty * * *

The pending agreements are not the product of any single event or incident, or any particular set of events or set of incidents. Rather, they are the product of the sweep of history and, most recently, the collective judgment of American and Panamanian leaders who committed themselves and their political fortunes to fashioning an up-to-date Panama Canal treaty relationship.

The Committee recognizes their untiring efforts and dedication to a political solution. They have threaded the "political needle" of the Panama Canal controversy and in the Committee's opinion their reasons, their decisions and their conclusions have withstood examination and painstaking scrutiny. Accordingly, it is the Committee's view that the pending treaties deserve the full support of the Senate and the American public.

In requesting this support, the Committee urges that one consideration be kept uppermost in mind—the pending agreements are first, foremost and fundamentally, political documents, based on political decisions and grounded in political logic.

They serve to define and accommodate the mutual interests of the United States and of Panama in the operation, maintenance and defense of an international waterway serving the shipping community and the navies of the world. They serve to resolve a complex political question involving an array of issues and sub-issues ranging from strategic policy to economic considerations; from the interpretation of legal standards to the protection of the rights of American and Panamanian citizens; and from the management and operational details of the Canal itself to the possibility of constructing a third set of locks and the building of a sea level canal.

Overhanging and interlacing all of these issues and sub-issues is a fervent nationalism, Panamanian nationalism on one side and American nationalism on the other. From the United States comes the rallying cry, "We bought it. We built it. It's ours. It's as American as the Liberty Bell or the Fourth of July." From Panama comes a different rallying cry, "Yanqui, go home. An end to colonialism. Freedom and independence now."

The nationalist sentiment on both side is as understandable as it is potentially dangerous. The United States succeeded where all others had failed. We conquered the unconquerable. We built the eighth wonder of the world. We linked the earth's two great oceans. We proved our technological prowess then, just as surely as we did in July 1969 when U.S. astronauts landed on the moon. And if the moon-landing was "a giant step for mankind," so, too, was the opening of the Canal in August 1914.

As Americans are justifiably proud of the Canal, the people of Panama are no less proud. It is, after all, the Panama Canal, not the American Canal in Panama.

Simply stated, the Panamanian people are no longer willing to allow another nation to exercise sovereign rights in their country. This is just another way of saying that, though proud of the Canal, the people of Panama are more proud of their own country, their own nation—and rightfully so. Panama can exist without the Canal, but the Canal cannot exist without Panama.

The documents now before the Senate provide a reasonable political solution and at the same time serve to check the spread of nationalist sentiment. They represent a collection of political judgments and decisions. They are a composite of compromises running through and across a tangled bundle of interests, both real and imagined. Not surprisingly, they are just as controversial in our time as the 1903 treaty was in its time.

In the Committee's opinion, it is all but self-evident that the political judgments rendered in the pending treaties will serve better than those rendered 74 years ago. Moreover, the Committee is firmly convinced that the Panama treaties will stand the test of time because they serve the mutual interests of both parties. The political judgments contained in them are balanced, fair and equitable—if not long overdue.

The fact is, the 1903 treaty belongs to another era, despite the half-hearted efforts in 1936 and again in 1955 to dress the wounds inflicted at the turn of century. But in retrospect, these efforts were little more than band-aids on the sores of history. The sores have continued to run and they have brought us to the point where the 1903 agreement, even in its amended form, serves more to jeopardize than to protect our nation's interests in the Panama Canal.

The Committee has not arrived at this decision lightly. If nothing else the hearing process and the materials and information assembled serve as ample testimony to the Committee's efforts to obtain the facts and render a judgment based on them.

In the Committee's opinion, the weight of evidence is overwhelmingly in favor of ratification. Here are the principal considerations based on the terms of the treaties which have brought the Committee to this conclusion:

THE TREATIES GIVE THE UNITED STATES THE DOMINANT ROLE IN A PARTNERSHIP
ARRANGEMENT FOR OPERATING THE CANAL DURING THE REMAINDER OF THE 20TH CENTURY

Secretary VANCE. First, as to the long-term operation of the Panama Canal, the United States will control canal operations through a new U.S. Government agency, the Panama Canal Commission, to be supervised by a board composed of five Americans and four Panamanians. The Commission will operate the canal until the end of this century. * * *

The United States will maintain responsibility for managing the canal, setting tolls, and enforcing rules of passage until the year 2000 (P. 11, part 1, SFRC Panama Canal hearings.)

* * * * *

THE TREATIES GIVE THE UNITED STATES PRIMARY, DAY-TO-DAY RESPONSIBILITY FOR THE
DEFENSE OF THE CANAL UNTIL THE YEAR 2000

Secretary of Defense BROWN. The treaty goes even further, however. It states unequivocally that during the life of the treaty, the U.S. armed forces shall enjoy the right and the primary responsibility to defend the canal itself. It further provides that during that period the United States may station, train, and support units of our armed forces in Panama, and that the United States will decide unilaterally whether and how to modify the force levels we maintain there. All key military bases and training areas which we now operate in the Canal Zone will remain under U.S. control. (P. 97, part 1, SFRC Panama Canal hearings.)

* * * * *

THE TREATIES GIVE THE UNITED STATES UNRESTRICTED RIGHT TO MAINTAIN THE
PERMANENT NEUTRALITY OF THE CANAL FOREVER

Ambassador LINOWITZ. Under the treaty, the United States is in a position to assure that the canal's permanent neutrality is maintained, and there is not, as Secretary Vance has said, any limitation on our ability to take such action as we may deem necessary in the event the canal's neutrality is threatened or violated from any source. The precise type of response we might determine to make would, of course, depend upon all the political, military, legal, economic, and other factors involved in a particular situation, but the key point is that it is for the United States to make the determination as to how we should respond and how we should defend our rights under the canal's regime of neutrality.

Thus, the treaty provides for the United States maximum freedom to determine how to carry out its responsibility for canal neutrality. We are under no obligation to consult with or seek approval from any other nation or international body before acting to maintain the neutrality of the canal, nor [does] the treaty in any other way limit our ability to act. (P. 23, part 1, SFRC Panama Canal hearings.)

THE TREATIES GIVE UNITED STATES WARSHIPS AND AUXILIARIES THE RIGHT TO GO TO THE HEAD OF THE LINE IN THE EVENT OF CRISIS OR OTHER EMERGENCY SITUATION

Senator CASE. That is to say you agree, as the negotiator and one who has dealt with this from the beginning, with the Secretary's statement. It means that our ships go to the head of the line?

Secretary VANCE. If necessary.

Ambassador LINOWITZ. If necessary. In other words, if we want to go through first, we are in a position to ask for it and get it. I am sure that both Ambassador Bunker and I understand that to be the meaning of the words "expeditious passage." (P. 31, part 1, SFRC Panama Canal hearings.)

THE TREATIES INSURE THAT AFTER THE YEAR 2000 FOREIGN TROOPS WILL NEVER BE STATIONED IN PANAMA

Secretary ALEXANDER I think it is a very positive sign about the attitude of maintaining neutrality after the year 2000. There will be no other country that will be able to be there and we have the unilateral right to insure the concept of the regime of neutrality under the treaty and that there will be complete access. The only interpretation I have heard is that no one other than the Panamanians can retain forces in Panama after the year 2000. (P. 324, part 1, SFRC Panama Canal hearings.)

Ambassador JORDAN. I think one of the interesting features of this particular article, Senator, is that this was not something that we pushed and demanded. This is something that the Panamanians wanted to have in, to put the world on notice at the end of this period when the U.S. forces had left they would never permit any other country to come in and establish bases in their country. (P. 325, part 1, SFRC Panama Canal hearings.)

THE TREATIES PROMISE TO HAVE MINIMAL IMPACT ON THE U.S. ECONOMY

Deputy Assistant Secretary (for Maritime Affairs) CASEY. Should toll increases immediately following ratification of the new treaties be about 30 percent, as some have suggested, the same line of reasoning would lead us to conclude that U.S.-flag operators would lose less than 15,000 tons of cargo.

The elasticity approach helps us to illustrate arithmetically what we have understood from the start: that tolls do in fact make up only a small part of the total cost to the consumer of canal-transported commodities. I might add at this point the price elasticity theory is a short-term concept. However, all the economic studies we reviewed indicate that reductions in tonnages through the canal for toll increases approaching 100 percent, tend to be offset by longer-term trade growth. (P. 446, part 1, SFRC Panama Canal hearings.)

THE TREATIES FULLY PROTECT THE RIGHTS OF ALL AMERICANS CONNECTED WITH THE OPERATION, MAINTENANCE AND DEFENSE OF THE CANAL

Secretary ALEXANDER. One of the most important issues to be considered regarding the new treaty is how the rights and benefits of current employees of the canal enterprise will be protected. Let me list just a few of the many actions which we will take or propose be taken in order to adequately deal with this matter:

Provision of a priority job placement program.

Provision of an early optional retirement program which would be designed to ease the impact of necessary force reductions while at the same time providing an incentive for employees with essential skills to remain with the Commission.

Assurance of the continued availability of adequate housing.

Provision of the adequate educational and medical services.

Terms and conditions of employment no less favorable than those existing on the effective date of the treaty.

In short, Mr. Chairman, the treaty will provide us with all the rights necessary to adequately care for both the Panamanian and the U.S. citizens of our dedicated work force.

Mr. Chairman, under the treaty we would retain all of the specific rights necessary to efficiently operate the canal and adequately care for our employees. (P. 272, part 1, SFRC Panama Canal hearings.)

THE TREATIES GIVE THE UNITED STATES AN OPPORTUNITY TO MODERNIZE THE CANAL BY ADDING A THIRD LANE OF LOCKS, PLUS AN EXCLUSIVE OPTION TO BUILD A NEW SEA LEVEL CANAL THROUGH PANAMA, THE ONLY SITE RECOMMENDED BY THE INTER-OCEANIC CANAL STUDY COMMISSION IN 1970

Secretary VANCE, The treaties further allow for the modernization of the canal through construction of a third lane of locks and foresee the possibility of construction in Panama of a new, sea-level canal. This would provide access for many modern supertankers and warships which are too large to pass through the present canal. (P. 11, part 1, SFRC Panama Canal hearing.)

The treaties do all of these things and more. They not only provide for the safe and efficient operation of an open, secure and neutral canal, but additionally, in the words of former Secretary of State Kissinger, they provide "an opportunity to advance fundamental American foreign policy interests." At the same time, Secretary of State Vance sees the treaties promoting fundamental, traditional U.S. values:

"Any nation's foreign policy is based, in the end, not just upon its interests, and in Panama our interests are clear and apparent. It is also based upon the nature and will of its people. I believe the American people want to live in peace with their neighbors, want to be strong, but to use their strength with restraint, want all peoples everywhere to have their own chance to better themselves and to live in self-respect. That is all a part of our American tradition." (P. 14, part 1, SFRC Panama Canal hearings.)

The Committee fully agrees with these observations, but also recognizes that the opportunity presented by the treaties is akin to a double-edged sword and points out that:

Acceptance of the treaties will evidence our firm commitment to the peaceful and equitable settlement of international disputes.

Acceptance of them will evidence our firm commitment to international cooperation among all nations, big or small, rich or poor, developed or undeveloped.

Acceptance of them will evidence our firm commitment to independence and self determination for all nations.

Acceptance of them will evidence our firm commitment to a foreign policy based on preserving the national interest without sacrificing our nation's principles, values or honor.

These are important commitments. If we do not honor them fully, the sword will cut the other way and our adversaries will exploit the situation to the maximum extent possible.

They will charge that the United States talks a good game, that we espouse the principles set forth in the United Nations Charter, that we speak of independence, self determination and human rights—but, when our interests are on line or when we move from the realm of the theoretical to the realm of the practical, that nothing has changed. The United States, they will say, is playing the same old shell game in the Western Hemisphere that it has played for years. The name of the game is Manifest Destiny, backed up by gunboat diplomacy, economic penetration and political subjugation. In a word, imperialism. And as evidence of all of this they will point to Panama and the Canal Zone.

Underscoring this concern, Gen. Maxwell Taylor, former Chairman of the Joint Chiefs of Staff, stated in testimony before the Committee, October 10:

"* * * The Soviet Union always intriguing for leadership in the have-not world has taken as a primary objective the undermining of our Latin American relations, particularly those with our trade partners.

"It will always assure to Panama a large allocation of troublemakers to complicate our problems. Turbulence there is always good news to Moscow—so also are American blunders. In this connection, let us hope that we do not give the Kremlin chiefs the occasion to rejoice which our rejection of these treaties would undoubtedly afford." (P. 58, part 3, SFRC Panama Canal hearings.)

In a similar vein, but turning attention to Cuba, Secretary of Defense Brown observed:

"I cannot speak for Mr. Castro, but if I were Castro and I wanted to do the most that I could to increase the influence of Cuba in the Caribbean and in Central and Latin America, and decrease and harm the United States psychologically, politically, and diplomatically, I would do all I could to see the treaty rejected." (P. 160, part 1, SFRC Panama Canal hearings.)

With respect to the Western Hemisphere in particular, the foreign policy stakes are indeed much larger than the Panama issue itself. Time after time in the course of its hearings, the Committee was asked to focus on the significance of the treaties as a regional, if not global, issue rather than a bilateral one.

President Carter at the treaty-signing ceremony addressed the matter this way: "This opens a new chapter in our relations with all nations of this hemisphere, and it testifies to the maturity and the good judgment and the decency of our people."

And Secretary of State Vance told the Committee on September 26:

"* * * For years, Latin American peoples and governments have viewed our negotiations with Panama over the canal as a litmus test of our intentions toward their countries." (P. 11, part 1, SFRC Panama Canal Hearings.)

Former Secretary of State Kissinger also addressed this aspect of the issue and dealt with the charge that Latin American leaders say one thing publicly about the Canal issue and quite another thing privately:

"I find it significant that no Western Hemisphere leader, regardless of what his private feelings on this issue might be, feels able publicly to take any position other than that of strongest support for the modernization of the 1903 treaty. This reflects the depth of public sentiment on the issue. No government and no public opinion in any of the countries of this hemisphere would be willing to support us if we now refuse to modernize the canal relationship. We would witness a gradual deterioration of our relationships even when some leaders might prefer to retain constructive ties. If the treaties are accepted, on the other hand, our many friends in the hemisphere will be enabled to cooperate in the development of a constructive Western Hemisphere policy." (P. 527, part 3, SFRC Panama Canal hearings.)

Representatives of the academic world endorsed these observations. Abraham Lowenthal of the Woodrow Wilson Center for scholars presented the issue this way:

"It is in that context that the Panama issue become so important in U.S.-Latin American relations.

"United States relations with Panama, and especially the status of the Canal Zone itself, have long symbolized for many in Latin America all that was regrettable about some aspects of the so-called "special relationship" with the United States. All of the attempts by our Government to convince Latin Americans that we respect their rights and understand their interests would ring hollow if we could not bring ourselves to abandon the habits of thought and practice which have been epitomized by the status of the Panama Canal." (Pgs. 121-22, part 3, SFRC Panama Canal hearings.)

Jorge Dominguez, Associate Professor, Department of Government, Harvard University, linked passage of the treaties to U.S. and Cuban competition for influence in the Hemisphere:

"* * * The United States has demonstrated by this treaty its continued importance to Latin America. This is something the Soviet Union cannot do; this is something Cuba cannot do. And this is also something no other U.S. ally can do. The point may bear an example. I have done a fair amount of work on Cuban foreign policy. In its competition with the United States over influence in Latin America, the Cuban revolutionary government has often called attention to the U.S. failure to agree with Panama on a new canal treaty. These new treaties, therefore, have taken away this argument with one stroke, and have demonstrated to many Latin American governments—including the government of Panama—that it may be more useful for them to work closely with the United States than with any other country, including Cuba." (P. 179, part 3, SFRC Panama Canal Hearings.)

After weighing all of the foreign factors, after considering all of the pros and cons, after pouring over 2,500 pages of testimony from 90 witnesses, the Committee on Foreign Relations finds that the national interest cost benefit analysis overwhelmingly supports ratification of the pending treaties.

Many witnesses who appeared before the Committee presented such an analysis. None was more penetrating or persuasive than that given by former Secretary of State Dean Rusk, as the following key excerpts indicate:

"I begin with the conviction that the treaty of 1903, as amended, offers a very fragile platform on which to try to stand in these closing decades of the 20th century. * * *

Treaties are the primary source of international law partly because they are drafted in relatively precise terms of legal obligation and, more importantly, because they represent the consent of the sovereign parties who agree to them. We cannot seriously suggest that the 1903 treaty represents the consent of Panama or of its people. It would be accurate to say that if the United States were a party to a treaty which became obnoxious to our public policy and repugnant to our people, we would move to denounce it and relieve ourselves of its burdens."

"But let us be under no illusion, an attempt to maintain our position in the Panama Canal Zone on the basis of the 1903 treaty would be an act of force, as in Eastern Europe. We can choose that course if we are prepared to pay the heavy political, economic and military costs involved. * * *

"When the United Nations Security Council met in Panama in 1973 and had before it a resolution on Panama, hostile to U.S. interests, it was necessary for our representative to exercise a veto, with no member of the council voting with us. There were 13 "yes" votes, the U.K. abstained, and the United States cast the only negative vote. Close friends such as France, Australia, Austria, and Kenya voted against us."

"Opponents of these treaties object to our making such arrangements with a dictator. Having been involved with this problem before the present regime in Panama came to power, I would suggest that the more democratic the government in Panama, the more insistent they would be on a prompt and fundamental change in the arrangements regarding the canal."

"* * * Providence has not given us the ability to pierce the fog of the future with accuracy and the year 2000 is a long way off."

"Perhaps we should not, today, try to answer every problem which might be posed to some future President and Congress. I must confess, however, that article IV of the neutrality treaty played a major role in my own decision to support these two treaties. If, God forbid, it should ever become necessary for a President and a Congress to take strong measures to keep the canal functioning and safe, they would, in my judgment, be in a far stronger position to do so under the treaties of 1977 than under the anachronistic treaty of 1903."

"Thus, whether we are thinking of the principles upon which we hope to see a cooperative community of nations move into the future or are thinking about a hardheaded approach to adverse contingencies which may lurk in the future, it seems to me to be to our advantage to give effect to these two new treaties. The consequences of not doing so could be very severe. I see no point in inviting these consequences upon ourselves now when we have a good chance to avoid them altogether." (Pgs. 520-23, part 3, SFRC Panama Canal hearings.)

These views command attention and respect. They present the Panama issue as rationally, as honestly and as dispassionately as it can be presented—indeed as it must be presented. The testimony of former Secretary Rusk, like numerous other witnesses before him and after him, sweeps away the emotionalism and the outdated symbolism that so many Americans attach to the Panama question and lays bare the cold necessities and realities of the last quarter of the 20th Century.

Here are the realities—as seen by America's top defense officials, Secretary of Defense Harold Brown and Chairman of the Joint Chiefs of Staff General George Brown:

Secretary BROWN. The canal was built for shipping, not slogans. We seek to guarantee transit of vessels, not theoretical claims of title. These goals we have sought, as I said at the beginning, are practical. The issues before you are practical ones. Our negotiations have obtained instruments which, more certainly than thousands of forces and their armaments on the spot, will assure those practical objectives for generations to come. (P. 98, part 1, SFRC Panama Canal hearings).

General BROWN. I think to describe the United States with this action as proof that the United States is a paper tiger, as this gentleman does, is absolutely wrong.

I think, rather than that, it shows the United States to be enlightened. I think it shows the United States to be determined to live in the world today and not in the world of yesterday. I think it shows that we profit by the experience of the Portuguese in Angola and Mozambique, the French in Algeria and Indochina, and ourselves in the Philippines. We left the Philippines for the same reasons that I think we should renegotiate these. It is in recognition of the importance of the Panama Canal that I feel we should do this because we would then be guaranteed, I think, of a better opportunity and guarantee in the future of the use of the canal. (P. 193, part 1, SFRC Panama Canal hearings.)

Addressing these same considerations, former Secretary Kissinger also helped lay to rest the charge that the Panama treaties are just further evidence of a policy of retreat:

"I recognize the deep feeling of many Americans who wish, after the Vietnam tragedy, to see an end to yielding and retreat by the United States. No one can appreciate such concerns better than one who strove for an honorable outcome during the Vietnam period. But the Canal is not the issue to select to demonstrate that we remain strong and resolute. Panama is the smallest and weakest of nations. We are not 'giving' the Canal to Panama; we are, rather, ensuring our ability to protect it. By taking constructive action now to revise our relationship with Panama in an atmosphere free of physical pressure, while we are still able objectively to assess the longterm risks and benefits, we will be demonstrating fundamental strength, not weaknesses. It is just this ability to distinguish between symbol and reality, to plan for future needs and to take timely action to advance our basic interests, that is the essence of a strong and effective world policy." (P. 523, part 3, SFRC Canal hearings.)

The Committee recognizes that for many Americans the symbol and the reality are one—that the Panama Canal and Canal Zone are as much a part of our heritage as Alaska, Hawaii, or Missouri; that they are as much a part of our technological leadership as computers, rockets, and satellites; that they are as much a part of our national security as missile sites in Montana or naval bases at Pensacola or San Diego; that they are as much a part of our world power status as our military presence in the Pacific or the Mediterranean. But the Committee does not have this luxury. It must distinguish between symbol and reality. For the nation's well-being the Committee's decisions must be based on the present and the future—not the past. Reaching these decisions in the case of Panama has not been easy, but necessary—indeed, vital.

The Committee is convinced that if the public-at-large could devote as much time and energy to this issue as the Committee has, it would arrive at the same conclusion. Since this is not possible or practical, the public will have to rely on judgments rendered by its elected officials. In this instance, it is the Committee's firm judgment that the national interest requires ratification of the Panama agreements; that the symbol and the reality are separate and distinct and that the differences between them are in fact the differences between night and day.

The testimony of William Jorden, United States Ambassador to Panama, graphically portrays these differences by reversing the symbolism in order to highlight the reality:

"Suppose, for example, that history had dictated that the Mississippi River and a strip of territory on each side were controlled by a foreign power. Suppose that in going from Illinois to Missouri, or from Louisiana to Texas you had to cross that strip.

"And imagine, if you will, that you broke the law in some fashion—by speeding or having a tail light out, or whatever—and you were arrested by a French gendarme or a Mexican policeman. It does not take great imagination to know what our reactions would be. Yet that is the situation that our Panamanian friends have found themselves in for the past 70 years. (Pgs. 281-282, part 1, SFRC Panama Canal hearings.)

The example cited by Ambassador Jorden sharply illustrates much of the basic reality of our present treaty relationship with Panama. If the situation were reversed, as the Ambassador suggests, Americans would view the reality of it as at best unacceptable, if not odious. Not surprisingly, Panamanians view it the same way.

In marked contrast, the proposed Panama treaties provide a positive response to a situation, a very real situation, that can no longer endure. Simply put, the treaties resolve a situation that is otherwise untenable. In its place, they hold out the genuine promise of establishing a partnership arrangement that will prove mutually satisfactory, mutually beneficial and mutually rewarding.

In their wisdom, the citizens of Panama have overwhelmingly endorsed that partnership arrangement as proposed in the treaties now before the Senate. The Committee strongly recommends that the United States follow suit and that the Senate give its advice and consent to the Panama Canal treaties.

VI. MAJOR ISSUES

The Panama Canal treaties raise a number of major issues. Most of these issues fall into one of three categories: legal aspects, defense and neutrality, and economic considerations. There follows a discussion of the issues categorized accordingly. In addition, the Committee's view on the sea level canal issue is also contained in this section. Finally, there is a discussion of the human rights issue and the question of any hidden financial commitments.

A. Legal aspects

(1) TRANSFER OF PROPERTY

The Committee has studied carefully the question raised by article IV, section 3, clause 2 of the Constitution, which provides that "The Congress shall have power to dispose of * * * the territory or other property belonging to the United States. * * ." The argument has been made that this provision grants to both Houses of the Congress the power to dispose of governmental property, that that power can be exercised only by statute, and that no treaty exercising that power can thus be effective in the absence of implementing legislation.

Whatever the validity of that position, it should be noted at the outset that the issue raised is not whether "concurrent jurisdiction" to dispose of government property resides in the President alone. An 1899 opinion of the Attorney General concluded that the power to dispose of certain governmental lands "cannot be exercised by the executive department of the government." 22 Op. Atty. Gen. 544, 545. The Committee fully concurs. The question, rather, is whether the concurrence of the House of Representatives, in addition to that of the Senate, is constitutionally required.

While reasonable arguments probably can be made for the mandatory inclusion of the House, the Committee believes that the weight of authority supports the conclusion that the constitutional grant of the disposal power to the Congress does not thereby exclude that subject from the treaty power.

Constitutional Text

First, the constitutional text gives no reason to assume that the power to dispose of property may be exercised only by statute, and not by treaty. The disposal-of-property clause is drafted in the same way as the provision conferring enumerated powers upon the Congress (article I, section 8): both say that Congress "shall have power. * * ." Where two substantively similar provisions of the Constitution are in their jurisdictional terms worded identically, and where one of those provisions has been construed as conferring concurrent power, it is not unreasonable to construe the other provision also as conferring concurrent power. It has long been established that article I, section 8 of the Constitution confers concurrent power—that the enumerated powers conferred upon the Congress therein may be exercised both by statute and by treaty. To hold that the enumerated powers are by implication excluded from the treaty power would be to hold that hundreds of self-executing treaties dealing with such subjects as foreign commerce, copyrights, patents, and postal services are invalid. The Constitution on its face presents no reason for regarding the disposal power as different, jurisdictionally, from those powers.

It is true that certain powers cannot constitutionally be exercised by treaty. Enactment of a statute would be required, for example, to appropriate money from the Treasury, or to impose taxes, or to declare war. But exclusive statutory jurisdiction exists in those cases for reasons peculiar to the specific powers in question. A treaty may not impose taxes because the constitutional requirement that all bills raising revenue originate in the House of Representatives (article I, section 7, clause 1) seems clearly to have been intended to include the House in the revenue-raising process. A treaty may not appropriate funds from the Treasury because the language of the appropriations clause, like that of the revenue clause and unlike that of the disposal-of-property clause, does appear to be exclusive: it provides that "no money shall be drawn from the Treasury, but in consequence of appropriations made by law" (article I, section 9, clause 7). A treaty may not declare war because the unique legislative history of the declaration-of-war clause (article I, section 8, clause 11) clearly indicates that the power was intended to reside jointly in the

House of Representatives and the Senate. (See p. 74 of this report.) No such rationale applies to the disposal-of-property clause.

Finally, it seems relevant that the disposal-of-property clause appears in article IV of the Constitution, the article dealing with federal-state and inter-state relations. While by no means conclusive, this placement does suggest an intent to set out a power of the federal government as against the power of the states, rather than a power of the Congress as against the joint power of the Senate and the President.

Intent of the Framers

From all available records it appears that the Framers evidenced no intent to preclude the United States from disposing of governmental property by treaty. They rejected all proposals to limit the treaty power. A review of the discussion of the disposal-of-property clause indicates that the Framers' concern was that the Federal government have primacy over the states in resolving disputes among the states over certain western lands—suggesting, again, an intent to delineate federal power versus that of the states. A number of statements, indicating that territory and other property could be transferred by treaty, were made by the Framers during the debate on the treaty power after article IV was adopted.

Judicial Authorities

The Supreme Court appears to have favored a construction of the Constitution which would permit the disposal of property by self-executing treaty. It is well settled, as the Attorney General noted during the Committee's hearings, that the treaty power extends "to all proper subjects of negotiation between our government and the governments of other nations", although it does not "extend so far as to authorize what the Constitution forbids." *Geofroy v. Riggs*, 133 U.S. 258, 266-267 (1890); *Asakuru v. Seattle*, 265 U.S. 332, 341 (1924). The transfer of property from one nation to another clearly constitutes a proper subject of negotiation; the question is whether the Constitution forbids such transfer by treaty.

A number of cases suggest that it does not. The Court had no problem with several treaties transferring United States property to various Indian tribes. (Prior to the Indian Appropriation Act of 1871, Indian tribes were recognized as independent nations with whom the United States could contract by treaty, and the Court has held that the "power to make treaties with the Indian tribes is . . . co-extensive with that to make treaties with foreign nations." *United States v. 43 Gallons of Whiskey*, 93 U.S. 188 (1876).) In *Holden v. Joy*, 17 Wall. (84 U.S.) 211 (1872), for example, the Court heard a challenge to a treaty with the Cherokee nation which transferred to it land belonging to the United States. The Court said: ". . . it is insisted that the President and the Senate, in concluding such a treaty, could not lawfully covenant that a patent should be issued to convey lands which belonged to the United States without consent of Congress, which cannot be admitted. On the contrary, there are many authorities where it is held that a treaty may convey to a grantee a good title to such lands without an act of Congress conferring it, and that Congress has no constitutional power to settle or interfere with rights under treaties, except in cases purely political." *Id.* at 247.

In *Jones v. Meehan*, 175 U.S. 1 (1899), the Court said that "[t]he title to the strip of land in controversy" had been "granted by the United States to the elder chief Moose Dung by the treaty itself. . . . *Id.* at 32. The Court also stated as follows: "It is well settled that a good title to parts of the lands of an Indian tribe may be granted to individuals by a treaty between the United States and the tribe, without any act of Congress, or any patent from the Executive authority of the United States." *Id.* at 10.

It may be worth pointing out that in a number of cases, occasionally cited for the purpose of showing that the disposal power is unlimited, the Court discussed the scope of the disposal power in the context of federal power versus states rights; no treaties were involved. See, e.g., *Alabama v. Texas*, 347 U.S. 272 (1954); *Wisconsin Central Railroad Company v. Price County*, 133 U.S. 496 (1890).

While additional cases are cited on each side of the question, the Committee sees little merit in attempting to weigh dicta against dicta. The short of it is that the Court has never struck down a treaty for disposing of governmental property; that it has, over the years, had before it a number of treaties which did so; and that there is no reason to assume that *Holden v. Joy*, *supra*, and *Jones v. Meehan*, *supra*, do not represent the Court's thinking.

Historical Precedent

As the Committee has noted in the past, it does not believe that a constitutionally questionable practice, by mere repetition, becomes more constitutional, S. Rept. 94-605, January 30, 1975 (94th Congress, 2nd Session) at 15. The Constitution is not amended by violation; express prohibitions and requirements, such as those contained in the declaration-of-war clause, the treaty clause, and the disposal-of-property clause, are not expunged through non-observance. Nonetheless, historical precedent can be useful for corroborative purposes—not to show what the Constitution has become or what it should be, but rather as evidence that a given construction of that document is grounded on experience as well as logic. It is for that at purpose that the Committee notes the following instances in which property belonging to the United States Government has, according to the Executive Branch, been transferred by treaty.

[Supplied by Department of State]

The following list includes treaties which are couched in self-executing terms and transfer territory or property belonging to the United States to other nations or (in the case of Indian treaties) to specific individuals without prior Congressional act authorizing such transfer.

A. Treaties With Indian Tribes

1. An example of a treaty with an Indian tribe providing for the transfer to the tribe of title to lands belonging to the United States without prior Congressional authorization is the treaty with the Cherokee Nation of December 29, 1835.
2. An example of a treaty with an Indian tribe conveying land to an Indian individual without act of Congress is the treaty with the Chippewa Indians of October 2, 1863.

B. Treaties with Foreign Nations¹

1. Treaty between the United States and Spain, February 22, 1819 (12 Bevans 528).
2. Treaty between the United States and Great Britain, August 9, 1842 (Webster-Ashburton Treaty) (12 Bevans 82).
3. Treaty between the United States and Great Britain, June 15, 1846 (Oregon Boundaries) (11 Bevans 95).
4. Treaty between the United States and the United Mexican States, February 1, 1933 (Rectification of the Rio Grande in El Paso-Juarez Valley) (9 Bevans 976).
5. Treaty between the United States and the United Mexican States, August 29, 1963 (Solution of the Chamizal Problem) (15 U.S.T.21).
6. Treaty between the United States and the United Mexican States, November 23, 1970 (Maintenance of the Rio Grande and Colorado River as International Boundary) (23 U.S.T.371).
7. Treaty between the United States and Honduras, November 22, 1971 (Swan Islands) (23 U.S.T.2631).
8. Treaty between the United States and Japan, June 17, 1971 (Reversion of Ryukyu and Daito Islands) (23 U.S.T. 447).²
9. Treaty between the United States and Panama, January 25, 1955 (Treaty of Mutual Understanding and Cooperation), Articles VI³ and VII (6 U.S.T.2283).

Conclusion

The Committee finds that the constitutional text, the intent of the Framers, opinions of the Supreme Court, and historical precedent all suggest that the Panama Canal Treaty can validly transfer to Panama property belonging to the United States without a need for implementing legislation. This conclusion is in full accord with the opinion of the Attorney General that "[t]erritory or property belonging to the United States may be disposed of by action of the President and the Senate under the treaty clause."—Op. Atty. Gen.—(1977); see hearings, part 1, pp. 199-203.

¹ In some cases the transfers effected by the treaty required appropriations of funds by Congress to clear title.

² The treaty provisions are drafted in self-executing language. Some property may have been transferred in reliance in 40 USC 511 and 512.

³ Effectiveness of Article VI was postponed until withdrawal from certain sections in the City of Colon, but the Memorandum of Understandings attached to the Treaty recognized that the transfers subject to legislative authorization were "in addition * * * to the transfer of real property affected by Article VI of the Treaty."

(2) SOVEREIGNTY

Much confusion has surrounded the illusive concept of sovereignty and the issue of what sovereign interests the United States possesses in the Canal Zone. Whatever the term implies, and whatever such interests the United States holds, it seems clear that the phrase "territory . . . belonging to the United States" subsumes land over which the United States exercises sovereign power, and that the disposal-of-property clause, discussed above, empowers the United States to transfer sovereignty as well as common law property rights. The Committee does not therefore believe that the issue of sovereignty—as a strictly legal matter—is relevant to the Canal debate. The United States can legally transfer its interests; the question is whether as a matter of policy it should.

To whatever extent it is relevant, it appears that the United States does not possess sovereignty over the Canal Zone. "Sovereignty," broadly defined, is the ultimate power to exercise governmental functions within a particular territory. The Committee believes, based on the terms of the 1903 and 1936 treaties with Panama and court decisions, that Panama has always maintained titular sovereignty over that territory. The United States has held certain rights to exercise certain attributes of sovereignty, but those rights are distinguishable from the underlying sovereign interest of Panama over the Canal Zone.

Article III of the 1903 Treaty with Panama provides that the United States has " . . . all the rights, power and authority within the Zone . . . which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power of authority."

In his testimony before the Committee on September 26, 1977, Ambassador Linowitz, referring to Article III of the 1903 Treaty, noted that "If we had sovereignty we would not have needed the words that we have certain rights . . . to act as if it were the sovereign." As Ambassador Bunker put it, "We have had rights, but not sovereignty."

Article III of the 1936 Treaty of Friendship and Cooperation with Panama states that the Canal Zone is "the territory of the Republic of Panama under the jurisdiction of the United States."

One oft-quoted case, cited for the proposition that the United States has somehow acquired sovereign rights, is *Wilson v. Shaw*, 204 U.S. 24 (1907). In that case, the Court said that—

" . . . it is hyper-critical to contend the title of the United States is imperfect, and that the territory described does not belong, to this nation, because of omission of some of the technical terms used in ordinary conveyances of real property."

The real question in *Wilson*, however, was not which nation possessed sovereignty but rather whether the United States had sufficient interest and authority in the Zone to expend funds for the construction of the Canal. The Supreme Court found that the grant of authority in the 1903 Treaty was sufficient. The limits of the Court's holding were pointed out by the Supreme Court of the Canal Zone that same year in *Canal Zone v. Coulson*, Canal Zone Supreme Court Reports 50 (1907), in which the defendants contended that the Court in *Wilson* had held that the Canal Zone was the territory of the United States and that therefore, the Constitution applied in the Zone. The court rejected this contention and stated as follows:

"The Supreme Court did not hold more in that case [*Wilson*] than that the United States had the use, occupation and control in perpetuity of the Canal Zone. It is apparent from an examination of the treaty that the United States is not the owner in fee of the Canal Zone, but has the use, occupation and control of the same in perpetuity so long as they comply with the terms of the treaty. . . ."

The Court went on to conclude that the rights of the United States in the Canal Zone were not such as to render the Constitution applicable.

In *Vermilya-Brown Co. Inc. v. Connel*, 335 U.S. 377 (1948), the Supreme Court was called upon to determine the status of certain United States military bases in Bermuda. The Court compared these bases to the Canal Zone, which the Court said was "admittedly territory over which we do not have sovereignty." The Court found that the ability of Congress to legislate depended not upon sovereignty, but upon control.

A variety of the other indices of sovereignty suggest that sovereignty over the Zone lies in the Government of Panama. In contrast to the sovereignty acquired by the United States through the purchases of the Louisiana Territory or Alaska, the United States did not acquire sovereignty; it acquired, under the 1903 Treaty, the use, occupation and control of the Canal Zone. This is made even more clear by the fact that the United States has made annual payments for privileges acquired in

the Canal Zone—as contrasted with territories over which this country acquired full sovereign interest. Principles of “citizenship by birth” are not applicable in the Canal Zone; a person born in the Canal Zone to parents who are not citizens of the United States would not be a U.S. citizen, as that person would be were he born in the United States, the Virgin Islands, Guam, or some other United States possession or territory. In addition, the Canal Zone is not listed by the Department of State as a territory or dependency in reports by the United States to the United Nations. Finally, the United States has allowed Panama to display its flag within the Zone, to collect income taxes within the Zone, and to exercise customs and immigration functions within the Zone.

For all these reasons: therefore, the Committee agrees with the Attorney General that “the Republic of Panama retained titular sovereignty over the Canal Zone”—although as noted above it does not regard that fact as a matter of legal consequence.

(3) RELATION TO OTHER TREATY RIGHTS AND OBLIGATIONS OF THE UNITED STATES

The Committee also has given careful consideration to the effect these treaties may have on the rights and obligations of the United States arising under other pertinent treaties, specifically, the United Nations Charter, the Charter of the Organization of American States, the Rio Treaty, and the Hay-Pauncefote Treaty of 1901. Its conclusion is that no inconsistency exists between these treaties and the two now before the Senate, for the following reasons:

U.N. Charter

Three provisions of the United Nations Charter appear relevant:

Article 2, clause 4 of the United Nations Charter provides as follows:

4. All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations.

Article 51 provides in pertinent part as follows:

Article 51

Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations, until the Security Council has taken the measures necessary to maintain international peace and security.

Article 103 of the United Nations Charter provides as follows:

Article 103

In the event of a conflict between the obligations of the members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.

As to article 2, clause 4, the Committee notes that the Joint Statement of October 14, 1977, addresses this question directly. It provides that—

Any U.S. action will be directed at insuring that the Canal shall remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

The Administration's elaboration to the Committee (p. 332, hearings, part 1) makes clear that no inconsistency exists:

A legitimate exercise of rights under the Neutrality Treaty by the United States would not, either in intent or in fact, be directed against the territorial integrity or political independence of Panama. No question of detaching territory from the sovereignty or jurisdiction of Panama would arise. Nor would the political independence of Panama be violated by measures calculated to uphold a commitment to the maintenance of the Canal's neutrality which Panama has freely assumed. A use of force in these circumstances would not be directed against the form or character or composition of the Government of Panama or any other aspect of its political independence; it would be solely directed and proportionately crafted to maintain the neutrality of the Canal. Such a use of force in support of the Canal's neutrality would be consistent with the purpose of the United Nations.

As to Article 51 of the Charter, the Committee agrees with the Executive Branch (p. 333, hearings, part 1) that—

... action by the United States in defense of its rights [under Article IV of the Neutrality Treaty] is not subject to preconditions and the United States may act until the Security Council has taken necessary measures to maintain peace.

As to Article 103, since no conflict exists between the obligations of the United States under the Panama Canal Treaties and its obligations under the United Nations Charter, the Committee sees no inconsistency.

The OAS Charter

Article 18 of the Charter of the Organization of American States, which seems particularly relevant, provides as follows:

Article 18

No State or group of States has the right to intervene, directly or indirectly, for any reason whatever in the internal or external affairs of any other State. The foregoing principle prohibits not only armed force but also any other form of interference or attempted threat against the personality of the State or against its political, economic, and cultural elements.

The Committee again concurs with the position of the Executive Branch that this provision is not inconsistent with the rights of the United States under the Neutrality Treaty. That position (P. 332, hearings, part 1) is as follows:

... Action conforming with the proposed treaty would not be interference in the internal affairs of Panama because being the subject of a treaty obligation, the matters embraced by the Neutrality Treaty are not the internal affairs of either State party to that treaty. Nor would action in implementation of Article IV be an intervention in Panama's external affairs; it would relate to Panama's external affairs in that action would be based on an international obligation of Panama. It would not, however, be "intervention" any more than reliance upon and implementation of a treaty right by one State and invocation of the corresponding treaty obligation of another ever is "intervention." Equally, performance of Article IV of the Neutrality Treaty would not be directed against the "personality of [Panama] or against its political, economic and cultural elements," but rather toward maintenance of the neutrality of the Canal.

The Rio Treaty

Article I of the Inter-American Treaty of Reciprocal Assistance (the "Rio Treaty") provides as follows:

The High Contracting Parties formally condemn war and undertake in their international relations not to resort to the threat or the use of force in any manner inconsistent with the provisions of the Charter of the United Nations or of this Treaty.

Since no use of force (as described above) would be inconsistent with the provisions of the United Nations Charter, no inconsistency exists between this article and the Neutrality Treaty.

Hay-Pauncefote Treaty

The additional question has been raised whether Article VI of the Neutrality Treaty, which relates among other things to the right to expeditious transit, would place the United States in violation of the 1901 Hay-Pauncefote Treaty with Great Britain. Article 3, paragraph 1 of that Treaty provides as follows:

1. The Canal shall be free and open to the vessels of commerce and of war of all nations observing these Rules, on terms of entire equality, so that there shall be no discrimination against any such nation, or its citizens or subjects, in respect of the conditions or charges of traffic, or otherwise. Such conditions and charges or traffic shall be just and equitable.

Inasmuch as the United States has taken the position that no third countries have acquired rights as third party beneficiaries under the Hay-Pauncefote Treaty, there thus being no third-country rights which might be abridged, the question is simply whether entry into force of the Neutrality Treaty would place the United States in violation of a treaty obligation with the United Kingdom. The Committee has been advised by the Department of State that it has consulted Her Majesty's Government concerning the relationship between these two treaties two treaties and that Her Majesty's Government "has confirmed that it agrees that the proposed Neutrality Treaty is consistent with the Hay-Pauncefote Treaty."

(4) WAR POWERS RESOLUTION

Section 8(a) (2) of the War Powers Resolution provides as follows:

"Sec. 8(a) Authority to introduce United States Armed Forces into hostilities or into situations wherein involvement in hostilities is clearly indicated by the circum-

stances shall not be inferred * * * from any treaty heretofore or hereafter ratified unless such treaty is implemented by legislation specifically authorizing the introduction of United States Armed Forces into hostilities or into such situations and stating that it is intended to constitute specific statutory authorization within the meaning of this joint resolution."

In the absence of the Joint Statement, article IV of the Neutrality Treaty, which commits the United States "to maintain the regime of neutrality established in this treaty," would appear to have committed United States to take such action—including the introduction of its Armed Forces into hostilities—as may be necessary to maintain the neutrality of the Canal. Thus, the United States would have been committed internationally to a course of action which under its domestic law it has expressly retained the right not to take.

This problem, about which a number of committee members expressed concern, was eliminated through the insertion of the Joint Statement by President Carter and President Torrijos on October 14. That statement provides that the defense of the Canal against any threat to the regime of neutrality will be carried out by each country "in accordance with their respective constitutional processes." The effect of this language is to make clear that the treaty does not obligate the United States to introduce its Armed Forces into hostilities or authorize the President to do so. It thus places the Neutrality Treaty, in terms of the "automaticity" of the United States' international commitment, in the same category as mutual defense treaties to which the United States is a party. All such treaties implicitly reserve to the United States a right of choice in each individual situation to act, militarily, as it deems appropriate under the circumstances. Any treaty which did not do so would, in the Committee's judgment, unconstitutionally divest the House of Representatives of its share of the warmaking power and would, unconstitutionally, delegate to the President the power to place the United States at war. The amendment recommended by the Committee to article IV would obviate these difficulties by rendering the United States' commitment non-automatic, as is the commitment under article IV of the Panama Canal Treaty.

(5) MISCELLANEOUS LEGAL MATTERS

Third-party rights

The question has arisen whether third countries will derive rights under the treaties either through accession (to the Protocol to the Neutrality Treaty) or through the creation of third party beneficiaries.

The Committee concurs with the Executive Branch that no such rights are created in third countries. Customary international law requires that the parties to a treaty *intend* to accord a right to a third state before a right is created. "Nothing in either treaty evidences such an intent," according to the Department of State. "In fact, it was the clear intent of both parties that no third party rights be conferred." Letter of Herbert J. Hansell, Legal Adviser, Department of State, to Michael J. Glennon, Legal Counsel, Committee on Foreign Relations, January 26, 1978 (hearings, part 5).

Status of Forces Agreements

The Committee wishes to make clear that the Agreements in Implementation of Articles III and IV of the Panama Canal Treaty will be entered into pursuant to the authority of that treaty, and not pursuant to the President's constitutional authority. The Committee is pleased to note that the Department of State does not claim "inherent" authority on the part of the President to conclude these agreements. Letter to Herbert J. Hansell, *supra*.

C. Economic Considerations

In response to the Committee's request of January 20, 1978, for additional economic and financial data, the State Department provided the following information on February 3, 1978.

DEPARTMENT OF STATE,
February 3, 1978.

Hon. JOHN SPARKMAN,
Chairman, Committee on Foreign Relations, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Attached to this letter you will find some additional economic and financial data concerning the operation of the Panama Canal. We are

supplying this data in response to the request made by the Committee as a result of the hearing held on January 20, 1978.

We hope that this material helps to clarify some of the questions which arose during the hearing and stand ready to supply any additional information the Committee may need.

Sincerely yours,

DOUGLAS J. BENNETT, Jr.,
Assistant Secretary of State
for Congressional Relations.

ECONOMIC AND FINANCIAL IMPLICATIONS OF THE NEW PANAMA CANAL TREATIES

This paper summarizes research on the ability of the Panama Canal to be operationally self-sustaining until the end of the century and examines the implications of the Panama Canal Treaty on domestic and world commerce.

Research performed by the U.S. treaty negotiating team, by independent consultants and by various U.S. Government departments indicates that:

1. The Canal enterprise can generate sufficient revenue under the basic treaty to cover all its costs.
2. Opportunities for toll increases substantially exceed the revenues which will be required.
3. Cost savings opportunities are substantial.
4. The impact of likely toll increases on domestic and world commerce will be minimal, if not negligible.

CAN THE CANAL PRODUCE SUFFICIENT REVENUE UNDER THE NEW TREATY TO COVER COSTS?

Since 1915 toll revenues have risen from \$4 million to \$165 million in fiscal year 1977. At current toll levels they will increase to \$210 million in 1985 and to \$224 million in 1990. With a modest 25 percent toll increase, revenues would increase to \$251 million in 1985 and to \$268 million in 1990.

At the same time various estimates have been made of the Panama Canal Commission's operating costs. An exhaustive study on Panama Commission cost projects has just been prepared by Arthur Anderson & Company for the 1979-83 period. These projections conclude that Canal costs, including payments to Panama and including an inflation factor, will range between \$241 million and \$249 million in 1979 to between \$237 million and \$262 million in 1983.

The most significant impact of the new Treaties on future Canal financial operations will be the several annual payments to Panama which will be funded out of Canal operating revenues as operating Canal expenditures of the new Panama Canal Commission.

Article XIII of the Treaty specifies three annual payments to Panama from Canal revenues as an equitable return to Panama on the national resources it has provided the Canal. The first payment is calculated on the basis of 30 cents per Panama Canal ton for each vessel transiting the Canal. Five years after the Treaty goes into effect, this payment will be adjusted every two years to reflect changes in the wholesale price index. This payment should cost the Panama Canal Commission about \$45 million in fiscal year 1979. This payment is a direct result of Canal traffic and would not, of course, be paid if the Canal were not operating.

The Panama Canal Commission will also pay Panama a fixed annuity of \$10 million out of Canal operating revenues. This payment is a fixed expense of the Company and is not a function of traffic.

The Commission will also pay Panama a third annuity of up to \$10 million only to the extent the Commission has a surplus. Should the Canal's revenues not produce a surplus sufficient to cover this contingent payment, the unpaid balance would be paid from future year surpluses.

Any unpaid balance remaining at the expiration of the Treaty would not represent a liability to the United States. Since this payment is only a contingent obligation, the Panama Canal Commission is not required to reflect it in its budget or the toll base.

In addition, Article III of the Treaty which is discussed in greater detail below requires an annual payment of \$10 million for specified public services furnished by Panama in Commission operating and housing areas. This reimbursement is for public services which currently cost the U.S. Government approximately \$18 million to perform.

Governor Parfitt, speaking for the Panama Canal Company, has suggested that an initial toll increase of 19.6 percent over existing rates would be required to meet these costs. However, the Governor pointed out a similar toll increase would be necessary by 1981 even without the treaties. American Management Services Com-

mission has suggested an initial toll increase of 25 percent. The State Department in its initial estimates and testimony had suggested a toll increase in the neighborhood of 30 to 40 percent which subsequent study indicates was excessively conservative.

A study on Canal traffic and revenue forecasts recently completed by International Research Associates offers estimates that are more optimistic than those developed by our negotiating staff during the actual treaty negotiations. The study concludes that:

(a) Tolls could be increased up to slightly over 100 percent before revenues would begin to decline.

(b) Toll rate increases ranging from 15 percent to 50 percent would result in losses of traffic, on a tonnage basis, ranging from 2.4 percent for a 15 percent increase to 11.8 percent for a 50 percent increase.

Various studies concur in the finding that an initial toll increase is well within the ability of the Canal to generate revenue through tolls.

This was our judgment during the negotiations. It is a judgment which has been supported by all subsequent analyses with which we are familiar, including the IRA study, a study of Commission costs by Arthur Anderson, and the findings of the Armed Services Committee consultant whose report was issued by the Armed Services Committee on February 1.

WHAT COST SAVINGS WILL BE EFFECTED?

Since 1951, the Panama Canal Company has been administered as a self-sustaining U.S. Government corporation. Currently, in addition to the Canal, annual costs funded by Canal revenues include the Canal Zone Government, Canal Company retail and commercial operations, an "interest" payment to the Treasury of \$18 to \$20 \$500,000 of the \$2.3 million annuity paid to Panama under the 1903 treaty.

In addition to the requirement to provide payments to Panama, the cost structure of the Panama Canal operation will be changed significantly by the new treaty.

The costs of the Canal Zone Government (about \$25 million per year) will disappear after a 30 month transition period. In addition, all commercial and retail facilities will no longer be part of the Canal operation. Costs of providing schools and hospitals for Canal Zone employees will be reimbursed from toll revenues, as is now the case.

The new treaty provides that the Commission pay Panama \$10 million per year in return for public services provided by Panama in the Canal operating and housing areas. This cost will be in contrast to the costs currently paid of approximately \$18 million.

The Executive Branch will specifically recommend to Congress that the legislation organizing the Panama Canal Commission not charge it with an annual "interest" payment to the Treasury of \$18 to \$20 million. Congress, however, can decide to include an interest payment in the cost base to be covered by increased tolls. The Congress should recognize that it has always been the policy of the United States to operate the Canal as a public service and that this interest charge is in some ways a departure from this concept.

Beyond these cost savings, American Management Services has reviewed planning budgets for the Panama Canal operation and has considered reductions proposed in connection with the reduced scope of activity of the Panama Canal Commission versus the Panama Canal Company. The American Management Study reported that cost reductions, even larger than those envisioned by the Company, could be made.

WHAT WILL BE THE IMPACT OF THE TREATIES ON DOMESTIC AND WORLD COMMERCE?

Since 1914, the Panama Canal has served world commerce as an important transportation route. Canal traffic has risen from 5 million Panama tons in 1915 to 123 million Panama Canal tons in fiscal year 1977. The IRA study indicates that traffic will further increase to 201.9 million tons by the year 2000.

Canal toll rates, however, have remained at low levels. They have changed very little over the years despite mammoth price changes for just about everything else. In 1914, tolls were set at \$1.20 per laden Panama Canal ton, and changed to 90 cents per laden ton in 1937. Since 1974, there have been increases in toll rates of 50 percent. Tolls today are set at \$1.29 per laden ton.

A toll increase of 20 to 30 percent over existing levels will have a minimum, if not negligible, impact on our trade and economy. A toll increase of about 30 percent will involve a transportation cost increase of less than one percent. Users of the Canal would pay only about \$50 million more in tolls per year on cargoes that have a value in excess of roughly \$50 billion, or one-tenth of one percent. In most instances,

it will be the foreign buyer of U.S. commodities transiting the Canal who is the ultimate payer of Canal tolls and not the seller or shipper. Therefore, of the \$50 million, U.S. businesses and consumers will be the ultimate payers of only about \$15 million. The overall impact of this on a \$1.7 trillion economy is negligible on either our business or the purchasing power of the consumer.

Obviously, there are uncertainties with respect to Panama Canal traffic and revenue, especially after 1990. The same is true of any projection of world or national economic conditions. These uncertainties would exist whether or not we undertake a new treaty relationship with Panama. The new treaty will provide a stable environment, while the alternative of continuing the present relationship could almost certainly involve greater costs and uncertainty for shippers.

Sea level canal provision and related issues

The size of ships which can transit the Panama Canal is limited by the capacity of the three sets of locks. Maximum size of ships is approximately 975 feet in length; 106 feet in width; with a 40 feet draft and a weight of 65,000 dead weight tons. The locks are filed by gravity flow and each transit through the Canal requires 52 million gallons of water.

Approximately 2,000 commercial vessels, primarily bulk cargo carriers and tankers, and 13 U.S. naval vessels are too large to transit the Canal. The Department of Transportation expects the number of commercial vessels too large to transit the Canal to increase. In addition, the Tokyo Bay class of ships may not be able to transit the Canal fully loaded according to DOT, and the transit time is longer for such large ships. The report of the Atlantic-Pacific Interoceanic Canal Study Commission stated that by the year 2000, 6 percent of bulk cargo carriers and 23 percent of tankers will be over 100,000 dead weight tons, and thus will be too large to transit the Canal. By 2040, the number of bulk carriers in excess of 100,000 DWT. will be 15 percent and 70 percent of all tankers will be too large to use the present Canal.

The increase in the size of ships indicates a potential need to increase the capacity of the Canal. Two major methods of increasing Canal capacity, a sea level canal or a third lane of larger locks for the Panama Canal, were considered by the Atlantic-Pacific Inter-Oceanic Canal Commission.

Article XII of the Panama Canal Treaty

In article XII of the proposed Panama Canal Treaty, the U.S. and Panama recognize that a sea level canal may be necessary in the future. The U.S. and Panama commit themselves to study jointly the need for and feasibility of a new sea level canal. Should a sea level canal in Panama be found desirable, the Parties will negotiate terms for its construction. Article XII also gives the U.S. the right to construct a third lane of locks at any time during the life of the Treaty if Panama is provided with a set of the plans.

Article XII, paragraph 2 contains restrictions on both the United States and Panama with respect to the construction of a sea level canal. Under paragraph 2(a), the United States has the sole authority to build a sea level canal in Panama until the year 2000, and the U.S. would have to agree to waive this option before a third nation could construct a canal. In exchange for this option, the U.S. agreed to paragraph 2(b) which will prevent the U.S. from concluding an agreement to construct a sea level canal any place else in the Western Hemisphere without the agreement of Panama until the year 2000.

The United States requested that the provisions of article XII, paragraph 2(a) be included because the construction and control of a sea level canal in Panama by a third nation could be detrimental to our national security and economic well-being. The Committee considered this question carefully and determined that this provision was a major benefit to the United States. Accordingly, the Committee decided to recommend strongly against adoption of an amendment to delete this important provision.

In arriving at its conclusion, the Committee determined that despite some questions about the terminology of paragraph 2(a), that the provisions of this subparagraph do form a binding commitment on the Republic of Panama. Panama commits itself not to allow the construction of a sea level canal by a third nation or consortium of nations unless the United States agrees to such action.

The language of paragraph 2(a) does differ from that of paragraph 2(b) and it has been contended that the restriction on Panama is less specific than that on the United States. Paragraph 2(a) states that no new interoceanic canal can be constructed in Panama except pursuant to the Treaty without the agreement of the

United States. This language is sufficiently binding since the preceding paragraph of article XII clearly says that the United States and Panama will jointly determine the feasibility of a sea level canal and negotiate for its construction. The provisions of paragraph 2(a) have to be read in the context of the entire article and particularly of paragraph 1 since that paragraph says that it will be the United States and Panama, and not some third party, that will negotiate for the construction of a sea level canal in Panama.

To gain this exclusive option for the United States, our negotiators found it necessary to give Panama assurance that the United States would not conclude an agreement for a sea level canal route elsewhere until the expiration of the Treaty. The Committee determined that this quid pro quo was reasonable and acceptable to the United States. In reality, the United States has gained an option important to its national security without giving up a real alternative. The Committee believes the interests of the United States are well served by this paragraph.

Since the restriction on the United States did form part of the basis of the exchange of commitments and since this exchange is beneficial to the United States, the Committee recommends that no amendment to strike out this part of article XII, paragraph 2 be adopted by the Senate.

The restriction on negotiations for a route outside Panama is not a major concession by the United States, because the preferred routes, as determined by the Inter-Oceanic Canal Commission, for a sea level canal are all located in Panama. They are:

(a) Route 10, which would be approximately 10 miles west of the present Canal and which would not interfere in the operation of the Canal; and

(b) Routes 14C and 14S, which vary only slightly, would follow generally the course of the present Canal and would, therefore, interfere in the operation of the present Canal.

Other routes that have been considered across Nicaragua, Costa Rica or Colombia would, to be economically feasible, require nuclear excavation, which is an unproven method that probably would be objectionable to the nations where the sea-level canal might be constructed. The Inter-Oceanic Canal Commission estimated that Route 10 would cost \$2.88 billion in 1970 dollars while the major Nicaraguan route would require \$11 billion using non-nuclear means. Nuclear excavation of the Nicaragua route would cost \$5 billion, but would require relocation of over 500,000 people.

In his testimony before the Committee, Colonel John P. Sheffey, who served as Executive Director of the Inter-Oceanic Canal Commission said:

"* * * I assure you that there are no foreseeable circumstances in which the United States would be likely to consider building a new Isthmian canal outside Panama. The only feasible routes are in Panama." (P. 515, part 4, SFRC Panama Canal hearings.)

Colonel Sheffey stated further:

"When we entered this study in 1965, one of our purposes was to prove that we could build a canal, a technically satisfactory canal, outside Panama because it would give us far better negotiating leverage to renegotiate our relationship with Panama.

"We spent \$22 million of the taxpayers' money in 5 years and proved only that we could not build outside Panama." (P. 521, part 4, SFRC Panama Canal hearings.)

The opinion of the Department of Transportation was expressed by Mr. Edward Scott, Assistant Secretary for Administration before the Committee on Foreign Relations on September 30, 1977, Mr. Scott said:

"* * * That Commission [The Inter-Oceanic Canal Commission] is the one which came to these conclusions, but everyone who has reviewed the work comes to the same conclusions, and I personally, and the Department [of Transportation], do not consider it a defect that the treaty commits us to building in Panama because that is the place to build and there is no question about it whatever." (P. 347, part 1, SFRC Panama Canal hearings.)

In 1914, the U.S. ratified the Bryan-Chamorro Treaty with Nicaragua which gave the U.S. an option in perpetuity to construct a canal across Nicaragua. This option in perpetuity came to be resented by Nicaraguans and the Inter-Oceanic Canal Commission recommended against a Nicaraguan route for a sea level canal in 1970. Accordingly, in 1971, the U.S. Senate by a vote of 66 to 5 gave its advice and consent to a treaty terminating the Bryan-Chamorro Treaty of 1914 and the option on a Nicaraguan route.

The third lane of locks alternative would be cheaper to construct, costing about three-fifths of a sea-level canal at Route 10. However, each transit through the Canal using the larger locks would require approximately 100 million gallons of

water and a lock canal slows transit time. The Chagres River and Gatun Lake do not have the capacity to provide the amount of water necessary for the operation of a third lane of larger locks, and water would probably have to be pumped up from the ocean to operate the locks. With the smaller locks in use at present, water is already a problem. During dry periods, the draft of vessels using the Canal is limited. Pumping such a large amount of water would be very expensive and a third lane, although cheaper to build, could be substantially more costly to operate.

The construction of a larger third lane of locks under the Deep Draft Lock Canal Plan would allow the transit of ships of approximately 150,000 deadweight tons. Such a system would enable the Canal to compete with alternative means of commercial shipping, but such a lock system still could not handle the U.S. Navy's aircraft carriers.

The Committee on Foreign Relations has not attempted to make decisions on the construction of a sea level canal, a third lane of locks or on which sea level canal route in Panama is most desirable. Such decisions would have to be made only upon extensive analysis of the complex economic and scientific issues as was done by the Inter-Oceanic Canal Commission. However, the Committee has determined, based on the 1970 Report of the Inter-Oceanic Canal Commission and the termination of our option in Nicaragua, that the consideration of alternatives should logically be confined to Panama for the period until the year 2000. The Committee believes that the proposed Panama Canal Treaty and the options it contains are sufficient to protect the interests of the United States in the alternative methods of improving inter-oceanic canal service during the life of the Treaty.

VII. COMMITTEE ACTION

President Carter, on behalf of the United States, signed the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality of the Canal on September 7, 1977, at the headquarters of the Organization of American States in Washington, D.C. The treaties and accompanying documents were transmitted to the Senate on September 16 and referred the same day to the Committee on Foreign Relations.

The Committee held public hearings on these treaties in September and October 1977 and in January 1978. During the hearing process, the Committee received testimony from more than 90 witnesses and compiled a five-part hearing record totaling some 2,500 pages. In addition, at the Committee's request the Library of Congress prepared an extensive 1700-page publication entitled, "Background Documents Relating to the Panama Canal," plus a complementary publication entitled, "Chronology of Events Relating to the Panama Canal."

The Committee's first round of hearings began the week of September 26 and lasted four days, September 26, 27, 29 and 30. During that time, the Committee heard from top Administration officials:

Monday, September 26.—

The Honorable Cyrus Vance, Secretary of State.

The Honorable Ellsworth Bunker, Ambassador at Large and Co-Negotiator, Panama Canal Treaties.

The Honorable Sol Linowitz, Co-Negotiator, Panama Canal Treaties.

Tuesday, September 27.—

The Honorable Harold Brown, Secretary of Defense.

Gen. George S. Brown, Chairman, Joint Chiefs of Staff.

Adm. Robert L. J. Long, Vice Chief of Naval Operations.

Lt. Gen. D. P. McAuliffe, Commander-in-Chief U.S. Southern Command.

Thursday, September 29.—

The Honorable Griffin B. Bell, Attorney General.

The Honorable Herbert J. Hansell, Legal Advisor Department of State.

The Honorable Clifford L. Alexander, Secretary of the Army.

Maj. Gen. H. R. Parfitt, U.S. Governor of the Canal Zone.

The Honorable William J. Jorden, U.S. Ambassador to Panama.

Friday, September 30.—

The Honorable Brock Adams, Secretary of Transportation.

The Honorable Richard N. Cooper, Under Secretary for Economic Affairs, Department of State.

The Honorable Anthony Solomon, Under Secretary for Monetary Affairs, Department of the Treasury.

Howard F. Casey, Deputy Assistant Secretary for Maritime Affairs, Maritime Administration.

On October 4 and 5, the Committee heard from 14 Members of the House and Senate who requested an opportunity to express their views on the proposed treaties. The Committee received testimony from the following Senators and Congressmen: Strom Thurmond; Ernest F. Hollings; James B. Allen; Mike Gravel; Paul Laxalt; Robert Dole; William Scott; and Jesse Helms. House Members who presented their views to the Committee were Representatives Samuel Stratton, Baltasar Corrada, John Murphy, Larry McDonald, Donald Fraser, and Robert Leggett.

Some 37 public witness and outside experts testified before the Committee during the week of October 10. Among others, the Committee heard from two former Chairmen of the Joint Chiefs of Staff, Admiral Thomas Moorer and General Maxwell Taylor, and from Admiral Elmo Zumwalt, former Chief of Naval Operations. The Committee was also honored to receive testimony in support of ratification of the proposed treaties from former Secretaries of State Dean Rusk and Henry Kissinger. A variety of other groups and organizations were heard by the Committee, including residents of the Canal Zone, experts on Latin America, labor officials, church groups and veterans' organizations. A list of all of the witnesses heard during the week of October 10 follows:

Monday, October 10.—

Adm. Thomas H. Moorer, USN-Ret.

Adm. Elmo R. Zumwalt, Jr., USN-Ret.

Gen. Maxwell Taylor, USA-Ret.

Mrs. Patricia Fulton, President, Pacific Civil Council, Canal Zone.

Mrs. Charlotte Kennedy, President, Cristobal-Margarita-Brazos Heights Civic Counsel, Canal Zone.

Mr. Harold Green, President, Gamboa Civic Council, Canal Zone.

Mr. Louis Fattorosi, Vice President, Canal Zone Federation of Teachers.

Tuesday, October 11.—

Prof. Jorge Dominguez, Center for International Affairs, Harvard University.

Dr. Abraham F. Lowenthal, The Woodrow Wilson Center.

Prof. Donald Dozer, University of California.

Prof. Lewis Tambs, Arizona State University.

Robert M. Bartell, Liberty Lobby.

Franklin Delano Lopez, Chairman, Puerto Rico Democratic Party.

Phillip Harmon, Canal Zone Non-Profit Public Information Corp.

Wednesday, October 12.—

William P. Thompson, President, National Council of Churches.

John Cardinal Krol, Archbishop of Philadelphia, on behalf of U.S. Catholic Conference.

Morris Levinson, Vice President, Synagogue Council of America.

Prof. Donald E. Miller, Church of the Brethren.

Kenneth Boehm, Young Americans for Freedom.

Mrs. (Leopoldo) Rose Marie Aragon, Mr. Richard Eisenmann, Panamanian Committee for Human Rights.

Dennis Small, U.S. Labor Party.

Thursday, October 13.—

Lane Kirkland, Secretary-Treasurer, AFL-CIO.

Martin Gerber, Vice President, United Auto Workers.

Alfred J. Graham, President, Canal Zone Central Labor Union and Metal Trades Council, AFL-CIO.

Capt. J. R. Williams, President, Panama Canal Pilots' Association, Canal Zone.

Rene C. Liocanjie, Regional Director, Central and South America, National Maritime Union, Canal Zone.

John Fred Schlafly, Chairman, Emergency Task Force on the Panama Canal, American Council for World Freedom.

Gary L. Jarmin, The American Conservative Union.

Dr. Herminto Portell-Vila, Editor, Radio Free Americas, American Security Council.

Hon. Hamilton Fish, former Congressman from New York.

Friday, October 14.—

Hon. Henry A. Kissinger, former Secretary of State.

Hon. Dean Rusk, former Secretary of State.

Robert Charles Smith, National Commander, The American Legion.

Frank D. Ruggiero, National Commander, AMVETS.

Maj. Gen. J. Milnor Roberts, USAR, Executive Director, Reserve Officers Association.

Col. Phelps Jones, USA-Ret., Veterans of Foreign Wars.

Following the release of the Statement of Understanding between President Carter and Chief of Government Omar Torrijos Herrera on October 14; co-negotiators Ellsworth Bunker and Sol Linowitz were asked to appear again before the Committee on October 19 to discuss the meaning and significance of the understanding in relation to the neutrality agreement.

On January 16, 1978, seven members of the Committee visited Panama and the Canal Zone during a two-day fact-finding mission. Chairman Sparkman led the group which included Senators Case, Church, Javits, Pell, Percy and Sarbanes. Other members of the Committee have also visited Panama in recent months. Senator McGovern visited Panama during the period December 3 to 6. Senator Pearson was there December 12 to 13 and Senator Baker, the Minority Leader, was in Panama January 3 to 7. These visits provided the Members with a first-hand opportunity to discuss the terms of the treaties with Panamanians and Americans alike, both in and out of government.

The itinerary of the Jan. 16 study mission follows:

Tuesday, January 17.—

- 0015 Arrive Tocumen International Airport.
- 0050 Arrive Holiday Inn.
- 0945 Leave Holiday Inn for Embassy.
- 1000 Country Team briefing in the Ambassador's office.
- 1100 Depart Embassy for Albrook Air Force Station (PAD).
- 1120 Overflight of Canal Zone.
- 1280 Southern Command briefing at Quarry Heights, Canal Zone.
- 1330 Depart Quarry Heights.
- 1345 Lunch with U.S. businessmen at the Union Club in Panama City.
- 1520 Depart the Union Club.
- 1545 Panama Canal Government briefing at Miraflores Locks. Brief tour of the locks.
- 1715 Depart Miraflores Locks.
- 1730 Call on Canal Zone civic and labor leaders.
- 1815 Depart Canal Zone for Holiday Inn.
- 1945 Depart hotel for Presidential Palace.
- 2000 Dinner hosted by President Demetric B. Lakas.

Wednesday, January 18.—

- 0800—Meeting with Archbishop McGrath, Bishop Shirley and Mr. De Lima.
- 0845—Meet with members of the Panamanian opposition at the Holiday Inn.
- 0945—Briefing at Holiday Inn by Minister of Planning and Economic Policy, Nicolas Ardito Barletta.
- 1045—Depart hotel for Paitilla Airport.
- 1100—Program by Panamanian Government, including lunch and discussions with Brig. Omar Torrijos at Contadora Island.
- 1530—Arrive Tocumen International Airport.
- 1630—Depart Tocumen for Washington.

The day after the study mission returned from Panama, the Committee began its final series of hearings on the treaties. These hearings took place on January 19, 20, 25 and 26. During the first three days, the Committee heard from historians, legal scholars, business associations, transportation groups, economists and a number of public witnesses.

On January 26, Senator Robert Byrd, the Majority Leader testified before the Committee.

The individuals who testified on January 19, 20 and 25 were:

January 19.—

- David McCullough, Author of: "Path Between the Seas."
- Jules Davids, School of Foreign Service, Georgetown University.
- Elting Morison, School of Humanities, Massachusetts Institute of Technology.
- Richard W. Leopold, History Department, Northwestern University.
- Richard A. Falk, Center of International Studies, Princeton University.
- Richard R. Baxter, School of Law, Harvard University.
- John Norton Moore, Center for Oceans, Law and Policy, University of Virginia.
- Covey T. Oliver, School of Law, University of Pennsylvania.

January 20.—

- Ely M. Brandes, President, International Research Associates.
- Henry Gevelin, President, Council of the Americans.
- Patrick N. Hughson, President, Association of American Chambers of Commerce in Latin America.

Donald G. Griffin, Vice President, Distribution and Transportation, PPG Industries (on behalf of Transportation Association of America).

James J. Reynolds, Director, American Institute of Merchant Shipping.
 Melvin Shore, Chairman, U.S. National Transportation Policy Committee, the American Association of Port Authorities.

Robert Corrigan on behalf of Seymour Milstein, President and Chief Executive Officer, United Brands Co.

January 25.—

Hon. Eldon Rudd, Congressman from Arizona.

Hon. William D. Rogers, Member, Committee of Americans for the Canal Treaties.

Peter V. Baugher, the Ripon Society.

Rev. Jesse L. Jackson, Operation PUSH.

Hon. Robert E. Bauman, Congressman from Maryland.

Col. John P. Sheffey, National Association for Uniformed Services.

Dr. George Fox Mott, the Mott Research Group, Washington, D.C.

Mr. Egon Richard Tausch, on behalf of U.S. Industrial Council.

Following the Majority Leader's appearance before the Committee on January 26, the Committee proceeded to begin mark-up of the treaties. Additional mark-up sessions were held on January 27 and 30. On January 30, the Committee ordered the treaties favorably reported to the Senate for its advice and consent.

The Committee acted first on the resolution of ratification to accompany the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. It approved this resolution by vote of 14-1. Voting in favor were Senators Sparkman, Church, Pell, McGovern, Clark, Biden, Glenn, Stone, Sarbanes, Case, Javits, Pearson, Percy, and Baker. Senator Griffin voted in the negative.

The Committee then acted on the resolution of ratification to accompany the Panama Canal Treaty. It approved this resolution also by a vote of 14-1. Voting in the affirmative were Senators Sparkman, Church, Pell, McGovern, Clark, Biden, Glenn, Stone, Sarbanes, Case, Javits, Pearson, Percy, and Baker. Senator Griffin voted in the negative. The Committee conditioned its approval of this resolution of ratification on Senate approval of the resolution of ratification to the Treaty Concerning the Permanent Neutrality and Operation of the Canal.

The members of the Committee wish to note at this point the strong support given to the treaties by their former esteemed colleague Senator Hubert Humphrey. Senator Humphrey was one of the first members of the Senate to announce publicly his support for the agreements. He made that announcement on September 7, 1977, the day the treaties were formally signed. The statement released by Senator Humphrey is reprinted below:

STATEMENT BY SENATOR HUMPHREY

I have followed this issue very carefully and discussed the treaties with the President by telephone. I have pledged to the President my full and active support for the treaties. An important goal of these negotiations has been the establishment of a modern and mutually acceptable treaty relationship between the United States and Panama which provides for the efficient operation of the important waterway that will continue to remain open to all of the world's shipping.

This has been the bipartisan goal for four Presidents, Johnson, Nixon, Ford, and Carter, who above all others have the responsibility for the national security of our country. The United States has lost nothing through these treaties. We have not given up anything. Clearly, no international relationship negotiated more than 70 years ago can be expected to last forever without adjustment.

In sum, the new treaties, based on partnership, give the United States the rights we need to restore the crucial ingredient of Panamanian consent and strengthens our mutual interest in a well-run and secure canal. The viability of any treaty depends on the underlying consent and shared interests of nations who are party to it.

Panama and our Latin American neighbors long have been dissatisfied with the 1903 treaty. This declining level of consent transcends any one government and now encompasses Panamanians of all strata.

There are some who claim that the proposed treaties will have an adverse effect on our security. However, the Panama Canal issue affects our relationships with other Latin American nations who view it as a test case of whether or not the United States will move into a more mature relationship with our neighbors in the Western Hemisphere.

Senate approval of the treaties will add substance and character to the good neighbor policy first enunciated by President Roosevelt.

But in my view the case is just the opposite. The 1903 treaty is viewed abroad as one-sided and anachronistic, a holdover from a colonial era which other nations have discarded.

The ability of the United States to work through this emotion-fraught issue at home through ratification of the treaties in the Senate will be viewed abroad by friend and foe alike as a sign that we can make necessary accommodations to a changing world.

In essence, a new treaty relationship based on the concept of partnership and similar to other agreements with our allies throughout the world offers a tool that will better protect our basic interests.

COMMON MISCONCEPTIONS

(Prepared by the Department of State)

1. *We are paying Panama to take the Canal.*

Most opponents agree that Panama which contributes its location (its principal resource) deserves a larger return for the use of its territory. Payments to Panama, which end in 1999, will come exclusively from Canal users through tolls—not from tax dollars. We built the Canal to use; the new treaties protect our continued use of it forever.

2. *We will lose our ability to protect the Canal.*

The treaties give us permanent authority to take any action to protect the Canal against any threat. The Joint Chiefs of Staff worked closely with our negotiators; they believe the new treaties will safeguard our defense interests for the future far better than the old treaty would.

3. *The treaties are a sellout of our global responsibilities.*

No. They show a world leader recognizing changing times and moving to better secure its interests for the future. Our principal allies—West Germany, France, Great Britain, and Japan—support the treaties.

4. *We have sovereignty now.*

No. We have never claimed sovereignty. For example, we have always treated the Zone as foreign territory for purposes of customs and mail, and children born there of non-US citizens are not US citizens. The 1903 treaty gives us rights “as if sovereign.” We give up only the “trappings of sovereignty” which we no longer need.

5. *We own the Canal Zone.*

Under the 1903 treaty we bought rights, not land, and we continue to make annual payments for these rights. The titles we have to a part of the Zone we got subsequent to the treaty from private holders, not Panama.

6. *The treaties will lead to Cuban/Soviet presence.*

An unlikely possibility since we’ll remain there until the year 2000; we’ll continue to have a permanent right to protect the Canal from *all* threats; and Panama has agreed that no foreign troops will ever be stationed there after 1999. Communism is unlikely to flourish among Panamanians unless we push them toward it.

7. *Panama is unreliable and unfriendly.*

We have close relations with Panama. For 75 years Panama has honored a treaty it has long resented as depriving it of national dignity and a fair return on its principal resource, the isthmus. Surely it is reasonable to expect that future governments will honor treaties that give Panama partnership in the enterprise and restore its dignity.

8. *Torrijos is disreputable and unreliable.*

Torrijos is controversial, but signing a treaty with him does not mean that we endorse him personally. In any case, we will operate and defend the Canal for 22 more years and it is unlikely that Torrijos will be in power then.

9. *The Torrijos government violates human rights.*

Panama is aware of our concern about some of its practices and has acted to modify some of its objectionable laws. In any event, we should treat human rights and the Canal issue separately, as does *Freedom House* which criticizes Panama’s human rights record, but supports the treaties.

10. *The Torrijos government is anti-Semitic.*

Panama’s Jewish community leaders have categorically denied the charge. There is no basis to it.

11. *Panama and Libya have agreed to make Panama a base for Arab terrorist activities in this hemisphere.*

Not so. Their agreements were routine and reflect no special relationship between the two countries. Indeed, Torrijos’ recent visit to Israel has strained relations with Libya.

12. *We should not sign any treaty with a dictatorship like the Torrijos government.*
The feeling by Panamanians of all political persuasions that the present arrangement is unfair and unjust is quite independent of the current leadership in either Washington or Panama. Panama's plebiscite shows strong public support for a treaty.

13. *We need perpetuity.*

In 1903 a permanent U.S. presence seem necessary to eradicate disease, construct and operate the canal. (The canal area was disease-ridden and still a jungle frontier.) But by 1965 this presence no longer seemed necessary in perpetuity and under the new treaties, this presence would end in the year 2000. What we still need permanently is access to the canal, and this the new treaties establish.

14. *We negotiated under duress.*

While the United States is a super power, Panama is a very small country. As President Carter has said, we consider the canal to be important, and we will take whatever action is necessary to protect it. Panama understands.

15. *Panama lacks the technical capacity to operate the canal.*

Seventy-five percent of present canal employees are Panamanians. In the 22 years before Panama takes over operation, Panamanians will receive the training and experience to operate the canal efficiently. Self-interest will give Panama the incentive to develop the needed skills.

16. *Tolls will rise precipitously.*

Experts estimate only about 30 percent. This will mean an immediate increase of about \$60 million in payments by users for goods that gross about \$40 billion in annual sales. Thus, the increase in delivered cost for most commodities would be less than one percent. The U.S. will set the tolls until 2000, and thereafter Panama's self interest in keeping traffic up will restrain any impulse to raise tolls unrealistically.

17. *The treaties are a bail-out of the New York bankers.*

Not so. Panama is a flourishing regional banking center (71 banks with \$9.7 billion in assets for customers public and private, in and out of Panama). At the start of 1977, Panama's government had a disbursed external debt of \$1.1 billion of which \$356 million was owed to U.S. banks. But Panama has never defaulted on a bank loan and there is, therefore, no reason for a "bail-out."

18. *We have abandoned the Canal work force.*

The treaty states that the Canal work force will enjoy, in general, the same terms and conditions in effect immediately prior to the treaty. In some cases, workers will have more rights than now. Employees adversely affected by the treaty will be eligible for priority job placement assistance and liberalized early retirement.

19. *We risk having access to the Canal denied to us in wartime or other national emergency.*

Not so. Panama knows that we have the right to take whatever action we deem necessary to maintain our access to the Canal. Furthermore, in emergency situations, we have the right to go to the head of the line. Panama would not want to challenge these rights, since the political and economic risks of doing so would be huge.

20. *Latin American support for Panama's control of the Canal is more appearance than substance.*

Not so. 26 Latin American countries signed the Declaration of Washington supporting the treaties. Leaders are watching our debate over the treaties very closely. The region's leading democracies who are the countries most directly concerned are Panama's strongest supporters for the treaties.

21. *Carter has broken his campaign promise never to give up the Canal.*

The President promised not to give up "effective control." Under the treaties we will operate the Canal in this century and will have the permanent right to keep it open in accordance with the terms of the neutrality treaty.

22. *The Senate should not ratify a treaty opposed by the American people.*

Many people who oppose the treaties simply do not understand them. Polls indicate this. Our job is to present a full explanation so that a reasoned and informed judgment can be made of whether the treaties are in our national interest.

23. *We cannot protect the canal without retaining our full rights in the Zone.*

Not so. Defense of the status quo would lead almost certainly to significant problems. On the other hand, relinquishing what we do not need reduces the likelihood of the need for force, gains Panama's cooperation in canal defense, provides us all the facilities we need until the year 2000, and, finally, gives us the right to defend the canal's neutrality permanently.

24. *The new treaty with Panama will not last.*

Panama has a good record of abiding by its treaty obligations, including those under the present treaty. I would rather take my chances with a treaty supported by two out of three Panamanians in 1977 than a treaty signed more than 70 years ago by a Frenchman which is now and has been universally opposed by Panamanians.

25. *The treaty goes too far in trying to satisfy Panama.*

Perpetuity and U.S. jurisdiction over the Canal Zone are the key objections by Panama and other nations to the existing relationship. No new treaty would be possible without elimination of these aspects of the existing relationship. In a tough negotiation, neither side gets all it might like, but these treaties contain every element needed to obtain our objective of permanent access to an efficiently operated and secure Canal.

Mr. CASE addressed the Chair.

The PRESIDING OFFICER (Mr. Moynihan). The Senator from New Jersey.

Mr. CASE. Mr. President, our chairman, the Senator from Alabama (Mr. Sparkman), has presented in a very fine and complete way the major considerations relating to this issue, and I shall not take the time of my colleagues to hear me beat the same straw.

We may have to deal with the problem in a somewhat repetitious fashion in connection with amendments, but there will be time enough to do that.

Obviously, we are beginning today a prolonged and perhaps even extended debate about these two canal treaties, although I was more than happy and not surprised to hear the Senator from Alabama (Mr. Allen) state that he had no intention to filibuster. I have not heard of anybody who is. But if I am mistaken, we will have to deal with the matter as it comes up.

Certainly, it presents a controversy, I think one of the most intense foreign policy disputes we have had in this country since the Vietnam war. It does go to the heart of our image as a nation—our image both in our own eyes and in the eyes of the rest of the world.

Of course, it touches on our memories: The pride that we all had and have and always will have in the magnificent engineering achievement in finishing a task that the French could not complete, in the days when we worked our will, and in the popular memory of Americans everywhere when we were not being "pushed around by tinhorn dictators."

I did not live in those times. Well, I did, in a way. I was born in 1904, and the actions were still fresh in the minds of the people of this country. Certainly, they were fresh in the minds of my family. I do not think Teddy Roosevelt ever had a more devout admirer than my father, who was a minister of the Dutch Reformed Church to which President Roosevelt had allegiance.

I recall that, in many ways, my father followed the President's example and his precepts. We had six children in our family. That was one of the precepts that I think President Roosevelt suggested was good for good Americans to follow.

These treaties do touch on themes that stir our memories. I recall that my own response to the canal goes back to 1921, when, as an ordinary seaman, in my freshman year, on vacation from college, I went through the canal on a lumber boat from New York, the old Bush Terminal, up to Vancouver. I recall the great thrill that one feels, after a couple of weeks of sailing and seeing nothing, to see the canal, with the American flag flying over it. It is a

very striking and touching thing. I do not in any way belittle feelings of that sort that people have. I think they are good feelings.

Little did I think, when I went through the canal that first time, or later as a tourist, that it was going to stir such a controversy in my lifetime. I just thought it was a fixed thing; it was ours. I understand that feeling.

Yet, nostalgia is not the most useful framework through which to view the treaties.

At the same time, we who support the treaties as well as those who oppose them should take into account the psychological aspects of this dispute. It would be a mistake for those of us who support the treaties to dismiss the opposition—I do not think any of us really do—as emotionalism or some sort of outdated chauvinism.

My office, as I am sure every other office in the Senate, has had thousands of letters and postcards and telegrams, communications of all sorts, from those who oppose the treaties. Some of that is organized, admittedly. Some of it may be ill-informed. In fact, the barrage started even before the treaties were signed and published. But the concern cannot be dismissed on any grounds such as that. There are real and deep concerns beneath the opposition, and they should be addressed.

The Foreign Relations Committee, as our chairman has told the Senate, held extensive hearings here, and a number of us made trips to Panama. We have been criticized as doing this a little too often. I do not think that criticism is very well justified. I would much prefer not having taken the 2 or 3 days we did take to go down there. It would have been much more pleasurable to stay home. The companionship of my colleagues is most enjoyable, but I had many other things to do. However, those trips were useful and they sharpened many points in my mind that helped me arrive at a conclusion.

There is the question of concern not related to specific provisions of the treaty—rather, the general idea of giving up this piece of America, as many people have come to feel about it—I am not talking technically about sovereignty now. I am just talking about our returning the zone to Panama and turning the canal over to Panama. I think that many people subconsciously feel it is another evidence that America is withdrawing from the world and that this is a very important factor in the trauma that the canal controversy has dealt us.

Mr. CHURCH. Mr. President, will the Senator yield on that point?

Mr. CASE. I yield.

The PRESIDING OFFICER. The Senator from Idaho. (Mr. Church).

Mr. CHURCH. Mr. President, I think that the able Senator from New Jersey has touched upon the keystone of much of the passionate reaction that typifies much of the mail in opposition to the treaties, when he says that a new arrangement over the future operation and control of the canal, as contemplated under these treaties with Panama, is viewed as a kind of retreat or withdrawal on the part of the United States.

I could not agree with him more because my mail reflects this same feeling, and I am sure that this has been the common experi-

ence of all Members of the Senate. Yet I find it curious. I remember at the end of the Second World War it was the United States that first proposed to grant independence to the people of the Philippines. No one at that time suggested that this was a serious withdrawal or retreat on the part of the United States from the Western Pacific, even though the resources of the Philippines were massive by comparison to those of Panama. It was not viewed as an act of weakness or retreat, but rather as the act of a self-confident nation which still believed in its own traditions.

We granted the people of the Philippines their independence because we recognized that they had the right to govern themselves, even as we had claimed that right against George III 200 years ago in the American Revolution.

Then I recall some years later when the United States decided by treaty to return jurisdiction of Okinawa to the Japanese. There was no hue and cry about withdrawal or defeat when that treaty was brought before us for ratification, even though we had fought and bled for Okinawa in the Second World War and the sacrifice had been great, even though American control over Okinawa could not have been successfully contested by any exertion of power directed against us, for we dominated the whole of the Pacific.

Strangely, no one complained at that time that this was an act of weakness on the part of the United States. Rather it was just the opposite. Everyone seemed to recognize then that it took a strong, just, self-confident country to recognize that the people of Okinawa, being, of Japanese origin, wishing to live again as a part of their own homeland, were entitled to that new arrangement.

MR. CASE. Mr. President, will the Senator permit an interruption?

THE PRESIDING OFFICER. The Senator from New Jersey (Mr. Case).

MR. CASE. I yield to my eloquent friend for as long as he wants to talk at any time. But I did want to point this out: That there was this difference, and that is at Okinawa we just finished a victorious war.

MR. CHURCH. Yes.

MR. CASE. We did not need to be reassuring ourselves about our strength, our will, our determination, or our position as a world leader. We had established that. And it is always a little easier to be generous when you are self-confident.

The history since and including Vietnam has been quite different, at least so it seems to many people, and that is why I think they regard this as another step in withdrawal from a position of world power and a shrinking of America which they are deeply concerned about. That is the main difference.

MR. CHURCH. Yes; I fully concur with the Senator because this action comes after the termination of the misbegotten policy in Southeast Asia, and the general psychology in the country is different now than it was then. Nevertheless, I think it is important to remind ourselves that recognizing the aspirations of the Panamanian people in these treaties is similar to what we did in the case of the Philippines and in the case of Okinawa. Back in those days the people of the United States upheld the decisions that we made in granting independence to the Philippines and in restoring Oki-

nawa to the Japanese as assertions of a self-confident nation and as acts which were consistent with our traditional principles.

Now, my question to the able Senator from New Mexico, the ranking member of the Foreign Relations Committee, is this.

Mr. CASE. New Jersey.

Mr. CHURCH. New Jersey; I am sorry.

Mr. CASE. I have that trouble with Senator Domenici, too.

Mr. CHURCH. The distinguished Senator is quite capable of representing two States, or three.

Mr. CASE. I thank the Senator. I hope that the citizens of my State and the voters will agree with his assessment come November.

Mr. CHURCH. The question that I would put to the distinguished Senator from New Jersey and the ranking Republican member of the Foreign Relations Committee is this: Are we not undertaking, in essence, to do the same for Panama as we previously did for the people of Okinawa and the people of the Philippines by putting an end to a canal zone which is 10 miles wide and 40 miles long that crosses the waist of Panama, the middle of that little country, in which we exercise, in effect, the rights of sovereignty, where American law and American jurisdiction is total? Do you not agree that the aspirations of the Panamanians, with respect to the restoration of the land as a part of their own country does not differ in character from the aspirations of the people of the Philippines and of the people of Okinawa when they asked for their independence in the one case and their restoration to their own homeland in the other, be acknowledged and conferred by the United States?

The PRESIDING OFFICER. The Senator from New Jersey (Mr. Case).

Mr. CASE. The Senator from New Jersey responds: I do. I do most heartily agree with the Senator from Idaho.

This is as far as we are concerned in the same vein. Our action is in the same line of thought and principle as our action taken there, and it is the right thing to do. It is the right thing to do because of the Panamanians, and it is the right thing to do because of the United States. We are not giving up anything that we have a secure hold on. We may be giving up some things that are illusions of security. But we are not losing our security. In fact, we are increasing it. So, on both grounds of idealism and of pragmatism, this is the right thing to do for the United States at this time. And one does not have to go into the history of our involvement from the beginning with a consideration of a canal at that general area has gone on for more than a century and a half I think. All of the actions that we have taken perhaps are actions that we might not be very proud of having spread out in the public view again, although most everybody knows about what happened in those days.

But we do not have to upbraid ourselves for what went on in the past to justify our getting out now.

It is in our present interest to do this. We will, by this action, in my view, have a much more secure hold on the right of transit through the canal for our vessels in time of war and in time of peace than if we attempted to hold on under anything like the present arrangements.

This is the way the Senate should be looking at the matter. I take it we are here to express the best in America. But I do not think we are necessarily here to give away America, and the Senator would agree to that, I am sure. Nor do we regard this as any such thing. We are here to preserve the right of transit for Americans and the rest of the world, both in peace and for us in war, with the right of going to the head of the line, which the Senator and I have insisted on from the beginning.

On our first day of hearings, when Secretary Vance was testifying before us, he made the point, under our questioning, that these treaties provide for that. The issue aroused, of course, some concern and some statements made in Panama required clarification. Our committee made the claim that we would have to have that clarification, and it came about, through the joint statement of the President and General Torrijos, which we recommend and which undoubtedly will be incorporated into the treaty as two parts amendments under the leadership of our majority and minority leaders.

This is an affirmative action—and affirmative action in the interests of this country and in the interests of all that is good in our relations with the rest of the world, including Panama and Latin America especially.

I do not berate the concerns that people have had about this as a possible expression or symbol of withdrawal, but that is not the way to look at it. It is not a withdrawal from anything that we have. It is not submitting to blackmail. A person takes precautions against catching a cold by dressing himself warmly in the winter-time. That is not submitting to blackmail from winter "coming down from the frozen north, driving his iron chariot forth."

This is just commonsense. It is just commonsense.

MR. CHURCH. Mr. President, will the Senator yield?

MR. CASE. I am happy to yield to the distinguished Senator from Idaho.

THE PRESIDING OFFICER (Mr. Moynihan). The Senator from Idaho (Mr. Church).

MR. CHURCH. Mr. President, our distinguished colleague, Senator Case, places these treaties in the right context. He emphasizes that we should look to the future, not the past. He emphasizes that the American interest is in the maintenance of a canal in Panama as a neutral, safe, and open passageway for our use and the use of other nations in the years ahead.

We have recommended, as a committee, that the Senate adopt an amendment that will eliminate any question as to the interpretation to be placed upon the provisions of the neutrality treaty with respect to the right of American ships to transit the canal at the head of the line in any case of future emergency or national need. That is one vital interest of the United States which will be clearly preserved if the Senate adopts the amendment we have recommended.

The second amendment to which the Senator has referred relates to the unilateral right of the United States, if necessary, even after the end of the century, to intervene for the purpose of protecting the canal against any threat that might affect its neutrality; and

again the committee has asked the Senate to write that provision explicitly into the treaties.

If the Senate acts as I anticipate it will, and adopts both of these recommended amendments, I can support the amended treaties with full confidence that they will serve the best interests of the United States in the years ahead. If the treaties are not so amended, there is a possibility of ambiguity in the future that would concern me sufficiently that I would have to cast my votes against the ratification of these two treaties.

But when the Senator from New Jersey looked back to the early days and said that what we did then is a part of the past, and we must now address ourselves to the interests of our country in the future, he underscored for me a point that I think needs to be emphasized in this debate.

Back in 1903, this was a very different world. Half a dozen major powers controlled the whole world. There was a single empire, the British Empire, upon which the Sun never set, exercising its jurisdiction over one-third of the land area of the globe. Half a dozen imperial powers maintained colonies in Africa, in South America, and in Asia, and dominated the whole world.

In the 75 years that have followed, we have seen the most extraordinary transformation. The empires have melted away like so many icebergs in the spring. A hundred new independent governments have been established where colonies once existed. The Suez Canal, once controlled by foreign interests, has been restored to Egypt.

There is no way to preserve the past, no matter how nostalgically we might cling to it. The interests of the United States will be protected through a new arrangement with Panama which reflects the realities of the present. And even as our own national pride naturally is identified with the heroic achievements of the earlier years, when we managed to construct a canal that at the time was the greatest single engineering undertaking in history, even though we may still think of the Panama Canal in terms of our conquest of malaria and yellow fever, and Teddy Roosevelt and the White Fleet and the Big Stick, those are days that related to a period of empire, when great nations did as they pleased, with little hindrance. Those memories have nothing whatever to do with the realities of 1978.

Therefore, I now suggest, Mr. President, that retaining American jurisdiction over a canal zone in a little country where we assert all the prerogatives of a colonial power is an anachronism which the world no longer accepts, and which the Panamanians cannot accept. For us to persist in this claim upon a little country would be to invite recrimination, hostility, and resentment that will extend far beyond Panama, and will affect our relations with all of the other republics of South America throughout the Hemisphere.

Mr. CASE. The Senator is so right. I am so grateful to him for his intervention. He may intervene any time.

Mr. CHURCH. I really apologize for having taken so much of the Senator's time.

Mr. CASE. I did not mind. I said to intervene and that is what I meant. It is a great compliment to the Senator from New Jersey to have the intervention of his colleague from Idaho. This will go

down in history as one of the best speeches I ever made because of the intervention of my colleague, the Senator from Idaho.

Mr. President, I should like to point out that it is not just us soft-headed liberals that think this way. A fairly tough guy, General Brown, Chairman of the Joint Chiefs, expressed himself very simply and eloquently on the matter in our hearings. He said:

I think to describe the United States with this action as proof that the United States is a paper tiger is absolutely wrong. I think, rather than that, it shows the United States to be enlightened. I think it shows the United States to be determined to live in the world today and not in the world of yesterday. I think it shows that we profit by the experience of the Portuguese in Angola and Mozambique, the French in Algeria and Indochina, and ourselves in the Philippines.

As my friend from Idaho pointed out, in Okinawa, too.
Returning to the general, he said:

We left the Philippines for the same reasons that I think we should renegotiate these. It is in recognition of the importance of the Panama Canal that I feel we should do this because we would then be guaranteed, I think, of a better opportunity and guarantee in the future of the use of the canal.

And former Secretary Kissinger, who was before us at the same time, and who is a fairly tough guy, said:

I recognize the deep feeling of many Americans who wish, after the Vietnam tragedy, to see an end to yielding and retreat by the United States. No one can appreciate such concerns better than one who strove for an honorable outcome during the Vietnam period.

He spoke with particular poignancy on that point:

But the Canal is not the issue to select to demonstrate that we remain strong and resolute. Panama is the smallest and weakest of nations. We are not "giving" the Canal to Panama; we are, rather, ensuring our ability to protect it. By taking constructive action now to revise our relationship with Panama in an atmosphere free of physical pressure, while we are still able objectively to assess the long term risks and benefits, we will be demonstrating fundamental strength, not weakness. It is just this ability to distinguish between symbol and reality, to plan for future needs and to take timely action to advance our basic interests, that is the essence of a strong and effective world policy.

Mr. President, those are very, very true words and very wise words. I should like, I think, to conclude this initial statement of my views with them.

I ask unanimous consent, also, that certain additional remarks be printed as part of my statement for purposes of the Record.

There being no objection, the additional statement was ordered to be printed in the Record, as follows:

ADDITIONAL STATEMENT BY SENATOR CASE

There are two major points which are being resolved with the leaderships amendments.

They are: one, the right of the U.S. to send troops to defend the Canal after the year 2000 when U.S. forces are to be finally withdrawn, and two, the right of the U.S. Navy to expeditious passage through the Canal in an emergency by going to the head of the line. As a result of the questioning during the hearings and agreements obtained when Senate foreign relations Committee members met Panamanian leaders, the Committee recommended that the treaties be amended to clarify and guarantee these rights. The language was taken from the joint Statement of Understanding agreed to by the United States and Panama on October 14, 1977. That statement was widely disseminated in Panama before the October 23 plebescite in which Panamanian voters approved the treaties. Thus a new plebescite is not necessary.

There is a third key article in the treaties as originally submitted to the Senate last September. In effect, Article V of the neutrality treaty prohibits Panama from

allowing Cuban or Soviet troops on its territory after the year 2000 when the existing American presence is phased out.

These new provisions, absent in the 1903 treaty, strengthen the long range protection of our overall national security interests.

This was a focal point during the hearings and the trip to Panama was helpful in getting a first-hand appraisal.

The Panama Canal Zone—a ten mile wide strip—is an American enclave which cuts Panama in two—a fact that many Panamanians resent. As discussed in briefings there with Lt. Gen. D. D. McAuliffe commander of the U.S. Southern Command, the thick jungle and hilly terrain along the Canal could make it easy for guerrillas to fire at ships, thus interrupting or halting effective use of the Canal without even trying to damage its vulnerable locks and support facilities. There is a concern that the U.S. would have to deal with terrorism and jungle war—which the Pentagon estimates could tie up 100,000 men for years—if the nationalism and anti-Americanism in Panama and other Latin American countries burst into leftist extremism in a reaction against rejection of new treaties.

Considering these possibilities is not giving into blackmail but a prudent effort to take into account all the factors involved in judging the future of the treaties.

Evaluating the treaties has some similarities to buying a house. Few are perfect and have all the features one would like. It took 13 years to hammer out the treaties. We did not get everything we wanted, nor did the Panamanians. But a new structure was created with a stronger footing. After weeks of hearings and investigations into it, I have concluded that, on balance, the treaties protect our national interests and should be ratified with the two amendments recommended by the Senate Foreign Relations Committee.

THE PRESIDING OFFICER. The Senator from Michigan (Mr. Griffin).

MR. GRIFFIN. Mr. President, as the only and lonely member of the Committee on Foreign Relations who voted against approval of the treaties, I wish at the outset to thank the distinguished chairman of the committee (Mr. Sparkman) and the ranking minority member (Mr. Case) for their courtesy and their consideration during the course of the committee's deliberations. I wish to say now, as I have said before, that I respect our two Senate leaders and those of our colleagues who have reached a conclusion contrary to mine—those who are convinced in their own minds that these treaties do represent and serve the best interests of our Nation. I salute them for having the courage of their convictions, because I believe, with Edmund Burke, that a Senator does owe his constituents his judgment and should not sacrifice it to public opinion alone.

However, Mr. President, I also believe that when the call on the merits of an issue is as close as this is, or as close as I perceive it to be, the judgment of the people ought not to be taken lightly. Very honestly and frankly, I have come to the conclusion that, in this situation, as so often is the case, the people are right.

Mr. President, as nearly as I can boil down the basic arguments of many people around the country who believe these treaties should be approved, there are three:

First, they believe, and are told that the Panama Canal is obsolete or becoming obsolete—that we really do not need it anymore or will not need it very long.

That is not the case. Far from it, The canal is vital to U.S. security, important to our economy—and will be more, not less, important in the years ahead—as I will detail at a later point in my statement.

Second. A second argument is that unless these treaties are ratified unknown terrorists and radicals will blow up the canal.

Like many other Americans, I am shocked and repulsed by such an argument, or suggestion, particularly when it is put forth by officials in high places in our Government. Surely, if we want self-respect as well as the respect of others, we cannot make our foreign policy on such a basis. Furthermore, as I will explain, I am deeply concerned that approval of these treaties will render the canal more vulnerable, not less, to the dangers of terrorism and sabotage in the years ahead.

Finally, the argument is made that we should ratify these treaties to divest ourselves of the guilt and stigma we are supposed to feel concerning the U.S. role in connection with the 1903 treaty and our operation of the Panama Canal.

Frankly, along with most Americans, I am proud of the United States role in building, operating, and maintaining the engineering masterpiece that is the Panama Canal. I do not think there is reason to be ashamed or to apologize. The canal has been good for the United States—and good for Panama—and good for the world.

On the other hand, for other positive reasons—and because times and circumstances do change—I am willing to recognize, as one Senator, that a major revision in our treaty relationship with the Republic of Panama is in order—that it could serve the interests of both countries.

My problem, as a lawyer and as a Senator, is that after carefully studying the text of these treaties, and the accompanying documents, I could come to no conclusion other than that they are fatally flawed—that they are riddled with ambiguities—that the security interests of the United States are not adequately protected—and that the defects are so serious and basic that they cannot be remedied by trying to rewrite the treaties here on the Senate floor.

Being the lone dissenter on the Foreign Relations Committee—and for that reason alone—I find myself thrust into the role of floor manager for the opposition. I wish to make it clear, however, that my views—and what I say—will not necessarily reflect the views of other Senators who oppose these treaties. Each of them will, of course, speak for himself as this debate proceeds.

Although I believe these treaties should not be ratified, there is a course open to the Senate other than outright rejection, and strongly urge the Senate to consider it.

Let me explain by first underscoring the fact that I recognize the importance of maintaining close and friendly relations with the people of Panama and with the people of other nations in our hemisphere. I am conscious of, and concerned about, the impact that outright rejection by the Senate could have upon those relations.

Under the Constitution, the Senate's role is one of "advice and consent." Instead of consenting to these treaties, I believe it would be a wiser course for the Senate to exercise only its "advice" authority. In other words, without rejecting the treaties outright, the Senate, after examining these treaties in detail, ought to advise the President to send the negotiators back to the drawing boards with instructions to persist until more acceptable treaties can be fashioned.

Despite all of his knowledge about the history of the canal, or perhaps because of it, David McCullough, the distinguished author of "The Path Between the Seas" acknowledged before the Senate Foreign Relations Committee that he had experienced great difficulty in reaching a personal decision about the merit of these treaties. Although he finally decided, on balance, to support the treaties, when he appeared before the committee he made this profound and perceptive point:

* * * If we say "yes" to these [treaties] in a grudging way * * * [because we think] we have painted ourselves into a corner and we have to get out * * * [that would be] unfortunate * * * [and] just as wrong, and in some ways a greater mistake than to say "no" in the spirit of saying "no" because [it should be] done right—because we don't want to have to come back in 15 or 20 years and have to do it all over again.

So, it would be my hope, Mr. President, that the Senate will consider and act in that spirit with respect to the treaties now before us.

In other words, I concur with those of my colleagues who believe and who will argue in the weeks to come that rejection of these treaties would be unfortunate and would adversely affect our relations with our allies in the hemisphere. But I also believe that it would be wrong to reject these treaties in effect by adopting substantive amendments on the Senate floor—that could do even more to poison the air of friendship than outright rejection.

Let's not kid ourselves or any one else. To make substantive changes in these treaties by amendment on the Senate floor really amounts to rejection. It would amount to an ultimatum to the Panamanian people on a take-it-or-leave-it basis.

Of real concern also is the possibility that the self-appointed temporary ruler now controlling Panama might say with respect to other substantive amendments, as he has already said with respect to the Byrd-Baker amendment that it will not have to be submitted to a plebescite of the Panamanian people.

In other words, we could end up with an agreement with a self-appointed temporary ruler of Panama, but without an agreement or treaty with the people of Panama. In my view it is vital to our future relationship that any new treaty be an agreement with the people of Panama.

Mr. President, I wish to review with the Senate some of the basic concerns I have with respect to these treaties. I will discuss the broad issue of the canal and U.S. security; the question of a new or second canal, as well as some other concern.

Military expert may disagree as to the advisability of ratifying these treaties, but it is clear there is general agreement that the Panama Canal is very important—if not vital—to the security of the United States.

Indeed, as the Soviet Navy continues to grow larger and larger, while our own Navy shrinks in size—the canal becomes more—not less—important.

In just the last 10 years—since 1968—the number of ships in the U.S. Navy has been cut by more than half, from 976 vessels to 459. In 1974, when the Soviet fleet was smaller than it is today, our Joint Chiefs of staff stated that we need more than 800 ships to "support our current national defense strategy."

Yet our shipbuilding funds continue to be reduced—navy officials acknowledge that the fleet will shrink further in size before there is an upturn in the numbers—and the goal of expanding to more than 500 ships by the early 1980's now seems elusive.

In contrast, the Soviet Navy by 1975 had grown to 1,200 vessels—although, admittedly, their ships do not compare with ours in tonnage or combat effectiveness.

But the sobering fact is that the rapidly expanding Soviet Navy raises real concerns about future control of the maritime “choke points” of the world—one of which is the Panama Canal.

As Adm. Thomas Moorer, former Chairman of the Joint Chiefs of Staff, has testified, we do not have a two ocean Navy. He said:

A large majority of our war and contingency plans are totally infeasible unless one assumes that full and priority use of the canal will be available.

It is true that our aircraft carriers, of which we have 13, are too large to transit the canal. But the United States has a Navy that is effective in both major oceans precisely because the rest of the Navy, particularly supply and support ships for the aircraft carriers, are able to shuttle between the oceans through the canal.

If access to the canal were denied to ships of the American navy, the trip from ocean to ocean would involve an 8,000 mile journey around Cape Horn—an extra 17 days for a warship travelling at 20 knots.

In a letter to President Carter on June 8 of last year, four of the Nation's most respected naval leaders—each of them a former Chief of Naval Operations—forcefully stated that the strategic and economic values of the canal are at least as important to the United States now as ever before, and they declared that—

Loss of the Panama Canal, which would be a serious set-back in war, would contribute to the encirclement of the U.S. by hostile naval forces, and threaten our ability to survive.

These officers—retired Admirals Carney, Anderson, Burke, and Moorer—forcefully warned the President of possible dangers to the canal because of the close ties between Panama and Cuba “which in turn is closely tied with the Soviet Union.”

Of course we can only speculate about the real intentions of the Soviet Union and its Caribbean proxy, Cuba, with respect to the canal. But few will argue against the proposition that it would be a tragic blow to United States and free world security if the Panama Canal should fall into Communist hands.

Since as far back as the 1959 Panama riots, there has been reason for concern about the covetous eye of Mr. Castro. Those concerns have been underscored in recent years by the avowed friendship between Mr. Castro and General Torrijos. If evidence of Cuban influence in Panama has not been so obvious recently, it may be because at the moment Castro has his hands very full in Africa.

Against this background relating to the canal's strategic and political significance, let me comment on the adequacy of the proposed treaties in protecting the security and other interests of the United States.

During the 1976 Presidential campaign, Candidate Jimmy Carter told the voters:

I would *never* give up complete control or practical control of the Panama Canal Zone. (Emphasis supplied.)

But these treaties—negotiated since President Carter assumed office—not only turn the canal over to Panama in the year 2000; they would also turn over practical—if not complete—control of the Canal Zone within 36 months after ratification.

Even if we accept the decision to turn the canal over to Panama in the year 2000, our security interests still require, in my view, that the treaties be negotiated to include certain fundamental safeguards:

First, we need more control and jurisdiction between now and the year 2000 to insure that we will be able effectively to operate and defend the canal.

Second, we must have the right, in unambiguous terms, beyond the year 2000 to use military force, if necessary, to protect the neutrality of the canal against any threat—even a domestic Panamanian threat, or particularly an internal threat from within Panama, because that poses the greatest danger.

Third, we need to maintain our option to negotiate for construction of a second (perhaps sea-level) canal outside of Panama, should that prove necessary because of Panamanian intransigence, or desirable because of economic or security considerations.

As drawn, the Canal Treaty and the Neutrality Treaty do not provide these important safeguards.

Even if it is conceded that the United States is not now sovereign in the Panama Canal Zone, there is no question that under the treaty of 1903, The United States has all the rights, power, and authority as if it were sovereign. I strongly suggest that control on that order is important if the United States is to be able effectively to operate and maintain the Panama Canal between now and the year 2000. In other words, if we are going to keep the canal for 23 years, it is essential during that period at least for the United States to retain adequate control and jurisdiction.

Under the proposed Panama Canal Treaty, the United States would have the responsibility to operate the canal during the next 23 years with employees—both United States and Panamanian—who would be subject, even while performing their duties with respect to the canal, to the laws of Panama, the police of Panama, and the courts of Panama.

In other words, shortly after the ratification, we would be in the position of trying to operate and maintain the canal in a foreign country—rather than in a canal zone under our jurisdiction.

I am deeply concerned that instead of solving problems, this arrangement is pregnant with the seeds of acrimony and conflict.

Under the treaty, persons employed by the Panama Canal Commission would be “employees of the United States”; they would have the right to be represented by unions and to “negotiate collective contracts.” If disputes arose—and that would not be unusual in labor management relations—how would they be resolved?

Under the treaty arrangement, the Commission itself would be immune from suit in the courts of Panama, and could be sued only in the U.S. Court in Louisiana—something of an inconvenience for employees in Panama who may claim back pay for discrimination or who may have any other claims against the Commission. How

would the Commission enforce legal obligations undertaken by others—a union, for example? Apparently, such matters would be left to the Panamanian courts. Would they apply U.S. law or Panamanian law?

It is no wonder that many U.S. military and civilian personnel who now work in the Canal Zone are deeply concerned about these aspects of the treaty arrangement.

Outside the boundaries of our four remaining military bases, of course, U.S. military and civilian personnel would be subject at all times to arrest and prosecution by Panamanian police in Panamanian courts.

We are assured by the State Department that arrested U.S. personnel in Panama would be protected by a "status of forces" type agreement set forth in annex D, which is similar to agreements we have with Japan and certain NATO countries where U.S. forces are stationed.

Annex D does recite that such U.S. citizens charged with crime in a Panamanian court would have the right to a "prompt and speedy trial," protection against involuntary confessions, self-incrimination, and the like. But the decision on what constitutes a "speedy trial" or an "involuntary confession" will be left, once again, to the Panamanian courts.

For years, Soviet citizens have been "guaranteed" human rights by the Constitution of the Soviet Union. The only problem, of course, is that officials of the Soviet Union pay no attention to those guarantees.

That reference would be unfair and out of order. I concede, if the Panamanian Government under General Torrijos had a good record of observing and respecting human rights in Panama. However, despite the fact that similar "guarantees" are set forth in the Constitution of Panama, last year the Torrijos government had the worst human rights record of any country in this hemisphere, except Cuba. Indeed, in this respect, Panama was rated by Freedom House as being about on a par with the Soviet Union.

Or status of forces agreements in other situations have worked reasonably well, perhaps because the host country has wanted the continued presence of our U.S. troops in their borders. Obviously, if a NATO ally did not appreciate our military presence and asked us to leave, we would.

In contrast, our troops are—and would be—stationed in the Canal Zone because we have a treaty right to protect the canal. Under the new treaty—at least in theory—our right to have troops there until the year 2000 would not depend on the continuing permission of General Torrijos or any successor.

In that kind of setting, it seems to me there is reason for concern about the adequacy of the protection that is accorded to U.S. citizens in annex D.

In a country where anti-Americanism has a proven political value, and where courts may be heavily influenced by the ruler in power, one is left to wonder whether such a treaty arrangement could even be used as the basis for harassing U.S. military and civilian personnel to force them out of the country.

Because many U.S. citizens—as well as some black Panamanians—who now work in the Canal Zone are deeply concerned

about their human rights if the new treaty should be ratified, morale among such employees by all accounts, is "very poor." Many of these employees indicate that they will leave if these treaties are approved; one recent poll indicated that more than 60 percent of U.S. civilians in the zone consider themselves in that category.

According to Gen. H. R. Parfitt, Governor of the Canal Zone, there are at least 1,000 highly skilled U.S. citizens whose services are absolutely essential and for whom Panamanian replacements could not be trained in the short term. In this category are 210 ship pilots, all but 2 of whom are U.S. citizens.

In view of the great importance of keeping the canal open, it would be ironic indeed, it would be tragic if the Senate, by approving these treaties, should trigger an exodus that closes down the canal.

I am concerned not only with the mishmash of jurisdiction and responsibility that would exist between now and the year 2000 under the proposed treaties, but also about the situation that would prevail under the so-called Neutrality Treaty after the year 2000—particularly in light of differences in interpretation which have existed, and in some vital respects continue to exist, between the officials of our two countries.

For example, with respect to the right of the United States under article IV of the Neutrality Treaty to intervene and defend the neutrality of the canal with military force, if necessary, against an internal threat from within Panama, major disagreements have existed between United States and Panamanian negotiators. Those disagreements have continued after the signing of the treaties and they continue even after the joint statement of October 14, 1977, issued by President Carter and General Torrijos.

We owe it to ourselves, Mr. President, and to our children—who would have to suffer the consequences of our mistakes—to understand the depth of these disagreements and their grave implications for the future, if left unresolved.

The chief Panamanian negotiator, Dr. Romulo Escobar, declared publicly that:

The draft neutrality pact * * * does not make the U.S. a guarantor of (the canal's) neutrality * * *."

Panamanian spokesmen have insisted that the United States would be able to respond militarily only if a foreign power attacked or threatened the canal. Just as often, our own negotiators and others have publicly asserted that the United States has a right to protect the neutrality of the canal against any threat, including a Panamanian threat.

Such statements and counterstatements are chronicled and detailed in the statement of minority views which I have filed as part of the committee's report and which are available to all Senators.

I recognize and respect the effort that has been made to end some of the ambiguity, in particular the joint statement of October 14, 1977, issued by President Carter and General Torrijos. Without doubt it is an improvement over the actual text of the neutrality treaty, but unfortunately the joint statement itself is not without ambiguities.

(Mr. RIEGLE assumed the chair.)

Mr. GRIFFIN. Later on that same day of October 14, for example, General Torrijos stated that the United States would have the right to defend the canal if it were attacked by "a great power." Shortly thereafter, Ambassador Linowitz replied that the United States had a right to defend the canal against any threat or aggression from whatever quarter. So the difference in interpretation quickly surfaced again even after the Carter-Torrijos statement.

The situation was further complicated when General Torrijos arrived back in Panama and said, "I haven't even signed an autograph"—at least implicitly suggesting that the unsigned statement was of questionable legal validity.

When the Byrd-Baker amendments are adopted, as I predict they will be, the Carter-Torrijos joint statement will actually be incorporated as part of the text of the Neutrality Treaty that will be an improvement but, unfortunately, this action will not erase differences of interpretation which persist, as underscored by the American Law Division of the Library of Congress in a report which concluded:

* * * It is not altogether clear that the joint statement would permit the United States to intervene in the event that the aggression or threat should result from Panamanian action.

Following the Carter-Torrijos joint statement and shortly before the vote by the Panamanian people, General Torrijos complicated an uncertain situation still further when he told the Panamanian people on radio and television that the role of the United States under the Neutrality Treaty was to defend the canal from foreign aggression if requested by Panama. Not once but twice he said:

* * * the United States is obligated to come to our defense * * * *when we ring the bell here, when we push the button* * * * (Emphasis supplied.)

On the record, it is painfully obvious that the United States and Panama have been in disagreement—and still disagree, despite the October 14 Carter-Torrijos joint statement—on at least two major points:

Our administration tells the American people that the United States will have the right to defend the canal after the year 2000 against any threat to its neutrality, including an internal threat from within Panama. But spokesmen for Panama assert that the United States will have such a right only if the canal is threatened by a foreign power.

Our administration tells the American people that the United States can determine unilaterally when such a right to defend the canal can be exercised. But Panamanian spokesmen insist that U.S. forces can come in only when requested or when the action is agreed to by Panama.

We would be living in a fool's paradise to assume that these contradictory interpretations will simply go away if this treaty arrangement is ratified.

It is essential, Mr. President, that we avoid being placed in the dilemma which such differing interpretations would create. Because it is by failing to reach a real agreement with the people of Panama by trying to paper over serious deficiencies and disagreements for short-term political gain, that we could be buying ourselves a one-way ticket to another Vietnam.

Mr. President, particularly, if we are to consider turning the canal over to Panama in the year 2000, and if the security and

economic interests of the United States are to be protected, then we should not relinquish our option to negotiate for construction of a second canal, possibly a sea-level canal, in a country other than Panama.

That is exactly what we would do under article XII of the proposed canal treaty, which reads in part:

During the duration of this Treaty, the United States of America *shall not negotiate with third States* for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

In exchange for such a clear and unequivocal commitment on our part not to build a new canal in any other country, surely it is reasonable to ask what would we get in return under the treaty?

The administration says we get a commitment in the treaty that Panama will not collaborate with any other nation to build a second canal in Panama. Whether that would be a fair exchange is open to serious questions. But beyond that, there are three important points to be made: First, the language of the proposed treaty does not say that; second, we already have such a guarantee under the existing 1903 treaty; and third, the existing guarantee would be wiped out if we were to ratify the proposed treaty before us.

In exchange for our clear and unambiguous commitment not to build a new canal in any other country, Panama would be bound, and I put "bound" in quotes, by the following language in article XII:

* * * [D]uring the duration of the Treaty, both parties commit themselves to *study jointly* the feasibility of a sea level canal in the Republic of Panama, and *in the event* they determine that such a waterway is necessary, they shall negotiate terms agreeable to both parties, for its construction.

It is not necessary to have taken a high school course in business law to understand that, under such language, Panama would be obligated only to "study" and to "negotiate." There is no clear and unambiguous commitment there—or anywhere else in the treaty—that would preclude Panama's joining with a nation other than the United States to construct a second, or sea level, canal in Panama provided they complied with the requirements of the treaty that they first study and negotiate.

Mr. President, even though the existing canal is not obsolete, and will not be obsolete in the near future, it is necessary and important that we do look toward the day when the existing Panama Canal will no longer be adequate. The dream of a sea-level canal, a canal without locks, ought to be more than just a dream in an era when men and women are going to the moon.

It is true that studies have been made and have indicated that the least expensive place to build a second or sea-level canal would be in Panama. But I suggest that for political and other reasons, it might be very wise to construct such a second canal in another country, even though it would cost a few billion dollars more.

Furthermore, perhaps such a second canal should be built in another country under the auspices of the Organization of American States or some other arrangement of international interests.

In a study published under the auspices of the Council on Foreign Relations in 1967, Immanuel J. Klette observed:

Although the cost of construction bears on the final choices, it should not be the prime factor in making decisions on a new canal. A waterway which is less expensive in dollars may be the most expensive in political consequences.

As we move toward a new treaty relationship with Panama, we should not ignore the value of competition—economic, political, and even diplomatic competition.

Holding open even the possibility of building a new canal outside of Panama—an option foreclosed by the proposed treaty—could provide very important and useful leverage in our relations with Panama.

After all, for the foreseeable future, Panama's economic survival is dependent on the Panama Canal. As Prof. Edwin C. Hoyt observed several years ago in the *Virginia Journal of International Law*:

If Panama is too intransigent, she may lose the [sea level] canal to one of these other countries. This would be an economic disaster for Panama.

Furthermore, if a second canal were constructed elsewhere in Latin America, Panama would be forced to keep its own tolls competitive or risk losing most of the traffic to its almost certainly more modern rival.

A major conference on Panama sponsored by Georgetown University's Center for Strategic Studies in 1967 reached this key conclusion:

Though the Republic of Panama seems technically to be the best place for a future canal facility, the United States should not abandon the right to approach other countries for possible canal location in the event that future political conditions exclude the project from Panama.

Under the circumstances, it is very difficult for me to see how article XII of the proposed canal treaty serves the interests of the United States.

In my minority views, Mr. President, I also speak to certain economic concerns that trouble me and many of my colleagues, and indeed many Americans. I will only state here in these remarks that the soothing assurances by President Carter and others speaking for the administration that these treaties, if ratified, will not create a financial burden on the people of the United States are hardly justified by the record, particularly the record of the hearings of the Committee on Armed Services conducted only last week.

Finally, Mr. President, I feel compelled to call attention to a matter outside the text of the treaty which prompts a question: Despite the 13 or 14 years of intermittent negotiations, were these treaties, insofar as some of the final details are concerned, negotiated in haste, under the pressure of a time deadline?

Because the treaties contain so much ambiguous language and so many provisions of doubtful merit, it is appropriate to ask such a question. And, unfortunately, there is reason for some concern.

On February 10, 1977, shortly after he took office, President Carter named Mr. Sol Linowitz to represent the United States as a negotiator for the Panama Canal treaties. But, Mr. Linowitz was appointed only on a temporary basis—for a 6-month period. Under the law, an appointment on this basis does not require confirmation by the Senate. Such an appointment bypasses the usual scrutiny by a Senate committee of a nominee's qualifications and possi-

ble conflict of interest. Doubtless the administration had its reasons for pursuing this course of action.

But because the Senate is an integral part of the treaty-making process under the Constitution, I would suggest that it was unwise—and something of an affront to the Senate—for the administration not to submit a treaty negotiator's name for confirmation. Utilizing such a short circuit procedure did not build Senate confidence in the treaty negotiations.

Even more important, in my judgment, is the question of whether this arbitrary and unnecessary 6-month limit on the tenure of a chief negotiator may have led the United States to make hasty and unwise concessions under the pressure of an artificial deadline.

We have been given to understand that at least one very significant concession—the surrender of our option to build a second canal outside of Panama—was made at the last minute.

We are left to wonder what else we may have given away—what ambiguities we may have settled for—what loose ends we may have left untied—in our rush to beat the clock.

We do know that:

Mr. Linowitz was appointed on February 10, 1977—and he had just 6 months, and 6 months only, to bring in a new treaty.

And interestingly enough, it was on August 10, 1977—exactly 6 months later, to the day—that negotiators for the two countries finally announced their agreement in principle on new treaties relating to the Panama Canal.

Mr. President, for these reasons and others which I shall not take the time to discuss here today, it is my reluctant but inescapable conclusion that these should not be approved by the Senate.

Any new treaty relationship built upon the ambiguities of the treaties now before us would be doomed to failure from the start. We cannot afford to approve them as they stand. To do so would be no favor either to the Panamanians or to the people of the United States.

It is argued by some that defects in the treaties can be remedied if the Senate will adopt a series of amendments. I cannot agree. Such an expedient, however attractive it may seem politically, would be inadequate and unwise. It would do both too little and too much.

If we must say “no” to these treaties—as I am now convinced we must—I believe, along with David McCulloch, that how we say “no” in this situation is very important in terms of our future relations with the people of Panama and the people of the Hemisphere.

I do not favor adoption on the Senate floor of a series of substantive amendments on a take-it-or-leave-it basis. That would be an affront to the Panamanian people. Furthermore, we would run the real risk that the Panamanian ruler temporarily in power would not submit such substantive charges to a plebiscite of the Panamanian people. If this happened we would end up with a treaty relationship only with the dictator in power, but not with the people of Panama.

Accordingly, Mr. President, I believe that the appropriate course for the Senate is to withhold its “consent” to ratification of the

treaties now before us—and to “advise” the President to persist in negotiations until acceptable treaties can be fashioned.

Mr. President, I yield to the distinguished Senator from Maine.

The PRESIDING OFFICER. The Senator from Maine (Mr. Muskie) is recognized.

Mr. MUSKIE. Mr. President, I thank my good friend from Michigan.

I ask unanimous consent that Madeleine Albright, of my staff, have the privilege of the floor during the pending business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MUSKIE. I thank the Senator.

Mr. CLARK. Mr. President, will the Senator yield for a similar request?

Mr. GRIFFIN. I yield.

The PRESIDING OFFICER. The Senator from Iowa (Mr. Clark) is recognized.

Mr. CLARK. Mr. President, I ask unanimous consent that Bruce Van Voorst, of my staff, be allowed the privilege of the floor during the consideration of the pending business.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOYNIHAN. Mr. President, I ask the same privilege for Dr. Charles Horner of my staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DANFORTH. Mr. President, I ask the same privilege for Mark Edelman of my staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

Does the Senator from Idaho seek recognition?

Mr. CHURCH. Mr. President, I do.

The PRESIDING OFFICER. The Senator from Idaho, Mr. Church.

Mr. CHURCH. Mr. President, I do not propose to present a rebuttal at this time to the arguments that have been made by the distinguished Senator from Michigan. He is a fellow member of our committee. I respect him very much, and I know that he has conscientiously presented his case.

I do think, however, that two points that he makes ought to be addressed at this time, knowing that all of the points will be discussed at considerable length and in sufficient detail in the course of the debate during the next few weeks.

Two points that I would like to respond to at this time have to do with his argument that somehow the adoption of these treaties will augment or enhance the Communist threat in Central America and Panama, as it might be directed against the canal in the future.

Mr. President, I am at a loss to understand the basis for this argument. Certainly the Communists do not agree with it. The most radical and most leftist elements in Panamanian politics are the most strident opponents of the treaties. It is hard for me to believe they think that their own interests would be advanced by the approval of these treaties. If that were so they would not be agitating against them.

Furthermore, in the course of our hearings, this question came up again and again, and I think the Record at this point should contain answers to such questions from several of our most prominent generals and admirals.

I call the Senate's attention to page 51 of part 3 of the hearings of the Committee on Foreign Relations, to a question asked by Senator Percy of Admiral Zumwalt, the former Chief of Staff of the Navy and former Chief of Naval Operations:

Senator PERCY. Finally, what do you think would be the result if we simply fail to ratify these treaties? Certainly we want to get a clarification of many of the points you want clarified; I think we all agree on that. If we simply fail to ratify, what do you perceive ahead?

Admiral Zumwalt replied:

I think the loudest cheers would be in Moscow and Havana. I think it would be a great asset, for their objective is to generate pressures to nonratify these treaties.

So Admiral Zumwalt points at once to the glee in Moscow and Havana, two centers of Communist power, in the event the Senate fails to ratify these treaties.

We also put the same question to Gen. Maxwell Taylor, former Chief of the Joint Chiefs of Staff, who stated in his testimony before the committee on October 10 as follows:

The Soviet Union always intriguing for leadership in the have-not world has taken as a primary objective the undermining of our Latin American relations, particularly those with our trade partners.

It will always assure to Panamá a large allocation of troublemakers to complicate our problems. Turbulence there is always good news to Moscow—so also are American blunders. In this connection, let us hope that we do not give the Kremlin chiefs the occasion to rejoice which our rejection of these treaties would undoubtedly afford.

In a similar vein, but turning attention to Cuba, Secretary of Defense Brown observed:

I cannot speak for Mr. Castro, but if I were Castro and I wanted to do the most I could to increase the influence of Cuba in the Caribbean and in Central and Latin America, and decrease and harm the United States psychologically, politically, and diplomatically, I would do all I could to see these treaties rejected.

So, Mr. President, I suggest that the argument that our ratification of these treaties would somehow augment a Communist threat to the canal are baseless. Indeed, a careful consideration of the position the Communists have taken suggests that the very opposite is the case. The rejection of these treaties will undoubtedly enhance Communist influence throughout Central America and weaken our influence and relations with all countries south of our borders. Such an action would be welcome news to the Communists.

The second point I would like to take up deals with the argument of the Senator from Michigan that these treaties are fatally flawed. He says that as they may relate to our crucial right of expeditious passage, to go to the head of the line in case of national emergency or need in the future, and as with respect to the unilateral rights we reserve to intervene for the purpose of maintaining the canal as an open, safe, and neutral waterway in the years ahead, there are ambiguities in the treaty. He says we should go back again to the negotiating table and begin anew.

Well, Mr. President, we have been 14 years at the negotiating table. If after that long and difficult period of hard bargaining that has extended over a period of nearly a decade and a half we cannot draft a treaty that adequately protects our interests, then on what basis could one reasonably assume that to go back to the negotiat-

ing table for more years of negotiation will produce any better result?

Mr. President, the committee wanted to be perfectly certain that there might be no possibility of argument concerning these treaties in the future in connection either with our right to intervene to maintain the canal, or with respect to our right of transit in time of need. That is why we have recommended to the Senate the adoption of two amendments. There is no possible reason why we should go back to the negotiating table when these two amendments make it as plain as language can just what our rights will be in connection with these two crucial matters in the future.

Mr. President, I would like to read the amendments and let the words speak for themselves. I defy any negotiator to go back to the conference table and come out with any clearer language.

The two provisions of the treaty which would be amended to eliminate any possible argument as to their interpretation are article IV and article VI. The Foreign Relations Committee recommends to the Senate these two articles be amended as follows, and I now am going to read into the Record the language which would be added to the respective articles of the treaty. They would become an integral part of the treaty itself.

Article IV of the treaty, if the Senate approves the amendment recommended by the committee, would have the following language added at the end of the article:

A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against peaceful transit of vessels through the Canal.

"This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

That is the amendment. I do not know how language could make plainer the right of the United States to act against any aggression or threat. And if any emphasis is needed, I call the Senate's attention to the following:

"The correct interpretation of this principle is that each of the two countries"—not both acting together, but each country—"shall, in accordance with their respective constitutional processes, defend the canal against any threat"—here I call attention to the fact that any threat must, by definition, include an internal threat or an external threat, because the language is "any threat"—"to the regime of neutrality, and consequently shall have the right to act"—each shall have the right to act—"against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal."

Mr. President, we do not have to go back to the bargaining table. There is no plainer way to make plainer the rights that are reserved to the United States than we have done by this language. Furthermore, it is language that has been agreed to by the Government of Panama and the Government of the United States, speaking through their chief executives, and it would be copper-riveted right into the text of the treaty itself.

Now, to turn to the second amendment proposed by the Foreign Relations Committee relating to article VI.

Mr. SARBANES. Will the Senator yield before he goes to the second amendment?

Mr. CHURCH. I am happy to yield to the distinguished Senator from Maryland.

Mr. SARBANES. I think that the point the distinguished Senator from Idaho has made is extraordinarily important. It is not sufficient to simply characterize the language. We have to look at the language itself. I thank the Senator for quoting the language in full, word by word, that was recommended by the Committee on Foreign Relations to be included as an amendment to article IV.

As he has pointed out, this language states that "each of the two countries shall"—each of the two countries—"in accordance with their respective constitutional processes"—their respective processes. It is not acting jointly, not together but separately and acting individually—"defend the canal against any threat"—any threat—"to the regime of neutrality, and consequently shall have the right to act against any"—against any—"aggression or threat directed against the canal or against peaceful transit of vessels through the canal."

The distinguished Senator from Idaho is absolutely right. This provision, this statement, which is to be incorporated into the treaty, is clear in giving the United States the right to act against any threat and to protect the neutrality of the canal. It provides us, the United States, with the legal and moral basis to take any action which we deem necessary in order to protect the neutrality of the canal.

Mr. CHURCH. I thank the Senator very much. I cannot possibly envision how the language could be interpreted in any different way. The words speak for themselves.

The committee, on page 6 of its report, explains the committee's own understanding of this provision, though, as the Senator from Maryland correctly points out, it should stand on its own. It needs no further interpretation. Nevertheless, the committee read much testimony on this point. Therefore, I think that the committee's opinion has value. I read from page 6 of the committee report with reference to the recommended amendment of article 4:

It allows the United States to introduce its armed forces into Panama whenever and however the Canal is threatened. Whether such a threat exists is for the United States to determine on its own in accordance with its constitutional processes. What steps are necessary to defend the Canal is for the United States to determine on its own in accordance with its constitutional processes. When such steps shall be taken is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act if it deems proper against any threat to the Canal, internal or external, domestic or foreign, military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. CHURCH. I shall be happy to yield if the Senator wishes.

Mr. GRIFFIN. As the Senator from Idaho knows, we are imposing somewhat upon the arrangement informally agreed upon as far as the time of the distinguished Senator from Nevada is concerned. I shall wait until the Senator from Idaho completes his statement. Then I should like a minute or two for response, if I may.

Mr. CHURCH. I thank the Senator. I assure him I shall take only a few more minutes.

Article VI of the treaty deals with the matter of the transit of vessels. The committee has recommended that the Senate amend this article, again to eliminate any possibility of argument in the future. The committee's recommendations would add, at the end of article VI, the following language:

In accordance with the Statement of Understanding mentioned in Article IV above: The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go the head of the line of vessels in order to transit the Canal rapidly.

Again, Mr. President, I suggest that the language speaks for itself. It is susceptible to no other interpretation but that the United States shall always reserve to itself the right to see that its ships may go to the head of the line in case of national need in the future. I think that is very significant, Mr. President, that both Chief Executives, of the United States and Panama, have agreed to this interpretation and that their agreement was presented to the people of Panama by Omar Torrijos at the time of the plebiscite, so that the people of Panama were fully aware of how these two provisions had been interpreted by the two Chiefs of State. That was presented to them prior to their vote, which should eliminate any argument concerning whether or not the people of Panama knew how these crucial provisions of the treaty are interpreted by both Governments.

Mr. SARBANES. Will the Senator yield?

Mr. CHURCH. Yes, I am happy to yield.

Mr. SARBANES. I think there is one other point that was made by the Senator from Michigan, who is a distinguished member of the Committee on Foreign Relations, in the course of his opening statement, that we ought to address briefly.

Mr. GRIFFIN. Will the Senator from Maryland allow me to respond first to the two points already argued before he proceeds to another one?

Mr. SARBANE. Surely.

Mr. GRIFFIN. Of course, we are imposing upon the Senator from Nevada, who is ready to proceed and is to be the next speaker.

First of all, perhaps the Senator from Idaho was not listening carefully, but those who did hear my statement will recall that I did not refer to "expeditious passage" or "head of the line." That was not one of the points I made at all with respect to the Carter-Torrijos statement.

I will say, however, as long as the subject has been raised, it is clear that "head of the line" treatment was not agreed to in the

treaty itself. Indeed, "priority passage" was asked for the United States negotiators and was rejected, as the chief negotiator for Panama has said time and time again. Accordingly, in effect, we are making a basic change in the treaty itself by adopting an amendment which accords the United States "head of the line" status.

But, be that as it may, that was not the point I made at all. I said that despite the so-called joint agreement of General Torrijos and President Carter that there were still, obviously, two points of disagreement.

One is that we say, and I am sure that the Senator from Idaho is convinced and I do not challenge his belief concerning his interpretation or what the State Department or the Committee on Foreign Relations interpretation of that agreement is, that we would have the right in the event of any threat to the canal to go in and use military force.

For the Senator from Idaho to recite his interpretation, however, does not mean that we have an agreement with the people of Panama, or in this case even with the leaders of Panama because they say the Carter-Torrijos statement does not mean that. They say it means we can come in if the canal is threatened or attacked by a foreign power but that we have no right, if the threat is an internal threat from within Panama.

Now, we cannot make an agreement with the people of Panama by just repeating over and over again what we thing the language means. The critical point is, what do the people of Panama think it means?

In this instance, the interpretation will not be submitted to the people of Panama. We will let General Torrijos do the interpreting and he does not interpret it as we do.

The second point is that the Carter administration is taking the position and representing to the people of the country, and it is our interpretation of the Carter-Torrijos understanding, that the United States can unilaterally decide when we can go in to defend the neutrality of the Canal.

The Panamanians are not saying that. They say it means we can go in when they ask us to come in or when they agree we can come in.

Two very fundamental differences. They existed before the Carter-Torrijos statement. They still exist.

Now, let me address the other point made by the distinguished Senator from Idaho. He quoted a couple of advocates of the treaties as authority for what the Communist position is with respect to these treaties, or what they think it ought to be.

The impression was left that the Communists would oppose these treaties and that we would be playing into their hands if we do not go along with the treaties.

I am not sure we want to make our foreign policy on the basis of what the Communist Party believes—or does not believe—in any event.

But I am certainly not going to take just an undocumented opinion of somebody as to what the Communist view is.

It so happens that in Panama after General Torrijos put himself in office following the election by the people of Panama of a

different leader, he did away with all the political parties in Panama except one, the Communist Party.

In the course of our hearings, it came up on several occasions as to what the position of the Communist Party in Panama was with respect to these treaties.

The State Department was asked for the answer and the State Department provided it. I will quote from the statement provided by the State Department:

The Communist Party of Panama on October 14, 1977, publicly announced its support of the new treaties, which it regards as part of a "trend toward decolonization." The party's statement is consistent with its general practice of not criticizing government policy initiatives as well as with statements by Communist Parties in Eastern Europe and the Soviet Union.

Mr. President, I ask unanimous consent that the statement be printed in full in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

COMMUNIST SUPPORT IN PANAMA FOR CANAL TREATIES

[Supplied by Department of State]

The Communist Party of Panama (Partido del Pueblo) on October 14, 1977, publicly announced its support of the new treaties, which it regards as part of a "trend toward decolonization." The Party's statement is consistent with its general practice of not criticizing government policy initiatives as well as with statements by Communists parties in Eastern Europe and the Soviet Union.

The PdP, however, is known to have reservations about certain aspects of the treaties, particularly the provisions for a continued U.S. presence in Panama until the year 2000 and continued U.S. rights thereafter as provided in the Neutrality Treaty.

This provision of qualified support contrasts with the solid opposition to the treaties by Panama's major ultra-leftist, ultra-nationalist and essentially anti-U.S. student organizations, as well as from the Revolutionary Socialist League, a very small Trotskyite group.

Mr. GRIFFIN. I thank the Senator from Nevada for yielding.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

Mr. SARBANES. Mr. President, I want to take just a moment, if the Senator from Nevada will indulge me, to address one of the points that was made by the distinguished Senator from Michigan, a member of our committee, having to do with the sea-level canal.

Questions have been raised about this and I think it is very clear that the provision that has been put into the treaty, article XII of the Panama Canal Treaty, with respect to the sea-level canal, is clearly in the favor of the United States. It was put there at our insistence. I do not think there is any doubt it serves our interests.

That article states that we will not negotiate with third states for the right to construct a canal on a route outside of Panama except as we in Panama may agree. In other words, if we want to go outside Panama, it has to be agreed to. In effect, we hold ourselves to building a route through Panama. In return—in return—the Republican of Panama agrees that no new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of the treaty except as the parties may agree.

Mr. GRIFFIN. Will the Senator yield?

Mr. SARBANES. Except in accordance with the provisions of this treaty, or as the two parties may otherwise agree.

Now, in effect, what we have accomplished by that provision is precluded for the rest of this century that any other country can come into Panama, and build a canal unless we are prepared to permit that to take place. We can prevent that from happening because a canal cannot be built unless we agree to it being done.

Now, Colonel Sheffey, who is now retired, was the Executive Director of the President's Atlantic-Pacific Interoceanic Canal Study Commission.

He came before our committee and in the course of his statement said the following:

As the former Executive Director of the \$22 million sea-level canal study in 1965-70, I assure you that there are no foreseeable circumstances in which the United States would be likely to consider building a new Isthmian canal outside Panama. The only feasible routes are in Panama. The economic, technical and political objections to the far longer routes in Colombia and Nicaragua eliminate them from practical consideration. Limiting the choice to Panama for the remainder of this century costs the U.S. nothing, and the treaty proposal for this prevents other powers meddling in the matter.

The theoretically feasible routes in Nicaragua and Colombia are 140 miles and 100 miles in length, respectively, as compared with 40 miles or less for the Panamanian route. The movement of large ships in narrow canal waters is a slow and hazardous operation. Ship operators would not readily accept the risk and time lost in transit on these long routes. The construction and operation costs of these longer canals would be three or four times the cost of the shorter canals in Panama, and even the shorter Panamanian routes are not economically feasible at currently forecast traffic levels.

In the 1970 study, the Nicaraguan and Colombian routes were considered only for a sea-level canal constructed by nuclear excavation. Nuclear excavation is of questionable technical feasibility at best, and is politically infeasible beyond doubt. Conventional excavation costs on these longer routes were so great that they were not even estimated with any precision. Today's construction costs on either route would be in excess of \$20 billion, and this could easily double by the time such a canal might be needed.

Certainly, the foreseeable traffic cannot support two Isthmian canals, and 95% of the world shipping forecast for the year 2000 will still be of sizes that can pass the present Panama Canal. The 5% of superships that need a larger canal cannot possibly support its cost even in Panama. The military advantages of a relatively indestructible sea-level canal are attractive, but have not moved us to build one in Panama. They are far from sufficient to justify a \$20 billion investment in a technically unsatisfactory and politically abrasive canal outside Panama.

Subsequently in the question period, to be absolutely certain about the thrust of his testimony, the following colloquy was held with Colonel Sheffey:

Senator SARBANES. Let me ask a question about the sea level canal.

I take it that you support the provisions of the treaty with respect to the sea level canal?

Colonel SHEFFEY. Yes, 100 percent, Senator.

The argument that we need the right to build a canal outside Panama for some unforeseen purpose is an empty one. We cannot build a canal outside Panama.

When we entered this study in 1965, one of our purposes was to prove that we could build a canal, a technically satisfactory canal, outside Panama because it would give us far better negotiating leverage to renegotiate our relationship with Panama.

We spent \$22 million of the taxpayers money in 5 years and proved only that we could not build outside Panama.

At that time, there was a very large measure of optimism that we could construct a canal with nuclear excavation. We found that nuclear excavation is probably not technically feasible, although we were unable to prove it one way or the other because of the limitations on testing. We know beyond my doubt that for the

foreseeable future it is politically infeasible because you cannot excavate with nuclear explosives without spreading radiation over very large areas.

We also found that these long routes outside Panama just did not lend themselves to practical canals. They are too long, too winding, too difficult to navigate to make a practical canal.

Senator SARBANES. So, what we give up is that right to build a sea level canal outside Panama, and we are really not giving up anything.

Colonel SHEFFEY. It is giving up nothing whatever, Mr. Chairman.

Senator SARBANES. The Panamanians, as I understand it, give up at least the right to allow some other power to come into Panama to build a canal.

Colonel SHEFFEY. It is an extremely valuable quid pro quo. We are getting something for nothing.

Mr. GRIFFIN. Mr. President, with the concurrence of the Senator from Nevada, I will take another 30 seconds to respond to the distinguished Senator from Maryland.

First of all, the provisions of article XII of the Panama Canal Treaty are rather brief and very easy to read; and I urge anyone interested in this subject to get a copy and read it. You do not have to be, as I said, a lawyer or even have taken a course in law to understand what it says.

In very clear and unambiguous terms, the United States gives up the right even to negotiate with other nations to build a canal anywhere outside of Panama.

The Senator from Maryland focused upon some language in article XII which he says means that Panama will not be able to build a second canal in Panama in collaboration with any nation other than the United States. This is what that language says:

No interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this treaty, except in accordance with the provisions of this treaty or as the two parties shall otherwise agree.

Obviously, there are two ways it can be done: First, the two parties may agree; or second, if pursued "in accordance with the provisions of this treaty."

What does that mean—to be in accordance with the provisions of this treaty? That is pretty ambiguous and fuzzy language. It seems very strange to me that good lawyers negotiating these treaties, who had no trouble finding language to pin down the United States, could not find better and clearer language to spell out the obligation of Panama.

I guess one can argue as the Senator from Maryland has; but frankly there is a very good argument on the other side. Or is that all Panama has to do to be "in accordance with the treaty" is to fulfill its obligations under the treaty with respect to the construction of a new canal. And what are they? They are to "study jointly" and to "negotiate." Negotiating does not mean you have to agree. All you have to do is to negotiate. If Panama studies and negotiates, they can say "We complied with the treaty," and go ahead.

Mr. SARBANES. Mr. President, will the Senator yield on that point?

Mr. GRIFFIN. At least, it is ambiguous. Will the Senator agree to that?

Mr. SARBANES. No; I absolutely do not concede that it is ambiguous.

The point that the Senator has just made might be a good point if the word "agreeable" were not in there but paragraph 1 of article XII, talks about negotiating terms agreeable to both parties.

That paragraph states:

Both parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama, and in the event they determine that such a waterway is necessary, they shall negotiate terms agreeable to both parties for its construction.

Mr. GRIFFIN. Great. In the event they agree, that is great. That really pins them down; does it not?

Mr. SARBANES. That provision "agreeable to both parties" gives us control. If it is not agreeable to both parties, it cannot be done by the other party. We control it. Panama cannot permit some other nation to build a canal if we are opposed to that happening.

Mr. GRIFFIN. Mr. President, I yield to the Senator from Nevada, to continue.

The PRESIDING OFFICER. The Senator from Nevada (Mr. Laxalt) is recognized.

Mr. LAXALT. I thank the Senator from Michigan for yielding.

I also look forward with great pleasure to working with the Senator from Michigan during the course of the next several weeks in opposing vigorously the ratification of the Panama Canal treaties.

Mr. President, as we begin the historic debate on the Panama Canal treaties, I believe it is important that we pause for a moment to clear the air. I think that before we get too deeply involved in what will almost certainly be a lengthy and heated debate, we should be certain as to just what we are discussing and how we should go about approaching it.

Quite simply, we are discussing the future of the Panama Canal which Adm. Thomas Moorer has referred to as one of the four major maritime gateways of the world, a waterway of the same level of importance as the Molacca Straits, the Suez Canal, and the Gibraltar Strait. The canal itself is approximately 50 miles long, contains three sets of locks, transits on an annual basis approximately 14,000 oceangoing vessels and is surrounded on both sides by a 10-mile strip of U.S. territory known as the Canal Zone.

How did the United States come to obtain sovereignty over the Canal Zone? Although this issue is essentially extraneous, it has been made a centerpiece of the proponents' position. Treaty proponents, in effect, argue that the United States obtained the zone in a classic exercise of gunboat diplomacy and because the age of colonialism is over, the United States should give up this colonial outpost. Reference was made to this effect the other evening, in the fireside chat, by none other than the President.

In fact, as I told the Foreign Relations Committee during my testimony on this matter, our presence in the Canal Zone is in no way colonial. Indeed, after we had all but decided on another route, the Panamanians asked us to come in in order to secure the economic benefits which the zone would provide. Panama is a prosperous, independent nation today because of U.S. expenditures in building and maintaining the canal.

Prior to concluding a canal treaty with Panama in 1903, the United States had studied several possible canal routes and had

Panama not revolted and declared its independence from Colombia, the canal would have been constructed in Nicaragua. The independence movement in Panama in 1903, which was directed against Colombia, was for the expressed purpose in Panama in 1903, which was directed against Colombia, was for the expressed purpose of negotiating a treaty directly with the United States in order to head off the imminent Nicaraguan route. The Panamanians, at that time, realized that their best chance of surmounting their fate as a poverty-stricken, disease-ridden province of Colombia lay with the construction of the canal.

Nor, has there been any exploitation by the United States of Panama. Quite the contrary. Panama has prospered, because of the canal to a degree far greater than any other nation in Central America. Since 1904, the United States has invested over \$7 billion in improving the canal facilities and the defense sites.

But, rather than spend a lengthy period discussing canal history which has been examined in great detail in hearings before the three Senate committees, I would instead like to discuss the broader questions of how I feel the Senate should approach debate on the treaties presently before us.

It seems to me that we need first to establish the standard by which the treaties should be judged. Then, it is vital that we look carefully in a balanced and reasonable way to determine that combination of strategic, diplomatic, and economic factors which we can fairly judge to make up the national interest of the United States in this matter.

In my judgment, on the canal treaty question, the proponents have performed a rather adroit reversal of typical legislative procedure. As my colleagues well know, the burden of proof in legislative matters lies with those doing the proposing. Thus, it is incumbent on anyone who wishes an affirmative vote of the U.S. Senate to present a clear and convincing case as to why the Senate should decide in his favor. Rather than present us with such a case, the proponents have turned to those of us who oppose ratification and confronted us with the question, "Why not?" This, to me, is the wrong way for us to approach this debate.

A second criticism which has been leveled at those of us who oppose the treaties confuses the question of who is to apply to this standard. I have heard many times that should the Senate reject the treaties, this would be tantamount to some kind of rejection of the President of the United States which would seriously impair his ability to conduct our foreign policy. In my view, this is simply not the case. The fact is that under our constitutional processes the current President, as every President before him, has only the power to negotiate. He has absolutely no power to bind. That is the function of the people acting through their representatives in the U.S. Senate. As far as our role is concerned, we should never be placed in a position of being a rubber stamp, because this would be a complete derogation of our constitutional responsibilities. We need to apply to our constitutional function to advise and consent our independent knowledge and the unique inputs each of us receives from our constituencies.

With that in mind, it seems to me that three basic questions should be asked as we approach these historic treaties. These are

the same three questions which I discussed in my testimony on this matter before the Committee on Foreign Relations on October 5, 1977. What do these treaties represent in a broader sense for our Nation, what specifically do they say, and how is the administration going about selling them to the American people?

WHAT THE TREATIES REPRESENT

First of all, what do these treaties represent for us as a nation? Needless to say, this is a question which has been hotly disputed in the many hours of committee hearings. But, to me, the proposed treaties represent a grievous risk of loss within 22 years and an almost certain loss after that time of a vital strategic and economic asset for the United States. They also set a defeatist tone for our overall foreign policy which is unworthy of our people and which we will likely be a long time living down.

International politics, in general, is a notoriously treacherous business where the motivations and credibility of potential partners must be carefully assessed. If anything, this is even more true for the proposed canal treaties where the essence of the proposed agreement is a valuable piece of commercial and strategic real estate being traded for paper promises of future use. Here the character of the man and nature of the regime offering us these assurances is of particular importance. It is critical that we determine the nature and character of the partner with whom we are going to bed on these treaties.

Mr. President, I suggest in this uncertain world that we need, in general, to be very careful in selecting those upon whom we rely on basic security matters. And, what is more, when it comes to international partners, the present Panamanian regime is hardly one in which I would repose a lot of confidence, much less the guardianship of a vital U.S. asset.

General Torrijos' connections to Havana and, by extension Moscow, are well-documented. As a result, what we are doing, in essence, is relinquishing control over a vital international waterway to an unstable dictator who is a close confidant of Fidel Castro, and that does not come to me by way of hearsay evidence. In response to a direct question to the general he admitted, to his credit, that he is a close friend of Fidel Castro, that he has relied upon him for advice in the past.

It is naive for us to conclude in our deliberations here that we are dealing with anything else but a close relationship from every standpoint between General Torrijos and Fidel Castro.

With Castro as a Soviet catspaw doing most of the immediate work, the vacuum created by our withdrawal from the Canal Zone will be rapidly filled. When you think about it, if Cuba, at Soviet instigation, would send 17,000 troops into Africa to interfere in the internal affairs of that continent, can we seriously question the fact that once we pull out of Panama, located only a few hundred miles from Cuba, that Panama will not be subjected to the same type of invasion or infiltration?

To me, it is naive to think that that is not a very real possibility.

Admiral Moorer, in his testimony before the Armed Services Committee, cited the weakness and instability of Panama as well

as the closeness of Torrijos to Moscow and Havana, to argue ably that U.S. departure from the Canal Zone would inevitably create a vacuum which would be quickly filled by the Soviet Union and by Cuba. As a result, he stressed that a confrontation over the neutrality of the canal, once the United States withdraws, will be transformed into a confrontation with the Soviet Union rather than any rag-tag group of Panamanian guerrillas or terrorists. We should remember that on this question we are not playing chess on a country club porch. We are playing international hardball. Anytime we delude ourselves to the contrary, we are inviting serious difficulties.

As important as the credibility of the Torrijos regime is in assessing the context of the treaties and as dangerous as the political vacuum would be should we withdraw, of equal importance is the message which Senate acceptance of these treaties would send to our allies and adversaries around the world. On this matter, I fully agree with Secretary of State Vance, who said in his statement opening the Foreign Relations Committee hearings:

How we respond to an issue such as the Panama Canal will help set the tone of our relations with the rest of the world for some time to come?

Where I differ with the Secretary, of course, is the kind of tone which I believe these treaties will set for our foreign policy. We are told that we must ratify the treaties because to do so would improve our Latin American relationships in particular. I suggest, Mr. President, that Latin America is far more interested in keeping the canal open than in our capitulation to Torrijos. Our neighbors to the south have a vital economic stake in the situation and they know Torrijos. And Senator Garn, during the course of the debates next week will speak directly to that based upon direct conversations with the heads of state in that part of the world.

The people down there know the administrative and economic difficulties with Torrijos and, in private, they are most uncomfortable with the prospect of his running a canal which is vital to their economic interests.

We are told by the proponents that we must ratify the Panama Canal Treaties in order to improve the general tenure of our relations not only with Latin America but worldwide. Somehow, if we approve these treaties, the world will suddenly commend us for being generous and beneficent. I suggest that just the opposite is true. History has taught us certainly that we cannot buy friendship on an international level anymore than we can buy it personally or privately. On the contrary, all one needs to do is observe the antics of the Third World in the United Nations. The more we help, the more they seem compelled to give us a hard time.

So this to me is senseless logic and the worst premise in the world on which to make a vital decision of this kind. It is my view, traveling around this country a bit and traveling around the world, that we are losing our respect, because of this type of behavior. And, I think our friends would view Senate ratification of the proposed treaties with contempt and pity. Particularly, the Latin Americans. As a Latin, I think I know something about their psychology. They love macho and glorify in it. On the other hand,

they detest weakness and I have a sneaking suspicion that this is how they would perceive our ratification of these treaties.

The big boy backed down.

In fact, it is difficult to see how they could perceive ratification in any other way. The proponents' position boils down to proposing to give away an important piece of real estate for the pure and simple reason that when push comes to shove, we do not think that we can hold it. The proponents cite fears of sabotage and guerrilla warfare and the alienation of Latin American opinion. The military leaders among them even draw distinction between concepts of possession and use of the canal. But, the essence of their position is that because the United States is not physically able to maintain its sovereignty over the Canal Zone, we should relinquish it before it is taken away from us by a country with 2,000 national guard troops.

Mr. CHURCH. Mr. President, will the Senator yield?

Mr. LAXALT. Certainly.

The PRESIDING OFFICER. The Senator from Idaho (Mr. Frank Church).

Mr. LAXALT. I hope there are not going to be too many interruptions. We saw fit not to interrupt the statements of the proponents.

Mr. CHURCH. We have the debate going now and we cannot debate this treaty under rules that prevent or preclude Senators from raising questions when assertions are made that need to be challenged.

Mr. LAXALT. I recognize all that, but we did operate initially here on the basis that we would devote these 3 days to general statements of position with debate on the specific provisions to commence when we come back from the recess. I have no objections to a debate. But we are changing ground rules. We are interfering with the time of other Senators who are going to speak after me. That is my only reservation, I say to Senator Church.

Mr. CHURCH. Mr. President, I never agreed, nor do I know of any understanding that Senators may not engage in the traditional debate that does occur in the Senate.

Mr. LAXALT. I would be the last to defy the conventions of this body.

Mr. CHURCH. Interventions of this kind must occur; otherwise we are simply going to have pro forma orations made to the public radio, which is hardly the kind of debate that I think a matter of this importance deserves.

When the Senator says that the proponents of this treaty are urging it upon the Senate on the grounds that we are being forced to do it, that we are bending the knee, so to speak, to tiny Panama that we are acting under threats of coercion or blackmail—that was the essence of the Senator's argument—I must strongly disagree, for this is not the reason that I support the treaties if they are amended as the committee recommends, I support the treaties for just the opposite reason: That our security will be enhanced if we ratify the treaties, simply because it is obviously easier to preserve an open space, a neutral canal, in a climate of friendship and cooperation, than it is in a climate of hostility.

That is not an act of genuflection before Omar Torrijos, who will not even be in charge of Panama by the turn of the century when

the actual transfer of the canal occurs. So I hardly see the relevance of that particular argument.

Mr. LAXALT. Will the Senator yield? Will the Senator yield?
Mr. CHURCH. Yes.

Mr. LAXALT. Are you contending, then, as a proponent of these treaties, as a factor for us to consider, that all possible fighting and aggression within Panama should be disregarded and be moot, as far as our future there is concerned?

Mr. CHURCH. No, not at all. I am suggesting that the Senate should consider, in a reasonable way, the climate affecting the security of the canal. Certainly the security of the canal is the paramount question.

As to the question whether the treaties would enhance or impede the security of the canal, I put exactly that question to General McAuliffe. This is my question:

Is it your opinion, General Brown, and also yours, General McAuliffe—

Both General McAuliffe and General Brown were at the witness table, at the time—

That the security of the canal would be enhanced or be impeded by these treaties?

This is what General McAuliffe replied:

If I may answer, Senator, in my judgment, our capacity to keep the canal open and in use for our country and the countries of the free world will be enhanced, considerably enhanced, by the provisions of the treaties. I say that because of the factors that I enumerated in my prepared statement. The heart of it is really having a friendly environment around the canal in which to operate, and we can do all of our defense tasks better in a friendly rather than in a hostile environment.

I am sure the Senator from Nevada would not suggest that General McAuliffe is a man who would bend his knee to the Panamanians, or would not stand up stolidly and defend the canal under any circumstances. But he is an enlightened and reasonable general, and he said:

My duty to protect the canal would be enhanced by these treaties, not impeded.

Then I put the question to General Brown:

As Chairman of the Joint Chiefs of Staff, would you agree?

He said:

I would agree, Senator Church.

So I simply would hope that if it is the security of the canal we are concerned about, we ought to at least heed the testimony of the men who are charged with the responsibility of the defense of that canal, the commander of our own forces in Panama.

Mr. LAXALT. May I say to the Senator I happened to be in Panama myself, and the impression I had rather clearly was to the effect that we presently have in the force in Panama sufficient troops to quell any serious disturbance.

And may I suggest further that the reason why we are talking about violence and suggested terrorist and guerrilla activity is because the proponents of this treaty—and I am not referring to the Senator from Idaho; I know he does not suggest anything of this kind—but there have been statements made by members of the administration all around this country indicating that if we do not give up the canal, we are going to have difficulties, therefore

we should give up the canal. That has been the position of the proponents around this country, and it is absolutely wrong.

In addition, it is incomprehensible to me that it can be seriously suggested that we are going to be in a better defense situation of the Panama Canal when we are out of control, rather than being in control. I do not follow that argument at all. Who can seriously contend that this country is not going to be in a superior position militarily and defensewise to protect that facility if we are in control there, rather than the Panamanians?

Mr. CHURCH. Mr. President, there is a very good answer to that question. I would refer back again to General McAuliffe. At the time, members of the Foreign Relations Committee, including myself, were in Panama meeting with him and obtaining the briefing, he made the point very emphatically—and as to this I am sure the Senator from Nevada would be in full agreement—when he said:

I am not concerned about a military threat to the canal that takes the form of guerrilla warfare and substantial military force.

He said:

We can, with sufficient reinforcement, preserve the canal, maintain it as an open channel through which to put our fleets, if we deploy sufficient troops for that purpose. It is a small area; we can erect a shield on either side which would prevent it from being taken over by any force likely to be available or in that area for that purpose, from any force likely to be launched in Panama or Central America or anywhere thereabouts.

That was not the question that concerned the general.

Mr. LAXALT. Will the Senator yield? That is the question.

Mr. CHURCH. Let me finish, because I am quoting General McAuliffe. He said:

I have no doubt that with sufficient forces, we can keep the canal open against that kind of military aggression.

But he said:

What is the purpose of the canal? The purpose is not to establish an enormous fortification there, with 50,000 American troops standing arm-in-arm to prevent some force from wresting the canal away from us. Certainly the Panamanians do not possess that strength. The purpose of the canal is to be a peaceful, secure, safe passageway for the merchant ships of the world.

Ninety-nine point nine percent of the time that is how the canal is used. That is how the canal confers its benefits. That is what the canal was built for. In times of national emergency—

Mr. LAXALT. And that is precisely how it has been operated for over half a century, without any problems whatsoever.

Mr. CHURCH. There has been trouble in the past. There has been gun fighting in the streets, and the slaughter of Americans, because of this trouble. It is quite incorrect to say there has been no trouble before. There has.

Times change, Senator. Nationalism exists in Panama. They, too, have their pride.

Mr. LAXALT. I would point out to you, too, that I am getting a little tired of constantly hearing about Panamanian pride. There is American pride, too.

Mr. CHURCH. Which we share.

Mr. LAXALT. Millions of Americans wonder what is happening to this country when you subjugate the interests of this country to what is called Panamanian pride.

Mr. CHURCH. Mr. President, that is an absurd statement. It is just possible that American interests can be enhanced by taking into account the pride of the Panamanian people.

Mr. LAXALT. I have no quarrel with that, just so we do not give them the entire facility and pay them several billion dollars in tribute beyond that.

Mr. CHURCH. Senator, if we can finish with the security of the canal, we can debate the economics at an appropriate time.

General McAuliffe said the purpose of the canal, and I think we should all agree, is a peaceful passageway for the commerce of the world.

Mr. LAXALT. Does anyone seriously question——

Mr. CHURCH. May I just complete General McAuliffe's argument?

Mr. LAXALT. Surely.

Mr. CHURCH. After all, he is the commanding general there and does have the responsibility to keep the canal secure.

Mr. LAXALT. And he is responsible to the Commander in Chief, who supports these treaties.

Mr. CHURCH. And he is also an honest man.

Mr. LAXALT. I do not question that for a moment. But I would like to see what General McAuliffe's secret ballot would be on these treaties if we could get it from him.

Mr. CHURCH. I have no doubt as to how General McAuliffe would cast his vote because he told me personally afterward: "Senator," he said, "these are treaties that the military has been for, that we have worked for, for years." He said, "When I give it my endorsement, I give you my personal assurance that this is my personal belief."

Mr. LAXALT. If he did that, he would be flying in the face of almost a universal consensus of retired flag officers in this country.

I would like to yield the floor for just a moment to Senator Garn.

Mr. CHURCH. If I may just complete my thought——

Mr. GARN. If the Senator will yield to me——

The PRESIDING OFFICER. The Senator from Nevada has the floor. Does the Senator yield?

Mr. LAXALT. I have yielded to the Senator from Utah for a moment or two.

The PRESIDING OFFICER. The Senator from Utah.

Mr. GARN. I will allow my distinguished colleague to finish his opening statement, which I believe most people will agree to.

I would like to ask the Senator if I could get a brief response to one thing: The Senator has made a statement over and over again about signing these treaties and he has quoted General McAuliffe how it would be easier to defend with a friendly group in Panama. There is no doubt about it. It would insult anybody's intelligence to assume otherwise.

From a military standpoint, I think it strains my imagination to think that the mere signing of these treaties guarantees friendliness within the Panama Canal Zone. I think it is a very naive position to assume that. With the conditions down there, General Torrijos is going to be just about as much trouble if the treaties are

passed as the expectations if they do not pass. I think it is ridiculous to assume that the treaties guarantee that we will have friendly relations, or some future dictator who replaces General Torrijos does not try one-upmanship. "Let's see if we can threaten them again in 5 years and see if we can squeeze a little more out."

Mr. CHURCH. My reply to the Senator from Utah is, of course, that no mortal can guarantee the future. I have not said at any point in this debate that the ratification of these treaties means that all of our problems in Panama, or elsewhere in Latin America, are solved. But I think it is a fair statement to say that most of the knowledgeable people in Latin America, most of the historians who have followed relations between the United States and her Latin neighbors, are in full agreement that these treaties are very likely to produce better feelings toward the United States owing to the long festering resentment on the part of Panamanians to our occupation of the Canal Zone, our control, our jurisdiction, our laws, our police, our courts, all of which to Latin Americans represents a colonial anachronism.

I took the floor to point out that in the matter of the canal's use, which is the important thing, General McAuliffe was not concerned at our inability to hold back substantial military threat. He said, "The things we cannot do is to prevent a continuous harassment of the use of the canal if a hostile climate develops."

He made this very clear. He said there is no way, with the jungles on either side of the canal to prevent the lobbing of mortar shells into the area. There is no way to prevent sniper fire. If it occurs intermittently, if it constitutes a threat to passing vessels, in that situation what happens to the commerce in the canal? Are ships going to move through knowing that intermittent rifle fire, that harassment, will continue in that unfriendly climate? Is the captain going to expose himself on the deck where he might be shot from the jungle? This kind of security cannot be furnished by any military force.

This is the principle benefit of the canal, its use to the United States and to the merchant fleets of the world. That kind of use cannot be guaranteed by an American military force of any size, which is the reason that General McAuliffe, our commanding officer in Panama, says that the treaties will enhance the security and the use of the canal and not impede that security.

Mr. GARN. I do not want to impinge further upon the time of my colleague, but let me say we will be debating that at great length at the proper time. I happen to be a member of the Armed Services Committee, and the Armed Services Committee is charged with the specific responsibility of authorizations to the Armed Forces of this country. I think we may have looked at it more critically. Though I would like to respond today, during the weeks to come expect me to be here refuting much of what the Senator has said today.

I would suggest in preparation the Senator might read the testimony of military officers, including members of the Joint Chiefs of Staff, before the Armed Services Committee. He will find some rather interesting things which are stated there. Just two examples rather quickly: Admiral Holloway testified that if he had his "druthers," and we lived in a perfect world and we did not have these threats down here, from a military standpoint he would

much rather keep it in perpetuity; he would much rather keep defense positions there, and people. It would be much easier to defend. That is the testimony of the Joint Chiefs of Staff before our committee.

When I asked him about the differences between retired flag and general officers and what he thought would be the results if we had a secret poll of active duty flag and general officers, he said it would be about the same, with the caveat that, of course, they were not as intimately involved in the details as negotiators as the Joint Chiefs, that they did not know as much about it. We are going to talk a great deal more about this defense.

I would just make one more statement. It would be rather interesting if the Armed Services Committee had jurisdiction over this treaty. It would have never reached the floor of the Senate. I do not know exactly what the vote would have been, but I would guarantee on the very defense issues we are talking about, looking at it from a military and defense standpoint, it would never have reached the Senate floor and would not if we held a vote on it today.

Mr. CHURCH. I have read the report of the committee.

Mr. GARN. The time belongs to Senator Laxalt. I will yield back to him.

Mr. SCOTT. Will the Senator yield for a question?

Mr. CHURCH. If I may respond briefly to the statements of the Senator from Utah, then I will yield.

The PRESIDING OFFICER. Does the Senator from Nevada yield?

Mr. LAXALT. I yield.

Mr. CHURCH. I have read the record of the testimony before the Armed Services Committee. On this very point General McAuliffe, testifying before the Armed Services Committee, had this to say when Senator McIntyre asked the following question:

Your thought would be, if we do run into real difficulty—I certainly hope we don't—you need in the vicinity of 50,000 troops to maintain the security of the canal over that period?

General McAuliffe replied as follows:

That is correct; and I should add this, in my judgment, to prevent what I would call the destruction of the canal. However, even with that sizable force or a larger one, I would say that unless extraordinary measures are permitted, such as moving across the national boundaries, there is no way that I could prevent the interruption of that canal, and the reason I say that, if I may use an illustration, the Canal Zone boundary is only 5 miles from the centerline of the canal. The exceptions are in the lake area. One can easily visualize, again, if there is a hostile Panama, visualize the use of standoff weapons only 5 miles away, and they wouldn't have to hit very much in the canal or in the Canal Zone, but they would terrorize the employees and probably stop commercial shipping, and that is whether they sink a ship or not.

That is the point. The use of the canal, by our general in charge, would be enhanced by the treaties.

Mr. GARN. I would only say there is more testimony of General McAuliffe later on in response to questions by the Senator from Utah about the vulnerability. I will not take any more time of my distinguished colleague. Later on we will discuss the rest of the testimony.

Mr. SCOTT. Will the Senator yield?

Mr. LAXALT. I yield.

Mr. SCOTT. Mr. President, it was this Senator's understanding that we are not going to have debate this evening. I have been over in my office preparing this short statement. There are other Senators sitting around. I wonder if we might let the Senators make their statements today and then have our argument later. I believe we have extended the courtesy so far. I hope that all Senators might give the other Senators an opportunity to have their opening statements.

Mr. LAXALT. I might indicate to the Senator from Virginia that that proposal has been made and it has met with an eminent lack of success. I have no objection to this. The opponents feel the debate should be kept current with the topical discussions as they arise.

For the purpose of the record, while we are on this point, may I read the testimony of Admiral Moorer before the Armed Services Committee. For those who may not be familiar with his background, as everybody knows, he served as chairman of the Joint Chiefs, retired, is as highly respected as anybody in this country in this field and, more importantly than anything else, is totally independent of any form of political pressure. He can tell it like it is.

Admiral Moorer indicated in his testimony:

The proponents of these treaties proclaim again and again that the only way to handle the internal threat is to ratify the treaties and give up the Canal. It is repeated over and over again that we are not interested in ownership, only continued use, which can be acquired only with the help of the Panamanians. Otherwise, they say, 100,000 troops will be required to defend the canal and we will immediately be plunged into another Vietnam. I do not accept any of these scare statements. In the first place, a major part of the income of Panama is due directly to the existence of an operating canal. If the Panamanians make an effort to sabotage the canal they are the ones that will be harmed. Most of them know this.

I should like to carry on now with what remains of my prepared statement.

Referring back to the violence argument, which initiated the recent discussion, this violence argument is worthy of detailed comment. Ambassador Linowitz stated it in perhaps the clearest way when he said in a Voice of America broadcast:

Expectations have been raised so high in Latin America that failure to get the treaties ratified could bring a whole range of consequences including violence.

Raised by whom? People like Sol Linowitz, making statements to this effect.

I do not believe that the issue of potential violence should be ignored. But, I do believe we need to inquire closely as to its origins. To me, the treaties represent the worst possible way of dealing with potential security threats to the canal from within Panama. The expectations of Panamanian extremists have certainly been raised by the prospect of their taking over the canal. But treaty proponents need to ask themselves whether those expectations would be satisfied by extremists being asked to wait 22 years or whether violence and sabotage are now possible irrespective of Senate ratification, simply because of the atmosphere of heightened expectations which the treaties create without really satisfying.

I might say on this point that Senator Dole and I, when we traveled to Panama, made it abundantly clear to the Panamanian people through their press that the rejection of the treaties by this body would not be a rejection of the Panamanian people per se. It would be simply a rejection of very bad treaties, which we felt were not in the best interest of this country.

Robert Gomez, the secretary general of the Federal Panamanian Students, perhaps put the extremist position best in a speech last fall when he said:

Contrary to what many think, the new agreement will not and cannot signal the end of the process or of the struggle for national liberation. Hail the unity of the patriotic forces and support for the liberating process; the struggle against imperialism and its internal allies will be continuous and prolonged. No one and nothing can stop it.

It was rather frightening to me when we asked General Torrijos, what if we reject the treaties; will you have control of this situation? He candidly admitted that perhaps he would not.

In view of this tinderbox situation, I see Senate refusal to ratify as providing at least some deterrence to violence by demonstrating that the power of the United States remains behind its legitimate interests. Ratification of a halfway house treaty, on the other hand, because it represents a clear capitulation under threat of force without satisfying extremist expectations would be a signal to potential rioters and saboteurs that they need not wait 22 years. All they need do is push just a little harder because the United States would have clearly demonstrated its willingness to succumb to violence. Then it would be open season for extremists to attack not only the canal but the property and persons of U.S. nationals throughout Latin America.

Let us discuss for a moment what the treaties say.

The terms of the treaties are no better than the overall tone which they set for American foreign policy, in my opinion. I am opposed to the front-end concession of the key principle of sovereignty.

Whether or not we would contend that there is sovereignty, which is an open legal question, I believe that the initial admission that not only do we have sovereignty now but we have never had it can be critically damaging.

I believe the rapid turnover of crucial support services to the Panamanians bodes ill for the effective operation of the canal. I think the human rights of Americans left in the Zone and our ability to guarantee the neutrality of the canal are inadequately protected under the terms of this treaty. It is, to me, an absolute scandal that we are proposing to pay the Panamanians what amounts to tribute to take the Canal off our hands.

With regard to sovereignty, the main purpose of the treaty is hardly concealed. The preamble to the agreement opens by "acknowledging the Republic of Panama's sovereignty over its territory." Quite clearly, at the very core of the nature of the present relationship between the United States and the Panama Canal is our own sovereignty over the Canal and Canal Zone. In my judgment, it would be bad enough if this new treaty confined itself to passing sovereignty to the Panamanian Government. But, as I read the existing language, it recognizes that Panama already has sover-

eignty. Thus, the Panamanians could presumably exercise their right to expel the United States from their country whenever they desire. Accordingly, in these agreements, we are not only giving away our canal, we are asserting that we have never had it.

President Carter has stated that we have never had sovereignty over the Panama Canal Zone. This is simply a distortion of the facts. The 1903 Convention between the United States and Panama gave the U.S. sovereign rights over the Panama Canal and the Canal Zone "in perpetuity" and "to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority."

Indeed, the question of U.S. sovereignty was debated and put to rest by the Supreme Court in 1970 (*Wilson v. Shaw* 204 U.S. 24 (1970)) and as recently as 1972 (*U.S. v. Husband* R 406 U.S. 935 (1972)).

Initially, the United States paid the new Republic of Panama \$10 million for the transfer of territory, assumed the annual obligations of the Panama Railroad and purchased its entire stock. We also purchased all privately held lands within the zone even those of squatters. All told, by the time of the completion of the canal in 1914, the United States had paid upwards of \$54 million in acquisition costs to Panama, the French company, and private landowners. Later, we even settled with Colombia under the Thompson-Urrutia Treaty of 1922.

Mr. President, quite literally, we provided fair compensation to anyone having even the pretense of a just claim. We did buy it. We did pay for it. And it is ours.

EFFECTIVE CANAL OPERATION

Despite some obvious disputes over the running of the canal, particularly reflected in demands by Panama over the years for more revenue and control of the canal, nearly everyone agrees that the Panama Canal Company has skillfully maintained an extraordinarily safe, fair and efficient operation. It has made a major contribution to the development of world trade and preserved our own security interests in the Western Hemisphere.

In scrutinizing the terms of the new agreement, I cannot help but wonder whether the operation will continue in the same equitable and efficient manner in the future. Article X requires that the American workforce must "within five years * * * be at least 20 percent less than the total number" of those working there at present. And, under section four of the same article, new non-Panamanian employees can only work for terms of 5 years duration (aside from some special circumstances). Thus, discrimination is mandated in the treaty against the very personnel whose qualifications are necessary for the continued operation of the canal.

Quite simply, Panama does not now have, and cannot have within the short period of time required, the skilled personnel to fill adequately the jobs of those who will leave their present jobs, whether voluntarily or under duress.

The mechanisms of the canal do not operate by means of good feelings or improved relationships with Latin America. Rather, the canal, as an international waterway, requires the skillful manipu-

lation of a complex series of gates and locks. Yet, many of the U.S. employees have stated that if the treaties are ratified they will return to America and not stay to train Panamanian replacements. Jobs such as the ships' captains that navigate the vessels through the canal now require 20 years of training and experience. Panama does not have such qualified people. At present, only 2 out of the 200 ships' captains are Panamanians. Until recently, no school even existed in Panama to train ship's captains and the country has virtually no navy. Nonetheless, the treaty requires that Panama assume control of an increasingly large portion of the skilled jobs in the operation of the canal.

And the question goes deeper than ability to one of willingness. Let us not shrink from the facts. The government of General Torrijos is shot through with mismanagement. Major management projects such as the new airport and Contadora resort island have failed utterly. Have we any reason to think Torrijos would prove either better able or more willing to handle the far greater challenge of running the multibillion dollar canal operation than these other tasks?

To make matters worse, the United States does not even have the option of building an alternative canal if the proposed arrangement with Panama does work out in practice. Under article XII, the United States is prohibited from negotiating "with third states for the right to construct an interoceanic canal * * * in the Western Hemisphere" without the consent of the Panamanian Government. Thus, even if there is an uprising and the canal is closed, Panama holds an absolute veto power over the United States pursuing an alternative route for the next 22 years.

HUMAN RIGHTS

The worst fears of the workers who now live in the Panama Canal Zone are fully realized under the terms of the proposed treaty. In all the discussion of alleged grievances and rights of Panama, we have curiously ignored the rights of the American citizens and perhaps equally tragic, those of the Panamanian employees of the Panama Canal Company, who live in the Canal Zone. In the treaty, we consciously expand Torrijos' authoritarian rule to include the zone without ever raising a question about the abysmal human rights record of this regime and its consequences for those who live and work there.

Under article XI, section 2, Panama does permit the United States to continue to have the "primary right to exercise criminal jurisdiction over the U.S. citizens employees" of the canal, their dependents and other American military forces. But, this protection is limited to only certain areas and, most importantly, lasts only for the transition period of 30 months. After this period of time, these people fall completely under Panamanian legal jurisdiction.

The human rights question must be squarely faced. The zonians have lived under the mantel of freedom provided by the United States in the Panama Canal Zone. Are they now to be abandoned? As I learned during a recent visit to the Canal Zone, simply in anticipation of the new agreement many employees have already

left the area and in a 3-year period this emigration is predicted to turn into a flood.

The administration's quest for human rights in the international area is certainly laudable. Yet, I must object when that same administration proposes to turn the civil rights of many thousands of American citizens and even more U.S. Government workers over to a dictator.

SECURITY GUARANTEES

Presumably, to protect the U.S. vital security interests, a separate treaty provides for the permanent neutrality of the canal. Thus far, this entire section has been enveloped in a conflict of interpretations between American and Panamanian negotiators. If disputes have arisen before the agreement is even ratified, this certainly bodes ill for its prospective implementation.

In the discussion thus far concerning American rights under the Permanent Neutrality Treaty, the Panamanians have made a much more convincing case for their position. Rather than a genuinely joint declaration, the Panamanians have insisted that since the main treaty acknowledges their sovereignty over the canal, they alone can declare the neutrality of the waterway. And, under article I of the second treaty, the language indicates only that "The Republic of Panama declares that the Canal * * * shall be permanently neutral." Thus, if Panama alone can declare neutrality, then unless other specific language indicates otherwise, the United States has no right under the treaty to proclaim unilaterally a threat to that neutrality and intervene to thwart such a threat.

Article IV of the neutrality treaty has been cited as a basis for the American right to intervention. This article does allude to both the United States and Panama agreeing "to maintain the regime of neutrality established under this treaty." The last four words of this quote clearly mean the kind of neutrality that Panama has declared already in the treaty and not an American right to determine this.

Thus, it is entirely understandable that General Torrijos in a speech to a Student Federation Congress in Panama on September 15, 1977, stated that:

I am not afraid, nor am I denying, that we signed a clause which if misinterpreted by future U.S. generations could give place to intervention. But, I am not afraid because I know the youth that we are producing. And, in order for there to be intervention, there must be a people willing to accept intervention, and these people have no intention of accepting it.

The language of the Panamanian view of what this agreement does could hardly be more specific.

Many other Senators share my concern with the meaning of the Neutrality Treaty. In this light, the Foreign Relations Committee has recommended an incorporation of the October 14, 1977, Statement of Understanding between Carter and Torrijos as part of the treaty. Frankly, even if this statement was made part of the treaty, the problem of interpretation is not solved. Without another Panamanian plebiscite, it is unclear whether this statement is even legal and binding upon both parties. As Senator Griffin indicated General Torrijos on returning to Panama after the October meet-

ing with Carter, stated, "I haven't even signed an autograph." Certainly, this statement at least suggests a lack of legal validity.

Furthermore, the Carter-Torrijos Statement declares that the rights of the United States do not extend to intervention in the "internal affairs of Panama." What course of action would then be open to us if the canal's neutrality was threatened from forces within Panama?

The October 14 statement also grants the United States "expeditions" crossing of the canal, that is, we may "go to the head of the line of vessels in order to transit the canal rapidly." Of course, being at the "head of the line" does not guarantee that a Panamanian-controlled workforce will actually push the levers and open the gates to get us through the canal.

On this point, as well as many others, the most lucid discussion that has thus far appeared of the nature and direction of the negotiations has derived from the Panamanians. They have indicated that the original language proposed by American negotiators was unacceptable to them, and, ultimately, on the crucial issues they have prevailed. I cannot help but conclude, as the Panamanians have, that even with the understanding incorporated, the United States, under the terms of the Permanent Neutrality Act, has sacrificed all meaningful rights to maintain the security of the canal.

THE HIGH COST

While most Americans oppose giving the canal to Panama, they are literally livid at the prospect of paying Panama to take the facility off our hands. Thus, the economic arrangements will require special attention and some plausible justification must be provided to explain why, in the course of transferring this multibillion-dollar asset to Panama, we must at the same time provide for payment to Panama of upward of \$50 million per year.

Of course, under the language of the treaty, the United States does not directly pay this money to the Panamanian Government, but the net result is the same. Under article XIII, dealing with the economic participation by the Republic of Panama, the agreement provides for Panama receiving \$0.30 per ton for each vessel transiting the canal. Moreover, 5 years after the new treaty goes into effect, this figure will be adjusted upward each 2 years to reflect changes in the American wholesale price index.

Some have contended that this provision places a ceiling on the amounts that the tolls may rise for the next 22 years. But, more likely, the effect will be a rising floor for future toll increases. Coupled with the per ton figure, the United States also quadruples the annuity payment to Panama to \$10 million and promises another \$10 million if canal revenues exceed expenses. This last provision may seem to provide an incentive for the efficient operation of the canal, but more likely, this will simply encourage a rise in tolls that will permit the \$10 million to be extracted.

All of this money derives from the revenues collected by the new Panama Canal Commission. The estimates of the total amount varies depending on the volume of cargo. But, on the basis of last year's volume of 117 million tons of cargo, this would have meant

approximately \$45 million, or about 20 times as much as Panama receives under the 1903 treaty. If the canal has its anticipated rise in traffic this coming year, but still runs a deficit, this figure would rise to over \$50 million.

In order to compensate for this huge new expenditure by the operators of the canal, Ambassador Linowitz has already indicated that tolls will have to rise by 25 percent to 30 percent upon ratification of the treaty. This would represent the single largest increase in tolls since the Panama Canal began operations in 1914. This rise relates largely to compensation being provided the Panamanian Government. But, as indicated in the analysis above, probably larger incentives will have to be provided to skilled workers to remain in Panama under the new treaty.

Despite the fact that the revenues going into the Panamanian treasury derive from the general operation of the canal, the actual expense shall be borne by those ships that transit the canal and through them the producers and consumers of the goods shipped. This could have severe repercussion on some products, such as American agricultural goods being exported from the gulf coast to the Orient or oil flowing from Alaska to our gulf coast. Therefore, although though the payments to Panama are indirect, the American taxpayer will bear much of the burden of the increase which presumably will rise each year due to the indexing procedures.

Overall, this constitutes a radical alteration of the concept of the Panama Canal. While the United States has always viewed the canal as facilitating world commerce, the Panamanians clearly view the waterway as their own OPEC in miniature, their monopoly over travel from one ocean to the other. And, given the veto power they hold over the American right to negotiate building another canal, Panama can effectively stymie any prospective competition.

Having expended an estimated \$7 billion over the past 74 years in order to bring into existence and operate the canal and all its related facilities, the American people have a right to ask why they must pay to have this enormous asset, run so efficiently and fairly for so long, taken off their hands by the Panamanian Government. This is particularly true when sales of only several million dollars to other nations in Latin America have been suspended due to criticisms of the nature of their government.

Yet, with respect to Panama, no concern surfaces over the nature of the military dictatorship in the country that the United States will in effect be rewarding with one of the largest gifts ever bestowed voluntarily upon another nation. If the Government of Panama appeared as a reliable friend of the United States, perhaps some justification for this enormous behest might be offered on foreign aid grounds. Instead, the Torrijos regime has constantly extolled Fidel Castro as a great Latin American leader and proceeded on its own social revolution that has substantially destroyed the Panamanian economy. In my judgment, if these treaties were to be ratified, the United States would be rewarding the wrong government, in the wrong place, at the wrong time, and in the wrong manner.

THE ADMINISTRATION EFFORT

Mr. President, in addition to my concerns about what these treaties represent and what they say, in closing, I would also like to express my concern about the manner by which they are being sold to the American public. Months ago Governor Reagan rightfully termed the whole affair a "medicine show". And, I can only accuse President Carter's chief political strategist, Hamilton Jordan, of understatement when he told the Baltimore Sun:

We are going to spend a tremendous amount of political capital to get the treaty ratified.

I have found one of the most intriguing developments resulting from the Panama Canal treaty issue to be the negative approach most proponents have adopted in their efforts "sell" the document to the American people. Actually, "intriguing" is not a graphic enough description of the sales effort being promoted. "Insulting", although harsh, is probably a much more accurate description of a campaign which is calculated to frighten people into accepting a bad agreement by attempting to persuade them that because the Canal is vulnerable to attack by elements within Panama, this facility can only be insulated from destruction through acceptance of the current treaty.

This "argument" is the most prominently mentioned of the reasons for relinquishing control of the waterway. According to this line of reasoning, since the canal is susceptible to attack, the Panamanian Government has raised the spectre of guerrilla warfare unless we deliver—either our country accepts the treaty negotiated and turns the canal over or it will be put out of commission with everyone losing in the process. Largely upon this basis, the canal treaty proponents are mounting what they refer to as an "educational" program to apprise Americans of the purported dangers.

In my opinion, of all the approaches those who favor ratification could have chosen to "educate" the people with, this is the least likely to succeed. It would not succeed because the American people will reject it. Treaty supporters have maneuvered themselves into the unenviable position of attempting to convince the American public that they should forego a valuable strategic asset because violent actions have been threatened if we do not knuckle under.

I, personally, do not believe that an "educational" program heavily resting on the foundation of the "violence argument", when there is ample evidence that the document itself is faulty, dangerous and inequitable, will have any chance of success. Possibly, this is the only really viable avenue of approach for treaty proponents because the treaty is so poor as to be indefensible on most other grounds.

Mr. President, the whole concept of a propaganda campaign is disturbing in our American context. Certainly, the administration has the right, indeed even the obligation, to take its case to the people. But, the vehemence of their propaganda effort must be a function of the recognition that they have an uphill battle, since the Panama Canal agreement certainly will not sell itself.

I personally deplore the pomp and grandeur that accompanied the signing of the treaties last year. This ploy was clearly designed to force the hand of the Senate into acceptance of a document without scrutiny. The administration hoped to reduce the Senate's vital advise and consent role to that of a mere rubber stamp.

What is far worse, however, in recent months the administration has begun to distort some of the fundamental facts regarding the Canal Zone—distortions which, if not corrected, will cause many Americans to reach wrong conclusions. I spoke earlier of the sovereignty question. As another example, notwithstanding President Carter to the contrary, the United States does not pay rent on the Canal Zone. Instead we pay an annuity of \$2.3 million for use of the Panama Railroad franchise and the Rio Hato Air Base, which we built. There is no mention of rent or lease in the 1903 Treaty or its amendments.

These are crucial facts. And, I am afraid that their distortion could confuse the American people. Stating your case to the public is one thing, mistating it is another.

I regret to say that the whole affair smacks to me of arrogant elitism. Once again, the benevolent leaders of government, business and labor are purporting to prescribe to the masses policies against their wishes for their own "good."

There is almost a feeling of *deja vu* today as, one after the other, familiar names and faces of those who run our foreign policy in the 1960's reenter the scene to bless the Panama Canal treaty. I get the distinct impression they have once again found it comfortable returning to the arena where many programs they designed a decade ago are now being carried out. Yet, this is not particularly comforting since the era of "the best and the brightest" was not once renowned for its foreign policy successes.

It looks like big business is concerned enough about insuring its investments in Panama to back the treaty. It is no secret that the Torrijos regime is teetering close to the edge of financial collapse. What is less well known is that many U.S. companies have created offshore investment centers in Panama, taking advantage of Panama's lax banking and tax laws, and pouring literally hundreds of millions of dollars there.

If the walls caved in on the Torrijos government, American dollars heavily invested in the country would be lost. With this treaty and its extravagant payoff plans, the Panamanian economy would be pumped up and many American businessmen saved from a financial drubbing. Additionally, I think the business community has bought the "violence argument" and is willing to have taxpayer dollars bail them out of imagined Latin difficulties.

The third leg of the establishment triad offering support for the Panama Canal Treaty is the leadership of big labor. There is so much politics tied in with this endorsement that I am not sure the merits of the treaty were a consideration. The polls show that the rank and file members do not support the treaty. Perhaps not all the leadership does either, but I cannot tell due to the heavyhandedness of George Meany. Louis Fattorosi is strongly against the treaty. Last month he was scheduled to speak out against the treaties as a member of the Panama Truth Squad. However, he

was warned by the AFL-CIO head office that if he did so the AFL-CIO would revoke the charters of the Canal Zone unions.

So, once again, we see a case of establishment arrogance. The power blocs in Washington have decided to "educate" the masses on the necessity of ratifying the Panama Canal Treaty. In fact, they have determined the issue to be so crucial that they justify hiding secrets, heavyhandedness, and distortions in order to ram the treaties down the throats of the American people.

Mr. President, I sincerely doubt that any propaganda campaign, no matter how skillfully handled, could "sell" this very dangerous and inequitable treaty to the American people. The fact that there is nothing really positive to commend it has led to a campaign based largely on simple scare tactics and distortions. Mr. President, Americans will not buy it. We have responsibilities which must be met now and in the future and such responsibilities will not be dismissed by threats of blackmail which carries with them undesirable precedents. I firmly believe that it will be impossible to "educate" our people to accept something that is wrong.

Mr. CHURCH. Will the Senator yield on that point?

Mr. LAXALT. Yes, sir.

Mr. CHURCH. Is the Senator really maintaining that the United States has, in the past, claimed to be sovereign in the Canal Zone? I do not think that he will find that confirmed in any Supreme Court decision relating to the treaty of 1903. In fact, the treaty language itself does not claim sovereignty for the United States in the zone.

Mr. LAXALT. May I quote the language?

Mr. CHURCH. It says "as if sovereign."

Mr. LAXALT. May I quote the rest of the language?

Mr. CHURCH. Yes, because the Supreme Court has passed on that language and never has a claim of sovereignty been made by the United States. Why have we been paying Panama fees all these years if we were sovereign there?

Mr. LAXALT. Royalties, payments on the air base. If there never has been sovereignty, that is another thing—

Mr. CHURCH. There have been payments. Not much, I concede, because \$250,000 a year is not much for a zone that is 10 miles wide and 40 miles long. I would like to get property on those terms.

Mr. LAXALT. Will the Senator from Idaho permit me to read a provision of the treaty which I think is critical to this discussion?

Mr. CHURCH. I will, indeed. I simply want to make the point that, to my knowledge, the United States has never claimed sovereignty over the Canal Zone.

Mr. LAXALT. Whether or not we have, the treaty specifically provides for the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

Mr. HOLLINGS. Will the distinguished Senator yield?

Mr. LAXALT. Certainly.

Mr. HOLLINGS. Aside from the language, did the distinguished Senator, when he left the Panama Canal, clear customs?

Mr. LAXALT. I do not recall.

Mr. HOLLINGS. The Senator does not recall? Certainly he recalls. He had to clear customs when he left.

Mr. LAXALT. I really do not recall. I was preoccupied with other matters.

Mr. HOLLINGS. It is nice to get preoccupied, but does the Senator know we treat the Canal Zone in our Treasury practices as a foreign country?

Mr. LAXALT. Yes.

Mr. HOLLINGS. Certainly we do. We treat it as sovereign Panama, and not U.S. territory. When the Senator goes to Alaska, he does not clear customs, or to Louisiana.

Mr. LAXALT. I do not recall paying any customs in the Canal Zone.

Mr. HOLLINGS. The customs regulations are clear. The Canal Zone is not in any way included in the sovereign customs territory of the United States.

Mr. LAXALT. Because that is our property, over which I think we like to have sovereignty.

If I declared, I did so out of the Republic of Panama, with no reference to the Canal Zone, which, in my judgment, is our property.

Mr. HOLLINGS. When we look at our postal statutes—I am sure the Senator is familiar with those?

Mr. LAXALT. Not as familiar as the Senator from South Carolina.

Mr. HOLLINGS. As with customs, they are treated as a foreign territory. But look at the actual birthrights, because the Senator and I are both good constitutionalists. We know that under the Constitution and statutory laws of the United States of America, as in the Senator's State of Nevada, if a Panamanian couple came to Reno and had a child, that child born in Reno would be a citizen under the Constitution of the United States, because that is the sovereign United States out at Reno; is that not correct?

Mr. LAXALT. That is correct.

Mr. HOLLINGS. If we went down to the "sovereign" territory of the Canal Zone and that same Panamanian couple had that child in the zone, it would not be a citizen of the United States, would it?

Mr. LAXALT. That is true.

Mr. HOLLINGS. Well, the Senator has answered the question.

Mr. LAXALT. No.

Mr. HOLLINGS. How he treats it.

Mr. LAXALT. The premise of the Senator's argument is that these factors are conclusive. I go back to the wording of the original treaty, which specifically excludes and precludes any right of sovereignty on the part of the Panamanian Government in relation to the zone. If we do not have sovereignty, if Panama has no sovereignty, who does?

Mr. HOLLINGS. Panama has it, and the Senator knows good and well. Remember France and NATO. Charles deGaulle had the sovereignty, and we had the NATO Treaty, and he said, "Get out of France." We got out, did we not?

Mr. LAXALT. Will the Senator please explain to me then the express wording of the treaty to the entire exclusion of the exercise by the Republic of Panama, any such sovereign rights, power and authority, is that not the clearest sort of disclaimer we would want?

Mr. HOLLINGS. The distinguished Senator, in answering that, just keeps going in his history. I am going to actual facts.

I know the distinguished Senator was an admirer of President Eisenhower and I fought under him as General Eisenhower.

In the 1950's under President Eisenhower, there was the Suez Canal crisis when Egypt took over the canal. In the Eisenhower administration's viewpoint, Egypt had sovereignty over the canal even though there were those same language rights concerning France and England. Where did the United States stand under President Eisenhower on the Suez Canal? And is that not where we stand on the zone?

Mr. LAXALT. I do not think so. I think the cases are clearly distinguishable.

May I ask leave, Mr. President, to permit Senator Helms to speak? He has been waiting patiently for a while. I am going to interrupt my particular presentation. He has exceedingly pressing engagement and wanted very much to be heard on this today.

If my colleagues will not object, I would like very much to have Senator Helms take the floor and make his presentation.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I thank the distinguished Senator from Nevada for his courtesy to me.

I will say to him and to other Senators that it was made clear this morning that there would be opening statements today, and while I heard a number of statements which I consider to be erroneous and perhaps bordering on the absurd, I have not interrupted any of the proponents of the treaties, assuming that full debate would ensue at a later time on this floor.

I would say to the Senator from Nevada that it is undisputed that the United States does have sovereign rights in Panama, and we will get into that in some detail as this debate proceeds during the next few weeks.

But for the time being, Mr. President, the Senator from North Carolina wishes to address himself to the so-called Baker-Byrd amendment which has already been filed and which is at the desk.

Mr. President, the distinguished majority leader (Mr. Robert C. Byrd) and the distinguished minority leader (Mr. Baker) have together sponsored amendments to the Neutrality Treaty which are designed to clarify and make more specific our rights and obligations under that treaty. Although I received an invitation to join as a cosponsor, I declined to do so, even though I appreciated their courtesy.

Mr. President, I do not disagree with the aims of the two leaders in proposing these changes. Indeed, I join with them in believing the American people are very doubtful about any Panama Treaty that does not clearly spell out our rights of defense of the canal. Like the two distinguished leaders, I believe that the treaty, as it stands, does not adequately define our defense rights.

Having said that, I must say that I differ with my two friends on the language they have offered to improve the treaty. In fact, as I look at their language, I fear it will unduly constrict the United States right to take unilateral action in defense of the canal. My reading of the language is that it makes the treaty worse, not

better. It contains an inherent contradiction, requiring extensive, subtle argument to explain away.

Now, Mr. President, the contradiction is this, in amendment 20 the text states that each of two countries shall defend the canal against any threat to the regime of neutrality, and, consequently, shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal.

But, Mr. President, and nothing has been said on this floor about that this afternoon, in the next paragraph it says that this shall not be interpreted as a right of intervention of the United States in the internal affairs of Panama, and that any U.S. action shall never be directed against the territorial integrity or political independence of Panama.

Now, of course, such language would be satisfactory were the treaty proposing that we would retain our present status in the Canal Zone; but, of course, we would not.

So, from a practical standpoint, there is simply no way that we could conduct military operations in the defense of the canal without occupying at least some portions of Panamanian territory. If Panama should not concur in our action, or if Panama actively opposed it, there is no question in my mind that Panama would interpret such action as directed against her territorial integrity and her political independence.

The extent of the confusion is evidenced in the extent of the convolutions in the reasoning of the report of the Committee on Foreign Relations. Indeed, I must congratulate the Committee on Foreign Relations on its ingenuity. The basic reasoning put forth there is that we would not offend Panama's territorial integrity or political independence because we would have no intention of permanently detaching Panamanian territory.

Unfortunately, that simply will not do. Although the argument is somewhat ingenious, it is not ingenuous.

Here is a right, one of the most fundamental of the rights necessary to preserve our interests, yet the language supposedly guaranteeing that right is so vague that it needs extensive explanation, interpretation, and *ex parte* pleading.

Will it now be necessary to get General Torrijos to agree that the committee's interpretation of the interpretation is the correct one? It seems to me that a Panamanian interpretation could be exactly the opposite.

The geography of the canal is such that to secure it adequately, we would have to secure the surrounding territory and, if Panama did not concur, we would have to do it anyway, or, allow the canal to be closed. Whether a "detaching" of territory would be "temporary" or whether it would be "permanent" would be a matter of interpretation.

Would we ever have to act against Panama's wishes? Every military expert who has testified on these treaties, including those strongly supporting them, has argued that the principal threat to the canal was from Panama. Whether this will change as a result of ratification of the treaties is a matter of conjecture—perhaps wishful thinking is more accurate. I think that any objective observer would agree that the odds are 50-50 or less.

Therefore, the only way in which the security of the canal can be assured is a treaty right that guarantees to the United States the clear right of unilateral action, no ifs, ands and buts.

Both the treaties and amendment 20 propose joint responsibilities; but all are silent upon whether the joint responsibility can also be exercised unilaterally. But only amendment 20 goes further than the treaties, and it specifically denies to the United States the right to take actions directed against territorial integrity of Panama.

Although we have other international treaty commitments that prohibit us from using force or the threat of force against other nations, the actual inclusion of such language in the context of supposed rights to take military action to defend the canal strongly undermines that right and it casts a cloud over any exercise of such rights.

Fortunately, however, Mr. President, there is an alternative. Former Deputy Defense Secretary William Clemens testified before the Armed Services Committee that, as a representative of the National Security Council, he, himself, had negotiated a security clause that had been approved by the Defense Department, and by the State Department; and I call the attention of the Senate to the fact that General Torrijos, himself, approved it.

It clearly and unambiguously spells out the right of unilateral action in the context of all other international treaty obligations. The language is as follows:

In the event of any threat to the neutrality or security of the Canal, the two Parties shall consult concerning joint and individual efforts to secure respect for neutrality and security of the Canal through diplomacy, conciliation, mediation, arbitration, the International Court of Justice, or other peaceful means. If such efforts would be inadequate or have proved to be inadequate, each Party shall take other diplomatic, economic, or military measures as such Party deems necessary, in accordance with its constitutional processes.

Mr. President, this language says that each party shall take military measures as such party deems necessary. This phrase absolutely leaves the decision to the United States. There is no ambiguity about it being a concurrent decision; and, in my judgment, it would be a great improvement over amendment 20.

Therefore, I intend to submit this language as a substitute, as a means of perfecting the language offered by the two distinguished leaders of the Senate. It is not offered in opposition to their language and intentions but to support their intentions and to effect their purpose more accurately.

I understand the difficulty that faces both leaders. The Clements language was not made public until both leaders—the Senator from West Virginia (Mr. Robert C. Byrd) and the Senator from Tennessee (Mr. Baker)—had announced their intentions; but, fortunately, the Armed Services Committee hearings did reveal this alternative in time for the Senate to act.

I believe that anyone who is a supporter of amendment 20 also could be a supporter of this substitute.

As former Deputy Secretary Clements has testified, even General Torrijos agreed to this language, so there should be no difficulty from that quarter.

Mr. President, I ask unanimous consent that the text of my proposed amendment be printed at this point in the Record.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

In lieu of the matter proposed to be inserted by the amendment insert the following:

"In the event of any threat to the neutrality or security of the Canal, the two Parties shall consult concerning joint and individual efforts to secure respect for neutrality and security of the Canal through diplomacy, conciliation, mediation, arbitration, the International Court of Justice, or other peaceful means. If such efforts would be inadequate or have proved to be inadequate, each Party shall take such other diplomatic, economic, or military measures as such Party deems necessary, in accordance with its constitutional processes."

Mr. HELMS. Mr. President, as we enter this historic debate, I would like to call attention to the hearings of the Senate Armed Services Committee, to which I alluded earlier, and to urge all my colleagues to peruse them carefully. As many are doubtless aware, these hearings were held on January 24 and 31, and February 1. For some reason, the news media saw fit to ignore those hearings for the most part. Except for coverage of the February 1 hearing by the Washington Star, little attention was paid to some of the extraordinary testimony that was developed at those hearings.

Because of the volume of material relating to the Panama Canal, and the haste with which consideration of the treaties was brought to the floor, special burdens have been imposed on Senators in their attempt to give judicious scrutiny to the issue. Although the treaties were signed on September 7, the 354-page report of the Foreign Relations Committee was not available Friday as hoped. I am informed that a few copies were available on Saturday, when the Senate was not in session. For all practical purposes, it was not available until Monday, when the Senator from North Carolina, returning from a meeting with the Governor of his State, was stranded in the worst blizzard to hit the east coast in 40 years, along with thousands of fellow citizens. While I am delighted to begin debate on an issue vital to the American people, let the record show the circumstances in which the debate has begun.

Similarly, the armed services hearings are available just today, about noon time. The committee staff is to be congratulated for the speed and diligence with which the hearings were edited and printed. Let the record show that this was accomplished in only 4 working days. Needless to say, the other Members of the Senate have hardly had time to become acquainted with their contents.

Coming at the end of a long period of public deliberation and discussion, the hearings of the committee, although brief, indisputably established two points:

First, the decision to give away the Panama Canal was based upon purely political pressures in total disregard of the defense and economic consequences of that decision;

Second, the outward rationale of the political decision is demonstrably false. Whether there was a hidden rationale, undisclosed to the public or to the Senate, was beyond the scope of the hearings conducted by the Armed Services Committee.

The hearings were notable for the quality of the testimony and the integrity of the witnesses, most of whom hold high offices under the U.S. Constitution, or did hold them in the past, and

participated in historic events. Thus, in a very short space of time, the committee was able to amass an important set of facts, hitherto undisclosed, which deserves to have a profound influence as the Senate works its will on these treaties.

The questioning of expert military witnesses, both those who favor the treaties and those who oppose them, revealed that the Panama Canal still plays a vital role as a catalyst in our defense planning, and that role is placed in jeopardy by the treaties, especially the lack of authority for unilateral military decision and the requirement that our military forces leave after the year 2000. The economic aspects of the treaties are still in total disarray, with little agreement on future projections, except that it is going to cost the American taxpayer untold billions in appropriated funds. Indeed, certain fundamental economic issues yet remain to be negotiated. Let us take up each aspect in turn.

THE MILITARY VALUE OF THE CANAL

The testimony of both Admiral Holloway and Admiral Moorer was significant for understanding the military value of the canal. Admiral Moorer summed it up in one sentence:

In fact, there is no feasible war plan for the United States, taking into account our reduced forces and extended commitments, that does not assume that the Panama Canal will be available for full time priority use.

Admiral Holloway's testimony pointed out that denial of the canal to the United States would require additional naval forces to fulfill our defense mission, and those forces would have to circumnavigate South America, a trip that would add 3 to 3½ weeks and 8,000 miles to the transit. He pointed out that this redeployment would greatly multiply the area of ocean that the U.S. Navy would have to make secure, and we could expect severe losses without a proportionate increase in antisubmarine warfare forces. Indeed, he said:

It would be extremely difficult to detect a shift in Soviet submarine operating areas from the north and middle Atlantic sea lines of communication to those around the tip of South America.

The testimony of both admirals deserves to be studied in detail. It is noteworthy that the testimony of both corroborates the findings of a study which was prepared at my request by a civilian analyst at the Library of Congress, Mr. Edmund J. Gannon. Mr. Gannon's study is available from my office.

DEFENSE BEFORE THE YEAR 2000

Under the treaties, the United States has the major responsibility for defense of the canal, without the specific authority to take unilateral action to defend the canal, even if the threat comes from Panama or from individual Panamanians. Although treaty proponents argue that the authority is implied, their arguments are devastated by the Carter-Torrijos understanding, which specifically forbids the United States to intervene in Panamanian internal affairs or to violate Panama's territorial integrity. Although clearly the United States has no wish to do either for its own sake, it is clear that the extension of Panamanian sovereignty over the canal

operating areas makes it impossible to defend the canal without, at least secondarily, impinging on both.

The testimony of former Deputy Secretary of Defense William P. Clements, Jr., was extraordinary on this point. The entire controversy about the treaty's alleged provisions for intervention was directly refuted by Mr. Clements' revelation that the former administration had obtained consent for a security clause that clearly provided for unilateral intervention. It was on this basis that Mr. Clements had formerly been an enthusiastic advocate of new treaties; yet the final treaty drafts eliminated this clause completely.

Mr. Clements provided valuable historical testimony about the events which led to the reopening of full-scale negotiations in 1975. Mr. Clements himself was deputized by the National Security Council to solve the security problem, and flew to Panama to negotiate the issue with General Torrijos. The clause was drafted in the Department of Defense, approved by the Department of State and the National Security Council—and even approved by General Torrijos himself, as Mr. Clements affirmed in response to close questioning. The language was as follows:

In the event of any threat to the neutrality or security of the Canal, the Parties shall consult concerning joint and individual efforts to secure respect for the Canal's neutrality and security through diplomacy, conciliation, mediation, arbitration, the International Court of Justice, or other peaceful means. If such efforts would be inadequate or have proved to be inadequate, *each Party shall take such other diplomatic, economic or military measures as it deems necessary*, in accordance with its constitutional processes. (Emphasis added.)

At the present time the United States enjoys the rights of a sovereign in the Canal Zone, so it is not necessary even to consult to defend our own property. The Clements language is a step down from the rights we now enjoy; but it is a marvel of precision and definition when compared to ambiguity of the defense clauses, both denumerated article IV, in each of the treaties. The Clements language unambiguously gives the United States the unilateral authority for defense actions, even without the approval of Panama.

It is incredible that any negotiating team, with the best interests of the Nation at heart, would backdown from such a clause once it had been established. It is a defect that drives straight at the heart of the treaties and makes them unacceptable in any form. There are, of course, other great defects which vitiate the realistic value of the treaties; but the lack of clear-cut defense rights is the root cause of the numbing distrust of the treaties which has gripped the American people.

DEFENSE AFTER THE YEAR 2000

Another key issue is the defense of the canal after the year 2000. The treaty provides that only the Republic of Panama may maintain military forces in Panama after the year 2000, even though the United States and Panama agree to "maintain the regime of neutrality."

The military problem is that once U.S. forces have pulled out of Panama, it would be extremely costly both in terms of manpower, materiel, and money to attempt to reassert our presence in order

to maintain neutrality in the canal's operation. If Panama resisted such an attempt, it would be even more difficult to keep the canal operational, since the canal would be then totally Panamanian in personnel and administration.

It is significant that Admiral Holloway, even though he had agreed to support the treaties because of their political implications, freely conceded that his military judgment was that the defense problem would be enormously complicated by withdrawal. Indeed, he revealed that he had strongly argued for a U.S. military presence, even if only in a limited form, after the year 2000. Without such a presence, it would be necessary to retake the airfields, or to land a marine amphibious force in the canal area. Every military man knows that such requirements are detrimental to defense needs.

Moreover, both Admiral Moorer and Admiral Holloway pointed out that the present Canal Zone serves as a base of naval and air operations 3,000 miles south of the United States. Admiral Moorer also drew attention to the fact that a modern navy depends upon ample stocks of petroleum products at strategic geographical intervals. He said that such stocks are not always available from commercial sources, particularly when such stocks are sensitive to political upheavals, such as the OPEC oil embargo. In the Pacific, the Canal Zone is the only U.S. refueling center south of California.

SUPPORT OF LATIN AMERICAN NATIONS

The major foreign policy rationale advanced for the ratification of the treaties is the argument that the Latin American nations eagerly support the withdrawal of the United States from the Canal Zone. Admiral Holloway testified that this was a consideration which tipped the balance for him in favor of the treaties, overriding his military judgment.

Yet upon close questioning, Admiral Holloway admitted that he had never personally conversed with the head of any Latin American state, and therefore, had no firsthand knowledge of their views. Instead, he relied upon State Department briefings for the information which apparently outweighed his years of considerable military expertise.

This attitude contrasted strongly with the views of another distinguished military officer on active duty, Lt. Gen. Gordon Sumner, Jr., Chairman of the Inter-American Defense Board. It is significant that General Sumner did not appear by choice, but appeared only at the express invitation of the committee, confirmed by the Chairman of the Joint Chiefs of Staff.

General Sumner is both an outstanding military analyst, and, by profession, an expert on Latin America. The Inter-American Defense Board is an independent international organization established by the Rio Treaty. In his capacity as Chairman, General Sumner represents the views of no single nation, but of all 19 members.

General Sumner testified he travels constantly in Latin America, and meets frequently with the heads of state of all members of the Board, as well as with their high-level defense officers. He testified

that he had discussed the Panama Canal with all of them; and that 17 of reliable east-west land transportation, the 19 members—United States and Panama excluded—expressed very grave concern about the treaties. He said that they were very disturbed about the economic consequences of the treaties, because of the fragile economies which many of them have. Since South America has no reliable east-west land transportation, the Panama Canal assumes a far greater importance to them.

General Sumner said that some of the Latin American countries were in favor of the treaties at first, but when they received copies of the treaties they became worried about their economic prospects. He said:

When they looked at what this was going to cost them, they had very serious reservations. Almost without exception they have expressed their opinion that the way the United States has operated the Canal over the past decades has been fair and equitable.

MULTILATERAL VERSUS BILATERAL APPROACH

General Sumner also pointed out that the other Latin American nations had been ignored in attempting to solve the Panama Canal problem—even though the canal is so important to them that it should be called "The Canal of the Americas." He suggested that in times past when the bilateral approach to international plans had failed, that it was sometimes helpful to call in all parties with a direct interest to find a mutual solution. Pointing out that the Inter-American Defense Board already had a structure to work together on the common defense of the hemisphere, he agreed to sound out members of the Board as to constructive solutions to the canal problem.

General Sumner's testimony points up the deep flaw in the argument that the giveaway of the Panama Canal will usher in a new era of good feeling in Latin America. On the contrary, just the opposite is likely to happen. The giveaway of the canal to a small and unstable nation is likely to inspire distrust, or at best indifference. Moreover, it is incongruous to pretend that the way to establish closer ties to Latin America is to ignore the direct interests of these nations in the canal for 14 years, to consult with no one, and then to hand the canal over lock, stock, and barrel to one nation whose political institutions inspire confidence in no one and which is allied in a show of friendship with the one Latin American pariah nation, Communist Cuba. Insulting and demeaning diplomacy never makes friends.

COSTS OF MILITARY RELOCATION

There is not the opportunity here to go into the additional military costs which would be imposed upon the taxpayers of the United States if the canal were closed to the U.S. naval fleet. Ship construction, relocation of communications and intelligence facilities, and higher costs of resupply would all have to be considered; but it is difficult to speculate on the future designs of potential enemies.

However, the committee received good estimates of the costs for the relocation of present U.S. military facilities in the Canal Zone.

A number of these facilities will be turned over to the Panamanian National Guard as soon as the treaty goes into effect, and brand-new consolidated facilities will have to be constructed at other sites for the use of U.S. forces. This construction is totally unnecessary, except for the implementation agreements adopted pursuant to the treaties. Lt. Gen. D. P. McAuliffe, U.S. Army, testified that this construction would cost the taxpayers \$42.9 million. All the new facilities will be turned over to Panama by the year 2000.

ECONOMIC ASPECTS OF THE TREATIES

The economic aspects of the treaties reflect the chaos and disarray of the negotiating process. It is difficult, even at this date, to assess the economic impact of the treaties. The facts simply are not available. Consider the following problems:

A study by American Management Systems, consultant to the committee, concludes that the two major systems of methodology for protecting traffic and revenues are inadequate and based upon guesswork, resulting in wide disparities in the extant professional projections.

A study commissioned by the Department of State and the Panama Canal Company by International Research Associates—a study which was supposed to be definitive—was strongly criticized by the president of the Panama Canal Company for being overly optimistic on its projections of revenues from North Slope oil. The study is not yet available to Congress.

The implementing legislation establishing the structure of the Panama Canal Commission, its accounting practices, and the range of labor benefits was promised for last October, but is still being withheld from Congress.

Basic financial issues yet remain to be negotiated with Panama—issues involving millions of dollars annually—and Governor Parfitt and other witnesses testified that the United States and Panamanian positions stand at opposite poles.

Millions of dollars of costs associated with implementation of the treaties do not appear in the Panama Canal Company budget or the projected Commission budgets because these costs will be transferred to other accounts as yet unselected—for example educational facilities may be transferred to the Department of Defense budget, and then again they may not.

Panama Canal Company projections are based upon unrealistic inflation assumption—for example 5 per annum, as against actual 6.7 percent today—and upon the forgoing of interest to the U.S. Treasury and of agreed-upon payments to Panama out of “surplus.”

The Comptroller General of the United States estimated that deficits the first year could range from \$37 million to \$79 million, depending upon which set of assumptions as to accounting practices is used.

The Panama Canal Commission will lose 58 percent of the land available to the present company for operating the canal, 43 percent of its present U.S. employees, 52 percent of its present Panamanian employees, and 69 percent of its nontoll revenues—35.6 percent of all revenues. Although some of these employees may

transfer to other United States or Panamanian entities, there is considerable doubt that present pay rates and job benefits will be preserved.

There is agreement on one thing, however; the American taxpayers will be paying billions of dollars in appropriated funds for the luxury of giving the canal to Panama. Although the language of the treaties suggests that payments will be paid to Panama out of tolls and other income by the Panama Canal Commission, the fact is that the Commission ought to be a U.S. Government corporation, if legal precedent is followed. As such, the Commission can pay no revenues to Panama; they will be paid into the U.S. Treasury—as the Panama Canal Company does at present—where they become funds belonging to the U.S. taxpayer.

According to the U.S. Constitution, no money shall be drawn from the U.S. Treasury but in consequence of appropriations made by law. Payments to Panama must therefore be appropriated by Congress every year by law. Although the appropriations doubtless will be established according to the treaty arrangements, the funds still represent funds which could have accrued to the benefit of U.S. taxpayers.

Moreover, extraordinary expenses of the Commission—removal of major slides, damage caused by war, and so forth—will still be the responsibility of the U.S. Government. Governor Parfitt also testified that any debts or liens remaining to the Commission by the year 2000 would have to be made up by the United States. The reality of that liability hinges upon the interpretation of an ambiguous section of the treaty, the clause promising contingent payments to Panama out of surplus earnings. Problems involve the following:

Whether or not the toll base should include the \$10 million "surplus"; that is, should tolls be set high enough to produce a surplus?

Whether or not the treaty obligation to roll over the contingent obligation to the next year that a surplus is earned ends in the year 2000; that is, if no contingent fees are paid for 22 years, do we owe Panama \$220 million in the year 2000?

Whether or not the Commission should pay interest to the U.S. Treasury on the U.S. investment; for example, is the projected amount of interest of approximately \$20 million each year to be a donation by the U.S. taxpayers to the Commission's operation? The total is a minimum of \$440 million over 22 years, yet the Panama Canal Company's projection of only a 19.5-percent initial toll increase is based upon forgoing the interest payment.

Whether or not the entire U.S. investment should be recouped through accelerated depreciation by the year 2000; for example, should the taxpayers make an additional gift to Panama of facilities with a current book value of \$618 million, but a replacement value of \$4.6 billion? Comptroller General Staats testified that recovery of the U.S. investment would require another \$23 million per year to recover the book value.

OTHER HIDDEN COSTS

In addition to the above unresolved problems, there are hidden costs as well. These include:

The \$8.9 million that the Republic of Panama has refused to pay for services rendered by the Panama Canal Company, some of the debt going back as far as 1955.

Early retirement costs to be charged to the Civil Service Commission of some \$7.5 million a year for 22 years, that is, \$165 million total.

Costs of benefits for dependents of certain personnel transferred to DOD—mainly schooling—\$5 million annually for 22 years, that is, \$110 million total.

Complete inventory of all assets of the Panama Canal Company and Canal Zone Government, \$2 million—the last inventory was in 1950–51 and cost \$750,000.

Indirect subsidy to Panama of \$6.6 million a year for at least 3 years, totaling \$19.8 million, through the annual payment of \$10 million for “services.” Many of these services—for example fire—will be duplicated by the Commission to insure reliability; but even so it is estimated, that Panama, with its lower wage base, will provide the services at a cost of \$4.4 million per year. After 3 years, the treaty provides that the payments will be adjusted on the basis of actual costs, but no definition of actual costs is provided.

SUMMARY OF UNEXPECTED COSTS

It is not certain by any means that all of the unexpected costs of the Panama Canal treaties have yet been discovered. Those discussed above, however, may be summarized as follows:

Military base relocation.....	\$42,900,000
Foregoing of interests due to U.S. Treasury: \$20 mil. p.a. × years	440,000,000
Foregoing of depreciation to recoup U.S. investment: \$20 mil. p.a. × 22 years	440,000,000
Panamanian interpretation or amount due under article III (IV) (c) in the year 2000 if no “surplus” is produced during preceding 22 years	220,000,000
Arrears of Republic of Panama for services rendered by Panama Canal Company since 1955	8,900,000
Subsidy to Panama for fire, police protection over Panamanian costs: \$6.6 mil. p.a. for at least 3 years	19,800,000
Early retirement costs charged to U.S. Civil Service Commission: \$7.5 mil. p.a. × 22 years	165,000,000
Benefits for dependents of certain personnel transferred D.o.D.: \$5 mil. p.a. × 22 years	110,000,000
Cost of taking complete inventory	2,000,000
Total unexpected costs	1,448,600,000
Estimated annual tonnage fees due to Panama: \$50 mil. p.a. × 22 years	1,100,000,000
Annual fixed fee: \$10 mil. p.a. × 22 years	220,000,000
Total of expected treaty payments.....	1,320,000,000
Grand total	2,768,600,000

All costs are expressed in constant dollars without inflation factors or treaty provided upward revisions included.

THE HASTY TREATY

The committee hearings did not touch upon the grave constitutional issues, such as the role of Congress in the disposal of U.S. territory and property under article IV, section 3; or the role of the House in the appropriation process under article I, section 7. Nor did the committee hearings touch upon the important issue of national sovereignty and the national will. But within their true scope, they revealed that the negotiators completely bypassed the practical issues of military defense and economic stability in their search for a pseudo-political solution to a nonproblem.

Perhaps a small clue to the tenor of the negotiations which produced these treaties may be found in the testimony of Governor Parfitt when he was asked if Ambassador Sol Linowitz had ever consulted him directly about the operational problems. The Governor testified that the Ambassador had not; and in fact, to the Governor's knowledge, the Ambassador had never even come into the Canal Zone.

Mr. President, I hope that at later stages of the debate on the treaties we will have a substantial number of Senators here. I count about six in the Chamber at this moment, including the distinguished Presiding Officer, which means that the statements by the distinguished Senator from Nevada, the distinguished Senator from Idaho, and others will pass like a ship in the night.

I commend the distinguished majority leader and the distinguished minority leader, who suggested this morning that Senators stay on the floor and participate in the debate and hear the opposing views, so that they will have some understanding of what is at stake in this matter.

If Senators do not do that, if they voted a mishmash, then this Nation will suffer.

I thank the distinguished Senator from Nevada for yielding to me, and I thank the distinguished occupant of the Chair.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland (Mr. Sarbanes).

Mr. SARBANES. Mr. President, I ask unanimous consent that following the remarks of the distinguished Senator from Nevada, because we deal in part with the issue of sovereignty and did not have the opportunity to fully complete it, certain excerpts of the report dealing with this subject be printed in the Record.

There being no objection, the excerpts were ordered to be printed in the Record, as follows:

(2) SOVEREIGNTY

Much confusion has surrounded the illusive concept of sovereignty and the issue of what sovereign interests the United States possesses in the Canal Zone. Whatever the term implies, and whatever such interests the United States holds, it seems clear that the phrase "territory" * * * belonging to the United States" subsumes land over which the United States exercises sovereign power, and that the disposal-of-property clause, discussed above, empowers the United States to transfer sovereignty as well as common law property rights. The Committee does not therefore believe that the issue of sovereignty—as a strictly legal matter—is relevant to the Canal debate. The United States can legally transfer its interests; the question is whether as a matter of policy it should.

To whatever extent it is relevant, it appears that the United States does not possess sovereignty over the Canal Zone. "Sovereignty," broadly defined, is the

ultimate power to exercise governmental functions within a particular territory. The Committee believes, based on the terms of the 1903 and 1936 treaties with Panama and court decisions, that Panama has always maintained titular sovereignty over that territory. The United States has held certain *rights* to exercise certain attributes of sovereignty, but those rights are distinguishable from the underlying sovereign interest of Panama over the Canal Zone.

Article III of the 1903 Treaty with Panama provides that the United States has " . . . all the rights, power and authority within the Zone . . . which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power of authority."

In this testimony before the Committee on September 26, 1977, Ambassador Linowitz, referring to Article III of the 1903 Treaty, noted that "If we had sovereignty we would not have needed the words that we have certain rights . . . to act as if it were the sovereign." As Ambassador Bunker put it, "We have had rights, but not sovereignty."

Article III of the 1936 Treaty of Friendship and Cooperation with Panama states that the Canal Zone is "the territory of the Republic of Panama under the jurisdiction of the United States."

One oft-quoted case, cited for the proposition that the United States has somehow acquired sovereign rights, is *Wilson v. Shaw*, 204 U.S. 24 (1907). In that case, the Court said that—

" . . . it is hyper-critical to contend the title of the United States is imperfect, and that the territory described does not belong to this nation, because of omission of some of the technical terms used in ordinary conveyances of real property."

The real question in *Wilson*, however, was not which nation possessed sovereignty but rather whether the United States had sufficient interest and authority in the Zone to expend funds for the construction of the Canal. The Supreme Court found that the grant of authority in the 1903 Treaty was sufficient. The limits of the Court's holding were pointed out by the Supreme Court of the Canal Zone that same year in *Canal Zone v. Coulson*, 1 Canal Zone Supreme Court Reports 50 (1907) in which the defendant contended that the Court in *Wilson* had held that the Canal Zone was the territory of the United States and that, therefore, the Constitution applied in the Zone. The court rejected this contention and stated as follows:

"The Supreme Court did not hold more in that case [*Wilson*] than that the United States had the use, occupation and control in perpetuity of the Canal Zone. It is apparent from an examination of the treaty that the United States is not the owner in fee of the Canal Zone, but has the use, occupation and control of the same in perpetuity so long as they comply with the terms of the treaty. . . ."

The Court went on to conclude that the rights of the United States in the Canal Zone were not such as to render the Constitution applicable.

In *Vermilya-Brown Co. Inc. v. Connel*, 335 U.S. 377 (1943), the Supreme Court was called upon to determine the status of certain United States military bases in Bermuda. The Court compared these bases to the Canal Zone, which the Court said was "admittedly territory over which we do not have sovereignty." The Court found that the ability of Congress to legislate depended not upon sovereignty, but upon control.

A variety of the other indices of sovereignty suggest that sovereignty over the Zone lies in the Government of Panama. In contrast to the sovereignty acquired by the United States through the purchases of the Louisiana Territory or Alaska, the United States did not acquire sovereignty; it acquired, under the 1903 Treaty, the use, occupation and control of the Canal Zone. This is made even more clear by the fact that the United States has made annual payments for privileges acquired in the Canal Zone—as contrasted with territories over which this country acquired full sovereign interest. Principles of "citizenship by birth" are not applicable in the Canal Zone; a person born in the Canal Zone to parents who are not citizens of the United States would not be a U.S. citizen, as that person would be were he born in the United States, the Virgin Islands, Guam, or some other United States possession or territory. In addition, the Canal Zone is not listed by the Department of State as a territory or dependency in reports by the United States to the United Nations. Finally, the United States has allowed Panama to display its flag within the Zone, to collect income taxes within the Zone, and to exercise customs and immigration functions within the Zone.

For all these reasons, therefore, the Committee agrees with the Attorney General that "the Republic of Panama retained titular sovereignty over the Canal Zone"—although as noted above it does not regard that fact as a matter of legal consequence.

Mr. LAXALT. Mr. President, I now wish to yield the floor to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas (Senator Dole).

Mr. HATCH. Mr. President, will the Senator from Kansas yield for just a few short remarks?

Mr. DOLE. I yield.

The PRESIDING OFFICER. The Senator from Utah (Mr. Hatch).

Mr. DOLE. Mr. President, I yield to the distinguished Senator from Utah, yes.

Mr. HATCH. Mr. President, I was particularly interested in the remarks and questions of the distinguished Senator from South Carolina (Senator Hollings), on this question of sovereignty.

To be frank with you, he asked a couple of questions such as, as to a national, a non-American person who has a child in Panama, will that child become a U.S. citizen? The answer to that is, "No."

Also, the fact that you might have to go through Customs when you go through Panama, which generally includes the country of Panama.

He said these are two indications that we do not have sovereignty in spite of the explicit language within the treaty itself which says that we do.

I would just like to remind my distinguished colleague and friend from South Carolina that citizenship has nothing to do with sovereignty, because Congress is what sets sovereignty under the Constitution.

I might mention that sovereignty has never conferred citizenship nor does it under the Constitution. Only Congress confers citizenship.

One of the most important cases in recent years is United States against Husband. The holding of that case was that the Panama Canal Zone is unincorporated American territory over which basically we have sovereignty.

The 1907 case of Wilson versus Shaw, which is a Supreme Court case, made it clear that basically we have sovereignty, because the question in that case was, does the United States have title enough to justify the expenditure of American funds in Panama, and the answer to that was decided by the Supreme Court of the United States, and never refuted, yes, we do.

So, I might add, the interesting question as propounded by my distinguished friend and colleague hardly disturbs the question of sovereignty under the Constitution or under any aspect or interpretation of the Constitution. The fact is, Senator Laxalt is absolutely right, the treaties make it abundantly clear that we have sovereignty, that Panama has waived all rights to sovereignty, and that it is lodged in us.

Mr. LAXALT. Since the Senator from Utah has demonstrated his expertise in the sovereignty and legal aspects of this treaty, for the purpose of the record will he indicate what in his opinion is the effect of the disclaimer of sovereignty in the Panamanians under the terms of the treaty.

Mr. HATCH. The effect is that they have turned over all rights and interest to the United States.

There was another misconception cited by our distinguished friend and colleague from Idaho, Senator Church. He indicated we

are paying an \$250,000 lease payment, or \$250,000 payment for the use of the Panamanian land. That just is not true. That payment was paid pursuant to the waiver of Panama's rights to the Panamanian Railroad.

They released all rights to us in that railroad, and we have made that payment ever since—which now amounts to \$2.328 million—every year since, in payment of the waiver of those rights.

We paid \$10 million for the Panamanian territory that we now have as unincorporated U.S. territory, which, if it were increased to present worth from the 1914 price, actually the 1903 price, it would be worth about \$120 million today in today's dollars.

Mr. SARBANES. Mr. President, will the Senator from Utah yield on this point?

Mr. DOLE. Mr. President, the Senator from Kansas has the floor.

Mr. HATCH. I am happy to yield back to the Senator from Kansas.

Mr. SARBANES. Will the Senator indulge me one moment?

Mr. DOLE. One moment. The Senator from Kansas would like to make his statement. I did not want to interfere with the orderly debate. We are going to have several weeks to do it.

I am happy to yield briefly.

Mr. SARBANES. I want to go directly to an assertion that was made that the \$250,000 payment commitment contained in the 1903 treaty was directed to the railroad only, Article XIV of the 1903 treaty says:

As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay the Republic of Panama the sum of ten million dollars (\$10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars (\$250,000) in like gold coin, beginning nine years after the date aforesaid.

The provisions of this Article shall be in addition to all other benefits assured to the Republic of Panama under this convention.

But no delay or difference of opinion under this Article or any other provisions of this treaty shall affect or interrupt the full operation and effect of this convention in all other respects.

So, I think the 1903 treaty is very clear, that that payment is for the rights, powers, and privileges and, of course, refers back in part to article III, which deals with this question of the grant made by Panama to the United States of certain powers that we can exercise as if we were sovereign.

Mr. HATCH. I have mentioned that all historical precedents that I have read and that all of the record indicates that the payment was strictly for release of rights with regard to the Panamanian Railroad. I do not think our article XIV changes that nor the Senator's interpretation of it.

I am happy to yield back to the distinguished Senator from Kansas.

Mr. DOLE. Mr. President, will the Senator from Nevada yield?

Mr. LAXALT. No; I yield the floor to the Senator from Kansas.

The PRESIDING OFFICER. The Senator from Kansas, Senator Dole, is recognized.

Mr. DOLE. Mr. President, let me say at the outset that I think this is probably one of the most important foreign policy questions

yet to come before the 95th Congress, and perhaps it is the most critical foreign policy issue of this decade.

The Senator from Kansas does not know how many votes there are for the treaties and how many votes are against. In my judgment, it is too close to call at this point.

Perhaps during this debate some will change their minds and some will change their positions. That is the way it should be.

It can be a very instructive and a very constructive debate. certainly the Senator From Kansas wishes to be part of that effort.

I would hope we do not fall into the trap of trying to bring up the treaties in reverse order, as is now being suggested by the Senate leadership, because it seems to this Senator we first must debate whether or not there is going to be a Panama Canal Treaty before we decide the second half of the agenda.

So I would suggest that the orderly procedure would be to take up the treaties as they were went to the Senate by the President, as the distinguished Senator from Alabama pointed out this morning.

There is no doubt in the mind of his Senator that there is a great deal of interest in both of these treaties.

TREATY DISCUSSIONS

Last Friday, the President asked me to step into his office, and we discussed the treaties. On Sunday, President Ford, called me long distance and we discussed the treaties. On Monday, Ambassador Strauss called me, and we discussed the treaties. On Tuesday, former Vice President Rockefeller called me, and we discussed the treaties. On Wednesday, today, former Secretary of State Henry Kissinger called me, and we discussed the treaties.

I think it is common knowlege that they are all of one view, that they support the teaties. I had a very fine visit with each of these distinguished Americans and certainly I do not quarrel with their view.

I do not have the same feelings on sovereignty as some in the Senate. My concern is, are these the best treaties? Are that good treaties? Good for Panama, yes, but are they good for us, America?

I guess everyone here has had a very difficult time deciding just what to do, and how to posture himself, and how to vote, because there are political implications to the votes on these treaties.

Let me say that when the Senator from Kansas heard that our negotiators had reached an agreement last August 10, I resolved, as I assume every other Member resolved, to try to come to grips with the real issues in a conscientious and impartial frame of mind.

I di' not have any preconceived notions. I did not yet know all the details about the treaties.

I might add I had gone through the entire campaign as President Ford's running mate in 1976, and as far as I can recall was never asked about the Panama Canal treaties, even though they were the big issue between President Ford and Governor Reagan in securing the Republican Presidential nomination.

As far as I know, I was never asked by anyone from August 19 through the election what my views on the treaties would be. So I

had no preconceived notions or any partisan commitments on the issue.

Some of us were asked to support the treaties before they were ever made public; but until the treaties were made public and released on September 7, like most other Senators, this Senator withheld his judgment.

Once they became available for inspection, it was our obligation as Senators to study the treaties, to adopt what we thought might be the best course. I knew of the political significance, and so I discussed it with many people in my State of Kansas. Many I did not have to discuss it with; they sent letter after letter, by the hundreds and by the thousands.

In December, I went to Panama with the distinguished Senator from Nevada (Mr. Laxalt). We had a visit with Omar Torrijos, the leader of Panama. We discussed the canal, and aspects of the canal treaties, with Canal Zone employees and military officers. I have also discussed them with State and local public officials, and other concerned citizens throughout the Nation in the past several months. I state that, so that those who might be interested will know that the process of reaching a decision is very difficult.

The objective approach of the Senator from Kansas toward this critical issue has been consistent. There were a number of unresolved points, as I read the proposed treaties. I recognize that the present 1903 Treaty is out of date in many respects. There is room for revision, but only in a responsible manner and to a practical degree.

So now we have the treaties before us, before the Senate of the United States, and it is our obligation as Senators to advise and consent, to give our best judgment, based not on partisan considerations but on what may be best for America and for Panama.

THESE TREATIES UNACCEPTABLE

I think all the arguments we will hear on this floor, whether they are for the treaties or against the treaties, would boil down to whether or not these are good treaties in the sense that they fully protect U.S. rights and interests. And are they the best treaties? Why not insist upon the best treaties that we can negotiate? Maybe they are the best. Maybe, after weeks and weeks of debate, the majority will determine that these are the best treaties.

I think, in the end, the ultimate question will be this: Would American interests be best served by Senate ratification, by a series of amendments, or by outright rejection of the treaties?

There is no doubt about it, the majority of Americans are still opposed to the treaties. The latest Gallup poll indicated it was very close, and that there may be a margin for these treaties if certain amendments were adopted.

However, I could not vote for the treaties as they were transmitted to the Senate. I do think a case can be made for updating the 1903 Panama Canal Treaty in a way that fully protects our rights as a nation, as well as the rights of Panama. I know that many opponents of these particular treaties, including Governor Reagan and others, have indicated they would be agreeable to some revi-

sions in the traditional Panama Canal agreements. Like them I do not reject out of hand the concept of a new bilateral treaty.

Frankly, though, I am disappointed with most of the decisions rendered by the Senate Foreign Relations Committee with regard to modification proposals set forth by this Senator and others. With the exception of the one amendment recommended by the committee, and originally proposed by this Senator last October, the committee rejected all other treaty amendment proposals. The committee's action leaves most of the basic concerns about these treaties unresolved. I know that I cannot support the treaties in the form recommended by the majority of the committee members, and I will actively oppose final ratification of the treaties in that form. And those are the crucial words: "in that form."

Regrettably, many of my Senate colleagues, like administration spokesmen, seem more preoccupied with avoiding treaty renegotiations or a second Panamanian plebiscite than with correcting treaty defects. Treaty modifications, they suggest, spell disaster both for these treaties and for the foreign policy stature of this administration.

THE CASE FOR AMENDMENTS

I reject the suggestion that Senate amendments to these treaties would be equated with defeat of the treaties. Neither do I accept the view that treaty amendments would be a crushing blow to the President's ability to conduct our foreign policy in the months ahead. Instead, I think the enactment by this body of any other amendments ought to be viewed in its proper light: As a new stage in canal treaty negotiations. As the Senate performs its constitutionally designated advisory role to the President in this international treatymaking process, further talks with the Panamanians on critical points may be necessary and should be welcomed.

But let us not overdramatize the consequences. Amendment of the canal treaties will not spell disaster for this administration's foreign policy program, and it should not, for it is not accomplished in a narrow partisan sense, or as a vote of "no confidence" for the President.

If we do our work as we should do our work, and as I think every Member of this body will do his work, it will be viewed by most thinking Americans as a conscientious effort by this body to preserve what we see as nonnegotiable interests.

I have listened to the arguments by treaty proponents that Panama will not accept changes in these treaties. But let me pose this question: Do my colleagues truthfully believe that Panama will reject out-of-hand a treaty that was 13 years in the making, simply because we suggest a few changes? Do my colleagues suggest that the Torrijos government will turn its back on the one thing that promises to insure that regime's popularity and power for years to come?

From a practical standpoint, Panama's leaders are not likely to reject these treaties simply because we insist on a few alterations. No, I think they will find it in their interest to "keep talking" at the negotiating table, as General Torrijos himself indicated to me during my visit to Panama last December.

As I recall General Torrijos' statement, he said he did not want a year-around plebescite, that another plebescite would be fine but he did not want a year-around plebescite.

So I suggest that whatever the action we take in the Senate, that Senate action will simply amount to a new stage in the treaty negotiations. And this Senator, for one, would be willing to see negotiations resume and continue for a few more months if it meant protecting America's vital defense and economic interests. Realistically, I think that is an arrangement that both governments can live with.

PRECEDENTS FOR TREATY MODIFICATION

All of us recognize, of course, that the U.S. Constitution gives the Senate the express responsibility to "advise and consent" on international treaty proposals, and there is ample precedent for our amending treaties such as this one. During the course of this Nation's history, more than 70 U.S. treaties with other nations have gone into force with Senate amendments attached. I believe it is our solemn duty and responsibility, as guarantors of the public trust, to modify treaties when necessary.

Least of all should we be deterred by the fear of renegotiation. I cannot, after all, accept the proposition that immediate ratification of these treaties is more important than guaranteeing the security of the canal and of our national interests. It would be far better that we spend a few more months at the negotiating table, than that we spend the rest of our lives regretting our handling of the treaty issue.

My general concern with the two proposed treaties is the careless and imprecise manner in which they were drafted. It is the ambiguities, the loopholes, and the concessions which disturb me the most, particularly as they relate to American rights of defense and use of the canal. It appears that much of this can be attributed to the undue haste in which they were concluded last year.

ADMINISTRATION CONCESSIONS DURING NEGOTIATIONS

Let us put one idea to rest right now: That is the misconception that these treaties have the weight of four presidential administrations in their favor. In fact, some of the major points of conflict which had been at issue for the past 12 years were suddenly "resolved" within the first 6 months of the Carter Administration. Previous administrations preferred no treaty at all to one which would involve unacceptable concessions. And that is to their credit. America has always taken a stand of principle over appeasement.

When one reviews the record of negotiations during the first 7 months of 1977, however, there is the unmistakable appearance of several important concessions made by the United States—A reflection of this administration's single-minded efforts to conclude a treaty by midyear. The administration's obsession in this regard was no secret, evidenced both by public statements and by the temporary 6-month appointment of a new chief negotiator in February of 1977.

According to information that has come to light in recent weeks, it appears that this administration made critical concession regard-

ing the duration of the initial treaty; regarding the prospect for a continued American military presence following treaty termination; regarding preferential rights of passage for U.S. warships during emergencies; and regarding unilateral U.S. rights to protect the permanent security and neutrality of the canal, these points have surfaced through public statements by officials involved in the negotiations, and through certain documents that have recently come to my attention. I will talk more about these points during forth-coming debate on treaty amendments.

There is no question that the Panamanian Government renewed its old demands with the advent of the new administration. There is no question that subsequent bargaining involved mutual concessions. Negotiations necessarily require a conciliatory attitude on the part of all parties. But the treaty concessions I have just cited involved vital security interests which should have remained non-negotiable from our standpoint. Unfortunately, they did not.

As a result, we have treaty "assurances" which are wrapped in ambiguity, and meaningless rhetoric where there should be iron-clad guarantees. We even find ourselves locked into a commitment for the next 22 years not to build a new canal in any country other than Panama.

In retrospect, it seems evident there should not have been an effort to rush the final stage of negotiations. At present, there is no justification for rushing the final ratification process by our two governments. If we do, we will certainly end up with a treaty that we will regret the generations to come.

SPECIFIC CONCERNS ABOUT TREATIES

Many of my colleagues are concerned along with myself about the vague treaty assurances on future American rights to defend the neutrality of the canal, and to use the canal for our own national Defense purposes. Our misgivings were heightened by contradictory definitions of particular provisions, such as articles IV and VI of the neutrality treaty. One thing is by now very clear: the differences in American and Panamanian interpretations on these points were real—they were not just a matter of "semantics."

THE "SECRET CABLE" AND THE "UNDERSTANDING"

For weeks after the treaties were made public last year, the administration sought to gloss over the differences. When I directed the Senate's attention to a confidential State Department cable in October, however, the realities of the contradictions became apparent. One week later, the joint "Carter-Torrijos Statement of Understanding" was issued, with its text closely modeled after two amendments I had introduced on September 23. The "understanding" was a step in the right direction, but only a first step.

It seems clear that the joint statement of understanding was a direct result of legitimate concerns raised by the State Department cable I presented to the committee on October 5. When Ambassador Sol Linowitz appeared before the Senate Foreign Relations Committee on October 19, he admitted that—

Had the issue not been raised here, sir, we don't think it would have been necessary to have this statement of understanding.

With all due humility, I do believe the State Department cable was the catalyst for action by both the committee and the President to clarify our defense and passage rights under the neutrality treaty. Despite criticism leveled at this Senator for releasing the cable—classified for “limited distribution”—I have never doubted that my decision was in the national interest. I believe, in retrospect, that it has served the Senate well in its consideration of the canal treaties.

THE AMENDMENT PROPOSAL

I do want to commend the members of the Foreign Relations Committee for having the good judgment and the foresight to endorse the proposal that the Carter-Torrijos understanding be made a part of the treaty itself. There has been a tremendous reversal in opinion on this point since I introduced treaty amendments Nos. 7 and 8 to that effect on October 17, just 3 days after the statement of understanding was issued. Senator Ernest Hollings introduced a similar proposal as amendment No. 9, and Senator Lloyd Bentsen followed suit with amendments Nos. 13 and 14 last month.

For months following the issuance of the Carter-Torrijos statement, the administration resisted and belittled my contention that clarifications and guarantees need to be written into the treaties themselves. A letter from the State Department to the chairman of the Foreign Relations Committee last December maintained that an amendment of articles IV and VI of the Neutrality Treaty “is unnecessary from a legal standpoint, and extremely undesirable in terms of maintaining the overall agreement on the treaties reached with Panama—such a step would, moreover, seriously complicate the ratification process.” That was the State Department’s opinion in December of last year. Due to the persistence of this Senator and others, the administration reversed its position 6 weeks later and agreed to the treaty amendment now recommended by the Senate Foreign Relations Committee.

The Senate leadership now supports that amendment as well, and I guess with 77, 78, or 85 cosponsors, one could say chances for approval appear good. But the effort to approve these treaties does not end there.

The Senator from Kansas remembers when it was indicated that he was obstructing the treaty process by offering amendments numbered 7 and 8. I do not hear that now, when those amendments have become amendments numbered 20 and 21 by the leadership. I do not think we should characterize any other amendments that are offered by this Senator or any other Senator as obstructions until we have had a full debate. The American people understand that those of us who have amendments are concerned about our national interests, are concerned about Panamanian interests, and are concerned about getting the best possible treaties.

So we have made progress, but we have not yet reached the objective.

TREATY DEFECTS

The treaties do not yet merit the support of those who would insure the future security interests of the United States.

As the Senator from Kansas indicated, I am not so concerned about the sovereignty dilemma as some others. I am not hung up on whether the canal is sovereign territory or not, or whether we own it in a technical legal sense. I am more concerned about what happens after the year 2000. I am less concerned about from now to the year 2000. We will still have troops there. There will be a presence there. But what happens after the year 2000, after the initial treaty terminates?

For the immediate future, I am bothered by uncertain protections of the rights of U.S. Canal Zone employees, and by excessive payments guaranteed to Panama which will create pressures for higher canal tolls. Maybe it will not hit us for 4, 5, or 6 years, but it is coming. Everyone agrees it is coming.

I am concerned about maintaining U.S. discretion in selecting a site for a new sea-level canal, and about Panamanian progress in the observance of human rights, though I might say it appears they are doing better. They have made progress in the past year, but much remains to be done.

It is for reasons that I seek to improve the treaty language by proposing specific amendments and reservations—not to obstruct the proceedings any more than I was trying to obstruct proceedings with amendments Nos. 7 and 8, which are now amendments Nos. 20 and 21, but as one who seeks assurance of the Nation's welfare.

On September 23 of last year, I proposed six amendments and two reservations to the proposed Panama Canal Treaty and Neutrality Treaty. Those proposals focused on specific problems including American defense and passage rights, payment guarantees for Panama, duration of the transition period, the transfer of U.S. property, human rights, and restrictions on construction of a new sea-level canal. Subsequently, I introduced five additional amendments on October 17, and January 19 of this year. All of them, I believe, go to the heart of the defects and omissions inherent in these treaties.

HEMISPHERIC INTERESTS

Mr. President, we recognize that there is widespread nationalistic support in Panama for regaining full control of the canal and Canal Zone. We also know that there is support for a "new canal arrangement" among many of the Central and Latin American governments. Our friends in this hemisphere should understand that we do value the continuation of our good relations with them. We do want to base our future relationships on a foundation of mutual interest and respect.

But despite all the administration's claims about widespread support for these treaties throughout Latin America, we know that those governments want us to act responsibly in guaranteeing the canal's future security. They want us to do what we can to assure the continuation of low toll rates, efficient operation, and adequate maintenance in the future. To do any less would be to betray their trust in our good judgment, and would betray their own interests in the use of the canal.

As recently as last June, the Organization of American States unanimously adopted a resolution opposing excessive increases in canal tolls. Yet, it is now well known that the payment guarantees

for Panama contained within these treaty provisions will necessitate immediate toll increases of as much as 25 to 40 percent—a fact that is sure to concern Latin American countries that are heavy canal users.

Mr. President, this Senator categorically rejects any onus of guilt or remorse on the part of the United States for our involvement with the canal. This Senator rejects any notion that we owe any other nation or nations an apology for our role in building the canal, in operating and maintaining it for 65 years, and in thereby enhancing the standard of living for the people of Panama.

This Senator rejects as well any suggestion that we retreat due to fear of unknown consequences. The governments of all nations must understand that we do not relinquish our presence in the Canal Zone because of veiled threats or direct pressures. They must know, without question, that we reserve all rights to protect the security of the canal when it is threatened, and that we expect to continue to play a vital role throughout this hemisphere. Free, then, of any sense of guilt or intimidation, we should now proceed to thoroughly discuss these treaties in an objective and responsible manner. We owe no less to those we represent, who will be listening carefully in the days ahead, perhaps more carefully than ever before.

A LONG DEBATE

Mr. President, the Senator from Kansas suggests, as he did at the outset, that this will be a long debate. It will be a constructive debate. Minds will be changed. Senators who now are uncertain may find, in the course of the debate or in the course of some amendments which will be offered, a way to improve the treaties and make it possible for them to vote for the treaties with certain improvements that go to the heart of the matter; that is, protection of America's vital interests.

Oh, yes, we are concerned about Panama. We know they are a small country, we know of the problems they have. We know about General Torrijos. We know that he has problems. We know there are difficult decisions for the leader of that country to make.

We know it is important to President Carter and we want to help President Carter when we can. It seems to this Senator that one way to assist the President is to make certain that we protect the national interest. Perhaps in the next week or 2 weeks or 3 weeks, amendments will be offered that will appeal to 51 Senators. It only takes 51 to amend the treaties.

It seems to this Senator that one way to assure passage of the treaties, perhaps by a wide margin in this body, is to make certain that we give careful attention to some of the amendments which will be proposed.

I shall only say one more time that there are those who yelled "obstructionism," when this Senator introduced amendments Nos. 7 and 8. I find now that 78 Senators share my early view. I do not see anyone saying they are obstructionist. They say it is a positive step forward.

The leadership has embraced the amendments. They now claim them to be their own. That is fine. That is the prerogative of the leadership. And the Senator from Kansas may want to cosponsor his amendments at the appropriate time.

But I think there has been proof demonstrated, by the fact that the leadership is embracing these amendments, that they know the treaties were vague and they knew the treaties were ambiguous. They knew the political dangers in ratifying the treaties in their original form. They told the President so very candidly. They told the American people. Now they are telling us.

I suggest to my distinguished friends, the majority leader and minority leader, that we share their responsibility. We share their concern. We hope that when we offer amendments, they will share our concern and they will share our responsibility, and they will understand that we offer the amendments in good faith, just as they offer amendments Nos. 20 and 21 in good faith.

This Senator has a feeling that there is going to be a big effort around here to get amendments Nos. 20 and 21 adopted and then claim victory and say it is all over. The Senator from Kansas does not believe that should happen. There is no doubt in my mind that amendments Nos. 20 and 21 will pass. But if we proceed as we should, by first considering the Panama Canal Treaty and trying to make improvements in the Panama Canal Treaty before we get to the second treaty concerning the permanent neutrality and operation of the Panama Canal, then I think we can end this debate with a great deal of harmony.

Perhaps at that point, there will be sufficient votes for passage of the treaties. If not, if there is an effort to beat down every amendment, or to adopt amendments Nos. 20 and 21 and say, this is it—these are the big ones, this clarifies the treaty, this is all we need—then I would suggest that the final vote is too close to call.

It seems to this Senator that there should be no fear of renegotiation. There should be no fear of upsetting General Torrijos. We should not concern ourselves with whether or not this is a plus or a minus for this administration or the former administration. We ought to concern ourselves with our responsibilities. I am certain we will. One of our responsibilities is to make certain that we have not overlooked something.

I commend the Senate Committee on Foreign Relations. They have worked hard. They heard many, many witnesses, as did the Committee on Armed Services. And I guess, after hearing all the witnesses and after knowing about amendments 20 and 21, the great majority decided that the treaties were no longer flawed. But this Senator does not buy that. We want to make certain these are the best possible treaties that can pass this body.

Mr. President, the Senator from Kansas will pledge his efforts to be constructive, to keep the debate at the highest level, to offer responsible amendments; and then hope that my colleagues, who may be wavering or may have ideas of their own, will be able to support those amendments.

I yield the floor.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that debate on the treaties today end at 6:30 p.m.

The PRESIDING OFFICER (Mr. Zorinsky). Without objection, it is so ordered.

Mr. CRANSTON. Mr. President, after speaking with scores of people, reading voluminous testimony, listening to arguments on all sides of the issue, and visiting firsthand the Republic of Panama

and the Canal Zone, I am deeply convinced that the case for approval of these treaties is strong and convincing. The U.S. national interest depends upon the proper use and assured security of the canal, not upon its ownership. And our national interests will be far more secure when Panama and other Latin American nations are our genuine allies—willing and able to cooperate with us and committed to similar, mutually beneficial goals.

I have thought long and hard about this historic issue and this is the final balance sheet I have come up with:

What does the United States gain if we approve these treaties?

The benefits, as I see them, are:

First. These treaties will vastly improve the prospect that the Panama Canal will remain secure, safe, neutral, and open to our commercial and military ships—and the ships of all nations—for now and the indefinite future. Keeping the canal open must be our overriding consideration.

Second. We retain the right for priority passage of U.S. ships in time of emergency.

Third. We retain the right to defend the canal forever against any perceived threat from within or without.

We already have that right of defense. But these treaties make the canal more secure, more safe for a simple—but all too often overlooked—reason: Military hostilities inevitably inflict casualties, and damage on both sides. Even the victor suffers some punishment.

The best way to defend the canal against attack is to take steps to avert an attack in the first place. The best way to protect the canal against damage—even temporary damage and temporary shutdown—is to remove as far as is in our power political provocation that might incite an attack.

Approval of these treaties will remove provocation of an attack against the canal by local nationalists—the very kind of attack to which the canal is most vulnerable.

Without any doubt, American military might can defend the canal and recapture it if recapture is needed. But Vietnam should have taught us that we cannot guarantee the transit of commercial shipping through the canal if ships are subjected to guerrilla attack in passage.

We do not want the canal closed to commercial traffic for years because of guerrilla warfare in the jungles of Panama.

We do not want the canal closed to our naval vessels for days or weeks or possibly months because of guerrilla warfare in the jungles of Panama and damage that guerrillas might inflict upon the canal.

Fourth. Approval of these treaties will right what all of Latin America has for generations perceived as a wrong. Approval of these treaties will establish us as the good neighbor we have always claimed we wanted to be, but have never quite succeeded in persuading anyone we were.

Fifth. Approval of these treaties will improve our image and our relations with all the nations of the Third World who see in our armed presence in the Canal Zone a vestige of the detested colonialism that they rebelled against—the very colonialism we ourselves rebelled against in our own Revolution.

Some people look upon the canal as a symbol of American power and ingenuity. But the canal has also become a symbol of American colonialism in an era when colonialism is in rightful disrepute. It is time for us to desymbolize the Panama Canal.

Sixth. Finally I believe these treaties will improve our relations—political, military, and commercial—with all the nations of the world. Approval will show us to be a strong, self-confident nation capable of dealing fairly with a small, developing country.

It will demonstrate to the world that we have the real, inner strength of the truly powerful—not the false bravado of the frightened bully.

Now, what would the United States lose if the Senate rejects the treaties—or emasculates them with demeaning amendments that would compel the Panamanians to reject them out of national pride and self-respect?

First. We increase the odds for domestic unrest that could imperil the peaceful passage of our ships.

Second. We increase the chances of a takeover of the Panamanian Government by right-wing—or left-wing—forces, thus further jeopardizing the canal.

Third. We raise the cost to us—in dollars and cents—in having to defend the canal against a disillusioned and possibly hostile populace and worse yet, in human lives. That cost could far exceed any monetary loss in ceding the canal—and I am speaking of American lives and Panamanian lives.

Fourth. And finally we lose that “decent respect for the opinions of mankind” that motivated our Declaration of Independence 200 years ago.

Once again we are being called upon to show a “decent respect for the opinions of mankind.” Let us live up to our heritage.

Mr. President, I yield the floor.

Mr. JAVITS addressed the Chair.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. JAVITS. I thank the Chair.

Mr. President, we are today setting the framework of this debate and we will get into many of the finite details as the days go on. So I would like to address myself to the framework within which I believe these treaties should both be recommended for ratification by the President, which is the practical procedure, and why it is in the highest national interest of the United States that this be done.

Mr. President, we do not live in isolation. We live in a time of history. In a real sense the United States in respect of the Panama Canal has been defying history, and those who defy history are condemned to relive it and reliving it may involve this country in such difficulties, including war, as to call for an acceptance rather than a rejection of these treaties.

Mr. President, I hasten to say immediately that we are not, I hope, and I certainly will not lend myself to that, going to simply say to every effort to amend or to make a reservation or to make a declaration, we cannot do that, we do not wish to negotiate these treaties again, the matter is laid at rest with the adoption of the two amendments which are recommended by the Foreign Relations Committee, and that is the end of that.

Of course, it will be my duty and it will be the duty of every other Senator to examine, as we did in the Foreign Relations Committee—of which I have the honor to be a member—every one of the amendments proposed by Senator Dole or Senator Laxalt or any other Senator, with a view toward improving the position of the United States in respect of this very difficult situation, if we can.

However, Mr. President, I do not believe that it should be made an argument for these amendments and reservations that we intend to turn them all down simply because we do not want to contend with them. I do not believe we should be prejudiced either way. We should consider them, we should debate them, and we should vote them up or down, as we deem them to be in the best interests of the situation.

It is for this reason that I supported the two amendments which the Foreign Relations Committee has recommended, because I believe in what they call for—the absolute unilateral right of the United States, after the year 2000, to defend this canal with whatever means it took, and whether or not it was on the territory of the Republic of Panama, itself; second, that in case of need, the war and auxiliary vessels of the United States would be entitled, upon the unilateral determination of the United States, to traverse the canal with the first priority over every other vessel.

Mr. President, I did that because I believe that is what the treaty says, the Neutrality Treaty, in article IV, as to the right to unilaterally determine that the canal neutrality is endangered and in article VI as to the right for priority passage of our war vessels, in case of need, through the canal.

Mr. President, where there was such a very general view that these were the two critical matters in respect of the treaty that had to be crystal clear beyond construction or interpretation of any kind or character, and where the Panamanians themselves concur, through the statement made by President Carter and General Torrijos in that declaration, I saw no reason why we should not adopt it as an amendment or a reservation or a declaration, or whatever anybody wished.

In short, there is no use going out and looking for trouble in respect of these treaties, if, by taking this action, we satisfy those who had any doubts on the subject that there was no room for doubt. But that does not mean that that is an open license to try to get the treaty turned down or to try to get the treaty made impossible of implementation because of the number or nature of the amendments which are thrown up against it.

So, Mr. President, in my judgment it was right and proper to support these amendments, and I am a cosponsor of them, and I am proud to be. But I do not believe that they were essential, except insofar as reassurance was concerned to many Members who wanted these particular points made crystal clear.

For those reasons, I hope very much that the treaties will be adopted.

It is very critical that this matter be looked at down the long corridor of history. This should be and will be, if I can have anything to do with it, a critically important part of the debate, because we are an anomaly in the world. The fact that the United

States controls the Panama Canal with the exclusivity that it does is an anomaly in this world.

Indeed, the whole of international law, all international opinion, all the stirrings and risings of the developing nations of the world, are directed exactly the other way. The fact is, too, that our history here is not unbloody, and let us not shut our eyes to that. The fact is that in 1964, in a real fracas in the Panama Canal, in respect of the Panama Canal, on this very issue which we face here, as to how it should be operated and run and whether or not we should assert the sovereignty over it which many would like to impute to us, many lives were lost.

Mr. President, that is history. The fact is that there was a war in respect of the Suez Canal, a war in which the United States took a very heavy responsibility to call off the forces of its two principal allies in Europe, France and the United Kingdom, and the forces of Israel, because the United States, back then in 1956, subscribed to the proposition that colonialism, in whatever guise, was dead and that it was no longer possible in this world to hold on with that degree of control to the kind of property which the United States, if the opponents of these treaties have their way, has asserted in respect of the Panama Canal.

In that respect, I must say that I look with great concern upon assertions, as I have heard already on this floor and that have been made in the public debate, that the United States is paying the Panamanians for taking the canal off our hands. One of the most shocking elements of the canal performance has been the way in which we have dealt with Panama on the question of payment. The fact is that, in essence, we are still paying today at 1903 rates. The fact also is, notwithstanding many of the contentions which have been made about this issue, that the United States has practically paid out everything it invested in the canal.

Indeed, I quote now from the testimony of Under Secretary of the Treasury Solomon, at page 434 of the testimony on this subject in which he says:

The total financial flows to and from the canal from the Treasury since the very inception of the building of the canal resulted in a situation where we have received everything back excepting about \$58 million.

That is a very great difference from the assertions that we are paying the Panamanians to take the canal off our hands.

Mr. President, the virtue of these treaties, which must be very seriously weighed in their favor, is this 23-year lapse on the part of the United States in turning over the control and the operation of the canal to the Panamanians. Twenty-three years—an almost unheard of period in affairs of this character. Twenty-three years that the United States can administer this canal, in a commission which is five-to-four United States, where the principal operating official until 1990 will be a U.S. national. That, it seems to me, is the absolutely clinching argument for the worth of these treaties. A quarter of a century to put this matter in shape and to put it in focus, and all the time relieving us of the responsibility for treating it as a colonial possession; and with a gradually developing and intelligent and maturing cooperation with the people and the Government of Panama.

Mr. President, I have no illusions about President Torrijos and how long he is going to be there, any more than I have illusions about President Carter and how long he is going to be there. The most he can be there will be 7 years, if he succeeds in being reelected. As to President Torrijos, we have no idea as to the duration of his term. But the canal will be there, and the people of the United States and the people of Panama will be there; and these are the interests and the relationships which are essential to keep inviolate.

Nothing in life is perfect. We cannot guarantee to the opponents of these treaties that there will be no trouble about the situation once these treaties are ratified and approved; nor can we make predictions—not the best experts who testified can make predictions beyond 1984 or 1985—about the financial situation which will involve the operation of the canal and whether it will continue to be economically viable.

But we have to compare, Mr. President, those eventualities as they would exist under the treaty with the eventualities which would exist absent the treaty. And Mr. President, absent the treaty what have you got? You have got the 1903 so-called Hay-Bunau-Varilla Treaty, an absolute paragon and model of gunboat diplomacy and the big stick which the United States consummated after the flush of victory in the Spanish-American War. That is what happened and, Mr. President, I would think it would be unanimous in the United States that that day is gone and gone forever, and yet our opponents would have us believe that it still persists and that in the absence of these treaties we can, I know we can, and everybody knows we can go back to this 1903 Teddy Roosevelt dictated treaty to a small people who just got their head above the ground, revolting against Columbia, a revolt which most historians attribute to the activities of the United States itself.

Mr. President, we are not living in a dream world and so we have to have treaties. There is no other way. And let us see then which are the best treaties for our country and for the peace of the Americas and for justice in the world.

I believe that the absolutely decisive factor—and I suppose I will be arguing the law on many things in this matter, the two-House approval and many other things, and that will come another day—but to me the basic reason for ratification is that we have a quarter of a century to learn to live intelligently and in friendship and amity in this new framework.

Mr. President, I have enough confidence in the sense of justice, decency, and fairness of the American people and in the need of the Panamanian people, which is clearly recognizable, to believe that that will give us an opportunity to establish for all time, so long as this canal is useful at all, a relationship between a very large and powerful country and a small and weak country which will be truly a model of modern times, and that is that might does not make right.

So I hope very much, Mr. President, that these treaties within that framework and within that spirit will be approved.

I yield the floor.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator from New York yield to me?

Mr. JAVITS. I yield.

Mr. ROBERT C. BYRD. I wish to congratulate him on this statement. He indicated that there is no way that we can predict with certainty to assure the opponents of these treaties as to what the economic realities may be, in 1985 or a few years hence. Is it true that we cannot predict with certainty what those economic realities may be under the 1903 treaty?

Mr. JAVITS. Of course.

Mr. ROBERT C. BYRD. And is it also true that one cannot predict with certitude the economic realities that may exist 10 years hence with respect to any number of other matters, not just the Panama Canal subject itself?

Mr. JAVITS. There is no question about it, Mr. President, and Senator Byrd, it so happens that I spoke this very morning with deep feeling and with an enormous load of evidence on the danger that 1979-80 could face us with one of the most dangerous monetary and economic crises which we faced in the latter half of this century and so what we are trying to do is to be provident, and it seems to me that the best insurance policy for providence was this quarter of a century in which we learned how to make this work.

Mr. ROBERT C. BYRD. Yes; so we are faced with a myriad of uncertainties and we attempt to view the future not just with respect to the Panama Canal operations themselves, and whether or not we are operating 10 years hence under the 1903 treaty or under the new treaties.

Mr. JAVITS. Exactly, and the auspices of the new treaty according as it does in modern terms with the aspirations of small peoples—that is small in terms of their country and the economic, political, and diplomatic power of those countries—is just as day is to night compared to this 1903 treaty to which we would revert if these treaties were turned down.

I believe that we should simply judge them on whether they are the best thing to do, but we should not damn them because we do not make a lot of amendments if they do not need it. We do not have to invite trouble, and at the same time we should be perfectly willing to give every reassurance we can, without tearing down the structure of these treaties, as Senator Byrd and Senator Baker propose to do.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from New York.

Mr. JAVITS. I thank the majority leader.

I yield the floor.

The PRESIDING OFFICER (Mr. Hodges). Senator Clark from Iowa.

Mr. CLARK. Mr. President, much has already been made this afternoon about the issue of the real position of the Joint Chiefs of Staff of our military on the questions of the wisdom of these two treaties, and I think there will be a great deal made of it as the debate goes on because I think the American people and the Members of this body respect very greatly the views held by former members of the Joint Chiefs of Staff and present sitting members of the heads of various military components.

We took this question up in the Foreign Relations Committee in some detail, and I would like to read sections both contrary and favorable to the position that the Joint Chiefs were really speaking

for themselves because this becomes a critical issue. Many of the people that I have talked to in my home State and in other parts of the country are concerned about whether in fact the United States and our defense posture is improved or not by these treaties. So if I might read from some of the hearings that dealt very specifically with this question—I am reading from the hearings of the Committee on Foreign Relations, part I, administration witnesses, page 155.

(Senator Clark speaking now to the Joint Chiefs:)

Senator CLARK. Gentlemen, some of the most bitter critics of the treaty say that those of you in the Joint Chiefs of Staff and the higher ranks of the military command are supporting this treaty in fear of maintaining or enhancing your positions. They say that you are being intimidated. What is your response to these accusations?

General BROWN. Senator, I just turned to Secretary Brown to ask if he would mind if I made an unsolicited statement at some point to get this on the record. I thank you for your question. The rules are quite clear and I think understood by all of us that nobody, no senior officer in uniform will remain on active duty and publicly be critical of a Presidential decision. I, in my role as chairman, and other members of the Joint Chiefs of Staff will articulate as forcefully and as logically as we can the view the Joint Chiefs of Staff hold on issues of national security, but if the judgment goes against us as it does in many cases, there is nothing in the law that says the President has to accept our advice, but we have to give it.

We don't go public without leaving active duty first in doing so. However, the rules are also quite clear that in response to interrogation before a congressional committee that we answer fully and factually. The public record is quite clear where we have been in opposition to a Presidential decision. I can cite two cases. One, and I am sure this comes as no surprise, was the B-1. The second was in January, the Joint Chiefs of Staff urged that the President not plan to withdraw the 2nd U.S. Division from Korea unless three things were made part of that program. One was that the drawdown be done in such a manner that the military balance on the peninsula not be disturbed. Second, that we make public a pledge of our continued support of the Mutual Security Treaty with the Republic of Korea, and third, that we remain a Pacific power. Those three conditions the President accepted, and it became part of his program, at which point the Joint Chiefs of Staff endorsed the program.

So, it is wrong to say that in the case of the Panama Canal we are doing this only because a decision has been made. I have personally worked very diligently for 4 years to achieve these treaties with Ambassador Bunker and subsequently with Ambassador Linowitz also, and as we have testified, the key point that finally found its expression in a treaty of neutrality was conceived within the Defense Department. We have worked hard for this treaty because we feel it is right.

Senator CLARK. Admiral, do you concur in that view?

Admiral LONG. Senator Clark, let me first of all speak for Admiral Holloway, the Chief of Naval Operations. I probably have as close a relationship with him as any naval officer on active duty. I can assure you and this committee that he has had absolutely no pressure placed upon him to form a position that would be contrary to his own belief.

As I indicated earlier, this statement that I have presented to you this morning was personally written by Admiral Holloway. This was not something that was prepared for him by the staff; he personally wrote it.

I think that Admiral Holloway has indicated on several occasions before committees or the Congress where he has had personal views that were divergent to the administration, when queried. Having had the privilege of testifying before several committees of this Congress, I also am well aware of the necessity and the procedures by which a witness is required, and expected, to give his own personal views, if asked.

So, I would just like to assure you, sir, that there has been absolutely no pressure placed upon the Chief of Naval Operations to form this opinion.

Senator CLARK. General, as Commander of the Panama Canal Zone area, what is your own personal view with regard to the treaty?

General McAULIFFE. Senator, my own personal view is completely consistent with my professional view. Let me say that somewhat similarly to General Brown. Over the past 2 years during which I have been the commander of the Southern Command and stationed in the Panama Canal Zone, I have worked with the Joint Chiefs

of Staff and, of course, with our negotiating team, for a new treaty, and in order to assure that our defense requirements, as best I could assess them, now and in the future, were adequately and sufficiently taken care of. I can assure you that this is how I come down on this issue.

Senator CLARK. I think all three of you have been very direct in your answers and very strong. I think it is appropriate that you do that because we hear this accusation from time to time.

Of course, it is a very serious accusation and if it were true, it would mean that you were putting your own careers above the interests of the Nation; it would mean that your relationship with the President of the United States is more important than the national defense of the country from the highest military officials of this land. So that is a pretty serious charge. If it were true, then I think the national defense would not have much going for it in any case.

Secretary Brown, you look like you want to say something.

Secretary BROWN. Yes, Senator Clark. I would like to say something about this because I think perhaps my uniformed colleagues cannot say it. It is this. The kind of charge to which you are referring—which clearly you do not share since you are not personally expressing it—is an insult to our senior military officials. I believe it is not helpful to the debate, any more than it would be helpful to the debate if the proponents of the treaty were to question the motives, the integrity, or the honesty of those who oppose it.

Senator CLARK. That is exactly right.

The CHAIRMAN. Let me say that there is a rollcall vote on.

I am giving you all this because I do not want to be selective in terms of the debate as it goes on, because it becomes more controversial.

Senator GLENN. Would the Senator yield for a comment on that point?

Senator CLARK. I yield for a comment from Senator Glenn.

Senator GLENN. I might say to the witnesses that I think the memory of General Singlaub has not been forgotten in the halls of Congress yet, and I think that is what feeds into some of this. I think when we have four former CNO's who take exception to this and all those on active duty are unanimous in their opinions on the other side, it cannot help but raise serious questions. I have been leaning toward approval of this, so I do not speak as one opposed to the treaty. But I think it is very serious when we have Admirals Carney, Anderson, Burke, and Moorer speaking out in opposition to this and those on active duty directly opposing them because it raises a question as to what their motivation is and who is best motivated in this area, knowing what happened to a previous man who disagreed with the administration.

So, I think that does linger over this a little bit. I would hope that if anyone has any reservations about this they would certainly speak out.

That is what is behind some of the questions that Senator Clark has raised. I know it has been in my mind a bit, and I find this extreme unanimity of opinion on one side and the other side a little difficult to cope with.

Secretary BROWN. The unanimity of opponents is more presumed, than real, Senator Glenn.

Admiral Zumwalt, who also is a former Chief of Naval Operations, supports the treaty. He gets considerably less publicity.

Senator GLENN. I found it difficult to just dismiss four CNO's as old battleship admirals who no longer have a valuable contribution.

Secretary BROWN. I do not dismiss them, nor do I question their integrity or their honesty. I have some question about how well informed they may have been since they signed the letter before the texts of the treaties were available.

Senator GLENN. Perhaps we could prevail upon them to recant their previous sins now that they have seen the light.

And so on.

General BROWN. Senator Glenn, I would also like to comment upon this.

And he comments:

I would just like to make a comment on the Singlaub affair. I don't propose that it be reopened here, but I think it only fair to say it has been mentioned by the people with whom I have talked about this—and it has been brought up to me as I have traveled around the country—you are absolutely right in how they understand it. But they really misunderstand it. They fail to recognize one fundamental thing that

we cannot have in a military organization if we are to have a disciplined military force responsive to proper authority. This is, that once a decision is made, you support it or you get out and contest it. You don't stay on active duty and contest it.

That is where I must draw the line.

Senator GLENN. General, I hope nothing I indicated was to the contrary. I spent 23 years in the Marine Corps and I am fully familiar with that and I agree with it completely. It is the only way we have to maintain a working military organization. If we ever lose that structure and lose that discipline, we will be through with our military structure in this country. So, I support that fully.

But where people have lined up so much on one side and the other on this with apparent unanimity of opinion, it did raise some questions in view of what has happened that I think are good to bring out at these hearings so that we can clarify them. That was my point.

The discussion at that point ends and goes on to another matter. I hesitate to read all of it into the Record at this point, except to say that it seems to me that the Joint Chiefs of Staff have made a very clear point, that simply being that in their judgment they are required by law, when appearing before a congressional committee, to give their honest views; and, indeed, they cite two examples in this testimony where they did precisely that, in the case of the B-1 bomber, where they opposed the President's position until it was changed, and did so publicly, and in the case of the B-1 bomber, where they opposed the President's decision and did so publicly.

There is no good reason, it seems to me, to believe that if they are prepared to take a position in opposition to the Commander in Chief when asked and required to do so in accordance with the rules of both Houses of Congress, that they would decide not to do so in the case of the Canal Treaty if they absolutely felt it was not in the national defense interests of the United States.

(Mr. Stone assumed the Chair).

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator from Iowa yield?

Mr. CLARK. I yield.

Mr. ROBERT C. BYRD. I compliment the Senator for his reference to the support which has been expressed for the treaties by the chairman of the Joint Chiefs of Staff and the Joint Chiefs themselves.

These are the people who are currently responsible for the defense of this country, are they not?

Mr. CLARK. This is correct.

Mr. ROBERT C. BYRD. These are the men who currently have the duty—not yesterday, not a year ago, not just 2 years ago, but now—is that correct?

Mr. CLARK. This is correct.

Mr. ROBERT C. BYRD. Does the Senator consider this to be an important point which ought to be made for the record?

Mr. CLARK. I believe so.

Mr. ROBERT C. BYRD. In other words, the men who are responsible today, not 10 years ago, for planning for the defense and security of this country support these treaties.

Mr. CLARK. That is exactly right. And I believe the Senator makes a good point. I really do agree with what Secretary Brown said before the Senate Foreign Relations Committee. That is that it is an insult to these military leaders to say that somehow they are

not interested in the highest defense interests of this country. I think they are testifying to their own integrity.

Mr. ROBERT C. BYRD. Or it impugns their patriotism.

Mr. CLARK. That is right.

Mr. ROBERT C. BYRD. I believe it is important that the Senator has stated, and it should be stressed, that the Joint Chiefs of Staff, the Chairman of the Joint Chiefs, the people who are responsible today—not those who were responsible 10 years ago perhaps—who under today's conditions, and looking forward to the future, are in support, unanimously in support, of these treaties. Am I correct?

Mr. CLARK. That is correct.

Mr. LAXALT. Will the Senator yield?

Mr. CLARK. I yield.

Mr. Laxalt. That may will be. I will not minimize the impact of having the endorsement of the existing and present Joint Chiefs. But is it not also true that the vast majority of the retired Joint Chiefs are in solid opposition to these treaties?

Mr. CLARK. Well, I do not have any count. I know that Admiral Zumwalt, of course, is in favor, but the others that I quoted are opposed.

Mr. LAXALT. Admittedly, they are not currently in charge. Admittedly, their information may not be as current or topical. But surely we here in the Senate, and the American people, have a right to observe and perhaps properly regard their opinions in this matter, is that correct?

Mr. CLARK. I think it is entirely correct.

Mr. LAXALT. I might point out, if the Senators are not already aware, that within the past few weeks there was a secret poll conducted of some 300 retired flag officers who had served previously in this part of the world. Of those polled, only six favored these treaties. I think in order to make the record complete it should be pointed out that to the extent indicated there is a sharp division among the military people.

Mr. CLARK. I do not question that. Really, the point I wanted to make, and make very clearly, and which I think the testimony makes, is simply this: Those people who argue that the members of the Joint Chiefs of Staff really do not favor this treaty, that somehow they are only doing that because their Commander in Chief favors it, are doing a great disservice to them. I think they have made a great case here in pointing out illustrations of when they have opposed the Commander in Chief, the B-1 bomber being a recent example and the withdrawal of troops from Korea being another.

One can disagree honestly over the treaties, military officials, former and present, but my feeling is that the present Joint Chiefs of Staff are unanimous in their honest opinion that the proposed treaties will serve the national interests of the United States better than the existing treaties. I am only trying to deal with the question of their forthrightness and their honesty in coming to their position. Admirals Berg and Zumwalt, and others, I am sure, are equally forthright and honest in coming to their position.

Many people around the country, some in this city, have suggested from time to time that, in fact, the Joint Chiefs are not being entirely open and honest in giving their candid opinion. I agree

with Secretary Brown and with their own comments I have read into the Record. I think they are honest about it and they are giving us their points of view. I would like to have that point well established. I am particularly pleased with the fact that the Senator from Nevada, I believe, shares that opinion. I yield the floor.

Mr. Allen addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. ALLEN. Under the unanimous-consent agreement which has been entered into, we only have 3 more minutes of debate tonight on this subject. I would like to comment on the statement that the Joint Chiefs say that the canal can better be defended under the proposed treaties than it could be defended under the existing treaties.

The signed agreements provide that as soon as the Panama Canal Treaty is agreed to, the bases of the United States in Panama immediately drop from 14 to 4, and that at the end of this century we pull out all of our troops.

I do not care if the Joint Chiefs have the military genius of Napoleon, to say that we can better defend the canal with 4 bases than 14, and that we can better defend the canal with no troops there after the end of this century than having 14 bases there, just does not make good sense.

Certainly, at the end of this century if we do go back in after we have withdrawn all of our troops, if we go back in to protect the neutrality of the canal, we have to go back in, in effect, as invaders. We would have to go in by amphibious landing or by dropping paratroopers. We do not know what effect that would have on some of our potential enemies around the globe. Russia or Cuba would take a dim view of our invading Panama for the purpose of defending the canal.

I do not care what the Joint Chiefs say, it does not make sense to say that we would better defend the canal with 4 bases than with 14, and that at the end of the century we could defend the canal better with no troops there than under our present arrangement in having 14 bases there.

Mr. ROBERT C. BYRD. Will the Senator yield for a question?

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. Is it not true that under the 1903 treaty, the United States has no legal right to complain if a foreign country sets up a military garrison in Panama today outside the Canal Zone; whereas, the treaties which are being debated, if ratified, would provide that no foreign power would be allowed to set up a military post or garrison anywhere in Panama? In that respect, the new treaties are a great improvement over the 1903 treaties. That is after the year 2000.

Mr. ALLEN. Yet the new treaty provides that we cannot intervene in the internal affairs of Panama, and Panama might be the very offender. They might be the person or the country that was forbidding us to use the canal. They might be the barrier; they might be the enemy. But we pledge that under no circumstances will we come in and interfere with the internal affairs of Panama.

Certainly, if they were forbidding our use of the canal, if we moved in to force our right to use the canal, that would be interfering with the internal affairs of Panama.

Mr. President, inasmuch as the allotted time has expired, I yield the floor.

Mr. ROBERT C. BYRD. Mr. President, article V of the Neutrality Treaty provides—and it is very brief—in the following sentence:

After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the canal and maintain military forces defense sites and military installations within its national territory.

Under the 1903 treaty, Mr. President, this protection is not provided. Any foreign power can, at this point or after the year 2000, station a military garrison in Panama and the United States would have no legal right to complain as long as that garrison were located outside the Panama Canal Zone.

The PRESIDING OFFICER. The Chair must rule that, pursuant to the previous order, the debate on the Panama Canal treaties will now terminate, the hour of 6:30 having arrived.

Mr. ROBERT C. BYRD. Mr. President, I congratulate Members of the Senate, who have carried on a very instructional debate. I commend them, both those who have presented views in support of and those who have presented views in opposition to the treaties.

ADDITIONAL STATEMENTS SUBMITTED

Mr. MCGOVERN. Mr. President, I was pleased and proud to note that the January 4-7 issue of the Christian Century contained one of the best discussions I have yet seen on the Panama Canal treaties. The article was written by the president of Dakota Wesleyan University, Dr. Donald Messer, of Mitchell, S. Dak.

Dr. Messer was among a number of Americans who spent a day in Washington in November receiving briefings on the treaties from President Carter and other administration officials. In my view he has performed a real service to the country by collecting the most pertinent facts from those sessions, combining them with imaginative arguments of his own, and setting them forth for a wider audience in a highly readable form.

He addresses with particular cogency the question whether these treaties represent a retreat by the United States. Dr. Messer writes:

Actually, the opposite can be argued; it is evidence of a nation's greatness when it can live in peace and partnership with its neighbors. Gunboat-diplomacy days are long gone; the U.S. promotes the self-determination and development of nations, unlike the communists in eastern Europe who continue to practice a form of colonialism.

Mr. President, because I believe it will be of interest and help to my colleagues as we approach the debates on the Panama Canal treaties, I ask unanimous consent that the article I have described, entitled "Panama Canal Treaties: Answering Questions on Main-Street America," be printed at this point in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

PANAMA CANAL TREATIES: ANSWERING QUESTIONS ON MAIN STREET AMERICA

(By Donald E. Messer)

Almost unnoticed in the wake of the world drama of Egyptian President Anwar Sadat's journey to Jerusalem was a mobilization meeting on Friday November 18 of grass-roots American citizens concerned with peace in the western hemisphere.

Summoned to meet President Jimmy Carter at the White House, over 1,000 leaders, Democrats and Republicans from every part of the United States, spent a day being briefed on the Panama Canal treaties. Almost unprecedented, at least in recent times, is the degree of presidential prestige and persuasion being applied in the interests of treaty ratification.

Prompting Carter's effort in the realization that the treaties are in jeopardy: the majority of Americans are opposed to them, and treaty opponents have launched a well-financed campaign to exploit this sentiment. Republicans particularly are being subjected to a political litmus test of true conservatism. While Ronald Reagan is the best-known spokesman for this perspective, members of the American Conservative Union have for some months been carrying on a highly organized crusade, sponsoring petitions, speaking on radio/TV talk shows, producing mass mailings, and generating antitreaty letters and petitions to Congress.

The White House Conference was directed by a bipartisan group called the Committee of Americans for the Canal Treaties (COACT), headed by Averill Harriman and former Senate minority leader Hugh Scott. Speakers defending the treaties included Vice-President Walter Mondale; former Secretary of State Henry Kissinger; Sol M. Linowitz, U.S. treaty negotiator (with Ellsworth Bunker); Secretary of the Navy W. Graham Clayton, Jr.; and Ambassador Henry Cabot Lodge.

In welcoming his White House guests, Carter asked for help, noting that supporters "will not be received with gratitude" when they defend the treaties, for they are "not yet popular." What an understatement from a man noted for hyperbole! In South Dakota one high school poll showed 90 percent of students opposed, with the other 10 percent saying it was OK to "give [the canal] away." A recent New York Times/CBS nationwide poll revealed that 29 per cent approved, 49 per cent disapproved, and 22 per cent had no opinion.

NEEDED: A CLIMATE OF PUBLIC UNDERSTANDING

Evidence suggests, however, that the American people could be persuaded to change their minds, if they were to receive accurate information regarding the treaties. Many conscientious citizens on main-street America, though initially opposed to the treaties, are open to hearing new information. People are confused, victims of a jingoistic third-grade educational past, an emotional antitreaty campaign, and the failure of political, civic, church and educational leaders to address their doubts and concerns. When the Times/CBS poll put the question differently, asking respondents if they would support ratification if it were certain "that the United States could always send in troops to keep the canal open to ships of all nations," then 63 per cent approved, 24 per cent disapproved, and 13 per cent had no opinion. Ironically, the treaties do give America precisely that right of military intervention, but the American people don't know it.

Mere passage of the Panama treaties is insufficient. A climate of public understanding is critically needed. Indications are that two-thirds of the Senate can be persuaded but that many need "home" support. Pushing through to passage with only minority public support could have negative consequences in the long run. The political alienation fostered by the Vietnam war, Watergate and Koreagate would deepen. More critical would be the undermining of President Carter's ability to conduct the foreign affairs of this nation with authority and confidence. The public needs to understand and approve the Panama Canal treaties: otherwise, efforts toward a new SALT pact or negotiations in South Africa or the Mideast could be severely weakened.

Now, for the first time since the 1960s civil rights movement, church people have an opportunity to join with the administration in a bipartisan political and educational effort to influence a policy decision for peace and goodwill in the western hemisphere. The Senate vote is expected by the end of March 1978. In the next few weeks, grass-roots Americans must speak out.

AMERICA'S INVOLVEMENT IN PANAMA

Even the simplest recitation of the history of America's involvement in Panama will provide more information than most Americans remember. Few have given the matter consistent, thoughtful attention, yet now most feel emotionally involved. Capturing this mood was a recent cartoon of two men, one saying: "I don't know what is the matter with me. For 30 years I never thought about the Panama Canal and now I can't live without it." These widespread feelings are what opponents are accentuating, believing that this is "one of those few issues that come along every ten or fifteen years in which a politician can make or break himself with one vote" (Richard A. Viguerie, quoted in "The New Activists," *Newsweek*, November 7, 1977, p. 41).

Most Americans are surprised to learn the circumstances and details of the original Panama Canal treaty. The facts of our involvement stand in sharp contrast to our historic ideals and our commitment to international justice, fair play and the self-determination of peoples.

It was the French who first attempted to build a canal across the Isthmus of Panama to give ships a more direct route between the Atlantic and Pacific Oceans. The French company went bankrupt, and Philippe-Bunau-Varilla, a French stockholder, approached the United States government in 1903. Recognizing the commercial and military value of a shortcut linking the Atlantic and the Pacific, the United States approached the government of Colombia and offered a treaty that would give the U.S. 100-year use of a six-mile swath of land through the province of Panama in exchange for \$10 million and \$250,000 annual rent. The Colombian legislature refused, arguing that the proposal was unreasonable.

The province was ripe for revolution. With American foreknowledge, if not assistance from military ships offshore, the Panamanians declared their independence and new nationhood. Three days later the United States recognized the new government and 12 days later signed a treaty for building a canal and creating a special zone. No Panamanians were even present; the treaty was signed by the Frenchman, Bunau-Varilla, who benefited significantly when the U.S. purchased his assets.

From the beginning the fairness of the treaty has been questionable. The offer rejected by the Colombians was far better than the agreement the Panamanians accepted. Rather than for a term of 100 years, the U.S. would hold the strip of land in "perpetuity"; not six miles but ten miles would be carved out of the center of their country. And "all the rights, power, and authority" were given to the U.S. as "if it were the sovereign of the territory." A new nation, which owed its independence to America's military might, and had no bargaining power; it had to sign. Secretary of State John Hay, who signed for the United States, later wrote a U.S. Senator that it was "vastly advantageous to the United States, and we must confess, with what face we can muster, not so advantageous to Panama. @.@ You and I know too well how many points there are in this treaty to which a Panamanian patriot could object" (quoted in *Panama Canal: The New Treaties* [Department of State, 1977], publication 8924, p. 5).

The construction of the canal fired America's imagination. From 1904 to 1914 America's spirit and technological know-how were pitted against enormous problems of topography, jungle disease and other hardships. It was "our moonshot of the early 1900s," according to Sol Linowitz. Built and run not for a profit but as a public service to the world, the canal has benefited ships of every nation.

Over the years minor treaty adjustments have been made, including an increase in the yearly payment to Panama to \$2.3 million. Especially irritating to Panamanians, however, was the Canal Zone—the "little America"—in the heart of their country.

Actually it surprises many main-street Americans to learn of this colonial strip of land, ten miles wide and 51 miles long. Just ask how they would like for their state to be divided in two, with 10,000 foreign troops and eight military bases occupying a strip down the middle. This simple exercise in "walking in another's moccasins" helps one imaginatively to see the issue as the Panamanian people see it (cf. "Bought and Paid For"? A Historical Look at the Panama Canal Issue," by Raymond K. DeHainaut, *Christian Century*, July 7-14, 1976, pp. 629-631).

This anticolonial resentment exploded in 1964, resulting in the deaths of 24 people (20 Panamanians and four Americans). President Lyndon Johnson, after consultation with Presidents Truman and Eisenhower, began negotiations for a new treaty which finally reached fruition in 1977. Though Carter signed for the United States, the document really represents the bipartisan diplomacy of the past seven presidents. As former Secretary of State Henry Kissinger says, "If only two more states had voted differently, it would have been the Ford-Kissinger treaty."

PROVISIONS OF THE TWO NEW TREATIES

Technically there are two treaties: one called the "Panama Canal Treaty" and the other the "Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal." Interrelated, both need ratification by a two-thirds vote of the United States Senate.

The "Panama Canal Treaty" terminates and supersedes previous treaties and defines how the canal is to be operated and defended until the year 2000. Briefly, six provisions can be outlined: *First*, it is agreed that the United States will have prime responsibility for defense and canal operations until 2000, with increasing Panamanian participation during this time. Right now, 70 per cent of the canal work force is Panamanian, so transition should not be difficult. *Second*, in three years the

Canal Zone will cease to exist and Panama will assume general jurisdiction. The U.S. retains its military bases until 2000.

Third, the canal will be operated by an American governmental agency, the Panama Canal Commission, made up of five Americans and four Panamanians, until the end of the century. The U.S. thus sets the rate of tolls for the next 22 years. Fourth, there are extensive provisions protecting the security and rights of current U.S. employees.

Fifth, Panama and the U.S. agree to study the desirability and feasibility of putting a new canal through Panama. A new sea-level canal (in contrast to the current one utilizing a complicated lock system) would be easier to defend militarily and would permit passage of larger ships. The U.S. will not attempt to build a canal in another Latin nation, and Panama has agreed not to construct a canal with the help of another country.

Sixth, Panama will immediately begin to receive more money from its most important economic asset, the canal. It will receive 30 cents per Panama Canal ton. Depending on traffic, this figure could total \$40 to \$50 million yearly. Additionally, an annuity of \$10 million is guaranteed, and up to another \$10 million is possible if revenues permit. All of this money comes from canal operating revenues, not from congressional appropriations.

The "Neutrality Treaty" is what its name suggest; it ensures that the canal "shall be permanently neutral"—open to commercial and naval vessels, without discrimination as to conditions or tolls. In time of national need, the "vessels of war and auxiliary vessels" of both the U.S. and Panama are "entitled to transit the Canal expeditiously."

Contrary to popular main-street American understanding, the treaty does provide that the United States has a right to intervene militarily after the year 2000 to ensure the canal's neutrality and the passage of America's warships. Controversy over whether Panama and the U.S. concurred in this interpretation resulted in a return visit to Washington this fall on the part of Panama's president, General Omar Torrijos. Since Carter and Torrijos issued a joint communique, affirming America's right to intervene militarily and "in case of need or emergency to go to the head of the line," this controversy has subsided somewhat.

Outlining a brief history and explicating the basic provisions of the treaties will resolve numerous queries. Yet most Americans are seeking an agenda of answers to their own questions and those raised by the vocal and active opponents of ratification. What follows are answers to typical questions being posed by main-street Americans today. No listing can be complete, but basically there are four types of concerns—those relating to sovereignty, costs, security and the American spirit.

1. "Why should we give away what is ours?" There are many variations on this "bought and paid for" or "giving back Alaska and the Louisiana Territory" argument. Some congressmen have even joined in a lawsuit against the president, contending that the treaties are "an unconstitutional giveaway of U.S. territory." Columnist Peter Reich of the Chicago Tribune suggests that next we will have to "show the Russians our good faith by turning Alaska back to them."

Sovereignty is the critical question—the U.S. has never owned or held title to the Panamanian land. The original treaty gave America "rights, power, and authority" as "if it were the sovereign of the territory." We bought Alaska in 1867 and the Louisiana Territory in 1803; in those cases there is no doubt as to our sovereignty. Even John Foster Dulles, Eisenhower's secretary of state, acknowledged in the United Nations that Panama never relinquished sovereignty over its land. A child born to non-American parents in the Zone has never been granted American citizenship. These slogans for sovereignty are not based in historical legal fact or practices.

Gradually turning over the operation of the Zone and the canal to Panama certainly falls within the best traditions and ideals of America. As an enemy of colonialism and champion of freedom, the U.S. voluntarily gave freedom to the Philippines in 1946 and refused to occupy its defeated enemies Japan and Germany. The rights of longtime friend Panama must likewise be respected.

THE BOTTOM LINE

2. "Shouldn't Panama give us money, instead of America paying Panama?" Related are rumors of secret money deals and fears of another "rip-off" of American taxpayers.

To the various questions of cost, at least five responses can be given. First, America can be proud that it has never operated the canal to make money. Our interests has been to ensure that it remain open for us, not that it be a source of

profit. America's initial investment has already been repaid many times over as our economy and our nation have grown.

Second, payments for Panama will come from the tolls charged, not from the American taxpayer. No new congressional appropriations are required. From 1914 to 1977 the tolls have increased only from \$1.20 to \$1.29 per Panama Canal ton. A 20 to 25 per cent increase in tolls is obviously inevitable and justifiable.

Third, increased tolls will have little if any effect on the American economy. The canal itself is obsolete for our larger vessels. Only about 4 to 7 per cent of our trade goes through the canal. The mechanism of the market is the best protection against future unreasonable rates; Panama wants to attract canal traffic, not discourage it. As someone has noted, if the canal were to close for any reason—sabotage, mismanagement, disaster or whatever—America's economy would hardly feel a tremor while Panama's would experience "an earthquake of a proportion no Richter scale could measure."

Fourth, Panama will receive increased loans from the United States, all to be repaid with interest. Apart from the treaties, America has agreed to stimulate further the national development of Panama by providing assistance via four international programs already existing and requiring no new funding. In the next five years Panama will get approximately \$295 million, all in loans to be repaid with interest. Along with making available military credits totaling \$50 million over a ten-year period, the purpose is to help Panama be more self-sufficient.

Fifth, it should be noted that it is Panama that could justify crying "rip-off" over all these years. The \$2.3 million received annually by Panama's 1.5 million people from the tolls for the use of the canal and Zone amounts to about \$6 per acre—hardly a fair price, especially when we remember that America pays rent to its allies around the world for the use of land for military purposes. Spain is getting \$685 million during a five-year period; Greece, \$700 million for four years. Turkey and the Philippines have been talking in terms of \$1 billion for four years. What Panama will receive under the new treaties seems small indeed, when compared with other arrangements, the value of the canal, and the fact that the U.S. will continue to operate at least eight military bases there.

THE BEST DEFENSE

3. "Isn't America's national security endangered by these treaties?" Critics say that the "communists" may take over the canal; during war our enemies will use it; the Panamanians will sabotage it; Torrijos is pro-Marxist and can't be trusted.

The primary way to address these concerns is to point out that America's top military leaders unanimously support the new treaties. Prior approval was received from the Joint Chiefs of Staff and the Department of Defense before any provisions were inserted in the treaties. The chairman of the Joint Chiefs, General George S. Brown, asserts: "Our capability to defend the Panama Canal will be enhanced through cooperation with the government of Panama. I have personally worked very diligently for four years to achieve these treaties. We have worked hard for these treaties because we feel they are right." Apparently nothing angers the chiefs more than the claims of opponents that they really don't favor the treaties but must follow Carter's line. (Don't forget that these men advocated the B-1 bomber, though Carter opposed it.) For conservative senators to impugn the integrity of generals is really a switch!

Knowledgeable Panamanian observers report that communism has no popular base of support in that country and that Torrijos is no Marxist. Ratification would take away the most compelling communist argument: that America will not peacefully turn over the canal and Zone. Further, Panama could not invite Cuba or Russia to operate the canal or to establish military bases, since the Panama Canal Treaty provides that the U.S. can be the only foreign power with military bases in Panama until year 2000. After that date, the Neutrality Treaty specifies that only Panama can operate the canal and maintain military bases within its border. If neutrality is threatened, America can intervene militarily.

Fears that enemy warships would benefit from these "neutrality" provisions are not shared by America's military leaders. During World War II, Germany and Japan technically could have used the canal. According to Navy Secretary W. Graham Claytor, Jr., if an enemy ship tried using the canal during war, it would be destroyed before it got within three miles of the entrance. If somehow it got to the canal, the U.S. would carefully ensure its passage—then blow it up three miles out to sea!

What alarms American military leaders is not external threat but internal sabotage. Probably the canal is defensible, but General Brown predicts that it would take 100,000 troops to fight in a jungle environment worse than Vietnam. Even if

General Torrijos or his successor wanted to avoid violence and sabotage, "Yankee colonialism" is so deeply resented that the war would be endless as guerrilla fighters would come from all of Latin America. As Henry Kissinger told that grass-roots gathering in Washington, D.C.: "Whatever we think, the 1903 treaty is not viewed anywhere in the world as equitable and just. We wouldn't stand a similar arrangement in our country."

Failure to ratify could have grave ramifications. Ratification would be the best defense, drastically reducing anti-Americanism in the hemisphere and making Panamanians responsible for operating and defending their own major economic resource.

AMERICAN IDEALS

4. "Shouldn't the United States quit retreating and take a strong stand in Panama?" This "spirit of America" question emphasizes America's need to show the world who's boss and the importance of not yielding to blackmail or negotiating under duress. Underneath is a fear that Panama will not stick to the terms of the treaties.

Many main-street Americans see the Panama treaties as evidence of this country's weakness abroad. Actually, the opposite can be argued; it is evidence of a nation's greatness when it can live in peace and partnership with its neighbors. Gunboat-diplomacy days are long gone; the U.S. promotes the self-determination and development of nations, unlike the communists in eastern Europe who continue to practice a form of colonialism.

The treaty negotiations went on for 13 years; the Panamanians displayed more patience than pressure. During this period no violence or sabotage occurred, though our military leaders say that sabotage would not have been difficult. It is said, for example, that a worker's lunchpail could hold enough explosives to create a sudden break in a dam or lock system; it would require two years' time for the system to refill with water. No one can be sure that Panama won't try to abrogate these treaties at a later date. Unlike the 1903 pact, however, these documents were negotiated freely without the pressures of time, conflict or gunboat diplomacy. Since they were freely agreed to and signed in the presence of almost all the western hemispheric leaders, they have a political, moral and legal force that was lacking in 1903.

Furthermore, on October 23, 1977, in a free election, the Panamanians by a two-thirds vote supported these treaties. The one-third who voted against the treaties represent various political positions, but according to two American election observers, there is "near national unanimity that the time has come for Panama to begin taking responsibility for the Canal" (unpublished "Article on Panama Plebiscite," by Donald G. Herzberg and Timothy S. Healy, Georgetown University).

The U.S. got what it wanted out of the new treaties: an open, neutral, accessible canal—just what we have now. The "spirit of America" is best expressed when we act according to our ideals, demonstrating that America is strong and self-confident enough to act with fairness and justice toward smaller countries.

For many, John Wayne epitomizes America's patriotism, if not its "macho" pride. On Main Street, where treaty support is often thought to be limited to "bleeding heart liberals," it is sometimes effective to respond to emotion by quoting one of Middle America's heroes. The "Duke" has said:

I have carefully studied the treaties, and I support them on the basis of my belief that America always looks to the future and that our people have demonstrated qualities of justice and reason for 200 years. That attitude has made our country a great nation. The new treaties modernize an outmoded relationship with a friendly and hospitable country. They also solve an international question with our other Latin American neighbors. Finally, the treaties protect and legitimize fundamental interests of our country" ["Treaty Support From—Yes—"The Duke," Washington Post, October 25, 1977].

A TIME TO ACT

Ratification of the treaties is endangered by an "unholy trinity" of forces. A right-wing opposition campaign is clear-cut and well-financed, with full-time staff working in some states. From these opponents people who speak out for the treaties can expect pressure, mailings and even "labeling." The second force is the left wing, much less vocal and surely less organized. This group regards the treaties as being much too pro-American, manifesting an updated style of military colonialism designed to protect this country's economic and political domination of Panama and the region.

Completing this "unholy trinity" are the apathetic Americans who have not taken a thoughtful public stance. Until recently I could be counted in this category—basically supportive but with some questions and reservations, not raising my voice in public or writing to my senators and local editors. Conscientious but puzzled main-street Americans are not getting help from local leaders. This widespread apathy could lead not only to rejection of the treaties but to a strengthening of the "new right" in American politics, the defeat of some outstanding political leaders of both parties in the 1978 elections, and an undermining of the president's ability to conduct an effective foreign policy.

Some "wild tongues" are at work on main-street middle America, and we need to hear again Franklin Littell's warning: "At the last judgment the balcony-sitter may plead, 'I never harmed a fly.' But the Judge will say, 'The fly that you never harmed carried the plague to million'" (*Wild Tongues: A Handbook of Social Pathology* [Macmillan, 1969], p. 125). Now is the time for each of us to speak out for the treaties, acting preventively for peace to avoid a "plague" of violence and war for millions in the western hemisphere.

Better yet would be for America to act not out of fear of coming catastrophe, but out of a higher patriotism and idealism that reflect the goodness of our people and our commitment to international justice.

Mr. CANNON. Mr. President, I ask unanimous consent to have printed in the Record a joint statement concerning jurisdiction of the Committee on Commerce, Science, and Transportation in the Panama Canal matter.

There being no objection, the statement was ordered to be printed in the Record, as follows:

JOINT STATEMENT OF SENATORS HOWARD W. CANNON AND JAMES B. PEARSON RE
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION JURISDICTION OVER THE
PANAMA CANAL

As Chairman and Ranking Minority Member of the Committee on Commerce, Science, and Transportation, we would like to clarify for the record the jurisdiction of the Committee over the Panama Canal on the eve of the Senate's consideration of new treaties with the Republic of Panama which will determine the future of the Canal.

Under Rule XXV, Section 1(f) (1) 12 of the Standing Rules of the Senate, the Commerce Committee has jurisdiction over "all proposed legislation, messages, petitions, memorials and other matters relating to the * * *

"Panama Canal and interoceanic canals generally, except as provided in subparagraph (c)."

Under Subparagraph (c) of Rule XXV, Section 1, the Committee on Armed Services has jurisdiction over all proposed legislation, messages, petitions, memorials and other matters relating to the "maintenance and operation of the Panama Canal, including administration, sanitation and government of the Canal Zone."

Although the Committee on Commerce, Science and Transportation does not assert specific jurisdiction over the particular treaties which are now before the Senate, the Committee has followed their consideration by both the Foreign Relations Committee and Armed Services Committee through its own Members' participation on those Committees, and will discharge its jurisdictional responsibilities as future developments may require, including a careful review of any legislation proposed to implement the treaties.

A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE
PANAMA TREATIES—PART I: THE PANAMA CANAL TREATY

Mr. HELMS. Mr. President, the full magnitude of the impact of the Panama Canal Treaty does not become clear until one studies the treaty, line by line, and compares it with our present status. Those who support the treaty assert that our present status has become untenable as a result of discontent among the Panamanian people. In itself, such an assertion is a judgment about future events. It may be valid and it may not. It cannot be proven. It is only a judgment.

Our task here, therefore, is to examine such judgments. They must be compared with another judgment: Whether the treaty, along with the Neutrality Treaty, will provide the basis for a sound working relationship with the Panamanian people. In other words, we must judge the treaty not only against our present status, but also against the goals proclaimed by the negotiators of the treaty itself.

In order to assist Senators in this task, I have prepared a side-by-side analysis presenting the text of the treaty, the way it changes our present status, and the way in which the treaty measures up to its own goals.

Mr. President, I ask unanimous consent that this analysis be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
THE PANAMA CANAL TREATY

(By Senator Jesse Helms)

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

The United States of America and the Republic of Panama,

Acting in the spirit of the Joint Declaration of April 3, 1964, by the Representatives of the Governments of the United States of America and the Republic of Panama, and of the Joint Statement of Principles of February 7, 1974, initiated by the Secretary of State of the United States of America and the Foreign Minister of the Republic of Panama, and Acknowledging the Republic of Panama's sovereignty over its territory,

Have decided to terminate the prior Treaties pertaining to the Panama Canal and to conclude a new Treaty to serve as the basis for a new relationship between them and, accordingly, have agreed upon the following:

Article I

Abrogation of prior treaties and establishment of a new relationship

1. Upon its entry into force, this Treaty terminates and supersedes:
 - (a) The Isthmian Canal Convention between the United States of America and the Republic of Panama, signed at Washington, November 18, 1903;

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

Bilateral action fails to recognize the deep and vital interests of other Latin American nations and Canal users.

Neither document has any validity as the basis for the disposal of U.S. territory and property under Article IV, Section 3 of the Constitution, which requires Congress to authorize such disposal. The Joint Statement of February 7, 1974, was not submitted to Congress.

The phrase "Panama's sovereignty over its territory" implies that all previous legislative enactments relating to the Canal Zone were illegal and opens the door to chaotic claims, e.g., Panama's present assertions that all those ever born in the Canal Zone are Panamanians, or at least "dual citizens" subject to Panamanian law. This last claim would apply to about 25% of the present U.S. work force and to about 80-90% of their children.

Article I

1. By implication, all of the jurisdiction which Panama receives under this treaty will be jurisdiction over U.S. territory, since the treaty fails to make explicit transfer of the U.S. territory involved.

through Panama territory, i.e., outside the Zone.

(b) The Treaty of Friendship and Cooperation signed at Washington, March 2, 1936, and the Treaty of Mutual Understanding and Cooperation and the related Memorandum of Understandings Reached, signed at Panama, January 25, 1955, between the United States of America and the Republic of Panama;

(c) All other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama concerning the Panama Canal which were in force prior to the entry into force of this Treaty; and

(d) Provisions concerning the Panama Canal which appear in other treaties, conventions, agreements and exchanges of notes between the United States of America and the Republic of Panama which were in force prior to the entry into force of this Treaty.

2. In accordance with the terms of this Treaty and related agreements, the Republic of Panama, as territorial sovereign, grants to the United States of America, for the duration of this Treaty, the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the Canal. The Republic of Panama guarantees to the United States of America the peaceful use of the land and water areas which it has been granted the rights to use for such purposes pursuant to this Treaty and related agreements.

3. The Republic of Panama shall participate increasingly in the management and protection and defense of the Canal, as provided in this Treaty.

(d) Each of these other treaties, conventions, agreements, and exchanges of notes should be examined to judge whether U.S. interests are degraded.

2. This clause sidesteps the question of ownership and grants the U.S. the "use" of what we already own. Thus the Canal is effectively "nationalized" by Panama on Day One of the treaty. This clause effectively converts the rest of the treaty into a management contract. The phrase "peaceful use" effectively cuts us off from any military uses not directly specified below as related to the defense of the Canal (e.g., hemispheric defense, use of Isthmian installations as an advance base for refueling and resupply of worldwide military operations).

3. It is noteworthy that this clause calls not for the participation by Panamanian citizens, but for the participation of the Republic of Panama, e.g., government-to-government participation.

2. Since the Canal Zone is U.S. territory, we already have these rights and the treaty is unnecessary.

3. Panamanians have already been increasingly participating in the management and protection, but not the defense of the Canal.

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

4. In view of the special relationship established by this Treaty, the United States of America and the Republic of Panama shall cooperate to assure the uninterrupted and efficient operation of the Panama Canal.

Article II

Ratification, entry into force, and termination

1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, six calendar months from the date of the exchange of the instruments of ratification.

2. This treaty shall terminate at noon, Panama time, December 31, 1999.

Article III

Canal operation and management

1. The Republic of Panama, as territorial sovereign, grants to the United States of America the rights to manage, operate, and

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

4. Although this clause is unenforceable, it points up the political threat that lack of Panamanian governmental cooperation under the new treaty has the potential to close the Canal.

Article II

1. The Constitutional procedures of the United States require that the House of Representatives authorize the disposal of U.S. territory and property before the instruments of ratification are exchanged.

It is noteworthy that all the restrictions of the Neutrality treaty, preventing us from using the Canal or our military bases for non-neutral purposes, go into effect on Day One, not at the year 2000, as many have assumed.

Article III

1. Note once again that this is a management contract; the United States agrees not to exercise its rights in any other fashion.

maintain the Panama Canal, its complementary works, installations and equipment and to provide for the orderly transit of vessels through the Panama Canal. The United States of America accepts the grant of such rights and undertakes to exercise them in accordance with this Treaty and related agreements.

2. In carrying out the foregoing responsibilities, the United States of America may:

(a) Use for the aforementioned purposes, without cost except as provided in this Treaty, the various installations and areas (including the Panama Canal) and waters, described in the Agreement in Implementation of this Article, signed this date, as well as such other areas and installations as are made available to the United States of America under this Treaty and related agreements, and take the measures necessary to ensure sanitation of such areas;

(b) Make such improvements and alterations to the aforesaid installations and areas as it deems appropriate, consistent with the terms of this Treaty;

(c) Make and enforce all rules pertaining to the passage of vessels through the Canal and other rules with respect to navigation and maritime matters, in accordance with this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules;

(d) Establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment;

(e) Regulate relations with employees of the United States Government;

(f) Provide supporting services to facilitate

2. All construction in the Canal Zone was undertaken on the assumption that the U.S. had valid titles in perpetuity. The 1907 case of *Wilson v. Shaw* was a challenge to this very point; the Court ruled that in the Government's favor.

2. (a) The U.S. may use without cost (1) the various installations which the U.S. built and which the U.S. owns.

The Agreement in Implementation is not a part of the treaty; it is an executive agreement outside the reach of Senate consideration—yet it describes the use rights of the United States which make the treaty meaningful.

"Sanitation" has a different meaning in the Canal Zone than it does in the continental United States. Here it means primarily the mosquito control program, which includes swamp controls, drainage of standing water, and removal and clipping of vegetation. Since the Panama Canal Commission will lose 58% of the area the U.S. now sanitates, failure by Panama to sanitize could lose the Canal by disease.

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

the performance of its responsibilities under this Article;

(g) Issue and enforce regulations for the effective exercise of the rights and responsibilities of the United States of America under this Treaty and related agreements. The Republic of Panama will lend its cooperation, when necessary, in the enforcement of such rules; and

(h) Exercise any other right granted under this Treaty, or otherwise agreed upon between the two Parties.

3. Pursuant to the foregoing grant of rights, the United States of America shall, in accordance with the terms of this Treaty and the provisions of United States law, carry out its responsibilities by means of United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America.

(a) The Panama Canal Commission shall be supervised by a Board composed of nine members, five of whom shall be nationals of the United States of America, and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appoint-

3. The U.S., at present, has sole control over all aspects of Canal management.

3. The treaty is an intrusion upon the rights of the Legislative Branch, since it creates an international obligation on the Congress of the United States to pass a law that conforms to the treaty terms. Should Congress create an agency with a different structure, or should the House of Representatives refuse to act, the United States would default on its obligations. Just as with the House action required under Article IV, Section 3, so too ratification of the treaty should be contingent upon enactment of the necessary implementing legislation.

(a) The Department of State has been unable to cite any precedent for a joint Board of U.S. and foreign nationals supervising a U.S. agency. The treaty fails to make it clear that the members of the Board, including the Panamanian nationals, should be confirmed

ment to such positions by the United States of America in a timely manner.

(b) Should the Republic of Panama request the United States of America to remove a Panamanian national from membership on the Board, the United States of America shall agree to such request. In that event, the Republic of Panama shall propose another Panamanian national for appointment by the United States of America to such position in a timely manner. In case of removal of a Panamanian member of the Board at the initiative of the United States of America, both Parties will consult in advance in order to reach agreement concerning such removal, and the Republic of Panama shall propose another Panamanian national for appointment by the United States of America in his stead.

(c) The United States of America shall employ a national of the United States of America as Administrator of the Panama Canal Commission, and a Panamanian national as Deputy Administrator, through December 31, 1989. Beginning January 1, 1990, a Panamanian national shall be employed as the Administrator and a national of the United States of America shall occupy the position as Deputy Administrator. Such Panamanian nationals shall be proposed to the United States of America by the Republic of Panama for appointment to such positions by the United States of America.

by the Senate for the protection of U.S. interests.

Provisions for a voting quorum on the Board are omitted from the treaty, and, if unilaterally proclaimed by the United States in favor of the U.S. majority, will become a cause of discontent and friction.

(b) This provision ensures that all the Panamanian representatives will be puppets of the Panamanian government. Any Panamanian representative whose statements or actions supported good management practice in defiance of Panamanian political interests would be removed. In the event of a revolution or a communist takeover, the Panamanian representatives would change accordingly. The U.S. will not be able to remove any Panamanian without advance consultation. The obligations inherent in consultation are nowhere defined. Note that the U.S. and Panama must "reach agreement" concerning such removal.

(c) The Administrator is the only instrument for enforcing the decisions of the voting majority of the Board. Because of the excessive drawdown of U.S. citizen employees, (43 percent in the first year, 48.5 percent in three years), the post quickly will become one of mere tokenism, perhaps within 5 years or sooner. By that time, the United States will have lost practical control of operations. When the U.S. Deputy Administrator takes over in 1990, he will be completely powerless.

Both the Administrator and the Deputy Administrator should be confirmed by the U.S. Senate.

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

(d) Should the United States of America remove the Panamanian national from his position as Deputy Administrator, or Administrator, the Republic of Panama shall propose another Panamanian national for appointment to such position by the United States of America.

4. An illustrative description of the activities the Panama Canal Commission will perform in carrying out the responsibilities and rights of the United States of America under this Article is set forth at the Annex. Also set forth in the Annex are procedures for the discontinuance or transfer of those activities performed prior to the entry into force of this Treaty by the Panama Canal Company or the Canal Zone Government which are not to be carried out by the Panama Canal Commission.

4. The activities divested provide \$142,000,000 in annual revenues (FY '79), or 69 percent of the non-toll revenues (35.6 percent of all revenues). Although some of these operations lose money, others are very profitable and help subsidize overall operations. The divestiture will also remove 43 percent of U.S. employees the first year. Although some will be transferred, the fate of many, perhaps most, is uncertain.

4. It is unlikely that the most profitable services (e.g., marine bunkering) will be taken over by private businessmen with close ties to the regime. Others will become Panamanian government agencies. While private business management in Panama can be considered adequate, the potential for abuses, corruption, and political exploitation is obvious. Panamanian governmental services are notoriously mismanaged, wasteful, and inefficient. It is noteworthy that no preplanning has been done for the transfer of \$142,000,000 worth of services, which will have considerable impact in a small economy. The wholesale shuffling of thousands of employees will have a detrimental effect on worker productivity throughout the Panama Canal Commission and the Panamanian economy.

5. The Panama Canal Company has estimated that the cost to Panama of providing the services for which the U.S. will pay \$10 million per year is only \$4.4 million primarily because of the lower wage levels Panama pays. The difference (\$6.6 million per year) is

5. Under the 1903 treaty, similar services were originally provided by the U.S. to the Panamanian cities of Colon and Panama City. When, at Panama's request, these obligations were abrogated, Panama's inability to provide the same levels of quality and

5. The Panama Canal Commission shall reimburse the Republic of Panama for the costs incurred by the Republic of Panama in providing the following public services in the Canal operating areas and in housing areas set forth in the Agreement in Implementa-

tion of Article III of this Treaty and occupied by both United States and Panamanian citizens: police, fire protection, street maintenance, street lighting, street cleaning, traffic management and garbage collection. The Panama Canal Commission shall pay the Republic of Panama the sum of ten million United States dollars (\$10,000,000) per annum for the foregoing services. It is agreed that every three years from the date that this Treaty enters into force, the costs involved in furnishing said services shall be reexamined to determine whether adjustment of the annual payment should be made because of inflation and other relevant factors affecting the cost of such services.

6. The Republic of Panama shall be responsible for providing, in all areas comprising the former Canal Zone, services of a general jurisdictional nature such as customs and immigration, postal services, courts and licensing, in accordance with this Treaty and related agreements.

delivery soon became notorious. Even today, garbage collection in Panama is seriously mismanaged, and utility rates are three times what they are in the Zone (where all costs are recovered). Perhaps that is why, under implementation plans prepared by the Panama Canal Company, the U.S. will duplicate many of the services purchased under this clause. For example, the U.S. will continue to operate 11 of its 13 fire stations.

6. These services are currently performed by the U.S. according to U.S. standards and law. The U.S. District Court at Balboa was established pursuant to Article IV, Section 3 of the Constitution and is part of the U.S. Federal Court System.

a hidden subsidy to Panama. Although in theory one might argue that the fee could be adjusted downward, as well as upward, the context ("inflation and other relevant factors") implies an upward adjustment. Moreover, there is no definition of "cost of such services", an issue open to misunderstanding and resentment.

6. A major portion of the U.S. District Court's docket (60 or 70 cases per year) involves cases at admiralty (e.g., ships' claims involving accidents or damage) often with awards running into millions of dollars. Panama has no admiralty courts, no admiralty law, and does not subscribe to the International Admiralty Convention. Its standards of impartial justice are low. The transfer of customs, immigration, and courts for the major ports to Panamanian control has ominous implications for control of the narcotics traffic, inasmuch as Panama is a major transfer center for narcotics shipment to the U.S., apparently with the sanction and participation of the Torrijos family.

With Panama controlling the police the customs and the courts the actual words of the treaty will mean less than the way Panama enforces and interprets its will.

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

7. The United States of America and the Republic of Panama shall establish a Panama Canal Consultative Committee, composed of an equal number of high-level representatives of the United States of America and the Republic of Panama, and which may appoint such subcommittees as it may deem appropriate. This Committee shall advise the United States of America and the Republic of Panama on matters of policy affecting the Canal's operation. In view of both Parties' special interest in the continuity and efficiency of the Canal operation in the future, the Committee shall advise on matters such as general tolls policy, employment and training policies to increase the participation of Panamanian nationals in the operation of the Canal, and international policies on matters concerning the Canal. The Committee's recommendations shall be transmitted to the two Governments, which shall give such recommendations full consideration in the formulation of such policy decisions.

8. In addition to the participation of Panamanian nationals at high management levels of the Panama Canal Commission, as provided for in paragraph 3 of this Article, there shall be growing participation of Panamanian nationals at all other levels and areas of employment in the aforesaid commission, with the objective of preparing, in an orderly and efficient fashion, for the assumption by

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

7. The impact of such consultation and advice particularly with the U.S. obligation of giving "full consideration" is difficult to conceive in advance. Presumably, when the national interests differ the U.S. will argue that it has given "full consideration" while Panama would argue that we have not. The three alternatives are capitulation, concession or confrontation. In practice, the Consultative Commission will become a battleground for psychological warfare resulting in Panama imposing its will on the United States. Note that the Committee "shall advise" even though the U.S. in Section 1 is supposed to make "all rules" pertaining to maritime matters. Panama is given a significant role.

8. It should be noted that increasing Panamanian participation does not mean that more Panamanians will benefit from the high wages (three times Panamanian wage rates), stability, lack of political interference, and retirement benefits that is available to U.S. government workers. In actuality, fewer Panamanians will be employed in the Canal operation.

the Republic of Panama of full responsibility for the management, operation and maintenance of the Canal upon the termination of this Treaty.

tion will cross the downward curve of U.S. practical control. That point could come within 3 years.

Fiscal year 1979 (without treaty):	
U.S. workers	3,944
Non-U.S.	10,574
Total.....	14,518
Fiscal year 1979 (with treaty):	
U.S. workers	2,270
Non-U.S.	6,195
Total.....	8,465
Fiscal year 1982 (with treaty):	
U.S. workers	2,033
Non-U.S.	6,032
Total.....	8,068

9. The use of the areas, waters and installations with respect to which the United States of America is granted rights pursuant to this Article, and the rights and legal status of United States Government agencies and employees operating in the Republic of Panama pursuant to this Article, shall be governed by the Agreement in Implementation of this Article, signed this date.

10. Upon entry into force of this Treaty, the United States Government agencies known as the Panama Canal Company and the Canal Zone Government shall cease to operate within the territory of the Republic of Panama that formerly constituted the Canal Zone.

9. We not only "use" these areas at present, but we also sanitize them, and prevent development which would destroy the ecological balance. The undeveloped jungle canopy in the Canal Zone attracts 20% more rainfall than the rest of Panama, rainfall which is essential to an adequate water supply to operate the locks. It also prevents siltation and runoff which would pollute the Chagres River, Madden Dam and Lake, and Gatun Lake, and the Canal itself. The Panama Canal Commission will give over to Panamanian control 58% of the land area it presently owns and protects.

10. The Panama Canal Company and the Canal Zone government were created by Congress through the Panama Canal Reorganization Act of 1950.

9. The Implementation Agreement as noted above is an executive agreement not part of the treaty and beyond the reach of Senate action. In addition, the Implementation Agreement includes three detailed annexes, and "agreed Minute to the Agreement", and a detailed set of 29 maps deposited in the Archives of the Department of State. Reference to the maps reveals that many vital installations (schools, drinking water reservoirs, dams, electrical plants, communications sites) are not contiguous with the main areas and will be left isolated deep in Panamanian territory.

10. The Executive Branch is attempting to abrogate Congressional authority which has been continuously exercised under Article IV, Section 3, since 1902 (The Spooner Act), and specifically in this case, since 1950.

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

Article IV

Protection and defense

1. The United States of America and the Republic of Panama commit themselves to protect and defend the Panama Canal. Each Party shall act, in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it.

2. For the duration of this Treaty, the United States of America shall have primary responsibility to protect and defend the Canal. The rights of the United States of America to station, train, and move military forces within the Republic of Panama are described in the Agreement in Implementation of this Article, signed this date. The use of areas and installations and the legal status of the armed forces of the United States of America in the Republic of Panama shall be governed by the aforesaid Agreement.

Article IV

1. The U.S. defends the Canal on the same basis as other U.S. territories. The U.S. may also use the territory for any military mission it chooses, whether directly related to defense of the Canal itself or not. In defending the Canal Zone, the U.S. enjoys the advantages of a clearly defined land and water area, so that its military operations need not impinge on Panamanian sovereignty and territory, unless attacked from Panama.

PRESERVATION OF U.S. INTEREST AS JUDGED BY
PANAMA

Article IV

1. The treaty is deeply ambiguous on the crucial point, namely, the right to take unilateral defense actions even if Panama is unable or unwilling. The concept that Panama, by herself, has any capability to defend the Canal is ridiculous; but nothing in the treaty prohibits Panama from calling in the troops of other nations to defend her sovereignty against the U.S. or even to fulfill her obligation here expressed to defend the Canal. This language contrasts with the clear, direct, right of unilateral decision expressed in the Clements clause: "each Party shall take such other diplomatic, economic, or military measures as it deems necessary."

2. "Primary responsibility" is nowhere defined and later seems to be modified by "equal" roles on the Combined Board. Nor is the U.S. given authority to carry out its responsibility. The U.S. military bases and vital Canal installations are not contiguous, yet the treaty itself gives no authority to move from one to the other if military operations are necessary. The rights of movement are not described in the treaty, but only in the Implementation Agreement, an executive agreement beyond the review of the Senate. The description of those rights is in the context of freedom from fees and licenses for

vehicles, and makes no mention of military operations or movement of ground troops.

3. The Combined Board falls under the same criticism as the Consultative Committee; namely it is a mechanism through which Panama can conduct psychological warfare against the U.S. Under this language, Panama has the right to be privy to all battle plans for Canal defense, even if Panama or Panamanian allies are the "enemy". The difference between "coordination" and "cooperation" is not spelled out, but note that the Combined Board "shall" provide for both. Paragraph (a) can be taken in two opposite senses: (1) The Board is responsible only for those contingency plans based on cooperative effort; or (2) all contingency plans for the defense of the Canal are required by treaty to be based upon cooperative effort—that is, the U.S. is forbidden to have contingency plans which exclude Panama. A similar ambiguity exists in paragraph (c), for it is not clear whether "United States and Panamanian military operations" are joint or could be separate. This paragraph goes beyond mere cooperation and planning and specifically involves "conduct", where Panama is given an "equal" role. The implication is clearly that Panama must be involved in everything; and that if the U.S. conducts operations without Panama or in opposition to Panama's wishes, it would be a violation of the treaty.

4. This clause is a mechanism by which Panama can protest the exercise of the U.S. right to set troop levels under Section 5.

3. In order to facilitate the participation and cooperation of the armed forces of both Parties in the protection and defense of the Canal, the United States of America and the Republic of Panama shall establish a Combined Board comprised of an equal number of senior military representatives of each Party. These representatives shall be charged by their respective governments with consulting and cooperating on all matters pertaining to the protection and defense of the Canal, and with planning for actions to be taken in concert for that purpose. Such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the armed forces of the United States of America or the Republic of Panama. The Combined Board shall provide for coordination and cooperation concerning such matters as:

(a) The preparation of contingency plans for the protection and defense of the Canal based upon the cooperative efforts of the armed forces of both Parties;

(b) The planning and conduct of combined military exercises; and

(c) The conduct of United States and Panamanian military operations with respect to the protection and defense of the Canal.

4. The Combined Board shall, at five year intervals throughout the duration of this Treaty, review the resources being made available by the two Parties for the protection and defense of the Canal. Also, the Combined Board shall make appropriate recommendations to the two Governments

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

respecting projected requirements, the efficient utilization of available resources of the two Parties, and other matters of mutual interest with respect to the protection and defense of the Canal.

5. To the extent possible consistent with its primary responsibility for the protection and defense of the Panama Canal, the United States of America will endeavor to maintain its armed forces in the Republic of Panama in normal times at a level not in excess of that of the armed forces of the United States of America in the territory of the former Canal Zone immediately prior to the entry into force of this Treaty.

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

5. This section sets a maximum, not a minimum level; the U.S. would be under enormous pressure from the mechanism of Section 4 to reduce force levels constantly. Even if a danger threatened, there is not definition of "normal times". If Panama or her allies were threatening the Canal, in our view, Panama might claim treaty violations if we reinforced our troop levels.

Article V

Principle of non-intervention

Employees of the Panama Canal Commission, their dependents and designated contractors of the Panama Canal Commission, who are nationals of the United States of America, shall respect the laws of the Republic of Panama and shall abstain from any activity incompatible with the spirit of this Treaty. Accordingly they shall abstain from any political activity in the Republic of Panama as well as from any intervention in the internal affairs of the Republic of Panama. The United States of America shall take all

Article V

At the present time, U.S. citizens who enter the Republic of Panama are obliged to follow the laws of that country. In the Canal Zone, they are protected by the laws of the United States, the Canal Zone code, and the Bill of Rights. The treaty is equivalent to a conspiracy to deprive U.S. citizens living in U.S. territory of their civil and constitutional rights. The experience of U.S. citizens with Panamanian courts and the guardia has been very poor, with numerous bombings, deprivation of right to counsel and even of the right to

Article V

Article V amounts to a bill of attainer against U.S. citizen employees who, in Panama's judgment, fail to 'abstain from any activity incompatible with the spirit of this treaty.' Such a catch-all phrase is open to any interpretation and is designed to intimidate U.S. citizens. "Any political activity" obviously could even include a U.S. citizen writing to his Senator or Congressman, or exposing graft and corruption within the Panama Canal Commission, its suppliers, or allied Panamanian agencies. The phrase "in-

measures within its authority to ensure that the provisions of this Article are fulfilled.

Article VI *Protection of the environment*

1. The United States of America and the Republic of Panama commit themselves to implement this Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama. To this end, they shall consult and cooperate with each other in all appropriate ways to ensure that they shall give due regard to the protection and conservation of the environment.

contact the U.S. Embassy. The State Department has admitted that Panama has violated on numerous occasions treaties intended to protect the rights of U.S. citizens, e.g., the right of unimpeded entrance and egress through Tocumen Airport, according to an agreement signed when the U.S., at Panama's request, ended its air passenger service from the Zone.

Article VI

1. As mentioned above, the ecological balance of the Zone is very delicate, and is crucial to the continued troublefree operation of the Canal. Indeed, the Panama Canal is probably the first large-scale project in the world which, for 75 years, has practiced effective environmental controls of great complexity. Certainly Panama has never managed controls on such a scale; rather, Panama has failed to cooperate (e.g., in removing squatters who have intruded on the eco-zone) and has practiced destructive development in the exploitation of jungle areas (e.g., slash and burn agriculture). The Commission will lose 58% of the land it now protects; the treaty should enlarge that area to include the whole Chagres River watershed, not diminish it.

It is also noteworthy that, in ceding the Zone to Panama, the U.S. will lose the only U.S. National Forest with tropical flora and fauna.

tervention in the internal affairs of Panama" is a current code word regularly used today in Panama to harass U.S. citizens, and arrest them without charges. The requirement that the U.S. government conspire with Panama to deprive a U.S. citizen of his rights (e.g., by firing an outspoken U.S. citizen employee) is probably unconstitutional on its face. Even if Panama were not a dictatorship, Article V would be a blot upon the civil rights record of the United States.

Article VI

1. There are few grounds to expect that environmental controls will be improved rather than degraded. The negotiations completely ignored the environmental considerations until the last minute. The State Department, in violation of law, filed its first hastily assembled draft environmental impact statement after the negotiations were completed, not before. The final EIS is woefully inadequate.

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:

THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

2. A Joint Commission on the Environment shall be established with equal representation from the United States of America and the Republic of Panama, which shall periodically review the implementation of this Treaty and shall recommend as appropriate to the two Governments ways to avoid or, should this not be possible, to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the Treaty.

2. The Commission on the Environment, like the Consultative Committee and the Combined (Defense) Board, is a mechanism by which Panama can protest and intervene in nearly any operating decision of the Panama Canal Commission or of our military bases.

3. The United States of America and the Republic of Panama shall furnish the Joint Commission on the Environment complete information on any action taken in accordance with this Treaty which, in the judgment of both, might have a significant effect on the environment. Such information shall be made available to the Commission as far in advance of the contemplated action as possible to facilitate the study by the Commission of any potential environmental problems and to allow for consideration of the recommendation of the Commission before the contemplated action is carried out.

Article VII
Flags

1. The entire territory of the Republic of Panama, including the areas the use of which

Article VII

Article VII is symbolic of the total surrender of the United States to Panamanian pres-

the Republic of Panama makes available to the United States of America pursuant to this Treaty and related agreements, shall be under the flag of the Republic of Panama, and consequently such flag always shall occupy the position of honor.

2. The flag of the United States of America may be displayed, together with the flag of the Republic of Panama, at the headquarters of the Panama Canal Commission, at the site of the Combined Board, and as provided in the Agreement in Implementation of Article IV of this Treaty.

3. The flag of the United States of America also may be displayed at other places and on some occasions, as agreed by both Parties.

Article VIII

Privileges and immunities

1. The installations owned or used by the agencies or instrumentalities of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements, and their official archives and documents, shall be inviolable. The two Parties shall agree on procedures to be followed in the conduct of any criminal investigation at such locations by the Republic of Panama.

2. Agencies and instrumentalities of the Government of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements shall be immune from the jurisdiction of the Republic of Panama.

sure. Obviously, it is totally unnecessary if the territory is ceded to Panama, a mere administrative detail. Yet the concession by President Kennedy to allow the Panamanian flag to fly with equal honor on U.S. territory in designated places merely inflamed Panamanian nationalists, symbolically undermined our presence (although no legal concessions were made), and was the formal cause of the riots of 1964, described by Ambassador Bunker and Joseph Califano as Communist organized. Although though the U.S. was exonerated by the International Commission of Jurists of any culpability with regard to the riots and the restoration of order, the events nevertheless were the occasion of opening the negotiations by President Johnson.

Article VIII

1. Although the installations will be inviolable, the personnel will not. After the transition period and even during it for some crimes, U.S. personnel will be subject to Panamanian jurisdiction. This is obvious in the clause on agreeing to procedure for criminal investigations to take place on the "inviolable" premises.

2. The same is true for agencies of the U.S. government. If the agencies themselves are unreachable, a Panama intent to harass could act against the agencies by acting against the personnel. Moreover, there is a conflict with Article IX, which appears to apply Panamanian law to U.S. areas of use.

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

3. In addition to such other privileges and immunities as are afforded to employees of the United States Government and their dependents pursuant to this Treaty, the United States of America may designate up to twenty officials of the Panama Canal Commission who, along with their dependents, shall enjoy the privileges and immunities accorded to diplomatic agents and their dependents under international law and practice. The United States of America shall furnish to the Republic of Panama a list of the names of said officials and their dependents, identifying the positions they occupy in the Government of the United States of America, and shall keep such list current at all times.

3. If diplomatic immunity is a necessity for the 20 key employees of the Panama Canal Commission, then it is a necessity for all U.S. citizen employees and their dependents. In fact, it is even more important for lower level employees who have less public visibility and are thus more easily harassed. The burden would not be great on Panama. Even if all present employees were given diplomatic immunity, the proportions of those immune to the population of Panama would be less than the proportion of those with diplomatic immunity in Washington, D.C. to the area population. But of course half the U.S. citizens will lose their jobs with the Commission anyway. Without immunity, it will be difficult to get U.S. citizens to stay long enough even for training Panamanians to take their places.

Article IX

Applicable laws and law enforcement

1. In accordance with the provisions of this Treaty and related agreements, the law of the Republic of Panama shall apply in the areas made available for the use of the United States of America pursuant to this Treaty. The law of the Republic of Panama shall be applied to matters or events which occurred in the former Canal Zone prior to the entry into force of this Treaty only to the extent

Article IX

1. At the present time, the Canal Zone is governed by U.S. law and the Canal Zone Code, in which the Bill of Rights is incorporated. The Court is guided by the Federal rules of criminal and civil procedure. Great attention is paid to the service of process and to the rights of defendants. The Governor of the Canal Zone is appointed by the President of the U.S. The U.S. Congress is the legisla-

Article IX

The statement that Panamanian law is applicable in the areas made available for the U.S. appears to conflict with the inviolability of U.S. locations and immunity of U.S. agencies promised in Article VIII.

U.S. law is based upon the U.S. Constitution and the Anglo-Saxon legal tradition, which puts more emphasis on the rights of the accused. Panamanian law has no jury

specifically provided in prior treaties and agreements.

2. Natural or juridical persons who, on the date of entry into force of this Treaty, are engaged in business or non-profit activities at locations in the former Canal Zone may continue such business or activities at those locations under the same terms and conditions prevailing prior to the entry into force of this Treaty for a thirty-month transition period from its entry into force. The Republic of Panama shall maintain the same operating conditions as those applicable to the aforementioned enterprises prior to the entry into force of this Treaty in order that they may receive licenses to do business in the Republic of Panama subject to their compliance with the requirements of its law. Thereafter, such persons shall receive the same treatment under the law of the Republic of Panama as similar enterprises already established in the rest of the territory of the Republic of Panama without discrimination.

3. The rights of ownership, as recognized by the United States of America, enjoyed by natural or juridical private persons in buildings and other improvements to real property located in the former Canal Zone shall be recognized by the Republic of Panama in conformity with its laws.

4. With respect to buildings and other improvements to real property located in the Canal operating areas, housing areas or other areas subject to the licensing procedure established in Article IV of the Agreement in Implementation of Article III of this Treaty, the owners shall be authorized to continue

ture for the Zone, since the Zone is an unincorporated U.S. territory under Article IV, Section 3.

Law enforcement is based on a highly trained professional police corps, entirely separate from the military. In the Canal Zone, there are clean jails and a modern penitentiary where prisoners are held for up to six months and then transferred to Federal Penitentiaries in the United States. There is an excellent system of probations and parole.

trials, except for homicide. In such cases, there is provision for a seven-man jury, but no right of challenge in selection, as in the U.S. In Panama there are no civil jury trials, and all cases are taken by deposition, so that there is no opportunity of confronting or cross-examination of witnesses. Criminal and civil liability in actions in tort are interlocked, so that there is no civil liability without criminal liability.

The police system in Panama is part of the military organization, the National Guard. There is no separate constabulary, no city police, no sheriffs. Each member of the Guardia has full powers of arrest. It is, in short, a full military dictatorship.

Panamanian penal institutions are deplorable. They are dirty, crowded, and serve bad food. There is little opportunity for bail or probation. Many persons are kept for months without a hearing, irrespective of guilt or innocence. Political prisoners are not unknown, although in recent months Torrijos has taken the precaution to clear out political prisoners during the treaty debate.

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

using the land upon which their property is located in accordance with the procedures established in that Article.

5. With respect to buildings and other improvements to real property located in areas of the former Canal Zone to which the aforesaid licensing procedure is not applicable, or may cease to be applicable during the lifetime or upon termination of this Treaty, the owners may continue to use the land upon which their property is located, subject to the payment of a reasonable charge to the Republic of Panama. Should the Republic of Panama decide to sell such land, the owners of the buildings or other improvements located thereon shall be offered a first option to purchase such land at a reasonable cost. In the case of non-profit enterprises, such as churches and fraternal organizations, the cost of purchase will be nominal in accordance with the prevailing practice in the rest of the territory of the Republic of Panama.

6. If any of the aforementioned persons are required by the Republic of Panama to discontinue their activities or vacate their property for public purposes, they shall be compensated at fair market value by the Republic of Panama.

7. The provisions of paragraphs 2-6 above shall apply to natural or judicial persons who have been engaged in business or non-profit activities at locations in the former Canal

Zone for at least six months prior to the date of signature of this Treaty.

8. The Republic of Panama shall not issue, adopt or enforce any law, decree, regulation, or international agreement or take any other action which purports to regulate or would otherwise interfere with the exercise on the part of the United States of America of any right granted under this Treaty or related agreements.

9. Vessels transiting the Canal, and cargo, passengers and crews carried on such vessels shall be exempt from any taxes, fees, or other charges by the Republic of Panama. However, in the event such vessels call at a Panamanian port, they may be assessed charges incident thereto, such as charges for services provided to the vessel. The Republic of Panama may also require the passengers and crew disembarking from such vessels to pay such taxes, fees and charges as are established under Panamanian law for persons entering its territory. Such taxes, fees and charges shall be assessed on a nondiscriminatory basis.

10. The United States of America and the Republic of Panama will cooperate in taking such steps as may from time to time be necessary to guarantee the security of the Panama Canal Commission, its property, its employees and their dependents, and their property, the Forces of the United States of America and the members thereof, the civilian component of the United States Forces, the dependents of members of the Forces and the civilian component, and their property, and the contractors of the Panama Canal Commission and of the United States Forces, their dependents, and their property. The

8. This is a meaningless provision. Either we have treaty rights or we do not. What is the purpose of putting a clause in the treaty saying that Panama should not violate the treaty? Did the negotiators expect Panama to violate it?

9. At the present time, there are no charges for the crew or passengers disembarking from a vessel.

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

Republic of Panama will seek from its legislative Branch such legislation as may be needed to carry out the foregoing purposes and to punish any offenders.

11. The Parties shall conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State, and who are not domiciled therein, may elect to serve their sentences in their State of nationality.

Article X

Employment With the Panama Canal Commission

1. In exercising its rights and fulfilling its responsibilities as the employer, the United States of America shall establish employment and labor regulations which shall contain the terms, conditions and prerequisites for all categories of employees of the Panama Canal Commission. These regulations shall be provided to the Republic of Panama prior to their entry into force.

2. (a) The regulations shall establish a system of preference when hiring employees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission. The United States of America shall endeavor to ensure that the number of Panamanian

Article X

Article X

2. For many years, an effort has been made to hire the maximum number of Panamanians consistent with the requirement to retain sufficient U.S. citizens in key operating, security, and management posts to operate the Canal in an emergency. This section is intended to prevent the United States from

2. The Treaty imposes a dual requirement, that of increasing the proportion of Panamanian workers while simultaneously decreasing the numbers of both U.S. and Panamanian workers by approximately half. Despite the hiring preference, Panamanians, overall, will be worse off. Moreover, this

nationals employed by the Panama Canal Commission in relation to the total number of its employees will conform to the proportion established for foreign enterprises under the law of the Republic of Panama.

(b) The terms and conditions of employment to be established will in general be no less favorable to persons already employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, than those in effect immediately prior to that date.

3. (a) The United States of America shall establish an employment policy for the Panama Canal Commission that shall generally limit the recruitment of personnel outside the Republic of Panama to persons possessing requisite skills and qualifications which are not available in the Republic of Panama.

(b) The United States of America will establish training programs for Panamanian employees and apprentices in order to increase the number of Panamanian nationals qualified to assume positions with the Panama Canal Commission, as positions become available.

(c) Within five years from the entry into force of this Treaty, the number of United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company shall be at least twenty percent less than the total number of United States nationals working

maintaining the capability to operate the Canal independently of Panama.

clause seems to conflict with the standard requirement for "veterans' preference" in hiring by U.S. government agencies. The proportion of non-panamanian employees established for foreign enterprises under Panamanian law is 20 percent. After reduction of 43 percent of U.S. employees in fiscal year 1979, the proportion will still be 36 percent, requiring drastic RIF's or a ban on new U.S. hiring to reach a proportion of 20%.

(b) The phrase "in general" connotes not a continuation of vested job rights, but rather arbitrary discretion. However, since half the employees of both nationalities will be "RIFed", the distinction is academic.

3. (a) Since Panama's pool of job skills is small, pressure will be exerted to redefine or lower job requirements. This has already occurred with the acceptance of two Panamanian pilot-apprentices who did not meet the basic job requirements (they will be the first two Panamanian pilots).

(c) The requirement for 20% reduction in 5 years is conservative. Panama Canal Company plans estimate a 43% reduction the first year, and a 48.5% reduction within three years. This is based on job slots eliminated. In practice, many more will leave, including those with irreplaceable skills needed for op-

THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

for the Panama Canal Company immediately prior to the entry into force of this Treaty.

(d) The United States of America shall periodically inform the Republic of Panama, through the Coordinating Committee, established pursuant to the Agreement in Implementation of Article III of this Treaty, of available positions within the Panama Canal Commission. The Republic of Panama shall similarly provide the United States of America any information it may have as to the availability of Panamanian nationals claiming to have skills and qualifications that might be required by the Panama Canal Commission, in order that the United States of America may take this information into account.

4. The United States of America will establish qualification standards for skills, training and experience required by the Panama Canal Commission. In establishing such standards, to the extent they include a requirement for a professional license, the United States of America, without prejudice to its right to require additional professional skills and qualifications, shall recognize the professional licenses issued by the Republic of Panama.

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

eration. The latest poll of U.S. workers showed 69% prepared to leave. The requirement for a 20% reduction in 5 years is not to be confused with the requirement for a proportion of 20% U.S. workers required in Section 2(a).

(d) Once more this is a pressure mechanism. Note that the pool is not of workers who have skills, but only of workers who claim to have skills.

4. There is no assurance that the professional licenses of Panama are equivalent to those of the U.S., or even that Panama licenses certain professions. Pilots are a case in point, since Panama is not a seafaring nation.

5. The United States of America shall establish a policy for the periodic rotation, at a maximum of every five years, of United States citizen employees and other non-Panamanian employees, hired after the entry into force of this Treaty. It is recognized that certain exceptions to the said policy of rotation may be made for sound administrative reasons, such as in the case of employees holding positions requiring certain non-transferable or non-recruitable skills.

6. With regard to wages and fringe benefits, there shall be no discrimination on the basis of nationality, sex, or race. Payments by the Panama Canal Commission of additional remuneration, or the provision of other benefits, such as home leave benefits, to United States nationals employed prior to entry into force of this Treaty, or to persons of any nationality, including Panamanian nationals who are thereafter recruited outside of the Republic of Panama and who change their place of residence, shall not be considered to be discrimination for the purpose of this paragraph.

7. Persons employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty, who are displaced from their employment as a result of this discontinuance by the United States of America of certain activities pursuant to this Treaty, will be placed by the United States of America, to the maximum extent feasible, in other appropriate jobs with the Government of the United States in accordance with Unit-

5. Some Canal workers are third or fourth generation Zonians. This includes not only U.S. citizens, but also black descendants of the original Canal builders from the West Indies, most of whom speak English and are discriminated against by the Spanish-speaking Panamanians. Contrary to the media stereotype many Zonians (about 20%) have intermarried with Panamanians. Because of their intimate knowledge of Panama, such employees are often the most strongly opposed to the treaties. They also fear for their children who were born in the Zone (about 80-90%) since Panama claims them as Panamanian citizens.

6. At the present time, all wages and benefits are on the basis of equal pay for equal work (except for the tropical differential necessary to induce U.S. citizens to leave the U.S. proper). The Panama Canal Company wages are about three times the rate paid for the same jobs in Panama. The U.S. minimum wage law applies in the Canal Zone.

5. This is fundamentally a punitive provision, grounded in resentment towards Canal Zone residents who have made the Isthmus their home. Although the 5-year rotation system is standard in U.S. military bases overseas, the Canal is a different situation, requiring the attention of career employees who dedicate themselves to the Canal as a life's work. Only long years of experience truly qualifies men for exacting and often hazardous operations. The exception clause will undoubtedly become a cause of strife.

6. The elimination of the tropical differential for new employees makes it probable that it will be difficult to attract necessary skills not available in Panama.

7. The employees are not reassured by the phrase "to the maximum extent feasible." For example, the transfer of teachers from the Canal Zone Government to DoD will cause friction because the Canal Zone Government has a higher wage and benefit scale appropriate to career teachers in a lifetime job. Their wage levels will be frozen, i.e., they will receive no raises in the future. Many others will find no equivalent employment.

THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

ed States Civil Service regulations. For such persons who are not United States nationals, placement efforts will be confined to United States Government activities located within the Republic of Panama. Likewise, persons previously employed in activities for which the Republic of Panama assumes responsibility as a result of this Treaty will be continued in their employment to the maximum extent feasible by the Republic of Panama. The Republic of Panama shall, to the maximum extent feasible, ensure that the terms and conditions of employment applicable to personnel employed in the activities for which it assumes responsibility are no less favorable than those in effect immediately prior to the entry into force of this Treaty. Non-United States nationals employed by the Panama Canal Company or Canal Zone Government prior to the entry into force of this Treaty who are involuntarily separated from their positions because of the discontinuance of an activity by reason of this Treaty, who are not entitled to an immediate annuity under the United States Civil Service Retirement system, and for whom continued employment in the Republic of Panama by the Government of the United States of America is not practicable, will be provided special job placement assistance by the Republic of Panama for employment in positions for which they may be qualified by experience and training.

There is no guarantee of a transfer within Civil Service, only the right to be put on a waiting list at a time when RIF's are occurring in the U.S. There is no assistance for those who are not eligible for early retirement, but want to quit rather than give up their Constitutional rights.

Panamanian workers, particularly blacks, fear job discrimination if they are employed by Panamanian agencies. Those who must find work in the private sector will receive much lower wage scales. The offer of "special job placement assistance" is meaningless in a mismanaged economy that already has high unemployment, zero economic growth, and will have hundreds, if not thousands, looking for work at the same time.

8. The Parties agree to establish a system whereby the Panama Canal Commission may, if deemed mutually convenient or desirable by the two Parties, assign certain employees of the Panama Canal Commission, for a limited period of time, to assist in the operation of activities transferred to the responsibility of the Republic of Panama as a result of this Treaty or related agreements. The salaries and other costs of employment of any such persons assigned to provide such assistance shall be reimbursed to the United States of America by the Republic of Panama.

9. (a) The right of employees to negotiate collective contracts with the Panama Canal Commission is recognized. Labor relations with employees of the Panama Canal Commission shall be conducted in accordance with forms of collective bargaining established by the United States of America after consultation with employee unions.

(b) Employee unions shall have the right to affiliate with international labor organizations.

10. The United States of America will provide an appropriate early optional retirement program for all persons employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of this Treaty. In this regard, taking into account the unique circumstances created by the provisions of this Treaty, including its duration, and their effect upon such employees, the United States of America shall, with respect to them:

(a) determine that conditions exist which invoke applicable United States law permitting early retirement annuities and apply

8. The loan of expertise may help in the transition, but it still does not eliminate the political mismanagement that has brought Panamanian governmental services and enterprises to a standstill.

9. (a) The right of collective bargaining is mocked by other treaty provisions which call for RIF's of U.S. employees and of Panamanians whose job functions will be divested from the Canal organization.

10. The full cost of this provision is not yet clear. It will be disguised in the Civil Service Retirement System budget and has been estimated at \$7.5 million per year, or \$165 million over 22 years. The Administration has not yet provided the legislation proposed, so neither the U.S. Senate nor the Canal employees know what this means.

THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

such law for a substantial period of the duration of the Treaty;
(b) seek special legislation to provide more liberal entitlement to, and calculation of, retirement annuities than is currently provided for by law.

Article XI

Provisions for the transition period

1. The Republic of Panama shall reassume plenary jurisdiction over the former Canal Zone upon entry into force of this Treaty and in accordance with its terms. In order to provide for an orderly transition to the full application of the jurisdictional arrangements established by this Treaty and related agreements, the provision of this Article shall become applicable upon the date this Treaty enters into force, and shall remain in effect for thirty calendar months. The authority granted in this Article to the United States of America for this transition period shall supplement, and is not intended to limit, the full application and effect of the rights and authority granted to the United States of America elsewhere in this Treaty and in related agreements.

Article XI

At the present time, U.S. citizen employees need not hazard their chances with the justice of a military dictator or the brutality of the Guardia and Panamanian justice.

Article XI

Although these provisions are supposed to ease tensions, they will increase the apprehension of U.S. citizens in Panama. First, there is a confusion in definition between "the former Canal Zone" and "the areas and installations made available for the use of the United States." Second, Panama assumes "plenary jurisdiction" over the former Canal Zone, but the U.S. retains "primary jurisdiction" over certain criminal offenses. In any case, Panama will have criminal jurisdiction over U.S. citizens who are charged with offenses outside of U.S. installations. It will be virtually impossible for a U.S. citizen not to subject himself to Panamanian jurisdiction. A further confusion is introduced with the "joint police patrols" with opportunities for dispute over jurisdiction. The whole article must be read in the light of Article XIX, "Criminal Jurisdiction," of the Agreement in Implementation of Article III. In that agree-

ment, Panama reserves the right to keep U.S. citizens in custody who are charged with murder, rape, robbery with violence, trafficking in drugs or crime against the security of the Panamanian state.

2. During this transition period, the criminal and civil laws of the United States of America shall apply concurrently with those of the Republic of Panama in certain of the areas and installations made available for the use of the United States of America pursuant to this Treaty, in accordance with the following provisions:

(a) The Republic of Panama permits the authorities of the United States of America to have the primary right to exercise criminal jurisdiction over United States citizen employees of the Panama Canal Commission and their dependents, and members of the United States Forces and civilian component and their dependents, in the following cases:

(i) for any offense committed during the transition period within such areas and installations, and

(ii) for any offense committed prior to that period in the former Canal Zone.

The Republic of Panama shall have the primary right to exercise jurisdiction over all other offenses committed by such persons, except as otherwise provided in this Treaty and related agreements or as may be otherwise agreed.

(b) Either Party may waive its primary right to exercise jurisdiction in a specific case or category of cases.

3. The United States of America shall retain the right to exercise jurisdiction in criminal cases relating to offenses committed

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
 THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
 1903 TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
 ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
 PANAMA

prior to the entry into force of this Treaty in violation of the laws applicable in the former Canal Zone.

4. For the transition period, the United States of America shall retain police authority and maintain a police force in the aforementioned areas and installations. In such areas, the police authorities of the United States of America may take into custody any person not subject to their primary jurisdiction if such person is believed to have committed or to be committing an offense against applicable laws or regulations, and shall promptly transfer custody to the police authorities of the Republic of Panama. The United States of America and the Republic of Panama shall establish joint police patrols in agreed areas. Any arrests conducted by a joint patrol shall be the responsibility of the patrol member or members representing the Party having primary jurisdiction over the person or persons arrested.

5. The courts of the United States of America and related personnel, functioning in the former Canal Zone immediately prior to the entry into force of this Treaty, may continue to function during the transition period for the judicial enforcement of the jurisdiction to be exercised by the United States of America in accordance with this Article.

6. In civil cases, the civilian courts of the United States of America in the Republic of Panama shall have no jurisdiction over new cases of a private civil nature, but shall retain full jurisdiction during the transition period to dispose of any civil cases, including admiralty cases, already instituted and pending before the courts prior to the entry into force of this treaty.

7. The laws, regulations, and administrative authority of the United States of America applicable in the former Canal Zone immediately prior to the entry into force of this Treaty shall, to the extent not inconsistent with this Treaty and related agreements, continue in force for the purpose of the exercise by the United States of America of law enforcement and judicial jurisdiction only during the transition period. The United States of America may amend, repeal or otherwise change such laws, regulations and administrative authority. The two Parties shall consult concerning procedural and substantive matters relative to the implementation of this Article, including the disposition of cases pending at the end of the transition period and, in this respect, may enter into appropriate agreements by an exchange of notes or other instrument.

8. During this transition period, the United States of America may continue to incarcerate individuals in the areas and installation made available for the use of the United States of America by the Republic of Panama pursuant to this Treaty and related agreements, or to transfer them to penal facilities in the United States of America to serve their sentences.

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:

THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

Article XII

A sea-level canal or a third lane of locks

1. The United States of America and the Republic of Panama recognize that a sea-level canal may be important for international navigation in the future. Consequently, during the duration of this Treaty, both Parties commit themselves to study jointly the feasibility of a sea-level canal in the Republic of Panama, and in the event they determine that such a waterway is necessary, they shall negotiate terms, agreeable to both Parties, for its construction.

Article XII

Article XII

1. A Sea Level Canal inside Panama is politically impractical, since the huge investment would be taken over by Panama. It is also economically infeasible. The only practical alternative would be in Nicaragua, an alternative approved by the 1931 Sultan Commission study. Although the 1970 study of the Atlantic-Pacific Interoceanic Canal Study Commission recommended a Panamanian site, a more recent study of the Nicaraguan site, based on new construction techniques perfected in Louisiana, says that Nicaragua is feasible. It would not however, be justified unless the Panama Canal were denied to the U.S. Section 1 commits the parties only to a study not to a project; Section 2 prohibits the U.S. both from negotiation or construction with a third party. Such negotiation may be the only leverage we would still hold over Panama to obtain cooperation.

2. The United States of America and the Republic of Panama agree on the following:

(a) No new interoceanic canal shall be constructed in the territory of the Republic of Panama during the duration of this Treaty, except in accordance with the provisions of this Treaty or as the two Parties may otherwise agree; and

(b) During the duration of this Treaty, the United States of America shall not negotiate with third States for the right to construct an interoceanic canal on any other route in the Western Hemisphere, except as the two Parties may otherwise agree.

3. The Republic of Panama grants to the United States of America the right to add a third lane of locks to the existing Panama Canal. This right may be exercised at any time during the duration of this Treaty, provided that the United States of America has delivered to the Republic of Panama copies of the plans for such construction.

4. In the event the United States of America exercises the right granted in paragraph 3 above, it may use for that purpose, in addition to the areas otherwise made available to the United States of America pursuant to this Treaty, such other areas as the two Parties may agree upon. The terms and conditions applicable to Canal operating areas made available by the Republic of Panama for the use of the United States of America pursuant to Article III of this Treaty shall apply in a similar manner to such additional areas.

5. In the construction of the aforesaid works, the United States of America shall not use nuclear excavation techniques without the previous consent of the Republic of Panama.

3. At the present time, the U.S. has ample authority within its sovereign powers to construct a third lane of locks. Such a project was started in 1942, and \$76 million was spent on excavations which could still be used in the project. All construction and all water levels would remain within the present Canal Zone. In addition, \$95 million was spent on the enlargement of Gaillard Cut, making a total of \$171 million spent in major modernization.

5. Nuclear excavation has already been ruled out by the results of Project Plowshare tests and by the Nuclear Non-Proliferation Treaty.

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

Article XIII

*Property transfer and economic participation
by the Republic of Panama*

1. Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree.

Article XIII

Article XIII

1. The requirement that the Canal be turned over "in operating condition" could cost billions of dollars if the Canal were destroyed by war, earthquake, major slides or Panamanian sabotage. The requirement that the Canal be turned over "free of liens and debts" implies that any cumulative operating deficits would have to be paid from the U.S. Treasury. According to testimony, the Panamanian interpretation that the \$10 million payment to be paid out of "surplus", if no surplus is earned in 22 years, becomes a U.S. obligation (\$220 million) under this clause.

2. The U.S. transfers *all* title immediately to Panama, and retains only *use*. A cloud is cast upon our title by the word *may*. The transfer of *property* without authorization by both Houses of Congress is unconstitutional under Article IV, Section 3. No provision is made for the recovery of the U.S. investment in the Canal, either through depreciation or through payment; indeed, the transfer is "without charge" to Panama. Although the treaty mentions only the transfer of "non-removable" assets, as a practical matter most removable assets will be given away too.

2. The United States of America transfers, without charge, to the Republic of Panama all right, title and interest the United States of America may have with respect to all real property, including non-removable improvements thereon, as set forth below:

(a) Upon the entry into force of this Treaty, the Panama Railroad and such property that was located in the former Canal Zone but that is not within the land and water areas the use of which is made available to the United States of America pursuant to this Treaty. However, it is agreed that the transfer on such date shall not include buildings and other facilities, except housing, the use of

which is retained by the United States of America pursuant to this Treaty and related agreements, outside such areas;

(b) Such property located in an area or a portion thereof at such time as the use by the United States of America of such area or portion thereof ceases pursuant to agreement between the two Parties.

(c) Housing units made available for occupancy by members of the Armed Forces of the Republic of Panama in accordance with paragraph 5(b) of Annex B to the Agreement in Implementation of Article IV of this Treaty at such time as such units are made available to the Republic of Panama.

(d) Upon termination of this Treaty, all real property and non-removable improvements that were used by the United States of America for the purposes of this Treaty and related agreements and equipment related to the management, operation and maintenance of the Canal remaining in the Republic of Panama.

3. The Republic of Panama agrees to hold the United States of America harmless with respect to any claims which may be made by third parties relating to rights, title and interest in such property.

4. The Republic of Panama shall receive, in addition, from the Panama Canal Commission a just and equitable return on the national resources which it has dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal, in accordance with the following:

(a) An annual amount to be paid out of Canal operating revenues computed at a rate of thirty hundredths of a United States dollar (\$0.30) per Panama Canal net ton, or its

4. The Panama Canal Company is a U.S. Corporation under 31 U.S.C. 846, and is subject to standard rules of accounting for government agencies. All revenues are paid into the U.S. Treasury, and drawn out only according to appropriations authorized by law. The annual payment of \$2.3 million is paid out of State Department appropriations. The Treasury is reimbursed \$519 million of this from the Panama Canal Company revenues, a sum representing in devalued dollars an

4. Panama has dedicated no resources to the efficient management, operation, maintenance, protection, and defense of the Panama Canal, other than the rainfall which flows into the Chagres River basin. It is the U.S. which has dedicated all such resources.

The payment mechanism specified in the treaty is unconstitutional. The annual amount is to be "paid out of Canal operating revenues." The fixed annuity is to be "paid out of Canal operating revenues." The con-

THE PANAMA CANAL TREATIES: A COMPARISON OF U.S. INTERESTS WITH OUR PRESENT STATUS AND WITH THE GOAL OF THE TREATIES—PART I:
THE PANAMA CANAL TREATY—Continued

PANAMA CANAL TREATY

PRESERVATION OF U.S. INTEREST AS JUDGED BY
1903 TREATY

equivalency, for each vessel transiting the Canal after the entry into force of this Treaty, for which tolls are charged. The rate of thirty hundredths of a United States dollar (\$0.30) per Panama Canal net ton, or its equivalency, will be adjusted to reflect changes in the United States wholesale price index for total manufactured goods during biennial periods. The first adjustment shall take place five years after entry into force of this Treaty, taking into account the changes that occurred in such price index during the preceding two years. Thereafter, successive adjustments shall take place at the end of each biennial period. If the United States of America should decide that another indexing method is preferable, such method shall be proposed to the Republic of Panama and applied if mutually agreed.

(b) A fixed annuity of ten million United States dollars (\$10,000,000) to be paid out of Canal operating revenues. This amount shall constitute a fixed expense of the Panama Canal Commission.

(c) An annual amount of up to ten million United States dollars (\$10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts paid pursuant to this Treaty. In the event Canal operating revenues in any

PRESERVATION OF U.S. INTEREST AS JUDGED BY
ASSUMPTION THAT CANAL SHOULD BE GIVEN TO
PANAMA

tingent payment is to be "paid out of Canal operating revenues to the extent that such revenues exceed expenditures." Payments cannot be made to Panama by the Panama Canal Commission. As a U.S. government agency, all revenues must be paid into the Treasury, whence they can be drawn out only by funds appropriated by law. These are funds which belong to and could accrue to the benefit of the U.S. taxpayers. Thus even if payments to Panama are appropriated from the Treasury according to the treaty formula, it is an error to say that no appropriated funds are involved.

The State Department has acknowledged that discussions are in progress so that future sums due Panama from the U.S. Treasury can also be assigned directly against Panamanian obligations with U.S. banks.

year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

Article XIV

Settlement of disputes

In the event that any question should arise between the Parties concerning the interpretation of this Treaty or related agreements, they shall make every effort to resolve the matter through consultation in the appropriate committees established pursuant to this Treaty and related agreements, or, if appropriate, through diplomatic channels. In the event the Parties are unable to resolve a particular matter through such means, they may, in appropriate cases, agree to submit the matter to conciliation, mediation, arbitration, or such other procedure for the peaceful settlement of the dispute as they may mutually deem appropriate.

DONE at Washington, this 7th day of September 1977, in duplicate, in the English and Spanish languages, both texts being equally authentic.

ANNEX—PROCEDURES FOR THE CESSATION OR TRANSFER OF ACTIVITIES CARRIED OUT BY THE PANAMA CANAL COMPANY AND THE CANAL ZONE GOVERNMENT AND ILLUSTRATIVE LIST OF THE FUNCTIONS THAT MAY BE PERFORMED BY THE PANAMA CANAL COMMISSION

1. The laws of the Republic of Panama shall regulate the exercise of private economic activities within the areas made available by the Republic of Panama for the use of the United States of America pursuant to this Treaty. Natural or juridical persons who, at least six months prior to the date of signature of this Treaty, were legally established and engaged in the exercise of economic activities in the former Canal Zone, may continue such activities in accordance with the provisions of paragraphs 2-7 of Article IX of this Treaty.

2. The Panama Canal Commission shall not perform governmental or commercial functions as stipulated in paragraph 4 of this Annex, provided, however, that this shall not be deemed to limit in any way the right of the United States of America to perform those functions that may be necessary for the efficient management, operation and maintenance of the Canal.

3. It is understood that the Panama Canal Commission, in the exercise of the rights of the United States of America with respect to the management, operation and maintenance of the Canal, may perform functions such as are set forth below by way of illustration:

- a. Management of the Canal enterprise.
 - b. Aids to navigation in Canal waters and in proximity thereto.
 - c. Control of vessel movement.
 - d. Operation and maintenance of the locks.
 - e. Tug service for the transit of vessels and dredging for the piers and docks of the Panama Canal Commission.
 - f. Control of the water levels in Gatun, Alajuela (Madden) and Miraflores Lakes.
 - g. Non-commercial transportation services in Canal waters.
 - h. Meteorological and hydrographic services.
 - i. Admeasurement.
 - j. Non-commercial motor transport and maintenance.
 - k. Industrial security through the use of watchmen.
 - l. Procurement and warehousing.
 - m. Telecommunications.
 - n. Protection of the environment by preventing and controlling the spillage of oil and substances harmful to human or animal life and of the ecological equilibrium in area used in operation of the Canal and the anchorages.
 - o. Non-commercial vessel repair.
 - p. Air conditioning services in Canal installations.
 - q. Industrial sanitation and health services.
 - r. Engineering design, construction and maintenance of Panama Canal Commission installations.
 - s. Dredging of the Canal channel, terminal ports and adjacent waters.
 - t. Control of the banks and stabilizing of the slopes of the Canal.
 - u. Non-commercial handling of cargo on the piers and docks of the Panama Canal Commission.
 - v. Maintenance of public areas of the Panama Canal Commission, such as parks and gardens.
 - w. Generation of electric power.
 - x. Purification and supply of water.
 - y. Marine salvage in Canal waters.
 - z. Such other functions as may be necessary or appropriate to carry out, in conformity with this Treaty and related agreements, the rights and responsibilities of the United States of America with respect to the management, operation and maintenance of the Panama Canal.
4. The following activities and operations carried out by the Panama Canal Company and the Canal Zone Government shall not be carried out by the Panama Canal Commission, effective upon the dates indicated herein:
- (a) Upon the date of entry into force of this Treaty:
 - (i) Wholesale and retail sales, including those through commissaries, food stores, department stores, optical shops and pastry shops;
 - (ii) The production of food and drink, including milk products and bakery products;
 - (iii) The operation of public restaurants and cafeterias and the sale of articles through vending machines;
 - (iv) The operation of movie theaters, bowling alleys, pool rooms and other recreational and amusement facilities for the use of which a charge is payable;

(v) The operation of laundry and dry cleaning plants other than those operated for official use;

(vi) The repair and service of privately owned automobiles or the sale of petroleum or lubricants thereto, including the operation of gasoline stations, repair garages and tire repair and recapping facilities, and the repair and service of other privately owned property, including appliances, electronic devices, boats, motors, and furniture;

(vii) The operation of cold storage and freezer plants other than those operated for official use;

(viii) The operation of freight houses other than those operated for official use;

(ix) The operation of commercial services to and supply of privately owned and operated vessels, including the construction of vessels, the sale of petroleum and lubricants and the provision of water, tug services not related to the Canal or other United States Government operations, and repair of such vessels, except in situations where repairs may be necessary to remove disabled vessels from the Canal;

(x) Printing services other than for official use;

(xi) Maritime transportation for the use of the general public;

(xii) Health and medical services provided to individuals, including hospitals, leprosariums, veterinary, mortuary and cemetery services;

(xiii) Educational services not for professional training, including schools and libraries;

(xiv) Postal services;

(xv) Immigration, customs and quarantine controls, except those measures necessary to ensure the sanitation of the Canal;

(xvi) Commercial pier and dock services, such as the handling of cargo and passengers; and

(xvii) Any other commercial activity of a similar nature, not related to the management, operation or maintenance of the Canal.

(b) Within thirty calendar months from the date of entry into force of this Treaty, governmental services such as:

(i) Police;

(ii) Courts; and

(iii) Prison system.

5. (a) With respect to those activities or functions described in paragraph 4 above, or otherwise agreed upon by the two Parties, which are to be assumed by the Government of the Republic of Panama or by private persons subject to its authority, the two Parties shall consult prior to the discontinuance of such activities or functions by the Panama Canal Commission to develop appropriate arrangements for the orderly transfer and continued efficient operation or conduct thereof.

(b) In the event that appropriate arrangements cannot be arrived at to ensure the continued performance of a particular activity or function described in paragraph 4 above which is necessary to the efficient management, operation or maintenance of the Canal, the Panama Canal Commission may, to the extent consistent with the other provisions of this Treaty and related agreements, continue to perform such activity or function until such arrangements can be made.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The United States of America and the Republic of Panama have agreed upon the following:

ARTICLE I

The Republic of Panama declares that the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty. The same regime neutrality shall apply to any other international waterway that may be built either partially or wholly in the territory of the Republic of Panama.

ARTICLE II

The Republic of Panama declares the neutrality of the Canal in order that both in time of peace and in time of war it shall remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality, so that there will be no discrimination against any nation, or its citizens or subjects, concerning the conditions or charges of transit, or for any other reason, and so that the Canal, and therefore the Isthmus of Panama, shall not be the target of reprisals in any armed

conflict between other nations of the world. The foregoing shall be subject to the following requirements:

- (a) Payment of tolls and other charges for transit and ancillary services, provided they have been fixed in conformity with the provisions of Article III(c);
- (b) Compliance with applicable rules and regulations, provided such rules and regulations are applied in conformity with the provisions of Article III;
- (c) The requirement that transiting vessels commit no acts of hostility while in the Canal; and
- (d) Such other conditions and restrictions as are established by this Treaty.

ARTICLE III

1. For purposes of the security, efficiency and proper maintenance of the Canal the following rules shall apply:

(a) The Canal shall be operated efficiently in accordance with conditions of transit through the Canal, and rules and regulations that shall be just, equitable and reasonable, and limited to those necessary for safe navigation and efficient, sanitary operation of the Canal;

(b) Ancillary services necessary for transit through the Canal shall be provided;

(c) Tolls and other charges for transit and ancillary services shall be just, reasonable, equitable and consistent with the principles of international law;

(d) As a pre-condition of transit, vessels may be required to establish clearly the financial responsibility and guarantees for payment of reasonable and adequate indemnification, consistent with international practice and standards, for damages resulting from acts or omissions of such vessels when passing through the Canal. In the case of vessels owned or operated by a State or for which it has acknowledged responsibility, a certification by that State that it shall observe its obligations under international law to pay for damages resulting from the act or omission of such vessels when passing through the Canal shall be deemed sufficient to establish such financial responsibility;

(e) Vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the Canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected, as a condition of transit, to inspection, search or surveillance. However, such vessels may be required to certify that they have complied with all applicable health, sanitation and quarantine regulations. In addition, such vessels shall be entitled to refuse to disclose their internal operation, origin, armament, cargo or destination. However, auxiliary vessels may be required to present written assurances, certified by an official at a high level of the government of the State requesting the exemption, that they are owned or operated by that government and in this case are being used only on government non-commercial service.

2. For the purposes of this Treaty, the terms "Canal," "vessel of war," "auxiliary vessel," "internal operation," "armament" and "inspection" shall have the meanings assigned them in Annex A to this Treaty.

ARTICLE IV

The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties.

ARTICLE V

After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory.

ARTICLE VI

1. In recognition of the important contributions of the United States of America and of the Republic of Panama to the construction, operation, maintenance, and protection and defense of the Canal, vessels of war and auxiliary vessels of those nations shall, notwithstanding any other provisions of this Treaty, be entitled to transit the Canal irrespective of their internal operation, means of propulsion, origin, destination, armament or cargo carried. Such vessels of war and auxiliary vessels will be entitled to transit the Canal expeditiously.

2. The United States of America, so long as it has responsibility for the operation of the Canal, may continue to provide the Republic of Colombia toll-free transit through the Canal * * * Thereafter, the Republic of Panama may provide the

Republic of Colombia and the Republic of Costa Rica with the right of toll-free transit.

ARTICLE VII

1. The United States of America and the Republic of Panama shall jointly sponsor a resolution in the Organization of American States opening to accession by all nations of the world the Protocol to this Treaty whereby all the signatories will adhere to the objectives of this Treaty, agreeing to respect the regime of neutrality set forth herein.

2. The Organization of American States shall act as the depositary for this Treaty and related instruments.

ARTICLE VIII

This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Parties. The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Panama Canal Treaty, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Panama Canal Treaty, six calendar months from the date of the exchange of the instruments of ratification.

Done at Washington, this 7th day of September, 1977, in the English and Spanish language, both texts being equally authentic.

ANNEX

The magnitude of the dismemberment of the Canal organization cannot be appreciated from the bare terms of the Annex. The Panama Canal Commission will lose 58% of the land available to the present Company for operating the Canal, 43% of its present U.S. employees, 52% of its present Panamanian employees, and 69% of its non-toll revenues (35.6% of all revenues.) Although some of these employees may transfer to other U.S. or Panamanian entities, there is considerable doubt that present pay rates and job benefits will be preserved. During the Armed Services Committee hearings, I requested Governor Parfitt to provide detailed statistics on the dismemberment of the Canal organization, and he supplied the following official charts:

THE PANAMA CANAL—EFFECT OF TREATY-IMPOSED CHANGES ON FISCAL YEAR 1979 PRESIDENT'S BUDGET

[In thousands of dollars]

Function	Fiscal year 1979 President's budget					Fiscal year 1979 under treaty-imposed changes				
	Activities retained			Activities divested		Activities reduced in scope				
	Expenses	Recoveries	Margin (cost)	Expenses	Recoveries	Margin (cost)	Expenses	Recoveries	Margin (cost)	
TRANSIT OPERATIONS										
Maintenance of channels—harbors	25,578		(25,578)	25,578		(25,578)	50		(50)	
Navigation service and control	45,643	30,975	(14,668)	42,942	27,209	(15,733)	2,701	3,766	1,065	
Locks operations	27,187		(27,187)	27,187		(27,187)				
General repairs, storehouse, engineering	8,107	5,500	(2,607)	6,357	1,127	(5,230)	1,750	4,373	2,623	
Miscellaneous canal expenses	17,162	223	(16,939)	14,927	170	(14,757)	2,235	208	(2,027)	
SUPPORTING SERVICES										
Marine terminals	22,868	28,213	5,345							
Marine terminals close out costs ¹				76		(76)				
Railroad	2,603	2,621	18							
Motor transportation	374	424	50				374		(374)	
Water transportation	3,540	3,690	150	8,021	5,408	(2,613)	(4,481)	(1,718)	2,763	
Power system	11,686	12,958	1,272	13,762	15,708	1,946	(2,076)	(2,750)	(674)	
Communications	910	1,052	142	869	905	36	41	147	106	
Water system	3,812	4,073	261	3,966	3,933	(33)	(194)	140	294	
Air-conditioning	61	66	5	644	783	139	(583)	(717)	(134)	
Food units	4,512	4,058	(454)							
Retail units	41,802	36,790	(5,012)							
Theaters and bowling alleys	688	431	(257)	4,512	4,058	(454)				
Employee housing	6,547	6,005	(542)	41,802	36,790	(5,012)	688			
Other	1,434	2,142	708	5,184	4,850	(334)	1,363	1,155	(208)	
				303	508	205	1,131	1,479	348	

THE PANAMA CANAL, SERVICES AND FORCE BY CITIZENSHIP

	Force, 1979 President's budget			Force, 1979 revised (treaty plan)		
	United States	Non-United States	Total	United States	Non-United States	Total
TRANSIT OPERATIONS						
Maintenance of channels and harbors	95	472	567	97	527	624
Navigation services and control	442	1,486	1,928	439	1,470	1,909
Locks operations	264	874	1,138	266	913	1,179
General repair, storehouse, engineering and maintenance services	398	1,417	1,815	347	1,285	1,632
General canal expense	123	102	225	97	101	198
SUPPORTING ACTIVITIES						
Marine terminals	64	1,501	1,565	.....	.....	.....
Retail units; food units; theaters and bowling alleys	118	1,117	1,235	.....	.....	.....
Railroad	43	134	177	.....	.....	.....
Motor transportation	36	426	462	36	345	381
Water transportation	58	.....	58	63	34	98
Power system	59	41	100	55	45	100
Communications system	71	47	118	68	47	115
Water system	30	70	100	30	72	102
Grounds, custodial, and other services	47	726	773	46	444	490
GENERAL CORPORATE ACTIVITIES						
Annuitant welfare program .....	.....	7	7	.....	7	7
Joint personnel program	8	19	27	8	15	23
Executive direction	83	20	103	83	36	119
Operations direction	46	4	50	33	5	38
Financial management	170	211	381	161	209	370
Personnel administration	58	81	139	48	75	123
General services	45	41	86	48	73	121
Apprenticeship training	30	103	133	33	125	158
Total, Panama Canal Company	2,288	8,899	11,187	1,958	5,829	7,787
CIVIL FUNCTIONS						
Customs and immigration	65	4	69	7	.....	7
Postal service	69	47	116	3	5	8
Police protection	245	112	357	177	96	273
Fire protection	25	148	173	25	126	151
Judicial system	9	1	10	5	.....	5
Education—libraries	734	282	1,016	4	4	8
Public areas and facilities .....	.....	.....	.....	30	16	46
Internal security	13	.....	13	11	.....	11
Other civil affairs	27	12	39	16	6	22
HEALTH AND SANITATION						
Hospitals and clinics	396	892	1,288	.....	.....	.....
Other public health services	66	176	242	18	112	130
GENERAL GOVERNMENT						
Office of the Governor	7	1	8	6	1	7
Total, Canal Zone Gov't	1,656	1,675	3,331	302	366	668
Reorganization provision .....	.....	.....	.....	10	.....	10
Total, the Panama Canal year-end employments	3,944	10,574	14,518	2,270	6,195	8,465

THE PANAMA CANAL—PERSONNEL COMPENSATION BY CITIZENSHIP, FISCAL YEAR 1977 ACTUAL

[In thousands of dollars]

	U.S. citizens	Non-U.S. citizens	Total	Remarks
TRANSIT OPERATIONS				
Maintenance of channels and harbors	2,190	5,168	7,358	
Navigation services and control	14,591	11,862	26,453	Note 2.
Locks operations	5,782	7,296	13,078	
General repair, storehouse, engineering and maintenance services	8,040	15,543	23,583	Note 2.
General canal expense	1,670	1,160	2,830	Note 2.
SUPPORTING ACTIVITIES				
Marine terminals	1,321	11,733	13,054	Note 1.
Retail units	1,423	5,731	7,154	Note 1.
Food units	236	1,481	1,717	Note 1.
Theaters and bowling alleys	65	186	251	Note 1.
Railroad	920	1,323	2,243	Note 1.
Motor transportation	748	3,512	4,260	Note 2.
Water transportation	1,410		1,410	Note 2.
Power system	1,392	400	1,792	Note 2.
Communications system	1,235	499	1,734	Note 2.
Water system	659	554	1,213	Note 1.
Grounds, custodial, and other services	665	4,749	5,414	Note 2.
GENERAL CORPORATE ACTIVITIES				
Annuitant welfare program		135	135	
Joint personnel program	95	173	268	
Executive direction	1,887	299	2,186	
Operations direction	1,222	50	1,272	
Financial management	3,667	2,342	6,009	
Personnel Administration	1,999	1,031	2,230	
General services	759	393	1,152	
Employment costs, apprentices	303	626	929	
Total, Panama Canal Co	51,479	76,246	127,725	
CIVIL FUNCTIONS				
Customs and Immigration	1,172	39	1,121	Note 1.
Postal service	1,290	719	2,009	Note 1.
Police protection	5,510	1,565	7,075	Note 1.
Fire protection	691	2,250	2,941	Note 2.
Judicial system	161	15	176	Note 1.
Education—Libraries	12,437	3,286	15,723	Note 1.
Public areas and facilities				
Internal security	291		291	
Other civil affairs	478	104	582	Note 2.
HEALTH AND SANITATION				
Hospitals and clinics	8,692	8,766	17,458	Note 1.
Other public health services	1,621	1,250	2,868	Note 2.
GENERAL GOVERNMENT				
Office of the Governor	208	6	214	Note 2.
Total, Canal Zone Government	32,547	18,000	450,548	
Total, the Panama Canal Agency	84,026	94,246	178,273	

Note 1.—These activities are to be divested from the Commission operations under the treaty.

Note 2.—These activities are to be reduced in scope of operations under the treaty.

THE PANAMA CANAL—NET BOOK VALUE OF FACILITIES AND EQUIPMENT, AS OF JUNE 30, 1977, AFFECTED BY THE TREATY

[In millions of dollars]

Function	Total facilities and equip- ment	Retained by Panama Ca- nal Commis- sion	To other U.S. Government agencies	To Panama—	
				Upon entry into force	During life of treaty
TRANSIT OPERATIONS					
Canal excavation, fills, dams, and embankment, land and treaty rights	310.1	295.6		14.5	
Maintenance of channels and harbors	7.0	7.0			
Navigation service and control	12.2	12.2			
Locks	37.2	37.2			
General repair, storehouse, engineering and maintenance services	7.2	6.3		.9	
Thatcher Ferry Bridge	13.9			13.9	
Other general canal operations .....	.6	.5		.1	
SUPPORTING SERVICES					
Harbor terminals	5.8	.2		5.6	
Marine bunkering	2.6	.3		2.3	
Housing	31.7	.1	0.1	31.5	
Retail units, food units, theaters and bowling alleys	6.5	.5		3.3	2.7
Railroad	2.6	.1		2.5	
Motor transportation	2.8	2.5			.3
Water transportation .....	.1	.1			
Power system	20.1	20.1			
Communication system	4.1	4.1			
Water system	5.3	5.3			
Central air-conditioning	1.4	1.4			
Grounds custodial and other services .....	.9	.7		.2	
GENERAL FACILITIES					
Company buildings	4.4	3.3	.1	.9	.1
OTHER PROPERTY					
Facilities held for future use .....	.1	.1			
Plant additions in progress	29.8	29.8			
CIVIL FUNCTIONS					
Customs and immigration					
Postal service .....	.3	.1		.2	
Police protection .....	.6				.6
Fire protection .....	.6	.6			
Judicial system					
Education—Libraries	19.6		17.0	2.6	
Public areas and facilities	18.5	4.7	1.6	12.2	
Internal security					
Other civil affairs .....	.7	.2	.1	.4	
HEALTH AND SANITATION					
Gorgas Hospital	8.0		8.0		
Coco Solo Hospital	2.0		2.0		
Canal Zone Mental Health Center .....	.6		.6		
Palo Seco Hospital					
Other public health services .....	.4	.1	.3		
OTHER GOVERNMENT FACILITIES					
Miscellaneous buildings and facilities	2.0	.7	.2	1.0	.1
Plant held for future use .....	.1			.1	
Plant additions in progress	7.6	7.6			
Total	567.4	441.4	30.0	92.2	3.8

Inventory footnote: Retail inventories will be reduced through selective purchasing and price reductions prior to entry into force of the treaty, with the remainder offered to the U.S. Army Commissary and the Army and Air Force Exchange. Operating supplies and materials include approximately \$1,000,000 of goods held for use in facilities to be transferred to Panama. These items will be offered to the individuals or agencies acquiring the facilities. The balance of the inventory will remain with the Commission. Inventory valuation (millions of dollars) as of June 30, 1977, are goods held for resale \$7.9; operating materials and supplies, \$18.8.

Housing footnote: The Panama Canal Commission retains the right of use of sufficient housing for the needs of U.S. citizen employees.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The PRESIDING OFFICER. The hour of 11 o'clock having arrived, the Senate will resume consideration of Executive N, 95th Congress, first session, which the clerk will report.

The assistant legislative clerk read as follows:

Executive N, 95th Congress, first session, Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

Mr. SCOTT addressed the Chair.

The PRESIDING OFFICER. Does the distinguished Senator from West Virginia desire recognition?

Mr. ROBERT C. BYRD. Yes. I yield to the distinguished Senator from Virginia (Mr. Scott), without losing my right to the floor.

Mr. SCOTT. Mr. President, I have a statement to make with regard to the Panama Canal treaties, and I assume the distinguished majority leader yields for that purpose.

The PRESIDING OFFICER. That is correct.

Mr. SCOTT. Mr. President, near the beginning of what may become a historic debate, one of vital interest to the people of this country, I believe we should not only closely examine these treaties and use our own best judgment in determining how to vote on them, but before voting should reflect upon the type of government we have in the United States and the part the people of the country should play in the decisionmaking process.

I am sure each Senator has received a substantial amount of mail, and that some of the mail is generated one way or another by groups with a special interest in the outcome. Because of this, I included a question in an annual opinion poll submitted to the people of Virginia last month. The newsletter containing the poll was sent to more than 400,000 Virginia homes. Let me add that the newsletter is sent to all registered voters in two of our congressional districts and to a representative group of citizens in the remainder of Virginia, of both political parties and holding differing philosophies of government. Our response to the question, "Would you vote to ratify the proposed treaties?" was 13 percent "yes" and 87 percent "no."

Mr. President, in 1820 when Thomas Jefferson wrote from Monticello to a friend regarding some constitutional questions he said:

I know no safe depository of the ultimate powers of the society but the people themselves; and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education.

Since 1820, of course, the general level of education throughout our country has risen considerably. I believe that with the ultimate sovereignty residing in the people of the country, we cannot, in making a decision, decline to be swayed at least in part by the overwhelming desire of the American people that these treaties be rejected. Next week we will be in recess, and I believe it will afford an excellent opportunity for any Senator who is in doubt about the feeling of the people of his State to confer with them.

In my own judgment, these treaties were written from the viewpoint of appeasing Panama and not from the viewpoint of what is best for the United States. I have no conflict in voting the way the

overwhelming majority of Virginians believe and in accordance with my own personal belief. The Veterans of Foreign Wars, one of our great patriotic organizations, refers to the canal treaty as a "payaway." They do not define this word but I believe we can surmise that it is more than giving away a part of the United States, it is paying a foreign country to take the American Canal Zone. I say American Canal Zone knowing that we will have debate as to where sovereignty resides and there may well be a basis for a difference of opinion on this question.

Nevertheless, for the past 75 years, since the 1903 treaty, since we acquired the proprietary interests of the private owners and squatters, since we acquired the interest of the French Canal Co. and subsequently paid \$25 million for the recognition by Columbia that we had a valid title, that we owned the canal, we have exercised complete and exclusive control over this zone.

Not now being a candidate for reelection to the Senate, I may have a greater degree of political freedom than most. Yet, the gist of my initial remarks is this: Let us confirm to our own people and to the world that in America the people rule. The American people are opposed to these treaties. I urge my colleagues that they get in close touch with those they represent before casting their vote on the matters before us.

(Mr. Sarbanes assumed the chair.)

Mr. ROBERT C. BYRD. Mr. President, as one who has represented the people of the State of West Virginia for a period now of going on 32 years—6 years in the two houses of the State legislature, 6 years in the U.S. House of Representatives, and now going into my 20th year in the Senate, may I say to the able Senator from Virginia, I think I know what my responsibilities are to the people of West Virginia and to the people of the United States.

There is no question but that the majority of West Virginians today oppose the treaties. The easy vote for me, would be to vote against the treaties.

There is no political mileage to be gained in voting for these treaties.

I know what my constituents are saying. However, I have a responsibility not only to follow them and to represent them but also to inform them and to lead them when, in my judgment, based on the facts as I have carefully weighed them, it is in the best interests of the United States that the treaties be approved. That is my responsibility to the people of West Virginia—to act in the best interests of the United States as my lights allow me to see the facts and to understand what is in the best interests of the United States—because what is in the best interests of the United States is in the best interests of West Virginia and West Virginians.

Edmund Burke said:

Your representative owes you not only his industry but also his judgment, and he betrays rather than serving you if he sacrifices it to your opinion.

I am not going to betray my responsibility to my constituents. I owe them not only my industry but I also owe them my judgment. That is why they send me here. If I am to reach a judgment based only on the number of names on a petition or upon the weight of the mail, what we need is a computer and a set of scales, not a

Senator, to represent the people of West Virginia in the U.S. Senate.

They understand. But when I differ with them in my viewpoint, it is for the reason that, based on the facts as I have weighed them—as contained in the committee hearings, the committee reports, my own personal study of the issues and the treaties, and my personal observations during my visit to Panama—I have reached a judgment, an honest judgment, a sincere judgment, a considered judgment, that the position I take is, as I see it, in the best interests of the United States of America today and in the future.

So much for the polls, the letters, and the percentages. We have a responsibility under the Constitution, and I say that every Senator here will seek to uphold that responsibility whether he votes for or against the treaties.

But to urge that we contact our people and see what they are saying, I should think that a Senator who has been here for 20 years, in the Congress for 26 years, and representing the people of West Virginia for 31 years, knows and is not oblivious to what they are saying.

Woodrow Wilson said that one of the most important functions of the legislative branch is to inform the people, not just to legislate.

And that is one of my responsibilities, to help the people not only of West Virginia but also my colleagues and the people of this country to better understand what it is that we are debating, to better understand the ignominious history of the 1903 treaty—if there ever was an example of rough-riding diplomacy, Mr. President, that was it par excellence—and to better understand the contents of the new treaties. How many of those who implore, and urge me and you, I say to the minority leader, and to the distinguished Senator from Kentucky who ably presides over this Senate today, with a degree of dignity and efficiency and skill as rare as a day in June—how many of those who urge us to oppose the treaties have actually read the contents of these treaties? It is up to us Senators to read the contents and to reread and to reread the contents of the treaties.

And so we have to weigh all of these considerations in reaching our considered judgment as to what is in the long run best interests of the people of West Virginia, Kentucky, Tennessee, Virginia, Alabama, Maryland, and the other States in this great Union.

West Virginia has a very special interest in this canal dating back to the days of its construction. I now read from David McCullough's book, "The Path Between the Sea," page 597:

Among the more fascinating facts about the Panama Canal, for example, is that all hardware for the lock gates—the lifting mechanisms for the stem valves, the special bearings, gears, and struts for the gate machines, all ninety-two bull wheels—was made by a single manufacturer in Wheeling, West Virginia.

So, Mr. President, the emotional feelings of West Virginians toward this canal predate today. They predate the month of September of last year when the signing of the treaties was witnessed across the Nation. They go back to the early days of the construction of that canal.

Now it has just been said by my distinguished and beloved friend from Virginia, Mr. Scott, that we paid \$25 million to Colombia to show "that we had a valid title to the Canal Zone."

Mr. President, we paid \$25 million to Colombia not to show that we had a "valid title to the Canal Zone" but, rather, as an indemnity to Colombia for the loss of Panama.

Mr. SCOTT. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes, just in a minute.

Potentially the most valuable province in all of Colombia in that age. That was why we paid \$25 million, and it was not paid until 1921, 7 years after the completion of the canal.

Mr. SCOTT ADDRESSED THE CHAIR.

Mr. ROBERT C. BYRD. I yield to the distinguished Senator from Virginia.

The PRESIDING OFFICER (Mr. Huddleston). The Senator from Virginia is recognized.

Mr. SCOTT. I am sure the majority leader would want to properly quote my remarks and since I was reading the statement I made was "and subsequently paid \$25 million for the recognition by Colombia that we held a valid title," which is just a slight variation. And, Mr. President, if the distinguished leader will yield further—

Mr. ROBERT C. BYRD. Mr. President, will the Senator allow me to thank him for that correction? I misquoted him. I used the word "had;" he used the word "held." But the key words in his statement are these: "A valid title to the Canal Zone."

Mr. SCOTT. The distinguished Senator is quite correct. I have studied all of these documents, as I am sure the distinguished leader has, and I would agree with him that every Senator should read the various treaties. I have read the 1903 treaty. I have read both of the treaties. Now I have read the book that the distinguished Senator has on his desk and another book on the subject. I have attempted to inform myself as fully as possible, and I would agree with our distinguished majority leader that we do have a responsibility to exercise our own judgment, that we should not have a computer representing the people of any State here in the Senate. But I would add to that that we also have a responsibility to listen to the voice of the people and when the overwhelming majority of the people of the United States—and I firmly believe that the overwhelming majority of the people of the United States are opposed to this treaty, it should be persuasive, and I believe that at the next election we will see that it does have an effect upon the makeup of this Senate. I am not going to be a candidate for reelection; the distinguished leader is not up for reelection this year. But I believe that this year we will see that the people of America want their voices to be heard.

If I could just read a portion more from the works of Thomas Jefferson, this letter that I was quoting from a while ago. He says further on "My personal interest in such questions is entirely extinct." Now I assume he said that because he was no longer President. He had left the White House more than 10 years before 1820. "But not my wishes for the longest possible continuance of our Government on its pure principles."

And so at least this is the feeling of Thomas Jefferson, a great Virginian, a great American, one of our early Presidents, and I think it is worthy of consideration.

Mr. BAKER. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes, I shall yield briefly in a moment. The distinguished Senator from Virginia is entitled to the respect of every Member of this Senate in what he says. But I say that it is our duty to take a while for debate on these treaties so as to inform the American people, as best we can, as to the history of the 1903 treaty, as to the contents of the new treaties, and as to the impact of either rejection or ratification of the treaties on the future foreign relations of the United States with Latin American countries and other countries of the world. And then, based on an informed opinion on the part of the American public, I venture to say that the polls will reflect a different attitude toward the treaties by the American people.

As an example, on February 2, 1978, George Gallup ran a poll. Here is the title: "U.S. Public Opinion Shifts to Support of Panama Treaties":

Among the large majority of Americans who have heard or read about the debate over the Panama Canal treaties, opinion is now closely divided with 45 per cent in favor and 42 per cent opposed. A survey taken three months ago showed opinion 48 to 40 per cent in opposition.

So you can see a shift in opinion.

Mr. DOLE. Will the Senator read the question he asked, though? That makes a difference.

Mr. ROBERT C. BYRD. I have not yielded to the Senator from Kansas. Will the Senator read the earlier question?

Mr. DOLE. I do not have it with me.

Mr. ROBERT C. BYRD. The Senator asks if I have the question that was asked in the Gallup poll. Does the Senator have the earlier question, which he said was different?

Mr. DOLE. I know they are different.

Mr. ROBERT C. BYRD. It does depend, I will say to the able Senator from Kansas, a lot on how the questions are phrased by the pollsters.

Mr. BAKER. Mr. President, will the Senator yield for just a moment?

Mr. ROBERT C. BYRD. Let me finish the quotation first:

The latest survey was conducted in early January and therefore does not reflect the possible effect of the Carter administration's "January offensive."

Before I yield to the distinguished minority leader:

Following is the survey question to determine the level of support for the treaties.

So I do have it. Here is one of the questions:

The treaties would give Panama full control over the Panama Canal and the Canal Zone by the year 2000, but the United States would retain the right to defend the canal against a third nation. Do you favor or opposes these treaties between the U.S. and Panama?

The survey was broken down into various groups. One was designated as the "better informed" group—in other words, those who could answer all three questions correctly—and in that group the poll showed 57 to 39 percent in favor of the treaties.

Mr. President, I ask unanimous consent to have printed in the Record the questions and the percentages with respect to the responses to those questions in the Gallup poll to which I have referred.

There being no objection, the material was ordered to be printed in the Record, as follows:

U.S. PUBLIC OPINION SHIFTS TO SUPPORT OF PANAMA TREATIES

(By George Gallup)

PRINCETON, N.J. Among the large majority of Americans who have heard or read about the debate over the Panama Canal treaties, opinion is now closely divided with 45 percent in favor and 42 percent opposed. A survey taken three months ago showed opinion 48 to 40 percent in opposition.

The latest survey was conducted in early January and therefore does not reflect the possible effect of the Carter administration's "January offensive," a nationwide effort by administration officials to inform the American public about the key facts of the treaties.

An important finding from this survey is that the more Americans know about the Panama Canal treaties, the more likely they are to favor Senate ratification, as seen in the views of the "better informed."

The "better informed" are defined as those who are able to correctly answer three questions dealing with key facts about the treaties: the year the canal is to be turned over to the Republic of Panama; whether or not the U.S. has the right to defend the canal against third-nation attacks; and whether or not the biggest U.S. aircraft carriers and supertankers are able to use the canal.

The vote among this "better informed" group (i.e., those who can answer all three questions correctly) is 57 to 39 per cent in favor of the treaties, as seen below:

Views of the "better informed" on the treaties¹

	Percent
Favor.....	57
Oppose.....	39
No opinion.....	4

¹ Results subject to wide sampling fluctuation due to small number of cases.

Following is the survey question to determine the level of support for the treaties.

"The treaties would give Panama full control over the Panama Canal and the Canal Zone by the year 2000, but the United States would retain the right to defend the canal against a third nation. Do you favor or oppose these treaties between the U.S. and Panama?"

Following are the questions asked of those who are aware of the debate in order to identify the "better informed" group, and the results:

"As far as you know, in what year is the Panama Canal to be turned over completely to the Republic of Panama, by terms of the treaties?" (Correct answers, 1999 and 2000.)

	Percent
Correct.....	20
Incorrect/don't know.....	
Not heard/read.....	80

"As far as you know, will the United States have the right to defend the Panama Canal against third-nation attacks after Panama takes full control?" (Correct answer, yes.)

	Percent
Correct.....	54
Incorrect/don't know.....	
Not heard/read.....	46

"To the best of your knowledge, how much do the biggest U.S. aircraft carriers and supertankers now use the Panama Canal—a great deal, quite a lot, not very much, or not at all?" (Correct answer, not all.)

	Percent
Correct.....	24
Incorrect/don't know.....	
Not heard/read.....	76

The results reported today are based on in-person interviews with 1,536 adults, 18 and older, completed in more than 300 scientifically selected localities across the nation during the period Jan. 6-9.

Mr. ROBERT C. BYRD. I now yield to the distinguished minority leader.

Mr. BAKER. Mr. President, I thank the majority leader. I am reluctant to interrupt his presentation, and I will not take very long, but I must say that the remarks of the distinguished Senator

from Virginia got my attention, because in that colloquy, in which he identified the majority leader and himself, in the one case the Senator is not up for reelection and in the other case the Senator is not running for reelection; and as far as I could tell, I was the only one who is running for reelection. Like the hod carrier who got hit across the nose with a 2-by-4, that got my attention.

Mr. President, all I want to say, as I have said previously to my good friend from Virginia, for whom I have great respect, and we have discussed the issue before—all I want to say is, let no one think that being up for reelection in 1978 makes one's position easier to decide. It does not. I have traveled in Tennessee, and I am aware of the concern about this.

It reminds me of what my father told me once about the sovereign electorate: You can doubt their judgment, but you had better never doubt their authority.

The reason I asked the majority leader to yield was to say, Mr. President, I think one of the key issues in this debate so far hinges on one of the statements made by the Senator from Virginia. I refer to his feeling that the country is overwhelmingly opposed to these treaties.

I do not think that is so. I think the country is overwhelmingly opposed to these treaties as they were submitted, but I think the country will support these treaties as I believe the Senate may amend them.

I thank the distinguished majority leader.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader for that very pertinent observation.

Mr. President, it was 131 years ago tomorrow—February 10, 1847—that President James K. Polk submitted to the Senate for advice and consent a treaty with the Republic of New Granada, later to become the Republic of Colombia.

Submission of that treaty—a treaty of “peace, amity, navigation, and commerce”—followed by 12 years the adoption of a Senate resolution requesting the President to open negotiations with other nations, particularly those of Central America and New Granada, “for the purpose of effectually protecting, by suitable treaty stipulations with them * * * to open a communication between the Atlantic and Pacific Oceans, by the construction of a ship canal across the isthmus which connects North and South America, and of securing forever—securing forever—the free and equal right of navigating such canal to all such nations, on the payment of such reasonable tolls as may be established * * *”

The treaty submitted to the Senate in 1847 guaranteed the U.S. freedom of transit across the Isthmus of Panama while the United States guaranteed the neutrality of the Isthmus and New Granada's—Colombia's—rights of sovereignty and property in the isthmus.

In his message to the Senate, President Polk said the purpose of the agreement was not for a political objective but to secure to all nations the free and equal right of passage over the isthmus.

Mr. President, here we are, 131 years later, confronted with treaties the purposes of which are to secure to all nations the free and equal right of passage over the isthmus. Over a century and a quarter ago, that was the import of the President's message. The

purpose was not for a political objective. The purpose was to secure to all nations free and equal right of passage over the isthmus.

The Senate gave its advice and consent to ratification of that treaty, and it entered into force in 1848. Although it did enable construction of the Panama Railroad, the United States and Colombia were never able to reach a final agreement on construction of a canal.

In 1903, the Senate gave its approval to the Hay-Herran Treaty, authorizing the United States to construct a canal across the Isthmus of Panama. However, the Colombian Senate unanimously rejected the treaty, with the opposition focusing on the threat to Colombia's sovereignty and what was regarded by the Colombians as inadequate payment to their country.

Later that year, with the clear encouragement of the United States, the Department of Panama declared its independence from Colombia and formed the Republic of Panama. U.S. forces, acting to maintain peaceful transit of the isthmus—get this, now—prevented Colombian troops from putting down the revolution.

In other words, we acted in violation of our solemn responsibilities, duties, and promise to Colombia, recognizing the sovereignty of Colombia over the province of Panama. It was the United States which prevented Colombian troops from effectively utilizing and exercising Colombia's rightful sovereignty.

Fifteen days after the uprising, before any Panamanian had had a chance to read it, the Hay-Bunau-Varilla Treaty was signed.

How do you like that? Before any Panamanian had had a chance to read it, it was signed—the treaty that no Panamanian ever signed. That is what we are talking about, the 1903 treaty. It was negotiated for Panama by Philippe Bunau-Varilla, a French citizen, and—get this—a major stockholder in the French canal company, a man who had not been in Panama for 18 years.

Under the agreement, the French company was paid \$40 million for its holding. The Panamanian Government was paid additional compensation of \$10 million. Colombia was eventually paid an indemnity of \$25 million in 1921, settling differences arising out of the events of 1903.

How did Bunau-Varilla come out in the transaction? Well, let us turn to page 401 of McCullough's book.

Mr. LAXALT. Will the Senator yield?

Mr. ROBERT C. BYRD. Not at this point, but I will later. I will be delighted to.

Let us refer to page 401 of David McCullough's book, "The Path Between the Seas."

The Bunau-Varilla firm, for example, recovered all of its 2,200,000 franc stake (\$440,000)—

Not just chicken feed even today—"in the Compagnie Nouvelle,"—in other words, the company "plus a profit"—they were doing pretty well—"of about 66,000 francs, or \$13,200."

That is a pretty good haul for Bunau-Varilla, the man who wrote and negotiated the treaties, the man who signed the treaties on behalf of Panama.

The Panamanian provisional government ratified the treaty on December 2, 1903, upon the strong urging of Bunau-Varilla and the United States.

Now I will yield to the Senator.

Mr. LAXALT. Is it true that at the time Bunau-Varilla came here to negotiate the treaties, he was a paid representative of the then Panamanian Government?

Mr. ROBERT C. BYRD. Yes. He had very adroitly manipulated himself into the position of securing from that revolutionary junta, the title of minister plenipotentiary. What I am saying is that he was not a Panamanian, he had not been in Panama for 18 years but he himself had a personal financial interest in seeing that the treaty was signed, and he, himself drafted the treaty in its English form.

Mr. LAXALT. But aside from the fact that he had a personal interest in the outcome of the transaction, which may not have been all that bad, we must remember that at that time Panama was a struggling little crown colony of Colombia from which it had attempted many, many times, unsuccessfully, to obtain their independence. Because of his intercession in coming here and his successfully negotiating that treaty, Panama for the first time attained its independence.

Moreover, it must be remembered that after the treaty was negotiated here it was thereafter ratified by the Panamanian Government on the Federal level as well as on the local level.

Mr. ROBERT C. BYRD. Yes, with a pistol——

Mr. LAXALT. And it was considered throughout the country as a triumph for Panama.

Mr. ROBERT C. BYRD. As it were, with a pistol at its temple.

Mr. LAXALT. Just as the Panama Government was taken in 1968 by General Torrijos.

Mr. ROBERT C. BYRD. No, on. The Senator seeks to confuse the issue. Let us stick with the original history of how this rough-riding diplomacy occurred.

Mr. LAXALT. I would suggest to the majority leader, and respectfully, that history does not indicate that at all; that at the time when we entered into the treaty here, negotiated it and had it ratified, it was welcomed by all Panamanians. They had celebrations all over that little country, and well they might, because at that time they were a pest hole ridden by disease, and this canal presented to them an economic salvation as well as a political independence from Colombia. I think history would indicate that, rather than doing disservice to that little country, we rendered them a great service.

Mr. ROBERT C. BYRD. As we look back—it is great to have hindsight—as we look back over the years which have transpired since, yes, one can say that we rendered a service to the people of Panama. And we did, by ridding the jungles in that area of malaria and yellow fever. But at the time the governmental sanction of the treaties was, as it were, at the point of a gun, because there was the threat, not only implicit but explicit, that “If you don’t ratify these treaties, the United States will withdraw its military forces.”

And then what would have happened to the revolutionaries? Not only would the government have fallen, but the heads of those leaders of the revolution would have rolled in the streets.

Mr. LAXALT. But is it not true that those revolutionaries at the time represented the Panamanian aspirations for freedom and independence?

Mr. ROBERT C. BYRD. They represented the aspirations of some of the people.

Mr. LAXALT. Of most of the people.

Mr. ROBERT C. BYRD. Of some of the people.

Mr. LAXALT. Of a vast majority.

Mr. HATCH. Will the distinguished majority leader yield?

Mr. ROBERT C. BYRD. I would be delighted to.

I believe the Senator from Nevada complained yesterday because he had been interrupted, during the reading of his eloquent speech, by Senators who wanted to ask questions. I welcome questions.

Mr. HATCH. If the Senator would like me to ask questions now, I have a couple which I believe pertain to this specific point.

Mr. ROBERT C. BYRD. I yield.

Mr. HATCH. Is it not true also, I ask the distinguished majority leader, that David McCullough also wrote that not only did the Panamanian Government approve these treaties, but that the cabinet representing the Panamanian people approved the 1903 treaty, and then the full, complete Panamanian Governments in 1936 and 1955 reaffirmed modified treaties which took out many of the reprehensible aspects which had been criticized by those who criticized the treaties at the time? So we have had three approvals by the Panamanian Governments of the 1903, 1936 and 1955 combined treaty.

Mr. ROBERT C. BYRD. We have had approval by the Panamanian Governments of modifications of the 1903 treaty. One of those modifications was not only that the payments be increased but also that the United States relinquished its control over some of the lands and waters—

Mr. HATCH. And the United States—

Mr. ROBERT C. BYRD. If the Senator will allow me.

Mr. HATCH. Certainly.

Mr. ROBERT C. BYRD (continuing). Over some of the lands and waters, the use of which had been granted to the United States under the 1903 treaty, which, to me, is a clear point to substantiate the position that I take, to wit, that the United States has never had sovereignty—never had sovereignty—over the Panama Canal Zone.

Mr. HATCH. Will the Senator yield again?

Mr. ROBERT C. BYRD. Yes.

Mr. HATCH. I have to admit that I do not find sovereignty to be that great an issue.

Mr. ROBERT C. BYRD. That is one of the things.

Mr. HATCH. If I may finish.

Mr. ROBERT C. BYRD. I have the floor.

Mr. HATCH. The Senator yielded to me.

Mr. ROBERT C. BYRD. I am saying that one of the items in that 1936 treaty was a modification of the 1903 treaty, which modification favors the Panamanians and recognizes the justice of their

cause, and, moreover, underwrites the fact that the United States never was given sovereignty over the Canal Zone in the beginning and does not have sovereignty today.

Mr. HATCH. If the Senator will yield again, I do not think that sovereignty is the major issue here.

Mr. ROBERT C. BYRD. It is one of the issues.

Mr. HATCH. Some of my colleagues do.

Mr. ROBERT C. BYRD. It is one of the issues.

Mr. HATCH. They may very well be right. But the point is this: The point that I was trying to bring out is that on three occasions, Panamanian officials approved this treaty. It has only been since the 1960's that we have had the major difficulties here with the advent of Torrijos.

All I am trying to point out is that we should not be led to believe that this was just a total reprehensible situation, where the Panamanians never had any decisionmaking role in the confirmation of these treaties, because they did. And they did on more than one occasion, long after the fact of the 1903 treaty.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Utah.

Mr. HATCH. I thank the distinguished Senator from West Virginia for letting me interrupt him.

Mr. HELMS. Will the Senator yield without losing his right to the floor?

Mr. ROBERT C. BYRD. Shortly.

Yes, Panamanians have agreed to subsequent treaties. But I reiterate that those treaties were modifications of the 1903 treaties, and justifiable modifications and were written in recognition by the United States of the justification for higher payments and for relinquishing control over some of the lands and waters—

Mr. HATCH. It was more than that.

Will the Senator yield again?

Mr. ROBERT C. BYRD. The use of which had been granted by Panama to the United States in the 1903 treaties.

Now, let me say just a little bit more about this.

Mr. HATCH. Will my friend yield?

Mr. ROBERT C. BYRD. Let me say just a little bit more. Then I shall be glad to yield to the Senator. I am going to be around until 6 o'clock today. I do not want to monopolize the Senate's time, but I shall be glad to answer questions as long as Senators want to ask them.

The Senator from Utah pays me great tribute in asking me questions. I appreciate the questions that have been asked of me.

Mr. HATCH. I have great respect for the distinguished majority leader.

Mr. ROBERT C. BYRD. I appreciate the kind of attention that is being given by Senators to what I am saying. I hope it will be as informative to them as it is informative to me to hear their views.

Someone has made reference to the approval given by the representatives of the Panamanian revolution. Dr. Amador, the first President of Panama, objected strenuously—strenuously—to the terms of the treaty. And one member of the delegation actually struck Bunau-Varilla when Bunau-Varilla rushed over to the train station to meet the delegation from Panama that had come down

to the train. After Bunau-Varilla had signed the treaty, he rushed over to the train station and there told these representatives of the Panamanian revolution what had happened, what he had done. And McCullough said that one of them was reported to have struck Bunau-Varilla, which indicates to me that they were not too happy with what had been done.

I yield to my friend from North Carolina.

Mr. HELMS. I thank the distinguished majority leader.

He said that no Panamanian had signed the 1903 treaty.

Mr. ROBERT C. BYRD. No Panamanian signed the 1903 treaty.

Mr. HELMS. I beg to differ with the leader. Let me list the names of those who did sign.

From the junta: J. A. Arango; Tomas Arias; and Manuel Espinosa B.

Mr. ROBERT C. BYRD. What was the date?

Mr. HELMS. December 4, 1903. If the distinguished Senator will indulge me, let us go down the list and thereby pursue it further.

Not only did the three whom I have just mentioned sign it but the Minister of Interior, Eusebio A. Morales, signed it; the Minister of Foreign Relations, F. V. de la Espriella, signed it; the Minister of Justice, Carols A. Mendoza, signed it; the Minister of the Treasury, Manuel E. Amador, the Minister of War and Marine, Nicanor A. de Obarrio, and the Subsecretary of Public Instruction, Francisco Antonio Facio, signed it.

Mr. ROBERT C. BYRD. The Senator is talking about the ratification of the treaty. I am talking about the original signing of the treaty. No Panamanian signed that treaty. Bunau-Varilla and Secretary Hay signed the treaty.

Mr. HELMS. Who designated him, I ask the Senator, to sign it?

Mr. ROBERT C. BYRD. I went through that a while ago. Shall I go through it again?

Mr. HELMS. I wish he would. In the meantime, since the Senator is so concerned about a non-Panamanian signing the 1903 treaty I would remind him that Henry Kissinger was not born in this country. And Mr. Kissinger signed the Kissinger-Tack agreement.

Mr. ROBERT C. BYRD. I beg the Senator's pardon?

Mr. HELMS. Henry Kissinger negotiated for this country, and he was not born here.

Mr. ROBERT C. BYRD. Henry Kissinger is a citizen of this country.

Mr. HELMS. Bunau-Varilla could scarcely have become a citizen of a country that came into existence only a few days earlier.

Mr. HATCH. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. HATCH. By the majority leader's argument, I think at least 25 percent of the American people should sign these treaties, because that is about what was the number of Panamanians that signed this treaty.

[Disturbance in galleries.]

Mr. ROBERT C. BYRD. May we have order?

The PRESIDING OFFICER. There will be order in the galleries.

Mr. HATCH. If the Cabinet does not have the right to sign these treaties, who does?

Mr. ROBERT C. BYRD. The Cabinet did not sign the treaties.

Mr. HATCH. If they did not have the right to approve it, I do not know who did.

Incidentally, in the 1936-55 modifications, which were far more than giving a few water rights and property, I do not know of anybody striking any French citizen or American citizen during those times. They were more than happy to have them.

Mr. ROBERT C. BYRD. If the Senator insists, I refer him to the Background Documents Relating to the Panama Canal, prepared for the Committee on Foreign Relations, U.S. Senate, by the Congressional Research Service, Library of Congress. On page 288, he will find the two signatories listed, John Hay and P. Bunau-Varilla, and their seals.

Mr. SARBANES. Will the distinguished majority leader yield?

Mr. ROBERT C. BYRD. Yes.

Mr. SARBANES. Is it not the case that a delegation had come from Panama to discuss the treaty with representatives of our Government, hopefully to sign a treaty, and that they were held in New York—held in New York—by the maneuverings of Bunau-Varilla so he could have the time to rush down and meet with John Hay and sign the treaty.

It is important that the 1903 treaty was signed by a man who had a very special personal financial interest in the provisions of the treaty. There is no question about that. Bunau-Varilla and William Nelson Cromwell, a New York lawyer, who later had a lawsuit with Bunau-Varilla's company over the amount of personal financial interests in the fees that he was entitled to collect, all stood to gain from this treaty in a special personal way.

When the Panamanian delegation held in New York arrived in Washington, as the majority leader stated, and Bunau-Varilla met them at the train station and presented them with the treaty, they went into a state of shock, except for one fellow who maintained enough sensibility to strike him over what he had done.

Subsequently, the treaty was sent down to the Panamanians and, in effect they were compelled to agree to it by the threat that, if they did not do so, they would lose the independence which they had recently gained because the United States would withdraw its protective umbrella.

There is no doubt the Panamanians wanted their independence from Colombia. But there is also no doubt that the Panamanians did not want and were very much opposed to the provisions of the treaty, which Bunau-Varilla drafted himself and then signed, and that they have remained so opposed ever since.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, I have the floor, and I thank the distinguished Senator from Maryland.

Several Senators addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, I would yield and yield and yield, but I insist on maintaining my right to the floor and yielding when I get ready to yield.

Mr. SPARKMAN. Will the Senator yield?

Mr. ROBERT C. BYRD. I yield to the distinguished chairman.

Mr. SPARKMAN. I ask the majority leader this because I am going to have to leave the floor. But before going, I want to make just these brief remarks.

It is easy to stand here on the floor and find objection. We can all find those objections. I do not suppose any one of us would claim that everything is absolutely right just as we see it.

But I would like to remind my colleagues that for weeks our committee held hearing and we heard all of the people who wanted to testify. We made it known that we would welcome them, and patiently we held out. Then our committee made a report that was favorable and incorporated two recommended amendments.

Here is something I want to call attention to because I think it is important. President Carter and General Torrijos had a meeting following the invitation to Western Hemisphere leaders to come to the United States. The Chiefs of State or the foreign ministers of virtually all of the Latin American countries had a big meeting here, and then when the meeting was over they issued a statement in which they laid down certain principles that ought to be observed and expressed their support for these treaties.

I had the feeling at that time that there was general approval among the nations of this hemisphere. We do not often get general approval on such an important issue.

I believe the Senator from West Virginia and the Senator from Tennessee, both acknowledged that there are people in their respective States who are not in favor of this treaty. That is true down in my State. There has been very strong sentiment expressed in my State.

I have said all along that this issue has been charged with emotionalism and that has had a tremendous influence on public opinion.

I think the Senator from Tennessee made a very fine statement when he reported on the fact that this was not popular all through his State. The Senator from West Virginia has also indicated the same is true in his State.

But I want to call attention to the fact that after hearing 92 different witnesses expressing every viewpoint that I think could be had and spending days and days and days on these treaties we reported them favorably, and the vote in the committee was 14 to 1.

I remind Senators that the Foreign Relations Committee is the committee that has jurisdiction over this question regardless of the interest that any other committees may have. It was the judgment of the Foreign Relations Committee after hearing all of this testimony that the treaties be reported favorably.

Furthermore, we had before us the communique, the joint communique, issued by President Carter and General Torrijos. We incorporated in our recommendations the text of the communique, a communique which when it was first issued was hailed by the people of this country.

I cannot think of any better recommendation for this than the fact that our committee almost unanimously voted in favor of these treaties with the condition that there be written into the Neutrality Treaty the substance of the communique issued by the ruling officials of the United States and Panama.

That is what we recommended and I believe that ought to be carefully considered by the Members of the Senate.

A lot has been said about the 1903 treaty. That was an important treaty at that time, but that is in the past. It is not relevant today. It is historical. Certainly that fact was taken into consideration by those who negotiated the proposed treaties.

I want to say that I do not think any country ever had more dedicated and able negotiators than we had in connection with these proposed treaties. I think great weight ought to be given that in the consideration of them.

I am going to have to leave the floor, but I did want to get in these few comments before leaving.

Mr. ROBERT C. BYRD. I thank the distinguished Chairman of the Foreign Relations Committee for his cogent and pertinent remarks.

Now, may I say that I am not going to yield and yield and yield and yield to the same Senator. It is going to be passed around if I am going to yield.

May I also say I am imposing on the time of the minority leader who is to speak after I finish mine.

Now, I yield to the Senator from Illinois who thus far has not asked me to yield.

Mr. PERCY. Mr. President, I shall be very brief. I will be speaking later, but I asked the majority leader to yield because I want to have interjected some voice of support.

First, I would like to commend the leadership for scheduling this debate prior to the Lincoln Day recess.

I want to commend Public Broadcasting for making the Senate deliberations on the Panama Canal available to the country so that when we go back home on recess this should be a very high priority topic for discussion.

When we begin to really think through this problem and what the consequences would be, if we do not ratify a new set of treaties, only then do we fully understand the importance of our pending decision.

That is, I think, the question we have to put to those who have formed an opinion in opposition to it. What do we do if we fail to ratify in an acceptable amended form? What consequences will follow?

I merely should like to report that, as I go back now, having taken a position in favor of the amendments that will be offered by this joint leadership and more than 70 Senators, I see the thinking changing in my State of Illinois. People are beginning now to say, "What would we do if we do not support the revised treaties?"

Time after time, I have seen hostile, emotional opposition melt in the face of hard facts. I do not want to interrupt the distinguished majority leader any longer to give some of those facts. I will have an opportunity later in the debate.

However, the most dramatic illustration I had was just the other day, when 150 elected officials representing postal workers from throughout the State of Illinois came down to talk about postal matters. We talked also about the Panama Canal, and at the end of the discussion, I asked for a vote by a show of hands, if they supported the position taken by the Foreign Relations Committee. The vote was 147 to 3 in favor of that position. That vote result never would have occurred a month ago.

So this debate is absolutely essential to have this matter much better understood. I think that by the time we come to the final vote, it will be better understood not only by the Senate but also by the country as a whole.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Illinois for his remarks.

I yield again to my friend from Utah.

Mr. HATCH. I thank the distinguished majority leader.

Mr. ROBERT C. BYRD. I yield for a question.

Mr. HATCH. My question is this: Is it not true, just to put this prior problem to bed. Is it not true that the Supreme Court of the United States has said in *Wilson against Shaw*, that with regard to the matter of original signatories, "A short but sufficient answer is that subsequent ratification is equivalent to original authority"?

So, regardless of what the emotional argument is, the 1903 treaty is valid.

I thank the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I hope I have not been misunderstood to say that the 1903 treaty was not valid.

In pursuance of that point, may I say that, regardless of how many governments there may have been, regardless of how many times the Government of Panama may have changed since 1903, so far as I know, no government of Panama has ever sought to repudiate the 1903 treaty. They all have lived up to it. I have not said it is invalid. That is the point the Senator is making.

Mr. HATCH. The implication is there.

Mr. ROBERT C. BYRD. No, the implication is not there. I simply said that the treaty was not signed by any Panamanian.

Mr. HATCH. But the Senator will agree that it is a perfectly valid treaty.

Mr. ROBERT C. BYRD. I do not disagree with that.

Mr. CASE. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. I yield.

Mr. CASE. Mr. President, I think it is enormously useful for us to go into history of the origin of our relations with Panama. It is interesting as a matter of history. It is interesting as a matter of giving us a feel for this whole situation.

But I do suggest that whether the arrangements made with Panama in 1903 and subsequently changed and each change was absolutely valid—assuming that we had every right, that we were not overreaching, that it was a bargain between powers of equal strength and therefore the kind that would be enforced in a court of law if it were a justiciable matter—nevertheless, the question still is, should that be changed now? That is what we really have to decide.

Is it in our interest, is it in the interest of the Panamanians, is it in the interest of the continued operation of the canal and its availability in peace and in war, that this arrangement be changed now? If so is this change a good one?

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator from New Jersey (Mr. Case), the ranking member of the Foreign Relations Committee, has put his finger on the gravamen of the question.

Mr. CASE. I thank my colleague.

Mr. ROBERT C. BYRD. Is it in the best interests of the United States to ratify these treaties? That is the question I have made my benchmark from the beginning. Is it in the best interests of the United States for the Senate to lend its advice and consent an approval to the ratification of these treaties?

I yield to the distinguished Senator from Alabama.

Mr. ALLEN. I thank the distinguished majority leader.

The point that I think is important is that the distinguished majority leader has said time and again that no Panamanian ever signed the treaty.

I call his attention to a most authoritative work. "Cadiz to Cathay," by Duval, on this subject. On page 393 of that monumental work we see this statement:

The signatures were placed on the last page of the treaty in the following order:

Junta Members; J. A. Arango, Tomas Arias, Manuel Espinosa B.

Minister of Interior: Eusebio A. Morales.

Minister of Foreign Relations: F. V. de la Espriella.

Minister of Justice: Carlos A. Mendoza.

Minister of Treasury: Manuel E. Amador.

Minister of War and Marine: Nicanor A. de Obarrio.

Subsecretary of Public Instruction: Francisco Antonio Facio.

That was on December 4, 1903. The U.S. Senate did not give its advice and consent to the treaty until February 23, 1904. So this signed treaty, signed by the Panamanian Government, signed by nine Panamanians, was before the Senate, I assume, from that time on, from December 4, 1903, up to February 23, 1904.

If the Panamanians had wanted to come out from under the treaty, they had ample time to do it. In fact, the treaty was signed by members of the government—nine in all.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator from Alabama has referred to an authoritative and monumental work, and it is, indeed. But there is nothing as authoritative as the original treaty itself, and that convention was signed at Washington on November 18, 1903.

On page 288 of "Background Documents Relating to the Panama Canal," I see two signatures: John Hay, Secretary of the United States, and P. Bunau-Varilla. Two signatures, neither of which is a Panamanian.

The distinguished Senator from Alabama has referred to the subsequent signing by Panamanians—not the signing of the treaty. He is referring to the ratification of the Hay-Bunau-Varilla Treaty of 1903, and that was done at Panama on December 2, 1903.

There is a difference in signing a treaty and in ratifying it. The treaty we are discussing before the Senate now has already been signed, but it has not been ratified. That is what we are talking about here. It is really a distinction perhaps without a difference, but there is a difference.

We are talking now about treaties—a treaty, the Neutrality Treaty, which already has been signed and was signed last September by the President of the United States, Mr. Carter, and by General Torrijos. By the time that treaty gets around to ratification, there may be different signatures. Who knows? An act of God may create a situation in which there will be different signatures.

I am saying that the original treaty was signed by John Hay and P. Bunau-Varilla, neither of whom was a Panamanian.

If we want to quibble about that, let us continue the quibbling on another day. But there is the record. And what did Bunau-Varilla do?

Mr. ALLEN. Mr. President, will the Senator yield at that point?

Mr. ROBERT C. BYRD. Three days after the approval of the treaty by the U.S. Senate, he submitted his resignation as envoy extraordinary, and this is what he said:

I had fulfilled my mission. I had safeguarded the work of the French genius.

And who was the French genius? Ferdinand deLesseps.

I had avenged its honor. I had served France.

This was the signatory on the part of Panama—Bunau-Varilla. He had served France, not Panama, not the United States of America. He had served France.

Mr. LAXALT. Mr. President, will the leader yield?

Mr. ALLEN. Will he yield since he discussed that?

Mr. ROBERT C. BYRD. Those were his words. Those were his words. "I had served France."

Mr. ALLEN. If the Senator will yield further, the Senator makes a point about the treaty being signed only by Bunau-Varilla. The Senator would realize that the American Government did not bring in a whole host of signatories to this treaty and it would have been difficult for the members of the junta there in Panama and the Cabinet there in Panama to have been present in Washington for the purpose of signing the treaty. They were down in Panama representing the Government and the people of Panama. Obviously they could not be up here in Washington to sign it along with Bunau-Varilla.

Mr. ROBERT C. BYRD. No. They were on their way from New York.

Mr. ALLEN. They signed it, though, in Panama, signed the treaty on the last page, and I ask unanimous consent that this statement appearing on page 393 of this Duval work be printed in the Record.

There being no objection, the statement was ordered to be printed in the Record, as follows:

The signatures were placed on the last page of the treaty in the following order:

Junta Members: J. A. Arango, Tomas Arias, Manuel Espinosa B.

Minister of Interior: Eusebio A. Morales.

Minister of Foreign Relations: F. V. de la Espriella.

Minister of Justice: Carlos A. Mendoza.

Minister of Treasury: Manuel E. Amador.

Minister of War and Marine: Nicanor A. de Obarrio.

Subsecretary of Public Instruction: Francisco Antonio Facio.

Mr. ALLEN. This was the first opportunity they had to——

Mr. ROBERT C. BYRD. Mr. President, I have the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. I shall yield to the Senator.

Immediately following the printing in the Record of the extracts from the Duval work, I ask unanimous consent to print in the Record the 1903 treaty as it appears beginning on page 279 and ending on page 288, of the volume background documents relating to the Panama Canal which will show that the convention was signed at Washington on November 18, 1903, by two persons, John

Hay and Bunau-Varilla, and I also ask unanimous consent that the following page 289 which deals with the ratification of that treaty on December 2 and the signatories thereon be printed in the Record at this point.

There being no objection, the material was ordered to be printed in the Record, as follows:

[No. 38. A Convention Between the United States and Panama for the Construction of a Ship Canal (Hay-Bunau-Varilla Treaty), November 18, 1903]

ISTHMIAN CANAL

Convention signed at Washington November 18, 1903.

Ratified by Panama December 2, 1903.

Senate advice and consent to ratification February 23, 1904.

Ratified by the President of the United States February 25, 1904.

Ratification exchanged at Washington February 26, 1904.

Entered into force February 26, 1904.

Proclaimed by the President of the United States February 26, 1904.

Amended by treaties of March 2, 1936, and January 25, 1955.—33 Stat. 2234; Treaty Series 431.

ISTHMIAN CANAL CONVENTION

The United States of America and the Republic of Panama being desirous to insure the construction of a ship canal across the Isthmus of Panama to connect the Atlantic and Pacific oceans, and the Congress of the United States of America having passed an act approved June 28, 1902, in furtherance of that object, by which the President of the United States is authorized to acquire within a reasonable time the control of the necessary territory of the Republic of Colombia, and the sovereignty of such territory being actually vested in the Republic of Panama, the high contracting parties have resolved for that purpose to conclude a convention and have accordingly appointed as their plenipotentiaries,—

The President of the United States of America, John Hay, Secretary of State, and The Government of the Republic of Panama, Philippe Bunau Varilla, Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama, thereunto specially empowered by said government, who after communicating with each other their respective full powers, found to be in good and due form, have agreed upon and concluded the following articles:

ARTICLE I³

The United States guarantees and will maintain the independence of the Republic of Panama.

ARTICLE II⁴

The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said Canal of the width of ten miles extending to the distance of five miles on each side of the center line of the route of the Canal to be constructed; the said zone beginning in the Caribbean Sea three marine miles from mean low water mark and extending to and across the Isthmus of Panama into the Pacific ocean to a distance of three marine miles from mean low water mark with the proviso that the cities of Panama and Colon and the harbors adjacent to said cities, which are included within the boundaries of the zone above described, shall not be included within this grant. The Republic of Panama further grants to the United States in perpetuity the use, occupation and control of any other lands and waters outside of the zone above described which may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal or of any auxiliary canals or other works necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said enterprise.

The Republic of Panama further grants in like manner to the United States in perpetuity all islands within the limits of the zone above described and in addition thereto the group of small islands in the Bay of Panama, named Perico, Naos, Culebra and Flamenco.

³ Bevans, Treaties and Other International Agreements of the United States of America, 1776-1949, v. 10, pp. 663-672.

³ Art. I superseded by art. I of treaty of Mar. 2, 1936 (TS 945, *post*, p. 743).

⁴ Art. II modified by art. II of treaty of Mar. 2, 1936.

ARTICLE III

The Republic of Panama grants to the United States all the rights, power and authority within the zone mentioned and described in Article II of this agreement and within the limits of all auxiliary lands and waters mentioned and described in said Article II which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority.

ARTICLE IV

As rights subsidiary to the above grants the Republic of Panama grants in perpetuity to the United States the right to use the rivers, streams, lakes and other bodies of water within its limits for navigation, the supply of water or water-power or other purposes, so far as the said rivers, streams, lakes and bodies of water and the waters thereof may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal.

ARTICLE V*

The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean.

ARTICLE VI*

The grants herein contained shall in no manner invalidate the titles or rights of private land holders or owners of private property in the said zone or in or to any of the lands or waters granted to the United States by the provisions of any Article of this treaty, nor shall they interfere with the rights of way over the public roads passing through the said zone or over any of the said lands or waters unless said rights of way or private rights shall conflict with rights herein granted to the United States in which case the rights of the United States shall be superior. All damages caused to the owners of private lands or private property of any kind by reason of the grants contained in this treaty or by reason of the operations of the United States, its agents or employees, or by reason of the construction, maintenance, operation, sanitation and protection of the said Canal or of the works of sanitation and protection herein provided for, shall be appraised and settled by a joint Commission appointed by the Governments of the United States and the Republic of Panama, whose decisions as to such damage shall be final and whose awards as to such damages shall be paid solely by the United States. No part of the work on said Canal or the Panama railroad or on any auxiliary works relating thereto and authorized by the terms of this treaty shall be prevented, delayed or impeded by or pending such proceedings to ascertain such damages. The appraisal of said private lands and private property and the assessment of damages to them shall be based upon their value before the date of this convention.

ARTICLE VII'

The Republic of Panama grants to the United States within the limits of the cities of Panama and Colon and their adjacent harbors and within the territory adjacent thereto the right to acquire by purchase or by the exercise of the right of eminent domain, any lands, buildings, water rights or other properties necessary and convenient for the construction, maintenance, operation and protection of the Canal and of any works of sanitation, such as the collection and disposition of sewage and the distribution of water in the said cities of Panama and Colon, which, in the discretion of the United States may be necessary and convenient for the construction, maintenance, operation, sanitation and protection of the said Canal and railroad. All such works of sanitation, collection and disposition of sewage and distribution of water in the cities of Panama and Colon shall be made at the expense of the United States, and the Government of the United States, its agents or nominees shall be authorized to impose and collect water rates and sewerage rates which shall be sufficient to provide for the payment of interest and the amortization of the principal of the cost of said works within a period of fifty years and upon the expiration of said term of fifty years the system of sewers and water works shall revert to and

* Art. V abrogated in part by art. III of treaty of Jan. 25, 1955 (6 UST 2273; TIAS 3297).

' Art. VI modified by art. X of treaty of Jan. 25, 1955.

* First sentence of art. VII amended and third paragraph abrogated by art. VI of treaty of Mar. 2, 1936; first paragraph modified and second paragraph abrogated by arts. V and IV of treaty of Jan. 25, 1955. See also agreement of May 18, 1942 (EAS 359), *post*, p. 809.

become the properties of the cities of Panama and Colon respectively, and the use of the water shall be free to the inhabitants of Panama and Colon, except to the extent that water rates may be necessary for the operation and maintenance of said system of sewers and water.

The Republic of Panama agrees that the cities of Panama and Colon shall comply in perpetuity with the sanitary ordinances whether of a preventive or curative character prescribed by the United States and in case the Government of Panama is unable or fails in its duty to enforce this compliance by the cities of Panama and Colon with the sanitary ordinances of the United States the Republic of Panama grants to the United States the right and authority to enforce the same.

The same right and authority are granted to the United States for the maintenance of public order in the cities of Panama and Colon and the territories and harbors adjacent thereto in case the Republic of Panama should not be, in the judgement of the United States, able to maintain such order.

ARTICLE VIII

The Republic of Panama grants to the United States all rights which it now has or hereafter may acquire to the property of the New Panama Canal Company and the Panama Railroad Company as a result of the transfer of sovereignty from the Republic of Colombia to the Republic of Panama over the Isthmus of Panama and authorizes the New Panama Canal Company to sell and transfer to the United States its rights, privileges, properties and concessions as well as the Panama Railroad and all the shares or part of the shares of that company; but the public lands situated outside of the zone described in Article II of this treaty now included in the concessions to both said enterprises and not required in the construction or operation of the Canal shall revert to the Republic of Panama except any property now owned by or in the possession of said companies within Panama or Colon or the ports or terminals thereof.

ARTICLE IX

The United States agrees that the ports at either entrance of the Canal and the waters thereof, and the Republic of Panama agrees that the towns of Panama and Colon shall be free for all time so that there shall not be imposed or collected custom house tolls, tonnage, anchorage, lighthouse, wharf, pilot, or quarantine dues or any other charges or taxes of any kind upon any vessel using or passing through the Canal or belonging to or employed by the United States, directly or indirectly, in connection with the construction, maintenance, operation, sanitation and protection of the main Canal, or auxiliary works, or upon the cargo, officers, crew, or passengers of any such vessels, except such tolls and charges as may be imposed by the United States for the use of the Canal and other works, and except tolls and charges imposed by the Republic of Panama upon merchandise destined to be introduced for the consumption of the rest of the Republic of Panama, and upon vessels touching at the ports of Colon and Panama and which do not cross the Canal.

The Government of the Republic of Panama shall have the right to establish in such ports and in the towns of Panama and Colon such houses and guards as it may deem necessary to collect duties on importations destined to other portions of Panama and to prevent contraband trade. The United States shall have the right to make use of the towns and harbors of Panama and Colon as places of anchorage, and for making repairs, for loading, unloading, depositing, or transshipping cargoes either in transit or destined for the service of the Canal and for other works pertaining to the Canal.

ARTICLE X *

The Republic of Panama agrees that there shall not be imposed any taxes, national, municipal, departmental, or of any other class, upon the Canal, the railways and auxiliary works, tugs and other vessels employed in the service of the Canal, store houses, work shops, offices, quarters for laborers, factories of all kinds, warehouses, wharves, machinery and other works, property, and effects appertaining to the Canal or railroad and auxiliary works, or their officers or employees, situated within the cities of Panama and Colon, and that there shall not be imposed contributions or charges of a personal character of any kind upon officers, employees, laborers, and other individuals in the service of the Canal and railroad and auxiliary works.

* Art. X modified by art. II of treaty of Jan. 25, 1955.

ARTICLE XI

The United States agrees that the official dispatches of the Government of the Republic of Panama shall be transmitted over any telegraph and telephone lines established for canal purposes and used for public and private business at rates not higher than those required from officials in the service of the United States.

ARTICLE XII

The Government of the Republic of Panama shall permit the immigration and free access to the lands and workshops of the Canal and its auxiliary works of all employees and workmen of whatever nationality under contract to work upon or seeking employment upon or in any wise connected with the said Canal and its auxiliary works, with their respective families, and all such persons shall be free and exempt from the military service of the Republic of Panama.

ARTICLE XIII

The United States may import at any time into the said zone and auxiliary lands, free of custom duties, imports, taxes, or other charges, and without any restrictions, any and all vessels, dredges, engines, cars, machinery, tools, explosives, materials, supplies, and other articles necessary and convenient in the construction, maintenance, operation, sanitation and protection of the Canal and auxiliary works, and all provisions, medicines, clothing, supplies and other things necessary and convenient for the officers, employees, workmen and laborers in the service and employ of the United States and for their families. If any such articles are disposed of for use outside of the zone and auxiliary lands granted to the United States and within the territory of the Republic, they shall be subject to the same import or other duties as like articles imported under the laws of the Republic of Panama.

ARTICLE XIV ¹⁰

As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars (\$10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars (\$250,000) in like gold coin, beginning nine years after the date aforesaid.

The provisions of this Article shall be in addition to all other benefits assured to the Republic of Panama under this convention.

But no delay or difference of opinion under this Article or any other provisions of this treaty shall affect or interrupt the full operation and effect of this convention in all other respects.

ARTICLE XV

The joint commission referred to in Article VI shall be established as follows:

The President of the United States shall nominate two persons and the President of the Republic of Panama shall nominate two persons and they shall proceed to a decision; but in case of disagreement of the Commission (by reason of their being equally divided in conclusion) an umpire shall be appointed by the two Governments who shall render the decision. In the event of the death, absence or incapacity of a Commissioner or Umpire, or of his omitting, declining or ceasing to act, his place shall be filled by the appointment of another person in the manner above indicated. All decisions by a majority of the Commission or by the umpire shall be final.

ARTICLE XVI

The two Governments shall make adequate provision by future agreement for the pursuit, capture, imprisonment, detention and delivery within said zone and auxiliary lands to the authorities of the Republic of Panama of persons charged with the commitment of crimes, felonies or misdemeanors without said zone and for the pursuit, capture, imprisonment, detention and delivery without said zone to the authorities of the United States of persons charged with the commitment of crimes, felonies and misdemeanors within said zone and auxiliary lands.

ARTICLE XVII

The Republic of Panama grants to the United States the use of all the ports of the Republic open to commerce as places of refuge for any vessels employed in the

¹⁰ Art. XIV amended by art. VII of treaty of Mar. 2, 1936, and art. I of treaty of Jan. 25, 1955.

Canal enterprise, and for all vessels passing or bound to pass through the Canal which may be in distress and be driven to seek refuge in said ports. Such vessels shall be exempt from anchorage and tonnage dues on the part of the Republic of Panama.

ARTICLE XVIII

The Canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section I of Article three of, and in conformity with all the stipulations of, the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.¹¹

ARTICLE XIX¹²

The Government of the Republic of Panama shall have the right to transport over the Canal its vessels and its troops and munitions of war in such vessels at all times without paying charges of any kind. The exemption is to be extended to the auxiliary railway for the transportation of persons in the service of the Republic of Panama, or of the police force charged with the preservation of public order outside of said zone, as well as to their baggage, munitions of war and supplies.

ARTICLE XX

If by virtue of any existing treaty in relation to the territory of the Isthmus of Panama, whereof the obligations shall descend or be assumed by the Republic of Panama, there may be any privilege or concession in favor of the Government or the citizens and subjects of a third power relative to an interoceanic means of communication which in any of its terms may be incompatible with the terms of the present convention, the Republic of Panama agrees to cancel or modify such treaty in due form, for which purpose it shall give to the said third power the requisite notification within the term of four months from the date of the present convention, and in case the existing treaty contains no clause permitting its modifications or annulment, the Republic of Panama agrees to procure its modification or annulment in such form that there shall not exist any conflict with the stipulations of the present convention.

ARTICLE XXI

The rights and privileges granted by the Republic of Panama to the United States in the preceding Articles are understood to be free of all anterior debts, liens, trusts, or liabilities, or concessions or privileges to other Governments, corporations, syndicates or individuals, and consequently, if there should arise any claims on account of the present concessions and privileges or otherwise, the claimants shall resort to the Government of the Republic of Panama and not to the United States for any indemnity or compromise which may be required.

ARTICLE XXII

The Republic of Panama renounces and grants to the United States the participation to which it might be entitled in the future earnings of the Canal under Article XV of the concessionary contract with Lucien N. B. Wyse now owned by the New Panama Canal Company and any and all other rights or claims of a pecuniary nature arising under or relating to said concession, or arising under or relating to the concessions of the Panama Railroad Company or any extension or modification thereof; and it likewise renounces, confirms and grants to the United States, now and hereafter, all the rights and property reserved in the said concessions which otherwise would belong to Panama at or before the expiration of the terms of ninety-nine years of the concessions granted to or held by the above mentioned party and companies, and all right, title and interest which it now has or may hereafter have, in and to the lands, canal, works, property and rights held by the said companies under said concessions or otherwise, and acquired or to be acquired by the United States from or through the New Panama Canal Company, including any property and rights which might or may in the future either by lapse of time, forfeiture or otherwise, revert to the Republic of Panama under any contracts or concessions, with said Wyse, the Universal Panama Canal Company, the Panama Railroad Company and the New Panama Canal Company.

The aforesaid rights and property shall be and are free and released from any present or revisionary interest in or claims of Panama and the title of the United States thereto upon consummation of the contemplated purchase by the United States from the New Panama Canal Company, shall be absolute, so far as concerns

¹¹ TS 401, post. vol. 12, United Kingdom.

¹² Art. XIX modified by art. IX of treaty of Jan. 25, 1955.

the Republic of Panama, excepting always the rights of the Republic specifically secured under this treaty.

ARTICLE XXIII

If it should become necessary at any time to employ armed forces for the safety or protection of the Canal, or of the ships that make use of the same, or the railways and auxiliary works, the United States shall have the right, at all times and in its discretion, to use its police and its land and naval forces or to establish fortifications for these purposes.

ARTICLE XXIV

No change either in the Government or in the laws and treaties of the Republic of Panama shall, without the consent of the United States, affect any right of the United States under the present convention, or under any treaty stipulation between the two countries that now exists or may hereafter exist touching the subject matter of this convention.

If the Republic of Panama shall hereafter enter as a constituent into any other Government or into any union or confederation of states, so as to merge her sovereignty or independence in such Government, union or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired.

ARTICLE XXV

For the better performance of the engagements of this convention and to the end of the efficient protection of the Canal and the preservation of its neutrality, the Government of the Republic of Panama will sell or lease to the United States lands adequate and necessary for naval or coaling stations on the Pacific coast and on the western Caribbean coast of the Republic at certain points to be agreed upon with the President of the United States.

ARTICLE XXVI

This convention when signed by the Plenipotentiaries of the Contracting Parties shall be ratified by the respective Governments and the ratifications shall be exchanged at Washington at the earliest date possible.

In faith whereof the respective Plenipotentiaries have signed the present convention in duplicate and have hereunto affixed their respective seals.

Done at the City of Washington the 18th day of November in the year of our Lord nineteen hundred and three.

[SEAL]
[SEAL]

P. BUNAU VARILLA.
JOHN HAY.

[Translation.—Decree No. 24, 1903, December 2, approving a treaty with the United States of North America.]

The Junta of provisional government of the Republic of Panama, considering that there has been signed, by the envoy extraordinary and minister plenipotentiary of the Republic accredited to the Government of the United States of America, and the Secretary of State of that Nation, a treaty which copied literally reads as follows:

[Printed ante.]

And considering:

1. That the guaranty of independence for the Republic has been obtained in that treaty.

2. That for reasons of exterior security it is indispensable to take up consideration of the treaty with the utmost celerity, in order that the paramount obligation on the part of the United States may begin to be effectively fulfilled:

3. That by this treaty is realized the aspiration of the people of the Isthmus touching the building of a Canal for the service of the commerce of all nations; and

4. That the Junta of Provisional Government, chosen by the unanimous vote of the people of the Republic, possesses all the powers of the sovereign of the territory.

DECREES:

Sole article: The treaty, signed in Washington the capital of the Republic of the United States of America, on the 18th of November of the present year, between His Excellency Philippe Bunau-Varilla, Envoy Extraordinary and Minister Plenipoten-

tiary of this Republic, and His Excellency John Hay, Secretary of State of the Republic of the United States of America, is approved.

Let it be made public.

Done at Panama, December 2, 1903.

(Signed) J. A. Arango, Tomas Arias, Manuel Espinoza B.

The Minister of Government, Eusebio A. Morales.

The Minister of Foreign Relations, F. V. de la Espriella.

The Minister of Justice, Carlos A. Mendoza.

The Minister of the Treasury, Manuel E. E. Amador.

The Minister of War and Navy, Nicanor A. de Obarrio.

For the Minister of Public Works, The Secretary, Francisco A. Facio.

[SEAL OF THE REPUBLIC OF PANAMA.]

Mr. ALLEN. I merely wanted to point out to the distinguished majority leader—he stated time and time again that no Panamanian ever signed the treaty when without question nine Panamanians representing the Government did sign the treaty on December —

*Foreign Relations of the United States, 1904, pp. 551-552; and Diplomatic History of the Panama Canal, Senate Document 474 (1914), pp. 303-304.

Mr. ROBERT C. BYRD. Of course, Mr. President—

Mr. ALLEN. Let me finish my statement if I may.

Mr. ROBERT C. BYRD. I beg the Senator's pardon. It is just a matter of dispute between us.

Mr. ALLEN. Does the Senator dispute the fact that nine Panamanians signed the last page of the treaty on December 4, 1903?

Mr. ROBERT C. BYRD. I dispute the fact that nine Panamanians signed the treaty on November 18.

Mr. ALLEN. The last page would not count as part of the treaty.

Mr. ROBERT C. BYRD. Not as signing. The Senator is talking about the ratification of the treaty.

Mr. ALLEN. No. I am talking about signing the treaty.

Mr. ROBERT C. BYRD. I am talking about the original signing of the treaty.

Mr. ALLEN. I understand they were signed here in Washington that way. But still when it was presented to the Panamanians on December 4, 1903, it was signed by the officials of the Panamanian Government.

Mr. ROBERT C. BYRD. For ratification.

Mr. ALLEN. No, not for ratification. It was ratified on December 2.

Mr. ROBERT C. BYRD. And signed on November 18.

Mr. ALLEN. It was not approved by the U.S. Senate until February 23, 1904. If there had been any dispute by the Panamanians, there had been plenty of time to reject the treaty and ask that it be withdrawn.

Mr. ROBERT C. BYRD. Page 289 which—has the Senator completed his statement?

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. Page 289, which I have had printed in the Record, reads in part as follows:

The junta of provisional government of the Republic of Panama considering that there has been signed—

That there has been signed—

by the envoy extraordinary and minister plenipotentiary of the Republic accredited to the Government of the United States of America and the Secretary of State of the nation, a treaty—

There you are. The junta in consideration that there has been signed, past perfect tense.

Mr. CHURCH. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Has been signed.

By whom? Not by any Panamanian. But by the envoy extraordinary and minister plenipotentiary to the Republic accredited to the Government of the United States of America, Bunau-Varilla who later said "I had served France."

Mr. CHURCH. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Yes, I yield.

The PRESIDING OFFICER. The Senator from Idaho (Mr. Church).

Mr. CHURCH. I want to say to the distinguished majority leader that he makes his case from the record. It is no surprise that the junta later acknowledged by their signatures that the treaty had been executed, because anyone familiar with the circumstances of the time will remember that a revolution had just taken place in Panama. The presence of American troops protected the junta whose members had perpetrated the revolution. The presence of American marines in Panama was their shield. They were confronted with one of two alternatives: Either to affix their names to the treaty that had already been signed, or return to Panama and face a Colombian firing squad. Under such dire circumstances, it can hardly be argued with a straight face that the 1903 Treaty was an arms-length transaction. The fact is that the treaty was imposed on the Panamanians. They had to accept. For them, the alternative was even worse than the terms of the treaty. What else could they do but sign?

Mr. ROBERT C. BYRD. Mr. President, if the Government, as the distinguished Senator from Idaho (Mr. Church) has just pointed out, had failed to ratify the treaty immediately, certain persons would have faced the most dire consequences, the most dire consequences, that of facing a firing squad, and the almost certain consequence would have been the suspension of the U.S. protection over the new republic, thus enabling Colombia to regain control.

Seventy-four years ago this month, on February 23, 1904, the Senate approved the treaty by a vote of 66 to 14.

As I have already indicated that treaty was drafted by Bunau-Varilla. He drafted all of the articles of the new treaty in longhand and in English.

And his lawyer and long-time friend, Frank Pavey, corrected the literary imperfections, polished the formulas, and gave them an irreproachable academic form. Here is what Varilla recalled later. He recalled later that, and I quote from McCullough's book again, page 391:

The "indispensable condition of success" was to write a new treaty "so well adapted to American exigencies" that it would be certain to pass in the Senate by the required two-thirds majority. A failure to obtain that two-thirds majority, he was convinced, could still * * *

And that Bunau-Varilla was equal to the task of writing such a new treaty that would be well adapted to American exigencies and that would pass in the Senate by the required two-thirds majority.

We have only to quote from a letter written by Secretary of State Hay to Senator Spooner. This is what Hay said:

The new treaty was "very satisfactory, vastly advantageous to the United States and we must confess with what face we can muster not so advantageous to Panama. You and I know too well how many points there are in this treaty to which a Panamanian patriot could object.

He conceded that the treaty "comes to us more liberal in its concessions to us and giving us more than anybody in this Chamber ever dreamed of having—we have never had a concession so extraordinary in its character as this. In fact, it sounds very much as if we wrote it ourselves."

Well, so much for the writing of the treaty, who wrote it, and to whose advantages it ran.

I yield again to the distinguished Senator from Idaho (Mr. Church).

Mr. CHURCH. Mr. President, I want to compliment the distinguished majority leader for laying out in such detail an accurate account of what happened back in 1903. Many of our people are unaware that, prior to the rebellion in Panama, the United States had reached an arm's-length agreement with the Government of Colombia with respect to securing the right to construct the canal across the Isthmus. That treaty had been negotiated in the normal manner, and it called, not for American rights in perpetuity, but rather for a 99-year lease of the Canal Zone.

When we were dealing at arm's length with another sovereign government, and not simply drafting a document to suit ourselves, making it as advantageous as possible, and dictating it to the helpless Panamanian junta, we were willing to settle for a 100-year lease of the Canal Zone.

Mr. ROBERT C. BYRD. And less than a zone 10 miles wide.

Mr. CHURCH. Yes, indeed; for considerably less than we arranged for ourselves in the subsequent treaty.

Moreover, the treaty with Colombia was submitted to the Senate and ratified, in 1902. It was rejected by the Colombian Senate in Bogota, for internal political reasons. Thereafter, the rebellion occurred in the isthmus.

The point I wish to make is this: Under the terms of the present treaty, American management of the canal will extend until the end of this century. Only then will the canal be transferred into Panamanian hands. At the end of this century, we will have had control of the Panama Canal Zone for 97 years—just 3 years less than we bargained for when we entered into a bona fide treaty with Colombia, not a puppet government, but another sovereign power.

I do not think we are giving up very much. We were willing in 1902 to settle for 99 years, and under the terms of the pending treaty will exercise control for 97 years. It is not much of a difference.

Mr. LAXALT. Will the Senator yield for a short observation?

Mr. ROBERT C. BYRD. Mr. President, I do not yield for that purpose.

Mr. CHURCH. It is not much of a concession, in my view.

Mr. ROBERT C. BYRD. I thank the Senator for his comments. I will be glad to yield now to the distinguished Senator from Nevada for the observation.

Mr. LAXALT. I simply wanted to observe that in the context of the 99-year lease situation, that in itself would indicate we did not give up much.

Mr. CHURCH. Correct.

Mr. LAXALT. Since that time, the taxpayers of this country have invested some \$7 billion in that facility. That presents a bit of a different picture, because if you are thinking in terms purely of physical assets, now, you are talking about \$7 billion, which even in these exotic days is no mean amount as far as the American people are concerned.

Mr. GRAVEL. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Mr. President, I yield to the Senator from Alaska.

Mr. GRAVEL. I thank the majority leader. I just could not help but rise in response to the observation of the distinguished Senator from Nevada.

Mr. ROBERT C. BYRD. Will the Senator speak a little louder?

Mr. GRAVEL. I will have my own statement to present in a moment, but first let me say that \$7 billion you alluded to, most of that is defense, the cost of defending the canal for ourselves. The cost of building the canal was preciously small compared to all of that, and we were building the canal so we could use it and get the benefit of it.

The canal has been operated for the past 67 years to the benefit of the consuming nations of the world. So now you are making the allegation that the \$67 billion is something we are giving them.

Mr. LAXALT. Seven billion dollars.

Mr. GRAVEL. Maybe the Senator is willing to give us a breakdown of what that is.

Mr. LAXALT. I will be delighted to furnish a breakdown. At the moment I do not have it. In general terms, this value is represented by the investment we have, on a cost basis, bookwise, in the cost of the facilities itself, the canal, and the cost of the basin. I can provide a breakdown of that information later for the edification of the Senate.

Mr. GRAVEL. We will look for that breakdown very shortly, and I think we will have time to go over it in great detail.

Mr. ROBERT C. BYRD. Well, there will be other figures presented in that connection. Now, if Senators will indulge me, I would like to complete my remarks, because time is fleeting.

The 1903 treaty has remained the basic document governing the operation of the canal, which was opened in 1913. As the distinguished Senator from Utah has told us, the Hay-Bunau-Varilla Treaty was subsequently revised by the treaties of 1936 and 1955. A defense site agreement, which would have permitted the United States to retain certain World War II bases within Panama, was unanimously rejected by the Panamanian National Assembly in 1947, following large-scale riots against the agreements.

The Panamanians had long resented the 1903 Treaty and the unusual circumstances under which it was concluded. Over the years, Panamanian criticism mounted. In 1959, and again in 1964,

there were serious incidents following protests by Panamanian students. In 1964, 27 persons were killed and more than 400 injured. Panama briefly broke off diplomatic relations with the United States.

On December 18, 1964, President Lyndon B. Johnson announced that the United States and Panama would undertake negotiations for an entirely new treaty concerning the canal. In 1965, President Johnson and the Panamanians announced agreement on negotiating guidelines. Those principles, which were endorsed by former Presidents Truman and Eisenhower—endorsed by former Presidents Truman and Eisenhower; does anyone question their patriotism toward these United States, or their dedication to what they felt was in the best interests of this country? They endorsed those principles, and those principles served as the basis for negotiations which continued through the administrations of President Nixon, President Ford, and now President Carter. They are embodied in the treaties signed September 7, 1977, by President Carter and the Panamanian head of government, General Torrijos. Thus, these basic principles, which I will be discussing in more detail, have enjoyed broad, bipartisan support over a period of 13 years.

So those who write and accuse the President of the United States, Mr. Carter, of being treasonous, those who write accusing Senators of the United States of being treasonous in supporting the treaties, should remember that President Truman, a Democrat, and President Eisenhower, a Republican, endorsed the principles, and President Nixon, a Republican, President Ford, a Republican, and President Carter have all continued these negotiations throughout their administrations. So the negotiations have had broad, bipartisan support over these 13 years, and the approval of the treaties is being given broad, bipartisan support now. This support has been from Presidents and from Senators who, upon entering their oath of office, swore, took a solemn oath under God, to uphold and defend the United States and the Constitution of the United States.

Mr. President, the treaties which are now before us have the same purpose as the resolution approved by the Senate in 1935 and the treaty submitted to the Senate 131 years ago this week by President Polk—opening communications between the Atlantic and Pacific oceans through a ship canal, and securing forever the free and equal right of navigating such canal to all nations on the payment of reasonable tolls.

Our forebears in the Senate demonstrated great wisdom and vision in recognizing the importance of opening a link between the Atlantic and Pacific through Central America. It required many years and a monumental effort before the canal across the isthmus which connects North and South America became a reality.

Just as those Senators of another era acted with remarkable foresight, so did those of a subsequent generation in making the decision to construct the canal.

The treaties before the Senate challenge us to act with equal vision.

With the inclusion of the two amendments I have introduced on behalf of the distinguished minority leader (Mr. Baker), the distinguished chairman of the Foreign Relations Committee (Mr. Spark-

man), the distinguished ranking member of that committee (Mr. Case), the two distinguished whips, (Mr. Cranston and Mr. Stevens), and 72 other Senators, a large bipartisan group, these treaties are, I am convinced, in the long term best interests of the United States. They are the best means of assuring what our Senate forebears sought so long ago—a secure canal connecting the two oceans, open to ships of all nations.

Mr. President, I have held the floor now for a little more than an hour and a half, and I feel out of respect to the distinguished minority leader I should not hold the floor longer today. I have read through nine pages of my prepared text. I am on the 10th page of a text that is 49 pages in length. I have yielded respectfully to others of my colleagues. I do not feel that I should continue with the remainder of my speech today. Out of my regard for the distinguished minority leader, I am about to yield the floor at this time. I shall continue my speech, and shall make the remainder of it, tomorrow, perhaps, or perhaps even after the nonlegislative day period.

I would like, however, at this time, to summarize the major reasons why I support the treaties if the two amendments proposed by the joint leadership are approved.

These treaties represent the product of negotiations conducted under four administrations, Republican and Democratic, over a period of 13 years. That is No. 1.

Mr. LAXALT. Will the Senator yield on that point for just a moment?

Mr. ROBERT C. BYRD. Yes.

Mr. LAXALT. During the course of the Senator's comments, this observation was made, and the point has been made several times around the country, suggesting that because five Presidents have negotiated with varying degrees of intensity, and because it is bipartisan, that perhaps then in the performance of our constitutional responsibilities this body should go along. Is it not true that in accordance with that very same Constitution that the Presidents, whoever they may be, and however many there may be, only have the power to negotiate—only—and that we here in the U.S. Senate, reflecting as best we can within the framework of our consciences and our principles, and reflecting the will of our constituencies, are the only ones with the power to bind? So if there had been 50 Presidents out there attempting to negotiate this treaty, it is of little moment to the Members of this body, because we eventually have the responsibility under the terms of the Constitution to finally make a judgment.

Mr. ROBERT C. BYRD. The Senator is correct. The Senate is not under any obligation, nor is any Senator under any obligation, to support the treaties merely because of the negotiations have been carried forward under the administrations of Presidents represented by both parties. That is not an argument, and I do not propose to make it an argument, for support of the treaties. I simply have said, and I say again, that the treaties represent the product of negotiations that have been conducted under Republican and Democratic administrations so that it cannot be said that these treaties are the product of a Democratic President only, but they reflect the kind of bipartisanship which both parties, throughout

the history of those parties, have generally reflected when it comes to foreign policy.

Second, these treaties, in my view, are consistent with the long-perceived interest of the United States. What is that long-perceived interest? A secure international waterway open to neutral access and use in peace and war by the United States and other nations.

So the problem is one that has been given attention by many Presidents and by Congress over a period of 14 years in recognition, I believe, of its being in the long-perceived interest of the United States.

These treaties would assure a climate of good will and understanding which would be conducive to keeping the canal open and accessible to uninterrupted use, thus protecting our long-term economic and diplomatic interests.

As the Joint Chiefs of Staff have repeatedly emphasized, the real strategic value of the canal, from a military standpoint, is in its continued, open, and assured use by the United States.

When I speak of the Joint Chiefs of Staff, I speak of those men who, today, have the responsibility for the planning, for the defense and future security of this country—not men who had the responsibility a decade ago or 20 years ago or 50 years ago, but the men who have that responsibility today.

Such use is best guaranteed by ratification of the new treaties, which would result in an atmosphere of cooperation, good will, trust, faith, and mutual respect, rather than confrontation in Panama.

Panama would have a greater stake in the canal and thus a stronger interest in its continued efficient and unimpeded operation. However, the United States would retain a high degree of control over the canal through the end of the century, as well as defense rights thereafter.

All annuity payments to Panama will come exclusively from canal users through tolls—not from tax dollars.

The new treaties will create a climate in which the canal can continue to function as a financially sound public utility, serving not only the United States, but also the entire world.

Ratification of the treaties would be consistent with our own role as a leader among nations. It is particularly important for our relations with Latin America. Rejection, on the other hand, would be seriously detrimental to our economic and diplomatic relations with the nations of this hemisphere and would give new impetus to extremist elements throughout—not only in Panama but in other Latin American countries, and may I include in the democracies of Latin America.

Those extremist groups are still there. They are in Venezuela, they are in Colombia, they are in Costa Rica—the democracies.

Mr. LAXALT. Will the Senator yield?

Mr. ROBERT C. BYRD. To reject the treaty would give new impetus to those elements, would give ammunition to them so that they could criticize the United States and stir up strife within those countries and attack the governments of those countries.

If I could just finish, I shall be glad to yield.

Mr. LAXALT. May I make one observation in the context of the Senator's statement?

Mr. ROBERT C. BYRD. Yes.

Mr. LAXALT. The Senator speaks of extremists in these various countries, and I do not think there is any doubt that, as in other countries, they exist in Latin American countries. Is it not also true that there are a great number of extremists within Panama itself—people who may not be willing to take a 23-year siesta, as has been indicated by the rhetoric there but, instead, when these treaties are ratified, will immediately want to take possession of those facilities? Does that not present just as dangerous a situation potentially as the reaction we are going to get from extremists in other Latin American countries?

Mr. ROBERT C. BYRD. There are extremists in Panama; there are extremists in the United States of America. There have been extremists in Panama. There always have been extremists in every country. So to say that there are extremists today is nothing new. But I say again that, even though the extremists have been in Panama all these years since 1903 and although their governments have shifted from time to time and changed, not once has Panama, not once has any government in Panama ever attempted to repudiate the 1903 treaty, no matter how ignominious that treaty seemed to be to the Panamanian people.

So I am saying that if these treaties are rejected, we are playing into the hands of those extremists, I say not only in Panama, but also in the democracies of Latin America and in other countries.

Mr. LAXALT. Will the Senator yield for one last time?

Mr. ROBERT C. BYRD. Yes.

Mr. LAXALT. The Senator is not suggesting that the Senate make a decision that would be responsive to extremist demands, is he?

Mr. ROBERT C. BYRD. Oh, of course, not.

Mr. LAXALT. I would hope not, because, in my view, if we in the Senate ever start making policy decisions of the type we may be confronting here shortly to satisfy any extremist group, we are going to be terribly derelict in our responsibilities.

Mr. ROBERT C. BYRD. I have heard that, Mr. President. That is one of the arguments being used against these treaties, as though we are bowing the knee, bowing the knee to the extremists. There is not any conceivable situation that could arise in Panama if these treaties were rejected, no conceivable situation that could possibly arise in Panama that we could not handle with our military.

Mr. LAXALT. Is that not the case, I ask Senator Byrd—

Mr. ROBERT C. BYRD. So why are we bowing the knee? We are not bowing the knee. We are not tucking our tails between our legs and running, because of some fear that there might be a situation arise in Panama that would create a military exigency.

This Senator knows, as I know, that no conceivable situation could arise there that the U.S. military cannot cope with. That is not the question.

Mr. LAXALT. I cannot tell the Senator—

Mr. ROBERT C. BYRD. That is not the question, but that is the answer that would apply to those would say that those who ratify these treaties are tucking their tails between their legs and running, because they are under threats and that it would be bowing the knee.

Mr. LAXALT. I cannot tell the Senator how delighted I am—may I make an observation?

Mr. ROBERT C. BYRD. Now the Senator wants to make an observation.

Mr. LAXALT. One last observation.

I cannot say how delighted I am to hear my leader make these observations, because the administration spokesman, like Sol Linowitz, like Mr. Bunker, have gone all over this country and indicated that if we do not ratify, if we reject, we are going to be meeting violence within the country of Panama. If that element is going to be omitted and deleted from our considerations, I think the debate is going to be far more fruitful.

Mr. ROBERT C. BYRD. That may very well be true. I do not know what we may be facing in Panama or anywhere else, for that matter. I do not know what we may be facing.

I do not know what we may be facing in West Virginia and Kentucky and the other coal-producing States if the coal contract is not ratified.

Mr. LAXALT. Or if these treaties are ratified.

Mr. ROBERT C. BYRD. But I am not using that argument, I say to my friend. General Brown had this to say. I quote from the report of the Committee on Foreign Relations, U.S. Senate, page 24:

I think to describe the United States with this action as proof that the United States is a paper tiger, as this gentleman does, is absolutely wrong. I think, rather than that, it shows the United States to be enlightened. I think it shows the United States to be determined to live in the world today and not in the world of yesterday.

Mr. President, the best way to prevent increased Communist influence in the area is to approve the treaties.

Consideration of these treaties goes beyond the specific issue of the Panama Canal to the broader questions of the effectiveness of U.S. foreign policy and this Nation's image in the world. Rejection of the treaties would seriously impair our effectiveness in dealing with other nations and in undertaking important foreign policy initiatives. There can be no doubt that failure to approve the treaties would have serious repercussions for our overall foreign policy.

These are the fundamental reasons why I am convinced that ratification, not rejection, is in the best interests of the United States—militarily, economically, and politically.

Mr. President, as I say, I feel apologetic to the minority leader for taking the time that I have taken. I have attempted to respectfully yield to other Senators as they have sought to ask questions, and this has prolonged my holding the floor. But I owe that to other Senators, and I respect them for it. I feel a sense of pride that they would ask their questions, pride that they are concerned, and I think it all adds to the edification of the American people and to ourselves.

In many instances, such questions have a persuasive impact on my own viewpoint. I try to keep in mind that I can be wrong and that it is the collective—the collective—wisdom of the Senate that counts and not just one's own private personal judgment.

I thank Senators for their patience. I thank all who have contributed to the debate thus far. I apologize to the minority leader and

at the same time thank him for his patience in waiting while I have held the floor.

Mr. LAXALT. I believe Senator Allen had an observation.

Mr. ALLEN. I want the distinguished Senator from Tennessee to get the floor and then, if he would be kind enough, to yield to me.

Mr. Baker addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. Mr. President, I have remarks at some length to make on this subject. But I understand that the distinguished Senator from Nevada has a question he may wish to put, and the Senator from Alabama has asked me to yield to him briefly so that he can respond to certain statements that may have been made yesterday.

I would be happy to do both those things, if I may, in whatever order my colleagues would wish.

I yield first to the distinguished Senator from Alabama.

Mr. ALLEN. I thank the distinguished Senator from Tennessee, the able and outstanding minority leader.

Mr. President, I do wish to answer two points made by the distinguished Senator from Idaho (Mr. Church) just a moment ago. But before doing so, I want to commend the distinguished majority leader (Mr. Robert C. Byrd) for his erudite, statesmanlike address and for his courtesy in yielding to Senators who might wish to make points contrary to the points being made by the distinguished majority leader.

The distinguished majority leader and I have reached different conclusions as to what is in our national interest as regards the Panama Canal Treaty, but certainly I respect him for the conclusion that he has reached and I respect him further and admire him very much for the very fine address that he has made here in the Senate.

Mr. ROBERT C. BYRD. Mr. President, may I say, if the Senator will yield, that that respect which the distinguished junior Senator from Alabama professes toward me is matched by my respect for him. Never would I question his sincerity of purpose.

I also must say that never have I seen a Member of the Senate who is more dedicated to his people, the people he represents, more dedicated to the Senate itself, more dedicated to its traditions, and more of a gentleman in his treatment of other Senators, than is the distinguished Senator from Alabama (Mr. Allen).

Mr. ALLEN. I thank the distinguished majority leader for those most gracious remarks.

Mr. President, I did want to answer a point made by the distinguished Senator from Idaho (Mr. Church), who will in the next year become chairman of the Foreign Relations Committee on the retirement of my distinguished senior colleague (Mr. Sparkman).

He made a point that at the end of this century we will have had control of the Panama Canal Zone for some 98 years and that when we were dealing with Colombia, which he referred to as a sovereign state with whom we had arms-length dealings, that we had in the treaty with Colombia provided for a lease of 100 years, that actually we were getting 98 years and why should we complete that turning the canal and the Canal Zone over to Panama.

The distinguished Senator overlooked the fact that the treaty with Colombia, while it did provide for a 100-year term of lease, had a further provision that it was renewable at the sole option of the United States.

So that is a far cry from being merely a certain period of 100 years.

The distinguished Senator from Idaho (Mr. Church) talked about the fact that Bunau-Varilla had drafted a treaty that was much more favorable to the United States than was the treaty with Colombia that the U.S. Senate approved and Colombia rejected, but he overlooked the fact or did not mention the fact that at that time, at the time of these negotiations with Colombia, the Panamanian route was not the only route that was under consideration.

In fact, in the year 1902, the Hepburn bill had been passed in the House providing for a Nicaraguan canal.

I might say, that canal route was supported by one of my great predecessors in the United States Senate, Gen. John Tyler Morgan, of Alabama, who has been called the father of the Panama Canal.

That bill providing for a Nicaraguan route passed the House by a vote of 308 to 2 and, unquestionably, the sentiment in the country was for the Nicaraguan route.

So it is quite obvious, Mr. President, that something in the nature of competitive bidding must have taken place.

The House and the people of the United States wanted the Nicaraguan route and if the route was to go through Panama, obviously the concessions had to be made that would induce a change in sentiment, a shift in sentiment, from the Nicaraguan route over to the Panamanian route.

So there is no doubt but what the forces recommending the Panama Canal would have offered to make concessions that were favorable to the United States to see that the Nicaraguan route was not followed, so that official opinion and public opinion might shift in favor of Panama.

I did want to point out those two factors in answer to the comments of the distinguished Senator from Idaho (Mr. Church).

I thank the distinguished minority leader (Mr. Baker) for yielding to me at this time. I am amazed at his good nature in having his opportunity to address this issue be delayed as long as it has. I express my appreciation to him.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. BAKER. Mr. President, I was delighted to yield to the Senator from Alabama and I am pleased to have his remarks at this time.

Mr. President, I yield now to the distinguished Senator from Nevada.

Mr. GRAVEL. I wonder whether the Senator will yield half a moment, in order for me to make an observation.

Mr. BAKER. I had already agreed to yield to the Senator from Nevada.

Mr. LAXALT. I have no problem.

Mr. GRAVEL. I just want to juxtapose into the statement made by Senator Allen.

Of course, if the decision was made to go through Nicaragua, with the subsequent earthquakes and volcanic activity, we never would have had a canal.

Second, the Senator is right with respect to the treaty, the Hay-Herran Treaty, but he must remember that it was turned down unanimously by the Senate of Colombia.

Mr. ALLEN. Yes, and I am sure the Senator understands why that was turned down. There was a consideration of \$40 million involved that they wanted to go to Colombia rather than to the French company, whose franchise had expired.

Mr. GRAVEL. If my colleague will look at the record, he will see that it was turned down over the issue of sovereignty.

Mr. BAKER. Mr. President, I hope my colleagues will pursue this dispute on someone else's time.

I yield to the Senator from Nevada.

Mr. LAXALT. Mr. President, I have an observation or two for the record in response to the observations of the Senator from West Virginia (Mr. Robert C. Byrd).

I thank him for his courtesy and cooperation as a leader. To be subjected to as many questions as we subjected him to is the height of patience.

He made observations indicating that military judgment through the Joint Chiefs is not part of the treaty. It is. But it might also be said, as was indicated yesterday, that outside of those presently in military positions in this country, the vast majority of military people, retired and independent, vigorously oppose these treaties.

Second, he stated that the payment of any tax dollars was not going to be required. I think it was amply and clearly demonstrated in the hearings before the Armed Services Committee last week that that is not the case, coming from no less a figure than the Governor of Panama, himself.

The responsibility of the American taxpayer in connection with this treaty is going to be substantial. It is going to amount to millions and millions of tax dollars.

He indicated that there was no problem in connection with the Communist tie in that part of the world. We respectfully disagree. General Torrijos, in remarks and questions to me, indicated that he is a close friend and confidant of no less than Fidel Castro. It is naive of us, as Americans, to think for a moment that if Castro is going to go several thousand miles away to Africa to do the handiwork of the Soviet Union, he will not, if there is a default in the power situation in Panama, travel a few hundred miles with several thousand troops to take advantage of what has been described by our military people as a hemispheric chokepoint.

I thank the minority leader.

Mr. GRAVEL. Mr. President, will the Senator yield for a moment?

Mr. BAKER. I am sorry, I cannot. I would be happy to do so under different circumstances, but I have just been advised by the assistant minority leader that he has to speak before 2 p.m. I have to speak before he does, and I would like to speak at this time, if I may. I apologize to the Senator from Alaska.

Mr. President, I thank all those who have participated thus far in this debate. In these 2 days, the Senate already has demonstrated that it retains its prime purpose and principal importance to the scheme of legislative and democratic government in the United States—that is, the opportunity for the Senate to provide a useful forum for the exchange of ideas; to provide for the country a stage

on which the adversary positions of men and women of good will can be tested and compared; and to illustrate to the rest of the country that out of this adversary relationship comes neither anger nor disunity, but rather, a better legislative product.

In that view, I urge my colleagues, and indeed the entire country, to understand that in this debate, over such a divisive and emotional issue, the Senate is doing precisely what the Founding Fathers intended and what it does best in terms of the relevant needs of the country. The Senate is providing an opportunity to synthesize the best ideas, to test the best judgments, and to formulate the best policy for the future national security interests of the United States.

I would be the last to claim—indeed, I never have claimed—that all the wisdom on this issue is on one side or the other. Not only is the question of advice and consent to the ratification of the Panama Canal treaties a divisive issue; it is a close issue. Men and women of good will are still on both sides of this question and no doubt will be on both sides of it after we conclude our determination, make our judgment as a Senate, and certify our decision to the President in terms of our consent or the withholding of that consent to the ratification of these treaties.

However, I think the country will be best served by understanding that it is the function and the responsibility of the Senate to hear, to understand, to test, and to judge the differing points of view, not only in the country but more particularly in this Chamber.

I say at the very outset that I have nothing but the most profound respect for every Member of this body and for their points of view and that I will consider each of them separately.

In my own case, I already have announced to the people of Tennessee, on Tuesday night, that it is my judgment that the new treaties, with certain amendments that have now been offered by the distinguished majority leader and me, are in the best national security interests of the United States. I will explain why I think so and even a little of how I arrived at that decision. But before I do, I should like to say a little about the remarks made by the distinguished Senator from Virginia (Mr. Scott) at the very beginning of the debate today.

I asked the majority leader to yield to me only long enough to say that the sensitivity of one who is a candidate for reelection is probably greater than that of anybody else who was involved in that colloquy, and I was the only candidate involved. I know firsthand the difficulty of making a decision on this issue under those circumstances.

Mr. President, without trying to assume or play the role of a moral giant, which I am not, or to lay claim to intellectual superiority and insight, which I do not, it may serve some purpose to give some insight into how one who is under the gun—that is, up for reelection in 1978—in fact judged this issue, before I turn to an analysis of the question itself.

To begin with, this is not a new issue. Other speakers, yesterday and today, have remarked on the fact that the matter of revisions of our treaty arrangement with the Republic of Panama have been the subject of conversations at various levels since the administra-

tion of President Eisenhower and, actually, before that. This matter was actively pursued in the administrations of President Johnson and each succeeding President, Republican and Democrat. It is not like the cartoon I saw in a magazine the other day that showed two men standing at a bar, and one said, "You know, I have not thought about the Panama Canal in 30 years, and suddenly I find I cannot live without it." This is not a new issue. It has been around for a long time. It simply had not been the high-pitched, emotional issue that it has become in recent years.

I think that the intensity of the emotion and the extent of the public campaign in support of or in opposition to the treaties, does not relate to their importance in terms of our perception of national issues but rather to another factor—and that is that in this age of instantaneous communications and almost instantaneous transportation and at a time when the population is better educated and more aware than at any other time in the history of the country, there is a more active concern for the major issues that confront the country. Therefore, I judge the importance of this event in terms of the public's participation in it.

I do not resent that there have been extraordinary letter-writing campaigns, newspaper advertisements, and, in fact, the utilization of all the modern media to try to bring to bear the point of view of one party or the other. I am speaking now of people, not political parties. I think it is a good thing, because it verifies the fact that America, even now, is still maturing into its full role as a self-governing republic. It is uncomfortable for those of us who are running for reelection to have 40,000 letters pour into the mail room, with less than 30 staff members trying to handle them. I say again, to anyone who has not received an answer, just bear with me. It takes a while.

Mr. Stevenson assumed the Chair.

Mr. BAKER. It always causes a concern to pick up a paper in Nashville, Tenn., and see a full page ad in a Sunday edition that says "Only Howard Baker can save the Panama Canal." It never dawned on me that only Howard Baker could save the Panama Canal. Moreover, the ad said, "Write, call, or visit." My wife asked: "Which one do you think they will do?" I said: "Probably all three." And they have.

But I welcome that as well because it is an extension of the public participation in a great national debate. It, likewise, caused a bit of consternation to go to a University of Tennessee football game in that magnificent stadium in my hometown of Knoxville that seats 102,000 people, which is almost as big as the city, and to see an airplane fly over at halftime saying: "Contact Senator Baker. Save the Panama Canal."

So when my friend from Virginia (Mr. Scott) suggested that this was a matter of particular interest to the people who might stand for reelection in 1978, all I can tell him is that he "ain't seen nothing yet." I have been there and I know what it is about. I have visited with the American Legionnaires who talk in earnest about this matter and who listen patiently to my attempt to analyze the issue carefully and dispassionately for them.

Mr. President, even with that experience and with the sensitivity that I have to my own political fortunes, I would not presume to

tell you or any of my colleagues what the country thinks about this issue. I rather suspect that the country wants us to help them decide what to think about this issue. I suspect that the polls recently taken indicate that most people instinctively oppose new treaties with the Republic of Panama, but with certain amendments and additional guarantees a majority probably support new treaties with the Republic of Panama. I would not presume to stand here on this floor and tell you that the American people think so and so. I can tell you what my judgment is and I have done so.

I believe that the judgment of the sovereign, the people of this country, is still to be made and that this debate may have a significant part to play in that judgment.

Parenthetically, Mr. President, I commend the majority leader for agreeing to broadcasts from the floor of the Senate. I had rather hoped that this debate might be televised as well, because I think electronic access to the Senate itself is a logical next extension of the public galleries. If the people of this country are to participate fully and meaningfully in the deliberations of their Government and if we are, in fact, to march together with the collective judgment of the sovereign, electronic communications from this Chamber will be very helpful and a good first step.

Mr. President, I have spoken of the sensitivity I feel for this issue. It is sort of like being, if my friend from Nevada will pardon the expression, a Las Vegas gambler. I feel sometimes you are betting every chip you have on this because this issue is a killer issue politically.

It may devour you, or you may survive it, but you cannot profit from it politically. No way.

Mr. President, all that does is make the issue more difficult. It does not shed any light on our determination. It makes it more uncomfortable. It does not facilitate the decision. It makes it more unpleasant, but it does not alter the facts.

Against that background of acute political distress, let me tell you how one Senator arrived at his decision. First, I know the majority leader will forgive me if I say that while we arrived at the same judgment on the desirability of amending these treaties by Senate action, and ratifying them as amended, I believe we arrived at that judgment, in part at least, by different routes. For instance, I do not think the 1903 treaty was a bad treaty. I think it was good for Panama and good for the United States, and I am proud of the canal that came as a result of it. I believe the pride that it has brought to the United States is well justified.

But that is not the point.

The point is—I did not negotiate that treaty, and I refuse to accept a burden of guilt for someone else who did. I must take the facts as I find them. And I judge them on the basis of what will best serve the national security interests of this country in the future, not by what happened in the past. Some may say, "Oh, the insensitivity of that."

I am not insensitive, and I have a compassionate concern for the plight of the Panamanian people, then and now. But my official sworn responsibility as a U.S. Senator is to look to the future of the United States. My judgment must be made not on whether it was a

good treaty then, but whether it is a good treaty now; and, whether that treaty agreement should be changed.

Mr. President, as far as I am concerned, this political odyssey began in August 1977, when I was in Tennessee during the period that the Senate was not in legislative session. I was enjoying an opportunity to travel about my State, even to visit with my family a little, and as I recall it was early one afternoon when I picked up the telephone and the operator said "Senator Baker, the President wants to speak to you."

The President came on the line to tell me that negotiations with Panama were about complete and that he wanted me to know of this in advance. The President also said that he hoped that the treaty could be submitted to the Senate immediately and that we could have early on that treaty in 1977.

I am sure the President will not be offended if I repeat now my reply in substance. I try to make it a policy not to repeat conversations in which only Presidents and I are present, but I think this is important and I believe the President would not judge it a mistake to deviate from that personal policy.

I thought for a minute and replied:

Mr. President, I am sure you know as certainly I know that this is an issue that will generate strong emotions, that will divide my State, the country, and indeed divide my party and your party, too. One only has to recall that extraordinary contest in the Republican Presidential primary in 1976 when this was certainly one of the principal issues in the campaign between President Ford and Governor Reagan, to know that it is going to be divisive. It is going to be difficult. And I must say, Mr. President, that I want you to know that I will consciously make the decision not to decide how I will vote during this year, and that I will wait until after the first of January to make that determination because I want to make certain that I fulfill my responsibilities as a Senator to my State and as minority leader to my party in the Senate.

I believe the President understood my point of view. When I returned to Washington I discussed the matter with the distinguished majority leader, and as a result he and I cosigned a letter to the Senate Committee on Foreign Relations, chaired by Senator Sparkman, of Alabama, and on which the senior Republican, the ranking minority member, is Senator Case of New Jersey. The essence of the letter was: We want the Foreign Relations Committee to hold the most extensive hearings. We want you to take your time. We want you to provide a forum for everyone on every side of the issue to be heard. We will cooperate with you as majority leader and minority leader in seeing that you have all the time you need to meet, and would encourage you to meet even after the Congress adjourns sine die so that the Senate will be in a position after the Congress reconvenes in January to proceed to consideration of these treaties.

The Foreign Relations Committee did hold extensive hearings, and did hear a wide variety of testimony on every conceivable side of the issue. The report of the Foreign Relations Committee is voluminous and extensive indeed.

Following the hearings, Mr. President, if I may take just a little more of the time of my colleagues to describe how I arrived at my decision, the Congress adjourned sine die in December. There was an opportunity to return to Tennessee once more, to spend Christmas there, and to ponder on what had gone before, to try to

understand this avalanche of information and contradictory testimony, to consider the views represented in the briefs and position papers submitted by two expert consultants that I had employed in my office as minority leader—one for the treaties and one opposed—and decide whether I had done all I needed to do to make a wise and reasoned judgment that would fully respond to my duties as a Senator and to my party in the Senate.

In December, I decided that the treaties did not meet the requirement that the future interests of the United States be fully protected, and that there was ambiguity in the neutrality treaty that I felt had to be dealt with. I had previously the privilege of visiting at the White House with President Carter. President Carter indicated then that he hoped to have a memorandum of understanding with General Torrijos to clarify articles IV and VI of the neutrality treaty.

I told the President that I would encourage him to do that—at that time the proposed memorandum of understanding was in the form of a letter—and I urged him to try to get General Torrijos to sign the letter. However, I also told him then that I did not think that a memorandum of understanding between President Carter and General Torrijos would suffice, that I thought that the matter had now moved to the Senate, that the Senate had an obligation under article II of the Constitution, and that, while a memorandum of understanding was desirable, I thought it did not meet the need for mandatory action by the Senate.

That was my final judgment. I decided there needed to be further amendments to the neutrality treaty before we turned to the consideration of the canal treaty itself, keeping in mind, of course, that unlike the 1903 arrangement, where there was one treaty—there are two in this case—the canal treaty and the neutrality treaty.

The question arose, what would the President of the United States say about the submission of such amendments? What would the Republic of Panama say? Would they reject the amendments? This was important because amendments require the formal concurrence of the other government. Was it or was it not worthwhile to try? What would the other countries of Latin America think? Mexico, for instance, or Colombia or Venezuela? In two or three of those countries, there is at least the possibility that a sea-level canal might be built. There is a provision in these treaties that the United States will not build a future canal anywhere except in Panama. What would these other Latin American countries think about amendments with respect to the sea-level canal?

Shortly after the first week of the new year it was my privilege to travel, in the company of two other Senators, pursuant to an authorizing resolution of this Senate, to Panama and to other countries, to ascertain their views. The distinguished Senator from Utah (Mr. Garn) and the distinguished Senator from Rhode Island (Mr. Chafee) accompanied me on that trip.

Mr. President, to abbreviate this chronology, I would like to say that on meeting with General Torrijos in Panama, I told him that I felt that our best interests, his and mine, would be served by absolute candor and frankness, and that I wanted him to know that the treaties in their present form, unamended, in my judg-

ment had absolutely no chance of passing the United States Senate. If he was amenable to amending the treaties, I would like to know that before I decided whether it was worth while to ask the Senate to work its will, in the amendatory process, to change them.

Our delegation, Mr. President, met twice with General Torrijos and a number of other government officials, both military and civilian, and the net result was that in my judgment General Torrijos indicated that the Government of Panama was ready to consider certain amendments, that they would not object to them, and that a satisfactory package of amendments on additional guarantees might be put together that would have some chance of passing the Senate, as contrasted to the treaties unadorned, which, in my view, had no chance of prevailing.

Having reached that decision, I made an announcement in Panama that I would return to Washington and try to put together such a package of amendments; and, I did. The result of that, Mr. President, was the joint initiative of the distinguished majority leader and 77 other Senators, including me: a joint leadership effort and a bipartisan effort to put these treaties in shape so that they were consistent with the requirement that they serve the undoubted national security interests of this country, and so that they would have some reasonable chance of passing this Senate.

It is still uncertain whether the treaties, as amended, can pass this Senate. That is what this debate is all about. This is one of the few cases where the Senate will decide the issue on the basis of the debate. It is not a charade. What is going on here will probably determine the outcome.

But I was pleased that we were able to get that number of cosponsors. I think it augurs well, not only for the future of the treaties but also the spirit of this body, because it showed that although Members disagreed on the final outcome, many of them wanted to work together to try to improve the submission before the Senate.

I look around the Chamber and see the distinguished Senator from Utah, the distinguished Senator from Nevada, the distinguished Senator from Indiana—and there are others here—who cosponsored that amendment. I am certain that some of those I have named may not be entirely convinced that they should vote for the treaties, but I think the fact that they cosponsored the amendment signifies a healthy and wholesome attitude in the Senate, that is, that the Senate will work its will to improve the documents, and then make final judgment on what the outcome should be.

Mr. ROBERT C. BYRD. Will the distinguished minority leader yield for one observation at that point?

Mr. BAKER. Yes, I will.

Mr. ROBERT C. BYRD. I had the experience, and I am sure the distinguished minority leader had the same experience, in talking with some Senators about those amendments, that some Senators told me they would support the amendments, but for various reasons they did not want to cosponsor them. So actually the support of the amendments will be greater than is reflected by the 78 sponsors and cosponsors thereon.

Mr. BAKER. I thank the majority leader. I had, indeed, the same experience, and I was doubly grateful for the cooperation and indeed the assistance of Senators who do not favor the treaties at this point, in trying to improve them according to the suggestions contained in those amendments.

Mr. President, I do not want to state this next set of facts without great care. I want my colleagues to fully understand that while the Panamanian Government indicated to my satisfaction that they would support such amendments and would not object to them, it is still, as far as I know, the position of the U.S. administration that they do not favor amendments. I cannot say that the administration will favor them. I can only say that it is my best judgment that if the Senate works its will and does, in fact, amend the treaties, they will not be objected to by the administration. I want that carefully understood. I do not have that representation at present, but I have a strong view that the administration will not object if the Senate decides to work its will and, in fact, to amend these treaties.

Following that point, Mr. President, the distinguished majority leader (Mr. Robert C. Byrd) appeared before the Committee on Foreign Relations to express his point of view as that committee began proceedings which would lead to the reporting of the treaties to this body for its consideration. At his request, and at mine, the Foreign Relations Committee did not amend the treaties, but rather, made only recommendations for amendments. That was not to short circuit the Committee on Foreign Relations, but because we believed that every Member of the Senate should have an opportunity equal to that of members of the Foreign Relations Committee to participate in deliberations. After all, the Senate now in a special procedure, sitting as the Committee of the Whole, is the functional equivalent of the Foreign Relations Committee and has general jurisdiction of the subject matter as a committee. Therefore, I was particularly pleased that the committee accepted the judgment of the majority leader, in which I concurred, that the maximum opportunity for those for and against the treaties would be afforded by reporting the treaties to the floor without amendments, but, rather, with suggestions.

I think that was borne out by the fact that 76 people did participate in cosponsoring the amendments Senator Byrd and I suggested, whereas in the Foreign Relations Committee no one but the members could have participated. The amendments would have appeared here as committee amendments rather than Senate amendments. I pay special tribute to the Foreign Relations Committee for doing that because, while it did not diminish their stature, it did accommodate the greater need of a greater number of Senators in this Chamber.

Mr. SARBANES. Will the Senator yield?

Mr. BAKER. I yield.

Mr. SARBANES. As a member of the Foreign Relations Committee, I want to say that I believe the procedure suggested by the majority leader and supported by the minority leader was an extremely constructive procedure to follow in this instance. The minority leader is correct that the committee did not actually amend the treaties but it did adopt positive recommendation with respect to

amendments which should be offered and which the majority and minority leaders had presented.

It was my view, shared obviously by the committee, that this was a constructive way in which to proceed, and that it would give maximum opportunity to the Members of the Senate to work their will in respect to this very important matter.

Mr. BAKER. Mr. President, I thank the distinguished Senator from Maryland for his comments, and for his help in the committee in dealing with the issue there, and in supporting this method of bringing it to the floor for the consideration of this body as a Committee of the Whole. I appreciate his remarks.

Mr. President, I would like now to turn to the reasons why I believe the amended treaties best serve the national security interests of the United States.

I followed with great interest the colloquy just held between the distinguished majority leader, Senator Byrd, and the equally distinguished Senator from Nevada (Mr. Laxalt), about whether we were bending our knee as a nation to the threat of terrorists. I would like to state my views without any association with either point of view. I simply want to state my views on this subject.

I believe the United States of America can operate that canal come what may.

I think every Member of this body, and the President of the United States, would do whatever was necessary to see that that canal stayed open and available for shipping and military purposes, whether these treaties are amended or not. I just happen to think it is going to be a lot easier to try to keep the Panamanians as our friends and allies than it is to convoy ships through the canal.

I just happen to think it is going to be better to try to accommodate the purposes of 1978 instead of clinging to the status quo.

I believe, Mr. President, that the 1903 treaty was a good treaty then but I do not think it is a good treaty now.

I do not think the United States should approve these treaties out of fear of another Vietnam, because I do not believe there will be another Vietnam in Panama.

In traveling to Mexico, Venezuela, Brazil, and Colombia, I asked in each case what would happen if these treaties were rejected. Would there be assistance and aid from adjoining countries? Would there be a supply line to Panama as there was into Vietnam? The answer was, "Of course not."

I do not believe for one instant that terrorist activities or student activities in Panama could keep the United States from using and enjoying that great waterway. It might be necessary to reinforce our garrisons there, but if it is we will just do it.

However, I think there is a better way, Mr. President. The better way is with revised treaties, extending in perpetuity our right to defend that canal in its utilization and neutrality, and our right to use it in time of war against anyone else, even including Panamanians, forever.

Some say, Mr. President, that by doing this we are giving away the canal. On the contrary, Mr. President, if these treaties are ratified, as amended, we will have more rights to defend the Panama Canal after the year 2000 than we have at any other defense establishment anywhere else in the world—more than in

Spain, in Greece, in Turkey, in England, or anywhere. We will have more permanent rights, more extensively held, in relation to the defense of the canal than anyplace else in the world.

Mr. LAXALT. Will the Senator yield for a question?

Mr. BAKER. Yes.

Mr. LAXALT. While it may be admitted that that may be the case in relation to our bases elsewhere, the Senator is not contending for a moment that we will have more rights after we give up this canal in its protection and operation.

Mr. BAKER. The Senator from Nevada is entirely right. That is one of the factors we have to take account of in making the balancing judgment. Certainly, we will have less rights after the year 2000 than we have now, but we will have more rights after the year 2000 than at any other military establishment anywhere else in the world, except those in the United States.

This points up, Mr. President, this very pertinent inquiry by the Senator from Nevada, the nature of the difficulty in arriving at these decisions. There is no clear-cut answer to this. Do we need greater rights than I have described? Do we need the rights we have now or even more rights than we have now in case of a world challenge in the future? I do not know.

All I can do is bring forth my very best judgment and decide, on balance, what is best for the country. Men can honestly differ on that point. It is a good point.

Mr. President, that brings me to the last point I would like to make. There is a section of the report on my trip to Latin America entitled "What Will the Neighbors Think?"

To summarize briefly, Mexicans think if a sea-level canal is built they may want to build it. In fact, I suspect that they are more interested in natural gas problems right now than they are in the Panama Canal.

The Colombians, on the other hand, have every right to be a little resentful. We may have, indeed, facilitated the loss of the Panama province. But I found no recrimination or bitterness in their attitude. I found instead that they are greatly concerned about the perpetuation of their rights to free passage of Colombian ships through the canal.

I found in Venezuela that there was a great concern for the unrest, the distress, and the political difficulty that might occur if the treaties were not ratified, particularly in terms of future encroachments by unfriendly powers such as Castro's Cuba.

I heard in Brazil a statement that America is a great power but it will not solve all of its problems in Latin America with the Panama Canal treaties. I would urge my colleagues to understand that. We are not going to solve every problem in Latin America with these treaties whether we approve them or do not approve them.

We have big problems with Brazil and I urge the administration to face them because they are problems of major consequence. Brazil has an economy that is growing so fast that in a few years its GNP, its population, and certainly its national pride may rival that of the United States. We have to put our house in order with Brazil.

Their general view is, "You ought to have the treaties but that does not solve all your problems. That is just an installment along the way."

I suspect this is probably right.

Mr. President, the President of Venezuela, who is an articulate, ebullient, capable politician, a great administrator, and magnificent host—we stopped at Caracas for 6 hours on the way back and spent a productive 4 hours with him in nonstop conversation—is most persuasive.

I asked this question, and I think it has a telling impact:

What would happen if some years in the future another head of government in Panama decided that Torrijos had done such a good job and made so much political hay out of new treaties with the United States, "Why don't I do it one better and negotiate that treaty again? Why don't I try to accelerate the day of the Panamanian take-over from 2000 to the year 1990, for instance?" It is a pretty good political issue in Panama.

The President of Venezuela said, and I am grateful to him for saying it, that if the United States does, in fact, negotiate satisfactory new treaties with the Republic of Panama, he will insist, as will, in his view, all Latin American countries, and even support the United States in the insistence that the treaties be fully performed according to their terms.

Mr. President, I close by saying, once again, that this is a close issue and a close call. I have indicated to my friends on this side of the aisle, on both sides of the question, that I wish to be of service to them in seeing that we have a meaningful and thorough debate. And I will do that.

Not only will future unity in this country be served by that, but significant debate on a close and important issue in the Senate go a long way toward the growth of our ability to govern ourselves intelligently at a time when we are better suited to it than ever before; at a time when the American Congress is more relevant to this era than ever before; at a time when our population is better educated and more aware than ever before; and at a time when our greatness has just begun.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. BAKER. Yes; I yield.

Mr. JAVITS. Mr. President, I think the Senator has made a magnificent statement, very forthright, very frank, giving his reasons for his support of the treaty with the amendments. May I say, as one of those who did not believe that the amendments were necessary, I believe the treaty says exactly what Senator Baker says it says. The purposes and intentions of the United States, it seems to me, are very clear. I do not know how many of us will be here in the year 2000, but I think our national purpose will be observed. I think we can proceed with confidence. But I also agree with Senator Baker that if this is what is required to reassure 67 Members, then it should be done.

I think that the people in Panama have shown an extraordinary discipline, considering their deep national feeling on this subject, by voting 2-to-1 for this treaty. It was made clear to them that the substance of these amendments would be made a binding agreement. They could easily have taken offense on the ground that we

were just belaboring the obvious. But the Panamanians are anxious for a settled course, which we are laying out with them in these treaties. I hope very much that these great purposes which is our objective can be served by the approval of the treaty with these amendments.

Mr. President, may I say, too, that I have the deep wish that those who so sincerely oppose the treaties—and I know Senator Laxalt is one who can be relied on to feel that way—will be gratified with us if it works out the way we think it will work out when we cast our votes.

Mr. DOLE. Will the distinguished minority leader yield?

Mr. BAKER. Mr. President, I am happy to yield to the Senator from Kansas (Mr. Dole).

Mr. DOLE. Let me say, first of all, that I appreciate the statement of my friend, the minority leader. I know it was a very difficult decision that was made.

I will say, as I indicated yesterday to Senator Byrd, that there may be others of us who will cosponsor the amendments, having originally sponsored the amendments as early as last September, and I assume we are not precluded from that.

Mr. BAKER. Mr. President, I must say that the Senator from Kansas is exactly right. As far as I know, he was the first one to make these suggestions in virtually this form. I am grateful to him personally for taking those initiatives and he would be most welcome as a cosponsor.

Mr. DOLE. I think the second question is—and I know it has been very difficult. There are some political overtones. I have read about what will happen to Senator Baker and Senator Dole, what will happen to the treaties. We are all aware of that. But I think the Senator from Tennessee has addressed the question in the proper way. Our responsibility is to the American people, not to a political party. Our responsibility is to make a determination. And it is a very close call, as the Senator from Tennessee has indicated.

I guess the Senator from Kansas, having made some suggestions and having still others to suggest during the course of the debate, would hope, and he has no reason not to hope, that the distinguished minority leader, as well as the distinguished majority leader—because I know both men struggled mightily with the decision. It is not an easy decision. As the distinguished majority leader said earlier, if we took a poll, it would be a very easy decision. But we are called upon to do more than tabulate.

I commend both the leaders for arriving at that decision. I may not agree with it totally, but I agree with it. They have struggled and they have tried and they have made their decision.

I guess the question, then, is if other amendments are offered that have merit and that would improve the treaties in the interest of this country and the Republic of Panama, would the minority leader be in a position to support those amendments?

Mr. BAKER. Yes.

Mr. DOLE. Or are we being told that this is it, that we will have the two amendments to the neutrality treaty and that is all?

Mr. BAKER. Mr. President, I think the Senator from Kansas' question is a good one, as his questions always are. I can only answer for myself. The agreement to cosponsor the two amend-

ments between the majority leader and me did not carry any obligation not to cosponsor any other amendments. It is my view that Senator Byrd probably will not, but I have not precluded that.

I must say in all candor, however, that I do not plan to support any amendment that would change materially the shape and the form of the treaties. For instance, I would not support an amendment that would change the date for transition. If it does not fundamentally change the shape and form of the treaties, then I would willingly consider not only amendments but, reservations and understandings that might also be helpful.

I might say that I have talked to a number of other Senators on this side who have a range of understandings that they wish to suggest in aid of interpretation of other parts of the treaty. Frankly, I have encouraged them to so proceed. So my answer to the Senator from Kansas is that this is not a take-it-or-leave-it proposition as far as I am concerned.

Mr. DOLE. I thank my distinguished colleague and emphasize that there may be differences, and there are very close differences. I think there are probably six to eight Senators—I cannot name them. I guess out of 100, there may be 6 or 8, as the Senator from Tennessee has said, who may be impacted by the debate. It seems to this Senator that, as we consider amendments, that is all we can ask, that they be considered as being responsible and well motivated, and offered in an effort to improve the treaties.

I thank my distinguished leader.

Mr. BAKER. Mr. President, I thank the Senator from Kansas.

I yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished minority leader for yielding.

I ask unanimous consent that Richard McCall, and Al Saunders of Senator Humphrey's staff be granted the privilege of the floor during Senate consideration of resolution and ratification of the Panama Canal treaties.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BAKER. Mr. President, I yield the floor.

Mr. Stevens addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, if the Senator will yield just briefly, I want to compliment the distinguished minority leader on his eloquent presentation that I have just listened to and congratulate him for the process by which he evolved his decision. It was a long one. It was a difficult one for him, and, as a Senator who is running this year, he is in a situation that, thankfully, two-thirds of the Members of the Senate are not in.

So I congratulate him and I applaud him for his courage and forthrightness in wrestling with this decision and for his fine statement.

Mr. BAKER. I thank the Senator.

Mr. ROBERT C. BYRD. Mr. President, I now thank the Senator from Alaska for indulging my comment.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Mr. President, I thank the Senator from West Virginia, the distinguished majority leader, for his comments. I, too, want to commend Senator Baker, our minority leader, for his

statement and for his very clear definition of his position and how he arrived at it.

I am one of those who is opposed to the treaties as they are now presented. I have stated that there are amendments that I feel must be adopted if these treaties are to reflect the best interests of the United States.

If the amendments are adopted, I will reconsider my opposition to the treaties. I believe it is possible for many of us to be satisfied with the terms of the treaties if the Senate is willing to make the changes that are necessary in order to deal with the reservations and fears we have concerning the text of the treaties as they now stand.

Mr. President, I am sending to the desk a technical amendment to the amendment of the majority leader and the minority leader, amendment No. 21, and I ask unanimous consent that it be printed in the Record.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT No. 30

Insert at the end of amendment No. 21 the following:

"In accordance with Annex A to this treaty the term "auxiliary vessel" shall be deemed to mean, any ship, not a vessel of war, that is owned, operated, or otherwise engaged in the carriage of military and nonmilitary government cargoes by or for a state and used, for the time being, exclusively on government non-commercial service. This is intended, and it shall be so interpreted, to insure that vessels which are chartered or leased by a state, irrespective of the type of charter or lease, are considered to be "auxiliary vessels".

Mr. STEVENS. Mr. President, my amendment clarifies the definition of "auxiliary vessel" in order the vessels chartered or leased by the United States, vessels which carry the bulk of our military and nonmilitary Government cargoes, will receive head-of-the-line passage in the event of an emergency. The present definition of "auxiliary vessel" incorporated into the Treaty Concerning the Permanent, Neutrality and Operation of the Panama Canal through annex A fails to adequately insure this.

In order for a vessel to receive head-of-the-line preference, it must be either a "vessel of war" or an "auxiliary vessel" of a state. "Auxiliary vessel" of a state is defined in annex A to the treaty concerning the permanent neutrality and operation of the Panama Canal as a vessel that is owned or operated by a state. This poses a substantial problem for the United States, 97 percent of whose bulk cargo and 82 percent of whose petroleum cargo travels on civilian vessels under charter by the United States.

Under the traditional rule of international law, military charters and leases are considered Government-operated vessels. This doctrine, however, has been substantially eroded. A growing number of third-world nations now refuse to recognize Government-chartered vessels as operated by a state and to grant those vessels appropriate privileges. The incidents involving Military Sealift Command-chartered vessels have occurred not only in third-world nations, but nations of the industrialized world as well. A recent incident occurred in Okinawa where local customs officials refused to recognize an MSC-chartered vessel as operated by the United States.

The U.S. Coast Guard subjects vessels that are leased or chartered to the U.S. Government and operated by commercial operators to numerous Coast Guard regulations related to inspection and manning requirements including the Federal Water Pollution Control Act, the Dangerous Cargo Act, and the Hazardous Materials Transportation Act to which Government vessels are not subject.

My technical amendment which affirms the intent of the framers of this document unequivocally affirms the traditional rule of law and insures that vessels chartered or leased by the United States will be classified as auxiliary vessels. The erosion of the traditional doctrine of International Law governing charter mandates this amendment.

In the past 15 years there have been numerous changes in traditional doctrines of international maritime law, some of which have been of substantial benefit to the United States—such as the implementation of 200-mile fishery conservation zones.

I would point out to my colleagues in the Senate that the Soviet merchant fleet will not have this problem. Whenever the Soviets choose to carry military cargoes they are always on-board Government-owned and operated vessels since their entire fleet is Government-operated. Unlike the Soviet counterparts, chartered or leased auxiliary vessels of the United States not recognized as auxiliary vessels for purposes of this treaty could be subject to safety inspections, search, and surveillance as a condition of transit. This could cause undue delay. It would be the height of irony if in a logistics emergency we were unable to resupply our military needs as fast as the Soviets because of our heavy reliance upon civilian vessels chartered by the United States for the carriage of our military cargoes.

Further, such vessels could be made to disclose their port of origin, destination, and cargo. Disclosures of this nature could be antithetical to U.S. security interests during a military operation. We should at the least require that this treaty put us on equal parity with the Soviet maritime fleet.

Mr. President, I have consulted closely with academia in the development of this position. Prof. Richard Baxter of the Harvard Law School, an internationally renowned specialist in this field who has been working with the Senate Foreign Relations Committee and who has testified before them on the canal treaties, agrees with my analysis of the "auxiliary vessel" definition. Professor Baxter is sending a letter to that effect which has been slowed down as a result of the blizzard presently inundating the New England area.

Mr. President, I believe in order for the Senate to fully understand the importance of this amendment, it would be helpful if a detailed description of the Military Sealift Command was presented. I would like to cover some of the highlights of the MSC mission, its organizational structure, and its operations. I also will note the resources the MSC has at its disposal and describe the manner in which those resources are managed. The Military Sealift Command is a unique organization which is a military unit, though its principal carriers are civilian vessels. It is a Navy command, staffed largely by a civilian work force.

MSC roles are both complex and varied. The MSC has a close relationship with all major elements of the Department of Defense, with the other single manager transportation operating agencies, and with a variety of civilian and Federal agencies. In 1949, the Department of Defense designated the Secretary of the Navy as single manager for DOD sealift, and directed that a sealift operating agency be established by the Navy. The MSC commander is the executive agent for the Secretary of the Navy and commands the Navy operating agency for sea transportation—the Military Sealift Command.

The MSC has supported U.S. force deployments in varied parts of the world in each decade since World War II. In the 1950's following the end of the war in Korea, MSC cargo carriage declined. It began to expand about 1961, and reached a peak in 1969. In that 1 fiscal year, MSC moved more than 30 million measurement tons of dry cargo worldwide. Half of that volume was delivered to South-east Asia. It is important to note that MSC dry cargo lifts in fiscal years 1974 through 1977, were below the previously low volume—in fiscal year 1960. This has had a direct impact upon the configuration of the MSC government-owned cargo fleet, which is now at an all-time low. The following table points out the importance of the MSC dry cargo lift capability:

MSC TRAFFIC DISTRIBUTION

	Fiscal year 1976	Projected fiscal year 1977
Dry cargo (M/T's)	7,854,542	7,688,835
Government owned ships (percent)	5	2.8
Commercial ships (percent)	95	97.2
Petroleum (L/T's)	10,693,169	10,725,000
Government owned ships (percent)	15	18
Bareboat chartered ships (percent)	42	47
Commercial ships (percent)	43	35

On operational matters the MSC Commander reports directly to the Chief of Naval Operations. However, guidance on financial matters is provided by the Assistant Secretary for Financial Management. Guidance on policy and procurement matters is provided by the Assistant Secretary for Financial Management. Guidance on policy and procurement matters is provided by the Assistant Secretary for Manpower, Reserve Affairs and Logistics. Allocation of sealift resources for support of the shipper services—the Army, Navy, Marine Corps, and Air Force—is provided, as necessary, by the Joint Chiefs of Staff.

MSC maintains a worldwide organization to support its operations. Command headquarters is in Washington, D.C., and four major subordinate units known as area commands, are located as shown—at Yokohama, Japan; Oakland, Calif.; Bayonne, N.J.; and Bremerhaven, Germany. Subarea commands are located in Naples, Italy, and New Orleans. Smaller MSC units known as MSC offices are located wherever Department of Defense traffic requires. The

MSC now has 14 and, where warranted, it maintains even smaller MSC units and individual representatives.

The MSC lifts both dry cargo and fuel required by Air Force and Army. The MSC staff must maintain continuing contact with these military departments—as well as with the Navy Department. MSC maintains continuing coordination with the Military Traffic Management Command and Military Airlift Command, the other transportation operating agencies.

MTMC provides terminal services and traffic management data for MSC use in planning and in operations while MAC provides air transportation for rotating MSC ship crews. MSC maintains an interface with the maritime industry and transports petroleum products and dry cargo for all of the military services. Requirements for MSC carriage of petroleum products are levied on MSC by the Defense Fuel Supply Center. The MSC also operates ships for agencies involved in ocean research, space flight, or cable laying and repair. The MSC negotiates contracts with varied maritime labor unions, and with shipyards for repair and modifications to its ships. Since MSC ships about 97 percent of its dry cargo aboard commercial carriers, it maintains close relationships with the commercial shipping companies. My technical amendment seeks to protect the carriage of this cargo.

Obviously, as a major shipping agency, MSC has considerable contact with the Federal Maritime Commission and the Maritime Administration. In all that it does, the MSC is carrying out transportation and procurement policies established by Department of Defense. I might note that the MSC's relationship with the maritime administration includes review of new civilian ship designs—to incorporate defense features—and the use of assets in the National Defense Reserve Fleet.

Specific agreements and legislation have established constraints which impact on MSC operations—and on its acquisition of resources. One is the Wilson-Weeks agreement, negotiated more than 20 years ago by the Secretaries of Commerce and Defense. While recognizing the need for a militarily controlled fleet, capable of meeting initial requirements of a contingency, and requirements commercial ships cannot fulfill, the agreement establishes priorities for acquisition of sealift assets and services on civilian vessels.

Two historic acts which set forth U.S. policy with regard to utilization of commercial U.S.-flag ships have an impact on MSC management of its resources. The 1904 Cargo Preference Act requires that only U.S.-flag ships, including Government-owned vessels, be used for movement of military cargo. We can employ foreign-flag ships only when U.S.-flag ships are not available. And the so-called 50-50 law, requires that at least half of Government cargoes be carried in privately owned ships. The key phrase here is "privately owned," as opposed to the key words in annex A, "operated by a state."

MSC tanker fleet operations are depicted by a similar graph. There is a difference here, however, that should be pointed out. POL deliveries during the Vietnam war years were much higher than during the Korean war, reflecting greater use of vehicles and aircraft. That trend has had an obvious impact on MSC long-range contingency planning.

I will now address MSC's sealift sources. These are the four primary sources of MSC sealift assets and services. The Sealift Command has limited organic resources. Historically, it has relied heavily on the U.S. merchant marine and the National Defense Reserve Fleet. In some instances, as in South Vietnam, it relied on foreign-flag ships to move military cargo.

The effective U.S. control fleet consists of U.S.-owned ships registered under foreign flags which can be recalled in an emergency situation. We must insure that in an emergency situation these various types of vessels are considered to be auxiliary vessels of the United States. The MSC controlled fleet comprises 106 ships, 68 in the nucleus fleet, and 38 privately owned ships under charter by command. The MSC nucleus fleet is comprised of Government-owned ships and bareboat chartered vessels. The latter are all tankers. All ships in the nucleus fleet are known as U.S. naval ships and the initials USNS precede each of their names.

Fifty nucleus fleet vessels are civil service manned while 18 of our 21 nucleus fleet tankers are operated by private contractors for the command. All six of the dry cargo ships in the nucleus fleet are specialized vessels. Three are ice strengthened and are often used in the Arctic and Antarctic. Two are roll-on, roll-off vessels and one is a heavy lift ship. The bulk of the nucleus fleet is made up of special project ships and those involved in direct support of the Navy fleet. The special project ships, all civil service manned, support the Air Force missile test ranges. Navy oceanographic surveys and research activities, cable laying and repair requirements, and similar nontransportation tasks.

Included in the MSC fleet support inventory are eight oilers, a stores ship, four oceangoing tugs, and four fleet ballistic missile resupply ships. All of these are civil service manned. The major element of MSC dry cargo capability for contingency support is represented by the 21 vessels in the chartered fleet. Included are 14 *Challenges* class breakbulk carriers and six C-4 hulls, two of which are heavy lift ships. The MSC also operates three coal carriers and three small cargo ships which support Air Force missile test range stations. Tankers in the chartered fleet are generally under some type of voyage charter, although one is now on a time charter. Special project ships charters are generally of a specialized nature not available in the U.S.-flag inventory. All chartered ships are manned and operated by their owners—with seamen hired through union hiring halls.

It is obvious from the MSC's heavy reliance on chartered vessels manned by nonmilitary or GSA crews that the status of these vessels must be clarified.

Mr. President, I might add at this point, the present decline of the U.S. merchant fleet, is of substantial concern to the MSC. Several trends in the active merchant marine inventory of dry cargo ships are significant to MSC. The number of these ships has been declining rather rapidly. We now have only about 290 in operation, about half of the 1969 total, and well below the 4,100 we had at the end of World War II. However, the current fleet is highly productive since it contains a high percentage of modern container ships and barge carriers. Tramp ships—primarily breakbulk ships that go where the cargo is—have almost vanished from

the U.S.-flag inventory. The 143 remaining breakbulk ships are largely operated by scheduled carriers.

Defense requirements for tankers can best be met by tankers under 50,000 deadweight tons. About 100 of these tankers are owned by independent carriers and many could be available for Defense Department employment.

What about the National Defense Reserve Fleet? The National Defense Reserve Fleet is a responsibility of the Maritime Administration. It now contains only 143 ships having potential military value. Eleven are seatrail class ships—self-sustaining vessels able to deliver wheeled vehicles and helicopters. The remainder of the useful NDRF inventory is made-up of 132 victory ships. Their eventual demise is inevitable—no matter how indestructible they may seem to be.

In total numbers, the effective U.S. control fleet—U.S.-owned foreign flag carriers—appears to be a substantial contingency asset. However, more than 300 are tankers, many of which are too large for military use. Another 85 are bulk cargo ships with limited defense value. The primary potential of the EUSC fleet is that represented by tankers under 50,000 dwt—and the transports.

As we review both peacetime and contingency sealift requirements, current trends in shipbuilding are significant to DOD. New ships are largely non-self-sustaining and highly specialized, and required sophisticated cargo handling support facilities ashore. In an emergency, we may not have those facilities. Although the RO-RO's and barge carriers do not fit fully into this non-self-sustaining category, their numbers are limited. A high percentage of the existing carriers are container ships, vital elements of a global distribution system. Their withdrawal for military use would have a great impact on public sector requirements. Current merchant ship construction is following the same pattern. The bulk ships now under construction or on order are sorely needed since the United States has only 19 such ships to carry the 46 strategic raw materials we must import. Their contingency capability is limited.

In covering the MSC peacetime and contingency sealift missions, I have commented on the shipping resources available to us. No matter how limited, they are what we will have in an emergency. We must learn to reap the maximum advantage from their capabilities. MSC studies have given the United States information which is guiding our efforts to modernize our tanker and cargo fleets—and to effectively configure those fleets to meet both peacetime and contingency needs.

Such studies include MSC review of plans for new civilian ships to insure that as many defense features as possible are incorporated during construction. I refer to features which will help make the ship militarily useful—such as large loading ports and hatch covers, strengthened decks, and use of materials to minimize damage during an attack. An inherent problem is that the features which reduce a ship's commercial productivity are not enthusiastically received by a ship's owners—an understandable reaction. There is also the problem of financially subsidizing the desired military characteristics.

The net result of various planning efforts has been a series of Navy/MSC programs that we refer to under the general heading of

sealift enhancement. That program is designed to improve both logistical and strategic sealift capabilities. The overall problem was first presented in the Navy program objectives memorandum for 1977. The Navy directed a detailed analysis of the capability of the MSC controlled fleet, the NDRF and commercial ships committed to MSC for emergency use. A conclusion was reached that a substantial effort should be made to increase the numbers of available civilian ships, and to improve the response time of those assets.

One element is MSC's sealift readiness program. Under this program, commercial carriers who offer to carry MSC cargo commit up to 50 percent of their ships for military use in a nonmobilization type emergency. The ships would be called up in phases, and in accord with a contractual commitment by the carriers. Twenty percent would be available within 20 days; 10 percent more within the next 10 days, and the remainder within 60 days. We must be assured that these vessels will receive priority in the transit of the canal.

In the next fiscal year, MSC revenue is expected to be nearly \$1 billion. Based on past experience, more than 80 percent of that will be paid to maritime industry organizations which provide assets, systems, and services to the command. The figures for 1977 are not in yet, but we expect commercial ships to have moved more than 97 percent of MSC's total dry cargo and 82 percent of our petroleum products. Unless my technical amendment is passed, these vessels may not receive priority in time of emergency for transit of the canal.

A recurring theme in sealift is the increasing DOD reliance on the merchant marine. This is understandable, and necessary. In the fiscal year 1977 budget cycle, the Navy initiated a sealift enhancement program. In its present form, this program places strong reliance on the merchant marine. The MSC continues to support funding for tests and exercises to learn how best to employ those privately owned and operated national assets.

Mr. President, I have clearly demonstrated the importance of the military sealift command's reliance on civilian-chartered vessels. It is imperative for the national security of this Nation that we make clear beyond a shadow of a doubt that vessels chartered or leased by the Government of the United States for the carriage of military and nonmilitary Government cargoes constitutes a vessel operated by the United States for purposes of this treaty. If we fail to do so, not only will the bulk of the auxiliary vessels used by the U.S. Navy fail to qualify as auxiliary vessels for head-of-the-line passage, but we will be forever placing ourselves at an inherent, tactical disadvantage relative to the Soviet auxiliary fleet. I would urge each of my colleagues in the Senate to support this technical amendment which clarifies and affirms the intent of the drafters of the treaty.

Mr. President, I thank the Senator from Tennessee for his indulgence in permitting me to make a statement at this time.

Mr. HATCH. I ask unanimous consent that Thomas Parry and Deirdre Houchins of my staff be accorded the privileges of the floor.

The PRESIDING OFFICER (Mr. Anderson). Without objection, it is so ordered.

Mr. GRAVEL. Mr. President, I ask unanimous consent that Bill Hoffman and Heidi Boucher of my staff be accorded the privileges of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. PERCY. Mr. President, the Foreign Relations Committee has painstakingly scrutinized all aspects of the Panama Canal Treaties during weeks of hearings and in our markup sessions. I believe that the recommendations we have made to the Senate are sound, and I stand ready to work with any of my colleagues and answer any questions they may have. I believe that if the treaties are amended to incorporate the defense guarantees embodied in the Carter-Torrijos statement of clarification, our interests will be well protected.

We are all aware that few issues in recent memory have provoked such an intense outpouring of public sentiment. Yet we in the Senate have an obligation to let rationality prevail.

I trust that at no time will we let this debate degenerate into a bitter and divisive, primarily emotional, battle. Certainly, to date the debate has been conducted in the highest tradition of the Senate.

These treaties were not written overnight. They come, as the distinguished majority leader pointed out earlier today, after 13 years of negotiations conducted with the support of both Republican and Democratic Presidents. The negotiators sought to devise an arrangement to satisfy Panama's justifiable desire to exercise sovereignty over all her territory, and at the same time to preserve the ability of the United States to protect the canal and keep it running efficiently. I think the treaties before us, as we propose to amend them, will achieve these goals.

If we now get bogged down in endless haggling about details, trying to squeeze out a few more years here, or trying to deny Panama some payments there, we will lose sight of our main purpose and we will surely kill the treaties in the process. While this may be the very objective of treaty critics, I would not want to be a party to it. I doubt that any of my colleagues would.

I have questioned treaty opponents about the likely consequences if these treaties are rejected, and have asked outright whether they were ready and willing to deal with the resulting situation. None of them has adequately addressed this problem to my satisfaction.

I believe it will not be as simple as saying, "Go back to the bargaining table." It would be difficult to convince Panama to do this after handing them and two American Presidents—President Carter and President Ford—humiliating defeats. We surely will not be able to get a treaty the next time around that gives us, as the proposed treaty does, almost a quarter century for an orderly transition of control. And we will be perceived by our neighbors in the hemisphere—indeed by countries all over the world—as being unwilling to respond to a nation's desire for sovereignty over all its territory. This is similar to the desire which burned in the hearts of colonial Americans 200 years ago.

This is an important moment in our Nation's history. We have an opportunity, in an atmosphere free from crisis, to demonstrate to the world how a large nation can work with a small nation. A large nation, and a powerful nation, as we are, has to lean over

backward in dealing with a small nation, in making absolutely certain that fairness and justice prevail. We can show our willingness to be responsive to the aspirations of a small nation while maintaining our ability to meet our responsibilities as a great world power.

I hope that years from now we can look back on what happened during these proceedings and be proud of what we said and did here.

Mr. President, having studied this issue as intensively as any in my 11 years in the Senate, I have gained an increasing degree of respect for those who take an opposing viewpoint. I have expressed in the Foreign Relations Committee my deep admiration for the distinguished Senator from Michigan (Mr. Griffin). He articulated a point of view which represented in the greatest traditions of the Senate the feelings of others of his colleagues who are not on the Foreign Relations Committee. He did so with dignity, with a depth of understanding of the issues, and with an understanding that others could hold opposite views and have his respect as well.

I was really pleased that we had one articulate, intelligent dissenting voice inside the committee and that we did not have a unanimous committee, because we would not have been reflective of the Senate as a whole. We have already heard on the floor articulate, intelligent, and deep feelings expressed by Senators whose patriotism and whose devotion to their country and its national interests cannot possibly be questioned.

The Armed Services Committee has been of great service to the country and to the Senate, even though it does not have jurisdiction in this matter, by having hearings and bringing out points of view, particularly with respect to the economics of the issue, which have helped clarify some of the problems we confront. I intend, as the debate goes on, to address myself particularly to the economic issues, because more factors were brought out that I think should be aired fully and debated fully.

So it is with considerable respect for those in this body and those in the country who have an opposing viewpoint to my own that I begin to engage in this process. But I do so having come to a conclusion, after as much study as I possibly could put into the subject, having arrived at a decision which I think is right, and which I intend to fight for, but also with deep respect for those who hold opposing views. I will listen attentively for any possible factors that I have not taken into account in my own deliberations and in my own study process in arriving at my own conclusions.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. PERCY. I yield.

Mr. GRIFFIN. Mr. President, I thank the distinguished Senator from Illinois for those very kind and generous remarks.

I say again, as I have said in the Committee on Foreign Relations, and in the Senate, that I deeply respect the views of those who have reached a conclusion contrary to mine. It has been a very agonizing decision for me, and I know it has been for others.

We are engaged in one of the most important and historic debates in my service in Congress, touching on any foreign relations issue; and the decision here is going to be one that we will have to live with for a long time.

It seems to me that there are good arguments on both sides, and I commend the Senator from Illinois for recognizing that. I commend all those who have not made a decision, whether they are in the Senate or outside the Senate, to do as the Senator from Illinois has recommended, and that is to listen and to weigh carefully the arguments on both sides.

I thank the Senator from Illinois very much for his contribution.

Mr. PERCY. I thank my colleague. All of us now will have an opportunity at the end of this week to go back to our respective States. I intend to go from one end of my State to the other and raise as a prime issue the Panama Canal and invite all of those who hold opposing viewpoints to address themselves to every aspect of it that they wish and to test my own judgment in any way that they wish.

I hope that I shall conduct myself with the same skill that I saw last night on public television, on one of those rare occasions when I was able to get home by 7:30 p.m. under this new humane policy we have that we will not have votes after 7 p.m.

It was the first time I had been able to get home in a long time at that hour. I saw the distinguished Senator from Maryland, Senator Sarbanes, who I felt did an absolutely wonderful job. I had deep respect for Senator Garn, also, who held opposing views but who I think presented them well to the television audience on a very distinguished public television program, one of the finest in the country. I think the traditions of the Senate were certainly upheld in that half hour. They presented the kind of dialog that I think should go on in the country because our foreign policy is no better than the understanding of it that is gained by the American people.

Part of the job of a U.S. Senator, just as it is of a Congressman, is to not only listen to all the arguments, study intensively, form our judgment, come to a judgment, make a decision, but then justify that decision. We are put on the pan time and again, and we intend to and will be many, many times in the next 8 days beginning Friday night. The country will have an opportunity to question us in every respect. I think we will come back perhaps somewhat chastened and a little more weary than we are right now possibly, but I think the process will really work, and that process is going to be engaged in right now.

I again extend my deep appreciation to my distinguished colleague from Utah who himself has been an articulate Member of this body on many, many issues. We have not always agreed, but I certainly have the greatest respect for his power of thought and reason and the tenacity with which he really fights for what he believes is in the national interest, and that is what he does on this occasion.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, Thomas Jefferson once remarked that he "never saw an instance of one of two disputants convincing the other by argument." Indeed, he added, "I have seen many, on their getting warm, becoming rude, and shooting one another." I expect the debate on the Panama Canal treaties will be warm and even

heated at times, because there is a great deal at stake; and I trust that no one will be shot because of it.

What truly concerns me, however, is Mr. Jefferson's inference that passion rather than reason tends to govern human affairs, and that emotional concerns will dominate our discussion. Perhaps they will, in spite of our efforts to think these treaties through carefully. Perhaps some people have already closed their minds to further debate, and cannot be moved from their position by the force of logic or the disclosure of new facts. Certainly many of the proponents and opponents of these treaties have made emotional appeals in support of their arguments. A treaty of this magnitude, that may well determine the course of human history and the fate of the free world, is bound to arouse an emotional response.

I want to congratulate those who are broadcasting this debate. I am informed that this is the first time Senate debate has been broadcast across the air waves.

It is my sincere hope that in the weeks ahead we might prove Mr. Jefferson wrong.

Although I personally listened to all of the administration's arguments and public relations efforts with regard to their support of these treaties, I do want to hear all the points that are brought up on the floor during the debate.

I have always taken the position that we need to upgrade the 1903 treaty. It is not perfect. On the other hand, my present judgment is that these new treaties are not in our national interests. I intend to participate in these debates with an open mind and weigh each and every argument on behalf of the agreements fairly and impartially. But I am going to have to be shown more than just the two amendments regarding our defense and transit rights. They are a good beginning, but they leave many problems unattended.

But I do question how the Senate can deliberate properly and intelligently under the conditions that have been imposed upon us by what I consider to be an impatient and nervous administration. Why is the Senate debating these treaties before the crucial details regarding their implementation have ever been seen? We have before us, as we prepare to offer our advice and consent, a considerable amount of information about the merits of these amendments. I seriously question, however, whether the Senate has sufficient information; and I doubt that Senators have had sufficient time to examine all of it carefully and thoroughly.

When we turn to the specific provisions of the treaties, I think we shall soon discover that there are parts missing or obscure and that we shall be compelled to proceed at a much slower and more cautious rate of speed than many had originally contemplated.

The Foreign Relations Committee has been so rushed that it must now print another report because its original version is peppered with omissions and typographical errors. Only within the last 3 days has the 354-page report of the committee been available to Members. Everywhere the report reflects haste and, in my opinion, carelessness. Aside from the printing errors, we find that many crucial issues have been either passed over lightly or ignored altogether.

Consider, for example, the section of the report dealing with the legal issues. The very complicated question of whether the President has the constitutional authority to dispose of Canal Zone territory by treaty alone, without the approval of both Houses of Congress, as is required by article IV, section 3, clause 2 of the Constitution, is dismissed in less than 5 pages—in a brief statement, I might add that I expect to show that this 5-page statement in the Foreign Relations Committee brief really is erroneous when I call up my amendment to the treaties requiring the President to gain congressional approval for these transfers of territory and property.

This is hardly a minor issue, and I must say I am quite astonished that it has been treated in the report in such a cavalier fashion.

At this very moment there is a resolution circulating in the House of Representatives, House Concurrent Resolution 347, the Murphy-Hansen resolution, which has the support of no less than 219 cosponsors. In other words, more than half the membership of the House of Representatives, both Democrats and Republicans, are opposing this flagrant abuse of our fundamental law. They are demanding that they also have the right to vote on this transfer of \$10 billion of American territory and property, and I think the Constitution clearly supports their position.

We have taken extensive testimony in the Separation of Powers Subcommittee of the Judiciary Committee, testimony from leading constitutional authorities which shows conclusively that the Members of the House have a right and a duty to participate in the disposal of U.S. territory and property.

There are two types of treaties. One is a self-executing treaty, and the other is non-self-executing. The former does not involve the transfer of property, and it does not require the consent of the House of Representatives because no implementing legislation is needed. The President can go and negotiate it through the State Department, through his representatives or ambassadors, with the advice and consent of the Senate, bring it back, and if two-thirds of the Senate ratify it, then it becomes the law of the land.

But the second kind of treaty is the treaty that is involved here, and that is a treaty which involves the transfer of American property. And article IV, section 3, clause 2 of the Constitution says you cannot transfer American property without the consent of both Houses of Congress. The Canal Zone and all of the property there cannot be transferred by treaty alone. Implementing legislation is also required, because Congress has exclusive control over territory and property.

And the reason the Founding Fathers gave this power to Congress, is because they did not want any President acquiring, governing, or transferring territory or property without having all 535 Representatives of the people in this Federal republic having a voice in the matter.

I think it is pretty significant that just today at least 219 of the Members of the House of Representatives, our Congressmen, have signed a resolution demanding that they have the obligation and opportunity for and on behalf of their constituents and this country of voting up and down on these transfers.

I submit that they should have a right to do so and that we in this legislative body ought to prevent this overreach by the President in violation of the Separation of Powers Doctrine.

There has also been an extensive discussion, particularly in the House of Representatives, over the issue of whether the various payments to Panama as provided for in this agreement shall be based on legislative appropriations. The treaty is silent on this subject and so is the report of the Foreign Relations Committee. The Constitution provides that no funds shall be drawn from the Treasury except by appropriations and yet it is clear that the treaty provides for payments to Panama. Again, we have a President, the Executive, bypassing the Congress, bypassing the House of Representatives in derogation of the Separation of Powers and article I of the Constitution to extend his power. If this great body allows that to occur I think we will have abandoned one of the pillars of our Constitution.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. HATCH. If I could just continue for a minute.

Mr. SARBANES. It is just on the point.

Mr. HATCH. I am delighted to yield to the Senator from Maryland.

The PRESIDING OFFICER. (Mr. Bentsen). The Senator from Maryland.

Mr. SARBANES. I think one thing is clear: The Senator may argue—I think it is an argument without legal validity—that the House of Representatives must be involved in the disposal of property, but I think the law is very clear on that point. I do not think it has been dealt with in a cavalier fashion by the committee. The number of pages which you give to a subject are not an indication of how well you deal with it; it is the quality of the consideration that matters.

Mr. HATCH. Let us include the matter of quality, because I do not think the quality of the statement is very high, either.

Mr. SARBANES. Obviously the Senator and I disagree on that point.

Mr. HATCH. It would seem that we do.

Mr. SARBANES. We are proceeding here with an exercise of the treaty-making power. The Senator's point really runs to the role of the Senate and the role of the House, and it does not establish overreaching on the part of the Executive.

Mr. HATCH. I respectfully disagree.

Mr. SARBANES. The Executive has never contested our role; clearly, for the treaties are now before us for advice and consent, which will require a two-thirds vote on the part of this body, an extraordinary majority on the part of the Senate to approve these treaties. So there has been no effort on the part of the Executive to bypass or to ignore the Congress.

The distinguished Senator may want to change the role of the Senate and the House of Representatives within the institution of Congress, but I do not think it is accurate, indeed it is not accurate at all, or fair, to say that the Executive is seeking to bypass the legislative branch of our Government in this matter.

Mr. HATCH. I appreciate the comments of the distinguished Senator from Maryland, but I sat through hours of hearings on this

subject before the Separation of Powers Subcommittee of the Committee on the Judiciary, of which I am the ranking minority member, and the President's witnesses indicated repeatedly that he has concurrent jurisdiction with the Senate to dispose of territories in spite of the fact that article IV, section 3, clause 2 of the Constitution says that Congress—not the Senate, the Congress—shall have the power to dispose of and make all regulations respecting territory or other property belonging to the United States.

I might add that some of the leading legal scholars in this land support my position very strongly, and I cite in particular Dr. Raoul Berger, formerly associated with Harvard Law School, who, when he was criticizing President Nixon and providing legal ammunition by which President Nixon could be impeached, was praised throughout the country, but now when he is coming out in favor of House participation in the disposal of territory under these treaties, he is ignored by the media, despite the fact that he himself, if he were a Senator, would vote for the treaties except for these constitutional defects. But he has made it clear that no reasonable Senator should vote for these treaties unless the property transfers are approved by the House of Representatives as well as the Senate; and I think the precedents backs him up in every way.

The second point I would like to make is that these treaties are requiring the American people to make millions of dollars of payments in the absence of legislative appropriations.

The wording of the treaties suggests that the appropriations process will be sidestepped, and that the many different payments to Panama will be made by the new Panama Canal Commission out of tolls. As the sponsor of an amendment to the treaties requiring that all these payments be appropriated, I am rather mystified by the committee's total disregard of this important legal issue.

Likewise, the printed hearings of the Senate Armed Services Committee reached me only a few days ago, and Senators are still awaiting the committee report. This is hardly surprising in view of the fact the committee completed hearings only a week ago. These hearings were very brief, and did not even touch upon the constitutional issues concerning the role of Congress in the disposal of U.S. territory and the role of the House in the appropriations process. At the same time, they contain 525 pages of testimony. Thus within the short span of approximately 1 week, Senators are expected to have read and digested nearly 1,000 pages of hearings and reports. This does not include the Report of the Armed Services Committee, which was just arrived, or the 2,423 pages of hearings of the Foreign Relations Committee that were printed only about 3 weeks ago. This is not to mention the volumes of hearings that have already been printed by other committees in the House and Senate, and I cite with particularity the Separation of Power Subcommittee of the Committee on the Judiciary.

My purpose in bringing these matters to the attention of the Senate is not to fault the committees—for they have been faced with heavy demands in a short space of time—but to illustrate the fact we are not only presently overburdened with more information than we can possibly read and assimilate, but also are handicapped

by the lack of specific information that is necessary for deliberation.

Mr. President, this is not a legislative atmosphere conducive to thoughtful debate. Speed is no virtue in a legislative assembly. If the Senate is to work its will properly, then we must be assured that each and every provision of these treaties will receive full and ample consideration. I trust, therefore, that Senators will resist political pressures to dispense with these treaties in a hasty manner, and that the proponents of ratification will, in particular, accommodate the need for thoroughness and precision.

TWENTY FLAWS

The need for extended debate will become more obvious, I believe, once it is clear that these treaties have been thrown together in a haphazard fashion and in their present form spell political, economic, and military disaster for the United States of America. My preliminary estimate is that there are at least 20 major flaws contained in the treaties, either explicitly or implicitly, all of which warrant our close attention. At the appropriate time, I shall address my remarks to these problems in more detail. And doubtless other Senators will uncover ambiguities, discrepancies, errors, uncertainties, puzzling questions, and omissions that I have overlooked, or that I have presently chosen to omit, as we delve more deeply into the documents.

For the moment, however, I shall discuss them only briefly, in order to point out the scope of the problems and the direction I shall take in attempting to deal with them. Two problems that I have already touched upon concern the role of Congress in the disposal of U.S. territory and the role of the House in the appropriations process. These are certainly among the most serious problems we face in connection with these treaties, because they affect our Constitution. Let me turn to the other problems that I have encountered.

Third. A recent line-by-line analysis indicates that there are a number of substantive inconsistencies between the English and Spanish versions of the treaties. These inconsistencies create a second layer of problems for the United States, because they will require the United States to contend not only with conflicting interpretations of the English text, which, incidentally, are bad enough, but also the Spanish translation or translations.

I might mention that I am going to offer an amendment to the treaties which will provide that if we have disagreements upon the differences between the Spanish and English translations, then, in that event, the English text shall prevail.

Fourth. There is some doubt as to whether the joint statement issued by President Carter and General Torrijos allegedly clarifying the ambiguity over our right to intervene militarily to defend the canal actually accomplishes this purpose. According to the American Law Division of the Congressional Research Service, for example, the legal effect of the joint statement is uncertain. The CRS analysis concludes that—

The Carter-Torrijos statement, while guaranteeing each party the right to act against threats directed at the Canal, also specifies that the U.S. may not intervene in the internal affairs of Panama. It is not altogether clear that the statement

would permit the United States to intervene in the event that the aggression or threat should result from Panamanian action.

I think that is a pretty important consideration.

Fifth. International legal scholars point out that the treaties contain no mechanism for compulsory third party adjudication of differences concerning nondefense issues.

Sixth. International legal scholars also point out that the treaties contain two ambiguities on transit rights. Pursuant to annexes A and B of the Neutrality Treaty, the treaty area is defined to include Panamanian territorial sea areas around the entrance to the canal delimited pursuant to the 3-mile limit. It is possible, therefore, that Panama would feel free to apply the more restrictive "innocent passage" provisions as they claim to apply them beyond the 3-mile area out to 200 miles.

Article VI(I) provides a right of transit for U.S. warships and auxiliary vessels "Irrespective of their internal operation, means of propulsion, origin, destination—or cargo carried." By negative implication, it might be argued that these features could be the basis for discrimination against certain categories of commercial vessels.

Seventh. There may be a potential ambiguity under articles 20 and 22 of the revised charter of the Organization of American States (OAS), which is binding on the United States, in connection with U.S. defense rights under the treaty. Article 20 provides that—

The territory of a State is inviolable; it may not be the object, even temporarily, of military occupation or of other measures of force taken by another State, directly or indirectly, on any grounds whatever.

Article 22 then goes on to provide that "measures adopted for the maintenance of peace and security in accordance with existing treaties do not constitute a violation" of this principle. The defense rights of the United States are presently exercisable under the 1903 Treaty—an "existing treaty" under article 22. Do these defense rights continue under article 22, in light of the fact these treaties terminate the "existing treaty" of 1903?

Eighth. Former Deputy Secretary of Defense William P. Clements has recently revealed that the former administration had obtained consent for a security clause that clearly protected American defense rights in the Canal Zone. The clause, which was approved by the National Security Council, the Department of State, the Pentagon, and even General Torrijos, unambiguously gave the United States the unilateral authority to defend the canal, even without the approval of Panama. Why was this clause replaced by the ambiguous terminology of the present agreement?

It makes one wonder because it had been completely agreed to before. We have testimony to that effect and yet we have people here who, at one time, argued that we did not even need these two amendments that the joint leadership recommended to us.

Ninth. The treaties purport to extend many guarantees to the United States. It is questionable whether such guarantees are meaningful, however, if they are simply paper guarantees—all sail and no anchor. The treaty provides, for example, that American warships shall enjoy expeditious transit, and the joint statement indicates that they shall even go "to the head of the line." But how does the United States enforce this guarantee if the Panamanians

control all of the facilities of the canal and its ports, if Panamanians are in charge, and refuse or fail to cooperate? How can the United States be assured of expeditious transit if the United States does not own or even operate the canal?

Nothing in the treaties solves these difficulties.

Likewise, the treaty provides that only the Republic of Panama may maintain military forces in Panama after the year 2000. But how does the United States exercise its right to defend the canal and its duty to maintain the regime of neutrality if all of the military installations are owned and occupied by Panama? What would be the costs in terms of manpower, material, and money? Would U.S. troops occupy Panamanian soil to keep the canal operational? Would they have the ability to operate the canal or would the United States be required to keep a permanent corps of canal pilots and other trained specialists who could be sent to Panama to keep the canal operating in times of emergency?

Tenth. Except for the Joint Chiefs of Staff, who are politically answerable to the administration, most American military leaders warn that loss of the canal would jeopardize our national security. An exhaustive analysis by the Congressional Research Service of the Library of Congress concerning the importance of the canal in terms of our strategic mobility and logistic support indicates that the canal will be even more vital to our defense needs in the year 2000 than it is now. In examining the role of the canal in facilitating the shipment of munitions to an Asian military operation, the study shows, for example, that we have only one munitions port on the west coast, and that this port is capable of loading only 4,000 tons per day. Since, based on past experience, the requirement could easily be 10,000 tons daily, at least 6,000 tons would have to come from the east coast, where most munitions are manufactured, and from which most transit the canal.

Adm. James Holloway, Chief of Naval Operations, and Adm. Thomas Moorer, former Chairman of the Joint Chiefs of Staff from 1970 to 1974 point out that the present Canal Zone serves as a base of naval and air operations 3,000 miles south of the United States. Moreover, the Canal Zone is the only refueling center south of California in the Pacific. When the United States no longer has use of the bases and ports and facilities of the Canal Zone after the year 2000, will not the loss of these strategic sources adversely affect our ability to control and defend a vast area of land and sea?

Sometimes it overwhelms you when you stop to consider that the principal reason advocated for these treaties is for national security purposes. They seem to ignore a lot of these facts that are brought out, not necessarily by opponents to the treaties, but by people who understand the security needs of this country.

Eleventh. The treaty assumes that the giveaway of the canal will usher in an era of good feelings in Latin America and that our Latin American neighbors support Panama's bid for the canal. The President has made this claim, as have representatives of the State Department.

But there is an abundance of evidence which suggests that many Latin American countries are deeply concerned about the treaties. This is not surprising, when we stop to consider that South America has no reliable east-west land transportation and must rely

heavily on the canal. What do they stand to gain economically when the tolls increase, as they are sure to do under these treaties? When visiting heads of state from Latin America were invited to Washington by the President to witness the signing of the treaties and were asked to sign the so-called Declaration of Washington, what explains the fact that they refused to endorse the treaties and agreed simply to congratulate Carter and Torrijos "for having initiated the steps that would lead to full sovereignty of the Republic of Panama over the totality of its territory"? What explains the refusal of some Latin American political leaders to participate in these signing ceremonies?

Recently, Lt. Gen. Gordon Sumner, Chairman of the Inter-American Defense Board, which is an independent international organization established by the Rio Treaty, testified before the Armed Services Committee that there is widespread anxiety in Latin America about the economic consequences of these treaties. General Sumner based this observation on his personal discussions with heads of state and high level defense officers in 17 Latin American countries.

Twelfth. The treaty not only forbids the United States from entering into an agreement with a third country for the construction of a new hemispheric interoceanic canal, but in effect closes the door to completion of the modernization project of the present canal. Panama lacks the capital and other resources to complete the Terminal Lake-Third Locks project that was begun after the Second World War, and it is not likely that the United States would pour additional millions into a canal that it no longer owned. Consequently, it is highly unlikely that there will be any improvements in the canal during the remainder of this century under these treaties.

I suspect that the Panamanians will place a higher priority on banking debts they owe and other debts throughout the world—which, incidentally, have skyrocketed under President Torrijos' regime.

Thirteenth. Another underlying assumption of the treaties is that the canal is a potential military hazard to the United States and cannot be defended against guerrilla attacks and sabotage. But if the canal is already indefensible, then it would be even more so if the U.S. military presence is reduced from 17 to 4 bases, as this treaty provides. The question also arises as to whether a tiny country of less than 2 million people has the capability or desire of carrying on a sustained military operation against a well-defended canal from which it benefits economically.

Fourteenth. Many substantive matters concerning the relationship between Panama and the United States, including defense, are contained not in the treaties themselves but in supplementary executive agreements. These executive agreements can be modified in the future by the President, without the assent of the Senate. The Senate is thus asked to approve not only the treaties themselves, but to grant wide discretionary authority to the President far into the future. This is delegation of legislative authority run rampant, which can serve only to expand the powers of the Chief Executive at the expense of the legislative branch—something which I hope none of us really wants to do.

Fifteenth. Under article IV of the agreement in implementation of article IV of the Panama Canal Treaty, the United States agrees to "emplace no type of nuclear armament of Panamanian territory," because Panama is a signatory to the Latin American Denuclearization Treaty. Such an important restriction serves no purpose other than to weaken our Southern defense and improve the nuclear strategy of our enemies.

On the other hand, I think it is a fair question to ask: Why did not our negotiators obtain language which keeps powers unfriendly to the United States out of Panama, including powers which possess nuclear weapons?

These treaties do not do anything about that. As a matter of fact, there is nothing in the treaties that prohibits an unfriendly power from using our ports, bases, and facilities. Nothing prevents Panama from opening those to the Soviets, to the Cubans, or to anybody else who would be eager to weaken or destroy us.

Sixteenth. Contrary to the assertions of State Department representatives, it seems certain that the canal cannot be operated under these treaties on a self-supporting basis, and that the American people will be called upon to pay millions, perhaps billions, of their hard earned dollars to the Panamanians. The Comptroller General of the United States, Elmer Staats, estimates, for example, that deficits during the first year could range from \$37 to \$79 million. Other estimates, such as that made under the auspices of the House Committee on Merchant Marine and Fisheries, indicate that the deficit could reach nearly \$100 million.

It makes you wonder. Who is going to pay those deficits? Do you think Panama is going to be able to pay those deficits? Not unless they make a deal with somebody else that is most likely to be in contravention of the obligations that they would owe to us.

This wonderful friendship that is going to arise once we transfer the canal to them, that is miraculously to appear overnight. Even though we all know that Mr. Torrijos has gone all over the Third World, running this country down, and that his closest friends are Fidel Castro and Qadaffi, of Libya, is a pipedream.

I do not know about the folks in this Chamber, today. But I will tell you that the American people are not going to buy it and I am not going to buy it.

Seventeenth. The implementing legislation establishing the structure of the new Panama Canal Commission, its accounting practices, and the range of labor benefits has still not been presented to Congress by the administration, although it was promised for last October. What is more, basic financial issues have not yet been negotiated with Panama. Governor Parfitt of the Panama Canal Zone has testified that the United States and Panama are in disagreement regarding a number of these issues. Thus, the Senate is being asked to give its advice and consent on a treaty about which it does not have complete information.

Eighteenth. The treaties contain a number of hidden costs which have not been brought to the attention of the American people by the administration. In recent testimony before the Armed Services Committee, Comptroller General Elmer Staats revealed the following information: First, the Republic of Panama has refused to pay for services rendered by the Panama Canal Company in the

amount of \$8.4 million. Some of this debt goes back as far as 1955. Second, early retirement costs to be charged to the Civil Service Commission under these treaties will cost \$7.5 million a year, or a total of \$165 million over the next 22 years. Third, costs of benefits for dependents of certain personnel transferred to DOD (mainly schooling) will cost \$5 million a year for the next 22 years, or a total of \$110 million. Fourth, inventory costs could reach as high as \$2 million. The last complete inventory of all assets of the Panama Canal Company, and Canal Zone Government took place in 1950-51, at a cost of \$750,000, and that was in 1950-51 dollars. Fifth, the annual payment of \$10 million to Panama for such services as police and fire protection, street maintenance, and garbage collection is actually an indirect subsidy, in part, of \$6.6 million a year for at least 3 years, totaling \$19.8 million. Because of Panama's lower wage scale, and other factors, it is estimated that Panama will need only \$4.4 million per year to provide these services. The treaty provides that these payments will be adjusted after 3 years on the basis of actual costs, but the treaty does not define actual costs and it is not clear, therefore, how the costs will be calculated.

Nineteenth. There is no indication, from the language of the treaty, whether the commission should pay interest to the U.S. treaty on the U.S. investment, although the administration has indicated that the forthcoming implementing legislative package will relieve the commission of its statutory obligation to pay interest. Does this mean that the projected amount of interest of approximately \$20 million a year will be a donation by the American people to the commission? Should the United States attempt to recoup its investment through accelerated depreciation charges? The treaty does not indicate how these problems are to be resolved—again thoroughly lacking in this area.

Twentieth. The treaty is no less ambiguous as to how the annual surplus or contingent payment of up to \$10 million is to be treated with regard to financial and toll setting plans. Will the tolls be set at such a rate as to eliminate the surplus each year, and if so would this not cause friction between the United States and Panama? And if no contingent fees are paid for 22 years, does the United States owe Panama \$220 million in the year 2000? The terms of the treaties do not give us any clues as to how these issues shall be resolved.

Mr. President, these are 20 problems that I have encountered with these treaties. There are many more, to be sure, and I intend to get into them in the course of this debate. This list is not definitive but illustrative of the many flaws contained in these documents. In a larger sense, of course, some of these defects are overshadowed by more serious issues that concern not just the canal but the integrity of our system of government and perhaps our very existence as a free, democratic Nation.

For many months, I have been increasingly disturbed by the manner in which these treaties were negotiated, and the way in which representatives of the State Department, especially the negotiators, were attempting to gain public support for the agreements. Negotiations, until they were actually concluded, were shrouded in secrecy, as though the administration had something to hide from

the American people. No Member of the Senate, as is often the custom, was ever included in these negotiations.

I might mention that a representative of big labor went down there, insisted upon, as I understand it, by big labor's leaders. Yet not one Senator was invited, not one Congressman. We all know why the representative of big labor went down there. I think the millions of union members throughout the country know, almost all of whom are in disagreement with the leadership of the unions in this regard.

I might also mention that the President took no interest in any fireside chats to explain to the American people why these negotiations were being held or what they meant to us in terms of our national interests and security. A cold silence fell upon the White House and, except for a few courageous Members of Congress, no one sought to alert the American people to what was going on down in Panama. Neither the past administration nor the present came to Congress and so much as asked for authority to enter into the crucial negotiations which ultimately produced these incredible treaties. This, incidentally, would have been the way to do it under our Constitution.

And when the new administration came to power, the same pattern of aloofness and secrecy was adopted. Like his predecessor, President Carter labored behind the scenes at his self-appointed task. Instead of appointing a new Ambassador to conduct these secret negotiations in the normal manner, he appointed Mr. Sol Linowitz to a temporary post, thereby avoiding the Senate confirmation process and denying to the Senate an opportunity to find out what the President, on his own authority, without consulting the representatives of the people in Congress, was planning for us.

Certainly, every other ambassador has to come in and justify his credentials to prove he has no conflict of interest. Not only ambassadors, but many other people in government.

We have seen in the Bert Lance case how very important it is for the Senate to do its confirmation job, to ask these people the right questions. We did not have that privilege with regard to Mr. Linowitz.

I do not know about the rest of my colleagues in the Senate, but I know there are a lot of people in this country that are very concerned about this and really believe that something is wrong.

The negotiations were so rigged that Linowitz' temporary appointment expired only hours before negotiations were completed and the treaty provisions basically agreed to.

And now, after all is done and we have been pushed by the President into a very difficult situation, he suddenly appears on television to tell us that President Theodore Roosevelt, of all people, would favor these treaties, and that much of the opposition to the treaties is based on misunderstanding and misinformation. If this be so, then who is to blame for not informing us a long time ago, when we sought information and were denied it?

But I would submit that is not true, anyway. I think the people of this country are not as foolish as many of our leaders think they are. I think they know what is going on and I think they realize that there are major issues here and this is not just a simple little treaty.

The truth of the matter, Mr. President—and this is what concerns me more than anything else I have discussed today—is that the American people are once again being subjected to what appear to be deliberate misrepresentations of the real facts by our Chief Executive. I hope I am wrong, but I do not know what else to conclude after listening to the President's address to the Nation last week. In that address, to give you an example, the President said—and I am quoting directly from his speech—"the canal should continue to be self-supporting." Are we paying Panamanians to take the canal?" asks the President. "We are not," he says. "Under the new treaties payments to Panama will come from tolls paid by ships which use the canal."

The question arises: On what basis can the President of the United States of America make such a flat, unequivocal statement when, on the very same day that he made those statements earlier, Elmer Staats, our Comptroller General, is here in the Senate explaining that there are not only millions of dollars of hidden costs in these treaties that will almost certainly be borne by the American taxpayer, but that the whole scheme is not at all likely to be self-supporting. As Staats makes abundantly clear in his closing remarks, and these are his words:

If canal transits fall short of what is currently estimated, it is possible that toll revenues will be insufficient to cover the costs of the commission, including the scheduled payments to Panama. In this eventuality, the U.S. Government is likely to be required to provide financial assistance either through congressional appropriations or by allowing the commission to borrow from the Treasury.

That was the day of the evening when the President told us that we are never going to have to pay a dime as a result of these treaties.

And then a day later, Governor Parfitt of the Canal Zone came before the very same committee as Staats and told the members: "I believe you should be alert to the possibility that the canal operation may not be self-sustaining in the outyears," indicating that Panama will surely have economic problems in the year 1984, just 6 years from today.

Mr. President, we cannot inspire public confidence in our Government through negotiations secretly arrived at, or by twisting the facts. All of the facts that the supporters of these treaties have in their arsenal will be put to the test here on this floor.

So far as secrecy is concerned, I shall only say that it has no place here. Above all, it is no secret that the American people are overwhelming against these treaties and I am persuaded that even more will join in opposition when we are finished with this debate. And if, after our deliberations are concluded, it is clear that the supporters have not turned public opinion around in their favor, then it is clear that these treaties are doomed. For if they do not enjoy public support, they will not prevail. As former Secretary of State Rogers told the Senate in 1971:

If there is one lesson we have learned from this involvement in Vietnam, it is that we need congressional support and we need public support.

Thus far, the administration has denied that it needs congressional support for these treaties, and it has every intention of bypassing the House of Representatives. Until very recently, it has ignored the public and disregarded the fact that the American

people are not inclined to surrender their canal for no apparent reason. I think that Senators will ignore these considerations at their own peril.

I might say finally that when I was down in Panama in August of last year that one of the leading members of our Government of the Canal Zone indicated to me that Mr. Linowitz had not at that point, as the treaties were being negotiated, even come into the canal zone.

Mr. HELMS. Will the Senator yield?

Mr. HATCH. Yes, I am delighted to yield to one of the great Senators in the U.S. Senate, the distinguished Senator from North Carolina (Mr. Helms).

Mr. HELMS. I thank the distinguished Senator. Let me say that he is rendering great service in this body, and citizens all over America are increasingly grateful to him.

Mr. President, I commend Senator Hatch on his remarks, particularly his pinning down and specifying the misrepresentations which have been so abundant in the discussion of this issue over the past several months.

Now, I am not one to say that the President of the United States intentionally misled the American people in a report.

Mr. HATCH. Nor am I.

Mr. HELMS. But one thing is certain. Either he misled the people intentionally, or he did so unintentionally. The fact remains that his address was laden with misrepresentations.

For example, he said that not one Panamanian signed the 1903 treaty when, as a matter of fact, as the Senator from North Carolina pointed out on the floor this morning, nine Panamanians—I repeat: nine Panamanians—signed the 1903 treaty.

Mr. HATCH. That is right.

Mr. HELMS. The President also said that we—the United States—do not own the Canal Zone, that we have never owned it, when, as a matter of fact, the deeds are on record wherein the U.S. Government purchased from private landowners property. The United States paid Panama, and paid Colombia. The United States even paid the French Canal Co. for its land in fee simple, its equipment, and its concessions.

Then, there is the question, I say to the distinguished Senator from Utah, of whether our friends in Latin America will love us if we do not give away the Panama Canal.

This Senator has been to South American countries representing three-fourths of the populations, the gross national product and the geography of South America. I have met with the heads of state in each of these countries and without exception they told me, in effect, "Don't give Torrijos that canal,"—because, I say to the Senator from Utah, they know what will happen. They know what will happen to the tolls.

The thing that bothers me as the Senator from North Carolina is: Why do we not level with the people of this country?

Thank the Lord that the American people have seen through all of the obfuscation because, as the Senator has just said, despite all the propaganda, despite the fact that the major news media of this country have virtually ignored testimony by distinguished Ameri-

cans in opposition to this treaty, the American people still are opposed to the giveaway of the Panama Canal.

The Senator from Utah alluded to testimony before the Armed Services Committee last week and the week before. Except for one brief story in the Washington Star, this Senator has not seen one mention of testimony by Admiral Moorer, General Sumner, and others, who warned that the defense capability of this country will be imperiled if we surrender control of the Panama Canal.

So I commend the Senator from Utah for his careful examination of the evidence in this matter, and I wish him Godspeed in continuing. I thank the Senator for his courtesy in yielding to me.

Mr. HATCH. I thank my dear friend and colleague from North Carolina.

There is one other question I would like to raise in addition to the 20 I have raised, and there are a number of questions raised within the 20.

What happens if the canal becomes too costly for the Government of Panama to operate? If that happens, who then has the right to operate it? Who would receive the tolls from it? Under these circumstances, do we have a right then to go in and operate it, after the year 2000? What if Panama decides to shut down the Canal for any reason? I have been told by some of the proponents of this treaty that that will never happen because Panama's economy depends too much on this canal. They say Panama would never do that to us because it is so dependent upon the United States of America, because 70 percent of all the traffic and tonnage that goes through the canal goes to or from the United States. This is what they say.

Some of these people are the same people who said that Fidel Castro would never turn his back on us. He was "the great agrarian reformer" who was going to liberate the people of Cuba.

I recall a banquet in Washington in which he was praised to the skies as the liberator of the Cuban people, and he went to New York and said he had been a Communist all his life. They said he would not turn his back on us because, frankly, he was dependent upon American commerce, our tourist industry, the tobacco industry, the sugar industry, and that that would never happen. But it did. It happened because a billion and a half bucks every year are poured down that sewer by the Soviet Union.

Why would it not be advantageous for the Soviet Union to do the same here and embarrass and put pressure on the United States. Then they will say, "My goodness, you always raise the scare." But is that so?

Last summer, in the Panamanian newspapers, it was very clearly delineated—we have copies of them—that a Soviet "trade delegation" headed by Nikolai Zinoviev went to Panama to do basically four or five things. Number one, to negotiate to build a heavy-duty equipment plant; two, to build a hydroelectric powerplant; three, to establish a Russian bank; four, to establish a Russian propaganda network; five, to acquire the rights to the Old France World War I airbase outside the city of Colon; and six, to purchase 50,000 metric tons of raw sugar at double the world price during a sugar glut.

Now, I wonder why they would be doing that? What makes me wonder even more is why the President does not wonder why they are doing that.

I could be wrong in my questions on this and the worries I have about it, but I think there is a lot more involved here.

I reiterate: I do not think the American people are stupid, as some of my friends in Congress think they are.

Mr. LUGAR. Mr. President, will the Senator yield for a question?

Mr. HATCH. I shall be pleased to yield to the Senator from Indiana.

Mr. LUGAR. I appreciate the Senator's mention earlier of the rights of the House of Representatives in this matter and the economic analysis which he mentioned in his arguments today.

I should like to pose this question for the sake of this debate, because I think the Senator has put his finger upon a very vulnerable part of both the treaty and the canal.

In connection with the cash situation faltering, Mr. Staats, in his testimony, indicated that there may be some very real difficulties; that the implementing legislation is not before us; that all the business arrangements remain virtually unknown at this point. The problem is clearly, as the Senator has pointed out, that we cannot calculate the flow of traffic, but we presume there may be some difficulties.

There is testimony with regard to the post-1980 period, with respect to the lack of oil traffic, for example, the fact that the tolls may be increased 30 percent to 40 percent right off the bat which could lead to some lessening of demand, although there is a projection that you have to get to a 75 percent increase before it tapers off drastically. There are the expectations on the part of the Panamanians of moneys that may flow and may help social services and upgrade the Government of Panama.

If revenues do not equate with expenses and there are not reserves to cover these, at some point this leads to a question of who will pay. How would the Senator face this question—that appropriations on the part of the U.S. Government might be called for in some year during the next 5 or 10 or 15 years?

Earlier in the remarks of the distinguished Senator from Utah, he mentioned that appropriation bills commence in the House of Representatives.

Mr. HATCH. Mandated by the Constitution.

Mr. LUGAR. This is an intriguing question with the regard to participation by the House of Representatives of this juncture. Very clearly, it has been expedient for the administration to attempt to gain rulings that the House was not involved, to try, I suppose, to finesse that entire issue, even while 219 of our colleagues in Congress, Members of the House, want very much to be involved. Very clearly, in my judgment—and I inquire whether the Senator shares this feeling—they may well be involved when appropriations are required to bail out the faltering economy of this situation on a business arrangement which is entirely inconceivable for the moment.

What does the distinguished Senator feel will be the reaction of the House of Representatives with regard to initiating appropri-

ation bills to finance the Panama Canal in subsequent years, if their interest has been totally disregarded in the arguments?

Mr. HATCH. I thank the distinguished Senator from Indiana (Mr. Lugar) for raising these interesting questions, because they really go to the heart of this problem.

We have not gone to the House of Representatives for authorization to begin the negotiations for these treaties. We are going to bypass them, regarding property transfers and payments according to some Senators—I hope not—in spite of the fact that 218 Members of the House have signed a resolution asking for their right to consider these transfers and their right to have 435 Representatives stand one way or the other and be counted.

I suspect that another fact is important at this juncture, and that is that it is not just later that they are going to be called upon to vote on appropriations. The minute this treaty goes into effect, they are going to be called upon to do this.

Who is going to pay the commission costs pursuant to a new treaty? Who is going to pay the labor costs, the transfer costs, the early retirement costs, and so forth? We had members of the State Department testify that some of these costs are subject to the appropriations process. They indicated that they will have to come in with their tail between their legs, to the House of Representatives, and beg them for appropriations.

I am sure that the great argument then will be that the United States will be embarrassed if we do not automatically grant these appropriations.

I will tell the Senator what I would do if I were a Member of the House. I would consider whether or not it might not be for the betterment of this country that it refuse to appropriate.

The Senator raises the question of the economic burden on the United States if Panama is unable to maintain and operate the canal pursuant to these treaties. At least for the next 22 years, especially during that period of time after 1984, according to Governor Parfitt's testimony, we will have to subsidize them or they will have to find money to maintain the canal.

They may be unable to pay for the maintenance of that canal, which is monumental. It is an engineering problem every year, and it is a costly problem. With inflation rising in Panama, they will have increasing difficulties in meeting the responsibilities, and these treaties may not take care of them.

Certainly not economically. I do not think anybody who knows anything about economics would argue that they do. If they cannot maintain the canal, there is nothing in these treaties that provides for a right of the United States to come in and manage it or take it over or do anything else.

But let me mention the importance of the Panama Canal to U.S. agriculture, just to cite one important economic consideration.

The Panama Canal continues to be the critical east-west link for U.S. agricultural trade. One-fifth of all American agricultural exports are shipped through the Panama Canal.

In 1976, one-fifth of all corn exports, one-fourth of all soybean exports, and nearly half of all grain sorghum exports went through the canal. These three products combined earned \$9.1 billion in foreign exchange for the United States during 1976 out of the \$23

billion in total U.S. farm exports. Adding in other bulk products dependent on canal transit—including wheat (especially hard red winter wheat from the Great Plains) and cotton—the figure would climb even higher.

In 1976, the Panama Canal handled 70 percent of all U.S. farm commodity exports to 15 markets in the Far East. The Asian market is now worth \$8.5 billion annually to U.S. farmers.

Even with toll rises, the Panama Canal remains the most economic means of shipping bulk products. Rerouting grain shipments around South America would double transportation costs and shipping time. Cross country land-sea transportation would be prohibitively expensive for grains and soybeans. Existing transportation and port facilities could not handle the volume increases required to circumvent the canal.

Without access to the canal, U.S. farmers would be unable to compete with Australia and other exporting nations with access to the Pacific for Asian markets.

Mr. LUGAR. Mr. President, will the Senator yield for a comment at this point?

Mr. HATCH. I am delighted to yield to the Senator from Indiana.

Mr. LUGAR. The Senator from Utah is certainly perceptive about the concerns of a great many citizens of Indiana because the agricultural shipments that are going to Indiana and other Midwestern States very frequently use the Panama Canal to reach our valued customers in Japan and elsewhere.

A very great concern of many of us is that the Panama Canal, as many have pointed out, is an aging utility. It is a utility that may require extensive maintenance and repairs. We are not talking about hypothetical expenses. We are talking about expenses that normally come with the facilities that many of our colleagues, including the distinguished Senator from Utah, have witnessed in operation.

Later in this debate I want to address attention of all of us to the fact that we should have been negotiating an economic treaty. We have been enraptured with the problem of sovereignty and we have been arguing that, and that is an important point, but the facts of life are that with whoever controls the canal we are going to come to a point of money. Precisely how is it to be financed, and how the cash flow is to be maintained, and which set of taxpayers will do this, and for whose benefit?

These are questions that are appropriately raised, I think, right along with any conditions of national security which are, of course, involved in this.

And I greatly appreciate the distinguished Senator from Utah's analysis this afternoon.

Mr. HATCH. I thank my colleague from Indiana.

Mr. DANFORTH. Mr. President, will the Senator yield for a question?

Mr. HATCH. I am delighted to yield to my friend and colleague from Missouri (Mr. Danforth).

Mr. DANFORTH. The Senator, I think has very fairly stated the serious consequences that would flow from shutting down the Panama Canal. I wish to ask the Senator what course of events he

could foresee occurring which would result in shutting down the Panama Canal or making it inaccessible for American shipping?

Mr. HATCH. Of course, that is calling for a prophecy, and I do not pretend to be a prophet, but I will say this: I believe that if we turn over the canal to the Panamanian Government pursuant to these particular treaties, which are so ambiguously written, so lacking in, I think, good legal form, with all of the problems that I have cited, we are in trouble.

Mr. DANFORTH. I understand. But what I am asking is what course of events would occur which would, as the Senator says, shut down the Panama Canal?

Mr. HATCH. I am getting to that.

I would submit that within 3 to 10 years, and I could be wrong on this—and I hope that I am—that the Panamanian leaders might find some reason, adequate or otherwise, for shutting down the canal to embarrass the United States of America.

It is not the first time we have been embarrassed by, should I say, antiethical powers.

I might add that there is a built-in economic inability on the part of Panama to operate that canal.

Mr. DANFORTH. I wonder if I could ask Senator Griffin a question about one of Senator Hatch's conclusions. I know Senator Griffin, as I understand it, is the floor manager on our side, or the Republican side on this matter, and a member of the Foreign Relations Committee, and he is an exceptionally able lawyer and student of this matter.

But Senator Hatch indicated that the Republic of Panama is unfriendly to the United States.

Mr. HATCH. No. Excuse me. I have to interrupt the Senator. I did not say the Republic of Panama. I said the leadership, Omar Torrijos and approximately 20 other leaders in Panama are unfriendly. The people in Panama are very friendly to this country.

Mr. DANFORTH. I wish to ask Senator Griffin. We talk about friendly countries and unfriendly countries. Is Panama a friendly country to the United States?

Mr. GRIFFIN. I say to the Senator from Missouri that that is a question I suppose each Senator will answer for himself. Of course, it is friendly as compared with some countries and unfriendly as compared with others.

My own experience, having been there, is that there is an underlying friendship for the United States that you find among the people of Panama.

Despite the hostility that they have with respect to the canal, it has been my general impression that the people of Panama like the United States, and that there is at least the potential for the improvement of our relations.

My own position is that it is important that we conduct ourselves in considering these treaties and act with respect to them in such a way that we can improve rather than destroy our relations with the people of Panama and with the people of the rest of the hemisphere.

Mr. DANFORTH. The Senator would say, I would guess, that Cuba is not a friend of the United States.

Mr. GRIFFIN. Certainly the leadership of Cuba does not give any indication of being a friend to the United States.

Mr. DANFORTH. The Senator would not put Panama in that category?

Mr. GRIFFIN. I would like to hope that a lot of people who live in Cuba continue to be friends.

Mr. DANFORTH. Would the Senator put the United States in the same category as Cuba or not?

Mr. HATCH. Panama.

Mr. GRIFFIN. The Senator means Panama.

Mr. DANFORTH. Panama.

Would the Senator put Panama in the same category as Cuba or not?

Mr. GRIFFIN. No; I would not. But, on the other hand, it all depends what aspect of the Panamanian situation you are trying to evaluate. If you are trying to evaluate the leadership, trying to evaluate the human rights record, as I pointed out in my statement the other day, the Torrijos government of Panama last year was rated as having the worst human rights record of any government in this hemisphere except Cuba.

Mr. DANFORTH. Having a bad human rights record does not necessarily mean they are not a friend of the United States.

Mr. GRIFFIN. I agree. But I would also say to the Senator from Missouri that I think whatever the relationships are between our Government and the particular temporarily serving ruler of the Republic of Panama is a pretty unstable situation to focus on or to depend on. Because I would have a great deal of concern that the Government of Panama could turn over at any time.

Mr. DANFORTH. Senator Hatch was predicting the possibility of an attempt made to embarrass the United States—

Mr. GRIFFIN. I think the Senator from Missouri should direct his questions in that respect to the Senator from Utah.

Mr. DANFORTH. But I mean to follow—you are on the Foreign Relations Committee, and I was just curious to know whether you thought the relationship we had with Panama was of an unfriendly nature, which would lead the present Government of Panama to, as Senator Hatch says, shut down the Panama Canal in order to embarrass the United States.

Mr. GRIFFIN. I think one can only speculate about that.

Mr. DANFORTH. That is what I would like you to do.

Mr. GRIFFIN. I expressed the concern that I had, and that I continue to have, that under the treaties that we have before us, the situation between now and the year 2000, and the inadequate protection that we accord the U.S. citizens who are highly skilled and absolutely essential to the operation of the canal, we could have a situation where the very ratification of these treaties by the Senate could trigger an exodus of skilled U.S. personnel that could close down the canal. You know, that is a real possibility.

Mr. DANFORTH. But would it be an unfriendly act by Panama?

Mr. GRIFFIN. That would not be in and of itself, except as the concern of the U.S. citizens in the Canal Zone is reflected. Obviously, if you talk to them, they have concern about what is going to happen to them if we ratify these treaties. Now, they may or may not be justified in their concern, but they do have it. Suddenly,

instead of operating in a 10-mile-wide area that is subject to the jurisdiction of the United States, they are going to try to operate and maintain a canal in a foreign country, under the laws of Panama, the courts of Panama, and the police of Panama. They have concern, and I think with some reason.

Mr. HATCH. If I might take the floor a minute, do you know how many changes of regime Panama has had since 1913?

Mr. GRIFFIN. I do not know. It has been quite a few.

Mr. HATCH. It has been in excess of 50.

Mr. THURMOND. Fifty-nine.

Mr. GRIFFIN. I would take the Senator's word.

Mr. THURMOND. Fifty-nine, in 73 years.

Mr. HATCH. I would suggest to the Senator from Missouri and my other colleagues on the floor that that does not lead one to believe the Government of Panama is stable. I would also submit that I agree with Senator Griffin, there is speculation as to whether they would shut it down to embarrass us.

I think it is not a speculative question if you look at the economics. That is a pretty important question, and I do not think we can ignore it. If you look at the economics of the situation, I do not think it is speculation to say that they would have to come back to the United States of America for funds if they want to continue the operation of the canal.

Mr. DANFORTH. I would say I am deeply concerned about the economics in connection with the question of the maintenance and continued operation of the canal, but I did want to ask these questions, and I appreciate your indulgence so I can ask them. It is that I think the image that people have of the proverbial tinhorn dictator who is the dupe of some foreign power and, for the sake of humiliating the United States, would just shut down the Panama Canal—I wanted to ask you and Senator Griffin in particular, who have watched this matter so carefully, whether you think we are dealing with a really unfriendly government in the Republic of Panama now.

Mr. HATCH. I want to ask the Senator from Missouri a question.

Mr. DANFORTH. I am just asking; I am not purporting to—

Mr. HATCH. I know; I want to return the compliment. Do you feel there is no possibility whatsoever that the Torrijos government would want to embarrass the United States of America?

Mr. DANFORTH. I am asking you the question.

Mr. HATCH. Well, it is not my time—I have the floor, so let me ask you, in return.

Mr. DANFORTH. I am one of the uncommitted group.

Mr. HATCH. Let me say I think it is a possibility, and one we cannot ignore in dealings with Panama, among other nations.

Mr. DANFORTH. Let me ask you if you are concerned—

Mr. HATCH. But I am concerned with the economics, lest the American taxpayers be bled to death.

Mr. DANFORTH. I think the economic question is one with which I am less concerned. I would really like to address the political one.

The president of United Brands, which operates the United Fruit Co., claims to be the biggest user of the Panama Canal, and he said, in the Foreign Relations Committee:

As a company, Panama has been good to us, and we believe it has been a good neighbor of our country as well.

You know, I am not talking about competence in upkeep, and I am not talking about economic considerations. I think that the economic considerations, as I say, are a matter that deserves very careful attention and debate during the course of these deliberations, but what I wanted to get at is the very simple question of whether Panama itself, as a country, historically, through 59 different governments, whether it has or has not been a good neighbor to the United States, whether it has or has not been a friendly country, and whether it is or is not a good neighbor and a friendly country today.

Mr. HATCH. Well, let me say this in answer to my friend's question: Yes, we have had a great friendship with Panama, which I would like to see continued. This friendship has not always been fostered in the atmosphere of the present leadership in Panama. Under the previous leader, Demetrio Lakas, we enjoyed great friendship, but I think very few people would argue, and I would be surprised to hear any Senator argue, that Omar Torrijos has been a great friend of the United States. I think all the evidence has been to the contrary.

I have never called him a tinhorn dictator, but he may be exactly that. I am saying he has never been a great friend of our country, and that these treaties, that are fraught with legal and economic difficulties, are not going to suddenly turn him on to be a great friend of the United States. I think history has shown otherwise. I think we cannot ignore history.

All I can say is this, that I think anybody who believes that these treaties are suddenly going to make great friends out of the leaders such as Torrijos is not correct.

Mr. DANFORTH. I am asking if today and historically Panama has been a friend of the United States. I am not asking if they love us but if they have been a friend.

Mr. HATCH. I really do think so. When we were there, we met a number of labor leaders. Two in particular stood up and said these treaties would not be good for Panama or the United States. It was an act of courage because Torrijos' friends were sitting there. That was said under a regime which has been rated the lowest in this hemisphere on human rights except for Cuba. The fact is they said it. Others were very much in favor of these particular treaties and some were diametrically opposed to the United States in a radical way. All of the American labor leaders at that point down there were basically against these treaties. That was back in August, and I do not know what has happened since, though I would be surprised if they changed their viewpoint.

Mr. DANFORTH. Can I pursue one more point? I apologize for taking up so much of the Senator's time. The Senator talked about maybe within the next 10 years Panama, in order to embarrass the United States, would shut down the canal.

Mr. HATCH. Or for any other reason, but that has to be considered as a potential problem.

Mr. DANFORTH. Am I mistaken that we are going to be operating the Panama Canal for the next 23 years, and that we are going to have troops on the scene?

Mr. HATCH. Basically, in some way, yes, because we are going to have a five-to-four control of the commission. That does not necessarily mean that we control it. Also, they might shut down our military bases from 17 to 4. We will be turning over all civil and military jurisdiction, even over our military forces, as I understand it, to the Panamanian Government. We will be paying them to do the garbage collection and military policing in the Canal Zone. We will not be doing that any longer.

Mr. DANFORTH. I am not talking about garbage collection. I am talking about operation of the Panama Canal.

Mr. HATCH. I think there will be considerable changes under these treaties.

Mr. DANFORTH. I am talking about whether or not, as a practical matter, it is possible between now and the year 2000 for Panama to shut down the Panama Canal.

Mr. HATCH. I think it is very possible, but let us——

Mr. DANFORTH. Does the Senator feel that would happen?

Mr. HATCH. No; because basically we are going to shut down the military bases from 17 to 4 and we are turning over jurisdiction to the canal. There are radicals in Panama who hate the United States of America, who may or may not be able to be controlled. The monetary difficulties are going to bring great and tremendous pressures on Panama. I think anybody who reads these treaties, and there was testimony on it, will see that that is a very serious problem. I think we have unfriendly leaders in Panama who certainly have not shown a propensity to be loyal supporters of the United States.

Mr. DANFORTH. Does the Senator think, and I am not arguing but I am trying to understand the argument, or does the Senator believe that there is a possibility that between now and the year 2000 Panama will shut down the Panama Canal?

Mr. HATCH. I think there is a possibility. I would not say it is a probability but it is a possibility. I think it is a probability that they will without further American financing, without further American appropriations. I think it is a probability.

Mr. DANFORTH. Without more financing than we would provide without the treaties?

Mr. HATCH. Than we would pay pursuant to these treaties.

Mr. DANFORTH. Without more financing than we would provide without the treaties?

Mr. HATCH. I do not know what financing we would provide without these treaties, in addition to what we are paying right now. It has grown from \$169 million in 10 years to \$2.9 billion today. So we are apparently not providing enough to them, even though we have provided to Panama, on a per capita basis, more foreign assistance than any other country in the world.

Let me just say what Governor Parfitt said. Of course, he is a general in the Corps of Engineers. He said:

Within the first year after the treaties went into effect, at least 43 percent of the American Canal Company employees have indicated that they would leave jobs in the canal, and that is a low estimate. Some have estimated as many as 69 percent. There wouldn't be enough really to run the operation in the first year, much less train Panamanians to do the jobs.

That was before the Armed Services Committee.

Mr. DANFORTH. Did he provide the figures on how many would be leaving if the treaties were not ratified?

Mr. HATCH. No; he did indicate before the Separation of Powers Subcommittee a personal opinion, that he felt that the problem was if we did not ratify the treaties, that the administration, regardless of who was in the administration, would act with dispatch to resolve any difficulties that might arise. He did indicate that. He was not afraid that the administration would act with dispatch, that he would stop any uprising which would occur, any more than he would be afraid of operating the Guantanamo Naval Base in Cuba.

Mr. DANFORTH. I have pursued the same line of questions with various people. I was told that there is some possibility of an exit of American personnel if the treaties are ratified. I was also told that there was some possibility of an exit of American personnel if the treaties are not ratified.

My basic view of the whole issue, as a matter of fact, is that the whole thing could very well turn sour whether we ratify the treaties or do not.

Mr. HATCH. That has been my argument for a long time, but because of the actions of our State Department and ambassadors over the course of time they have put us in such a serious dilemma by not negotiating proper treaties that we will be in trouble no matter what we do.

Mr. DANFORTH. I do not know whether or not any individuals or groups, but I think just the course of world events.

Mr. HATCH. This appears to be it. I share that sentiment.

Mr. DANFORTH. Can the Senator give me an assurance that if the treaties are not ratified, things will operate smoothly in Panama and that the Panama Canal will continue to go on without a hitch?

Mr. HATCH. The only thing I can say there is that I believe the interests of the United States would be better served and that we will probably over the long period of time have less difficulties in the United States if we refuse to ratify these treaties but make it clear that we will renegotiate the treaties so that they will be satisfactory to both nations. That would be in the best interests of both nations, and these treaties are not, in my opinion.

Mr. DANFORTH. Would the Senator agree with me that no matter what we do there is a fairly good chance that things are going to, in one way or another, go sour with the Panama Canal?

Mr. HATCH. I think there is a good chance no matter what we do that we are going to have difficulties. I think we are going to have much more difficulty, and I think history will bear it out, though I could certainly be wrong, I think we will have much more difficulty if we ratify these treaties in their present form without consideration of all the things I brought up today.

If we could resolve the difficulties that I have brought up today, I would not have any problem at all with voting for these treaties myself, but I do not think we are going to resolve those difficulties. It is a question of whether the Senators, 67 of them, are going to vote for the treaties or not. If they do, we will have to live with it. If they do not, we are not going to have the treaties and will have to live with whatever is there. But I hope at that point we will have an aggressive administration, and President Carter certainly

has indicated that he would be aggressive. I would suspect if we do so judiciously and quickly we will not have a great many difficulties, but only God can tell the answer to that.

I yield to the Senator from New Jersey.

Mr. CASE. I thank my colleague for yielding.

I think the chief point I wanted to make, and which has perhaps been made by our colleague from Missouri, is that it seems to me that on the economic side a larger part of the concern would exist whether or not we entered into these treaties. There is no question about it, we will need new locomotives. We need a lot of work on the canal in addition to regular maintenance. That would have to be met whether we turned the canal over or not. And I do not think there would be any greater cost to the United States if we waited.

Mr. HATCH. As you are the ranking minority member of the Senate Foreign Relations Committee, I want to show that respect and deference on the floor, but I do not see how—

Mr. CASE. If I understand correctly, the Senator and I are very fond of each other and regard each other highly as individuals. We would not lift a finger not only not to harm each other but we would defend each other to the death against the panoplies that people from the outside might attempt to visit upon us.

The question is, what is the wise thing to do here?

Mr. HATCH. I do say this: I do not think that a serious argument can be made that these treaties will not cost the United States a lot more money than we are presently paying right now because, if the tolls go up, the United States is going to pay the bulk of those tolls. If we transfer all of this property, we are going to have to see that it maintains itself through appropriations here.

The argument is going to come in afterward that we are going to need those appropriations in order not to be embarrassed. I am suggesting, why not face the problem now? Let the House vote on it. Maybe they will vote for these treaties. That would end a lot of the controversy.

Mr. CASE. Well, I am sorry that I cannot agree with the Senator that the House should have an initial voice in this decision.

Mr. HATCH. I understand that is the Senator's position.

Mr. CASE. I think this is a matter in which the Constitution requires action by the Senate—a two-thirds majority, not a majority as for legislation—and the Senate alone. If the House decides in its wisdom that it will not enact legislation to implement the treaty, that would be for the House to decide later. This has always been so in regard to treaties, commencing with the treaty that ended the Revolutionary War, where the House was not even, as the Senator will recall, permitted by General Washington to see the documents relating to the negotiations with France.

Mr. HATCH. That, of course, involved a totally different problem.

Mr. CASE. I know.

Mr. HATCH. What I am saying is that all prior legal precedents support my position, in my opinion and in the opinion of some fairly effective people.

Mr. SARBANES. Will the Senator yield on that?

Mr. HATCH. No, I will not.

Mr. CASE. I would yield, except I do not have the floor.

I would like to make this point. The Senator's argument in regard to the economic difficulties under the treaty really comes down to the question of whether it is going to be as competently maintained under, first of all, the Joint Commission, and then, eventually, of course, under the Panamanian Government alone.

Mr. HATCH. I do not think the word "competently"—

Mr. CASE. The expenses that are involved here are going to have to be paid in some fashion, whether out of tolls or out of governmental appropriations of money supplied by the taxpayers.

Mr. HATCH. Will the Senator admit, then, that we may have to have extra governmental appropriations in order to maintain the Panama Canal, after we have given it to Panama?

Mr. CASE. I do not know whether we will or not. I do know that, except for the argument that it is not going to be efficiently maintained, the Senator's whole economic position fails, because we are going to be in that position—

Mr. HATCH. No, because we would still have \$10 billion worth of property. We would still be operating it. Last year, we lost \$7 million, not the billions that we stand to lose under this particular treaty. We can raise the tolls again to cover the \$7 million loss.

Mr. CASE. There is no argument between the Senator and me about several points. There is no argument that we have been taking what we call interest in varying amounts. We have not always been collecting the total amount.

Mr. HATCH. That is correct, but we have done fairly well.

Mr. CASE. That we are going to get, that is true. There is no argument with the Senator, or between us, on the question of costs of our withdrawal in respect of retirement pay. There is no question about these arguments.

I do object, and I am sure the Senator would not disagree with me on this, to accumulating depreciation and saying that we are paying \$440 million over the next 20 years, or some such figure as that, on property that everybody admits we are giving away right now.

Now, you can say we should not give away the Panama Canal to Panama. That is one single point; that is, to do that. Except for these costs of operating the transfer, there is no argument between the Senator and me. We are either giving away something that has depreciated in value some \$600 million, or something that has a present market value of \$5 billion to \$6 billion.

Mr. HATCH. Actually \$10 billion, according to the staff.

Mr. CASE. We are giving it away.

Mr. HATCH. That is a significant difference.

Mr. CASE. I do not think it is at all. The only value the canal has for the United States or for the rest of the world, including Panama—except as she may be able to operate it at a profit which she can use for other purposes, which the Senator and I would agree is a very doubtful thing—the only use it has for anybody is to go through it. If the best way to go through it is to turn it over to Panama, as some of us think, if the best chance of keeping that right and keeping it an active right is to do that, then that is the wise thing to do, whether or not we go through the motions of saying, this is yours, now, it is not mine. It does not take a nickel

to do that, except for the incidental costs the Senator and I would agree do exist. I do not argue with that.

Mr. HATCH. The Senator and I have our disagreement, as the Senator knows, on this matter.

I did not mean to sound as if I would not recognize Senator Sarbanes before, but we had our colloquy going. I would like to recognize him at this time.

Mr. CASE. The Senator is in charge of the time.

Mr. SARBANES. I was prompted to interject by the statement of the Senator from Utah that all prior legal precedent indicates that there is a role for the House of Representatives with respect to property disposition in this matter. That is simply not the case.

Mr. HATCH. But there is.

Mr. SARBANES. The Senator from Utah may want to make an argument to that effect, but I think it is a legally deficient argument.

Mr. HATCH. Can the Senator cite one precedent that does not back up that argument? Would he cite a few precedents?

Mr. SARBANES. Yes, they are cited in the committee report.

Mr. HATCH. Why not tell me what those stand for?

Mr. SARBANES. There is a list in the committee report.

Mr. HATCH. Let us get it out and see what they stand for. Maybe we can do that later when I bring up my amendment.

But I can say right now that every one of the precedents that the Senate Foreign Relations Committee is considering is very extinguishable.

Mr. DANFORTH. Will the Senator yield on that point?

Mr. HATCH. If Senator Sarbanes is through.

Mr. SARBANES. There are precedents set out on pages 65 through 69 of this committee report.

Mr. HATCH. If the Senator wants to cite one of them as a particularly weighty precedent, I should like to see it—anyone he wants to cite.

Mr. SARBANES. I cite them all to the Senator.

Mr. HATCH. I ask him to cite one and tell us why it is a weighty precedent, because I do not think he can.

Mr. SARBANES. I think each of them is of weight and I cite them all to the Senator.

Mr. HATCH. Cite the fact and the issue and the holding involved in the case and tell me why it is a weighty precedent; that is all I am asking. I am saying there is not a weighty precedent on the Senator's side of the argument and there is all kinds of weight, including three transfers of property in Panama, all transfers in the past, which are made subject to approval by the House of Representatives. I think that is pretty weighty. I think my American people think it is a pretty weighty thing.

Mr. DANFORTH. May I just inquire on this point?

Mr. HATCH. Surely, I am happy to recognize the Senator from Missouri.

Mr. DANFORTH. It seems to me the Senator from Utah is a lawyer and Senator Sarbanes is a lawyer; I am a lawyer; most people in the Senate are lawyers.

Mr. CASE. The Senate is many other things as well.

Mr. DANFORTH. Lawyers always argue about the meaning of cases and they never resolve it among themselves. I should not think the U.S. Senate would be a particularly good place to resolve an issue of law. That is what courts are for.

If treaties are constitutionally infirm, then they are not worth the paper they are written on. The only way, it seems to me, to determine whether they are constitutionally infirm would be to litigate that question in a court and then take it all the way to the Supreme Court of the United States.

So why not settle it that way? Why do we have to debate it here?

Mr. HATCH. Let me answer that question. I would suggest that if we have to wait for the court to handle this, they cannot do it in the next month that this will be decided. If we ratify this treaty and the court comes down and with an opinion that says yes, Senator Hatch and all the others who agreed with him are right, then nothing will be accomplished. We will not be able to do anything about it then, regardless of what the Supreme Court says.

I think it is an issue that has to be faced by the Senate, because we are going to make a determination without a vote in the House and thus be in error under article IV, section 3, clause 2, which is very important.

There have been things which I consider to be erroneous and, I think, very indefensible arguments by the State Department—for example, that the President has concurrent jurisdiction. But they cannot, in my opinion, bring forth a weighty case, and I do not think the five pages of the Senate Foreign Relations Committee report makes a weighty case against the position that article IV, section 3, clause 2 mandates, especially under the prior history and weight of information with regard to the three transfers of property in Panama, that the House of Representatives should vote on it.

I have taken enough time today and I would be happy to yield.

Mr. DANFORTH. May I ask one question?

Mr. HATCH. Surely.

Mr. DANFORTH. At what point in time does the first treaty, the Panama Canal Treaty, become effective?

Mr. HATCH. Six months after ratification is when it becomes effective.

Mr. DANFORTH. Six months after?

Mr. HATCH. As far as I understand.

Mr. DANFORTH. Is that correct, 6 months after ratification?

Mr. HATCH. That is correct.

Mr. DANFORTH. Well, I would imagine that the courts would deal with the matter in a very expeditious fashion.

Mr. HATCH. Does the Senator think, as an attorney, the case in the district court that has to go to a circuit court and then the Supreme Court, where cases languish as long as 6 years, will be determined in 6 months?

Mr. DANFORTH. I think with the importance of this case the courts would dispose of the issue very expeditiously.

Mr. HATCH. I understand the distinguished Senator from Missouri's point and as former attorney general of Missouri I have to give him a lot of credit to do that, but one of our major oaths as Senators is upholding the Constitution. We have, as a legislative

body, a coequal right to define that Constitution under certain circumstances. This is one of them.

I understand the Senator's position and respect it, as I respect him, and he knows that. But the fact of the matter is that we are not going to solve this problem by letting a court solve it after the fact. I think we have to face the issue here as Senators and determine whether or not we are going to allow our colleagues in the House the opportunity to vote on this.

Several Senators addressed the Chair.

Mr. HATCH. My point is that we should.

Several Senators addressed the Chair.

Mr. GRIFFIN. Could another lawyer get in here?

Mr. HATCH. I am delighted to yield to the Senator from Michigan.

Mr. DANFORTH. Let me make this one point and, believe me, I will sit down.

I think one Justice said that the Constitution is what the Supreme Court says it is, and we are not, I do not think, in a very good position to adjudicate a constitutional issue on the floor of the Senate.

Mr. HATCH. But we are in a position to determine whether or not our colleagues in the House have a right to vote on it.

Mr. DANFORTH. This is what courts are for, and if we have done something which is a constitutional infirmity, then it would become a nullity. So I do not understand why we have to bring that issue up.

My view is, frankly, that there are important issues to be raised with respect to the Panama Canal Treaty and with respect to the Neutrality Treaty; that they do involve maintenance; they involve repair and they involve economic questions; and that those issues should be debated at length.

But what concerns me is that we can sort of muddy the waters by bringing up unrelated issues, which I think we can go on and on and argue first, when there is another forum that can properly adjudicate it.

Mr. HATCH. The Senator and I respectfully disagree on that. As far as muddying waters, I think we are muddying by not deciding something as momentous as to whether or not the President is violating the separation of powers doctrine and extending his power to the exclusion of the other two coequal branches of Government. I think it is our responsibility when we know the courts cannot decide it, whether we ratify or do not ratify this. I think we would be remiss not to, especially in light of the fact that 219 Congressmen asked us to; I think it would be a breach of our responsibility.

I would go so far as to say it is an affront to the House of Representatives if we do not consider them in this.

Now, I am going to bring up the amendment. It may very well be that the Senate will vote and say that the House does not have the opportunity and will not have the opportunity. If that is the case, I think we are wrong, but I will have abided by it, as we all know.

But I am going to argue as forcefully as I can that there is a lot more involved than just a minor constitutional issue. This is a

major, monumental constitutional issue that the Senate does have a right to determine under these circumstances.

Mr. President, I yield the floor to the distinguished Senator from Michigan.

Mr. GRIFFIN. Mr. President, I just want to register another point of view. I want to say that I do not agree with the Senator from Utah that it is all that clear and absolute that the House has a constitutional right to be involved in the conveyance of property.

On the other hand, I think they have a good case to make and they have been making it throughout the history of Congress from the time of the Jay Treaties.

On the other hand, I do not agree with the Senator from Missouri that this is not an important issue in the sense that the Senate should look at it.

I would say this: Whether the House concurrence is required with respect to the conveyance of real estate and property, or not, there is no getting around the fact that these treaties are not self-executing.

They are not like other treaties that do not require implementation.

If we ratify these treaties without the approval or concurrence of the House, the very first thing that must be done under article III of the principal treaty is that the United States of America shall, in accordance with the terms of this treaty and the provisions of United States law, carry out its responsibility by means of a U.S. Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America.

Whether or not appropriations are going to be called for, and I tend to agree the day is not far distant when we will be asking the House of Representatives to appropriate additional funds, there is no question that the House of Representatives immediately is going to have to pass a bill to constitute a new entity known as the Panama Canal Commission which will be composed of five U.S. members and four Panamanian members.

Whether or not the House concurrence is required with respect to the conveyance of property, would it not be the better part of wisdom for the administration, to say nothing of the Senate, to seek the approval of the House of Representatives on these treaties?

Now, while it is not required by the Constitution, there is not anything to prevent the administration from submitting these treaties after they have been acted on by the Senate, if they are ratified, to the House for their approval.

Or another possibility would be to proceed, as the Senator from Utah has suggested, with an amendment to the ratification resolution which would withhold the deposit of the ratification document until the House of Representatives has approved them, and especially when 219 Members are on record now demanding participation and when there is no question they are going to have to participate. I frankly think that whether it is required by law or what the Supreme Court would say or would not say, it would be just, wise, and prudent policy to follow that course of action.

Mr. HATCH. I would like to thank my friend from Michigan (Mr. Griffin) for the comments he has made.

But although we may disagree to a degree, I think his statement was a good statement and one with which I heartily agree, for the most part.

I want to say that I thank the public broadcasting system, or whoever is broadcasting this, because I do think that for the first time the American people have an opportunity of at least listening to some of these issues that are very important and very momentous.

I say that I, for one, will be very loathe to deny my colleagues in the House, when better than half of them have asked for a right to participate, when it is clear they are going to have to participate if the treaties are ratified, the right to participate now.

I think it is a mistake. I think it is a breach of our obligation as Senators.

Mr. President, I yield the floor.

Mr. Church addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CHURCH. Mr. President, I would like to speak briefly to the question that has occupied the Senate during the last few minutes.

Mr. Thurmond addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I had understood that I was to follow the distinguished Senator from Utah; is that correct?

Mr. CHURCH. I might have asked the Senator to yield. It will only take me a minute or two, to insert some material in the Record.

Mr. THURMOND. I yield.

Mr. CHURCH. I thank the Senator for his courtesy.

The PRESIDING OFFICER (Mr. Hodges). The Senator from Idaho (Mr. Church) is recognized.

Mr. CHURCH. Mr. President, there is no question that the Senate could amend the treaty in such a way as to permit the House of Representatives to pass upon the question of divestiture of any property. If we did that, I think we would make a great mistake, for this would diminish the constitutional prerogative of the Senate to handle treaties.

I hope the Senate will reject any amendments of that kind, because the Constitution confers on this body the exclusive right to ratify treaties. We can do so only by mobilizing a two-thirds vote, while the House can decide by a simple majority.

But when the argument is made that the House possesses a constitutional right to participate, I think that is simply without foundation. Only recently, certain Senators who oppose these treaties brought an action in the Federal courts and sought an injunction on the very question of whether the House possessed a constitutional right to pass on the conveyance of property belonging to the United States. The Supreme Court refused to hear the case. The injunction was refused. Under our system, it is left to the courts to determine such questions. So I believe that this is an argument without foundation.

Moreover, when the committee held its hearings on the treaties, the Attorney General of the United States appeared, to address

this very point. I will read into the Record his final conclusion, and then I will yield the floor. It reads as follows:

The final point which I wish to make is that throughout our history Presidents acting with the advice and consent of the Senate have made numerous self-executing treaties transferring territory or property belonging to or claimed by the United States. One example, cited in the Opinion, is the 1819 Florida Treaty with Spain. Under that treaty the United States ceded all its territory beyond the Sabine River in Texas to Spain in return for the cession of the Spanish territories of East and West Florida. While there had been some dispute over some of the relevant boundaries, the congressional debates, as well as President Monroe's annual message to Congress, make it clear that many considered the action to be an outright cession of American territory in exchange for Spanish territory. 36 Annals of Congress 1719-38, 1743-81; 2 J. Richards, Messages and Papers of the Presidents 55 (1896). There was no statute authorizing this cession of American territory. There have been numerous other treaties which have transferred U.S. territory or compromised U.S. claims. See, e.g., United States-Great Britain Treaty of 1842 (Webster-Ashburton), 8 Stat. 572, T.S. No. 119; United States-Great Britain Treaty in regard to limits westward of the Rocky Mountains of 1846 (Oregon Treaty), 9 Stat. 869, T.S. No. 120.

In conclusion, the text and history of the Constitution, as well as the decisions of the Supreme Court and historical treaty practice all support the opinion I recently rendered that property of the United States may be transferred by treaty absent statutory authorization.

Mr. GRIFFIN. Mr. President, will the Senator yield for a brief question?

Mr. CHURCH. I yield.

Mr. GRIFFIN. I listened carefully and noted that in that communication from the Attorney General, he referred to a self-executing treaty. I wonder whether the Senator from Idaho disagrees with the Senator from Michigan concerning whether or not these treaties, particularly the Panama Canal Treaty, are self-executing. I contend that it is not self-executing, in the sense that implementing legislation clearly is going to be required and the treaties cannot stand on their own.

Mr. CHURCH. My reply to the Senator is that, in certain respects, these treaties are self-executing. In other respects, implementing legislation will be required. However, with reference to the transfer of property, which is the question at issue, I think the treaties are self-executing.

Actually, I really believe that the Senator from Michigan and I are not on opposite sides of this proposition. He makes the case that, as a matter of policy, we should amend this treaty in such a way as to permit the House of Representatives to act on the question of property transfers.

Mr. GRIFFIN. Particularly because the treaties are not self-executing in other respects, irrespective of what the situation may be concerning property.

Mr. CHURCH. I believe, on the other hand, that to amend the treaties in this fashion would create a very bad precedent, because the Senate would be denigrating its own authority under the Constitution.

In any case, there is no legal basis for the argument that the Constitution itself confers some right upon the House of Representatives to act in this case, and the effort to establish that proposition has already been rejected by the Supreme Court of the United States.

Mr. ALLEN. Mr. President, will the Senator yield at that point?

Mr. CHURCH. I yield.

Mr. ALLEN. The Senator stated that this contention has been rejected by the Supreme Court. Not on the merits, I say to the distinguished Senator. It was not the matter of the separation of powers. The Supreme Court felt that it should not inject itself into a legislative matter. Is that not correct?

Mr. CHURCH. The Supreme Court refused to hear the case.

Mr. ALLEN. Yes, but not on its merits, I insist.

Mr. CHURCH. The purpose of the plaintiffs was to secure an injunction, and the effect of the Supreme Court's refusal to hear the case was to deny them the injunction.

Mr. ALLEN. Again I say that they did not decide the case on the merits and on the constitutional issue involved.

The PRESIDING OFFICER. The Senator from South Carolina (Mr. Thurmond) is recognized.

Mr. THURMOND. Mr. President, this week the Senate begins the formal debate on the Panama Canal treaties, a debate which in fact has been underway in the meeting halls, towns and cities of America since last September when President Carter and General Torrijos signed the treaty documents in ceremonies here in the Nation's Capital.

TREATIES FATAALLY FLAWED

My visit to Panama in August 1977 and my study of the treaties since that time have convinced me these documents are fatally flawed and should not be consented to by this body.

This does not mean the United States should slam the door in Panama's face relative to a new treaty. Rather, a full debate and careful study of all the issues will reveal that these particular treaties are not in the best interests of the United States or the Republic of Panama. Therefore, I trust this formal debate will convince the Senate that on these treaties the Senators should advise the President to seek new agreements rather than consent to those already reached.

Mr. President, of great importance to this debate is the new information on the treaties which was developed in the recently completed hearings of the Senate Armed Services Committee. These findings impact on the financial, defense and economic aspects of the proposed treaties.

Key points highlighted by the testimony before our Committee on Armed Services included the following:

First. The Senate must receive and consider the implementing legislation if it is to act on these treaties in an informed and responsible manner. To do otherwise would defeat the purpose of this or any treaty, that purpose being to resolve or prevent disagreements, not create them.

Second. The American public must be told during this debate of the huge costs which may be incurred by the U.S. Government and the taxpayer under these treaties. The administration has not been forthright in their claim that the treaties "require no new appropriations, nor do they add to the burdens of the American taxpayers."

Third. The ability of the proposed Panama Canal Commission to make huge annual payments to Panama while at the same time

remain self-sustaining must be carefully examined by the Senate during these debates.

Fourth. Issues for possible conflict between Panama and the United States under the treaties must be clarified and agreed to by both sides if we are to avoid setting the stage for serious disagreements in the future. Proponents of the treaties argue these documents will buy for the United States good relations in future years. However, a careful examination of the treaties, particularly the financial provisions, raises the likelihood that new disputes will be created rather than prevented.

1. IMPLEMENTING LEGISLATION

Mr. President, yesterday I delivered to the majority and minority leaders of the Senate letters urging that they use their position to prevail upon the administration and the State Department to submit the implementing legislation.

The Senate must know the direct costs of implementing these treaties and evaluate carefully the risks that appropriated funds will be required to meet our obligations over the next 22 years.

The treaty implementing legislation is the key determinant of the financial viability of the proposed Panama Canal Commission. Only this legislation can answer such critical questions as: What Government agency will run the Commission? How will the annual contingent payment to Panama be handled in financial and toll setting plans? How will personnel termination costs or base relocation costs be financed? What should be done to relate payments to Panama for public services to the actual costs incurred? How can the quality of these services be assured? What will be the range of labor benefits for Panamanian employees? What will be the accounting practices used and who will audit this new Commission? How will Panama's \$8.4 million debt to the present Canal Company for past services be settled? How will the Commission finance capital improvements?

These are but a few of the questions for which there will be no answers until the implementing legislation is presented. In my judgment, the Senate will be making a serious mistake if we attempt to act on the treaties without the implementing legislation.

2. U.S. FACES HUGE COSTS

Mr. President, the Secretary of State testified before the Foreign Relations Committee as follows:

The Treaties require no new appropriations, nor do they add to the burdens of the American taxpayer.

Quite the contrary is true. Besides turning over to Panama a \$8 to \$9 billion investment, the Armed Services Committee hearings revealed costs of the treaties could run as high as \$2.3 billion, some of which would come from appropriated funds.

Earlier this week, Secretary Vance in a letter to Senator John Culver, admitted the yet to be submitted implementing legislation would excuse the canal from interest payments to the U.S. Treasury. This alone would cost the Government a minimum of \$440 million in income by the year 2000.

The treaties also trigger other direct costs to the Government, unless they are charged to the Canal Commission. These would include \$43 million to relocate U.S. military bases, \$165 million in early retirement costs for U.S. employees and \$110 million in schooling costs. Testimony indicates all of these costs would come from appropriated funds.

Further, the United States has made these commitments to Panama: up to \$200 million in Export-Import Bank credits, up to \$75 million in Agency for International Development housing guarantees, \$200 million in Overseas Private Investment Corporation loan guarantees, and \$50 million in foreign military sale credits.

In addition to the costs already cited, an approximate \$1.5 billion over the next 22 years is expected to be paid directly to Panama under the treaties, all of which is to be financed by higher tolls. These costs include: \$880 million collected by Panama from tonnage commission, \$220 million in direct annuities, \$220 million minimum payment for services rendered by Panama, and up to \$220 million in payments from excess revenues of the Canal Commission.

Since about 70 percent of the canal traffic either originates or terminates in the United States, the American taxpayer will have to shoulder the burden of these higher costs.

3. CAN THE CANAL SURVIVE FINANCIALLY?

Mr. President, the great burdens placed on the finances of the Canal Commission by these treaties brings into question the very survival of this vital waterway.

In these treaties the administration has constructed a financial plan designed to pour millions of dollars into Panama's debt-ridden government. Hearings in the Armed Services Committee indicated the administration in its efforts to meet Panama's money requirements, may have constructed through these treaties a financial scheme doomed to failure.

Maj. Gen. Harold Parfitt, Governor of the Canal Zone, warned the canal operation may not be self-sustaining after 1984 under the terms of the proposed treaties. Until 1984 large quantities of Alaska oil will be moving through the canal, but after that date this business will be lost to a new pipeline and the land bridge in the United States. Governor Parfitt testified there was a high probability that the United States would have to make up the difference between canal income and the required payments to Panama between 1984 and 2000.

The payments to Panama under the treaties of about \$1.5 billion are to be financed through higher tolls on ships using the canal. However, tolls can be increased only to a point without the loss of business to the so-called land bridge. Tolls have already been raised about 40 percent in the last several years, and under the treaties an immediate increase of 25 to 40 percent is predicted.

Economic experts are in dispute as to how high the tolls can be raised without such actions being counterproductive. All experts agree, however, that once traffic managers decide to move their goods across land, the business is not easily or quickly regained.

Secretary Vance in a recent letter to the Senate, indicates that the implementing legislation will provide that the borrowing authority of the Panama Canal Company will be transferred to the Panama Canal Commission. Thus, it is obvious the administration itself recognizes the heavy financial risks involved in these treaties. Further, my colleagues should bear in mind the United States is obligated under the treaties to turn the canal over to Panama in 1999 debt free—I repeat, debt free. That means if the Canal Commission cannot sustain itself through higher tolls, the United States will have to pay off the deficits in 1999.

Thus, by placing these burdens on the Canal Commission are we unwittingly sowing the seeds which could bring about the failure of the canal as an economic means for movement of goods to and from the Atlantic and Pacific Oceans?

4. UNITED STATES/PANAMA CONFLICTS LIKELY

Mr. President, one of the most important revelations of the Armed Services Committee hearings was that the ambiguities ranging throughout the treaties raised the unwelcome prospects of new disputes—I repeat, new disputes—between Panama and the United States.

Some support the treaties chiefly in the belief that they will insure good relations with Panama. However, we have already seen that ambiguities such as the neutrality and priority passage clauses have created friction between the two nations. The financial provisions alone are replete with varying interpretations, all of which could fester into major disputes unless clarified by amendments or in the implementing legislation.

A major provision of the treaties relating to payments for Panama could easily create a serious conflict between the two nations in future years. This results from the fact that Panama is to be paid 30 cents per canal-ton until the year 2000. To finance these and other direct payments to Panama from operating revenues, the Canal Commission will be forced to increase tolls.

In an effort to generate income for these new expenses, it is not unlikely for the Canal Commission to increase tolls to the extent that less traffic transits the canal. Panama would oppose raising tolls to that extent as its payments would be lower due to the reduced tonnage transiting the canal. The question then arises, is the Canal Commission to risk losing traffic to meet its expenses to Panama, or should it meet those expenses through borrowing? Panama would strongly favor borrowing to avoid the tonnage loss, but the United States would hesitate to assume these debts, as in 1999 such debts would have to be paid off from the U.S. Treasury.

Another serious issue left in doubt by the treaties is whether or not the \$10 million annual payment to Panama from excess revenues is cumulative. Panama contends it is cumulative, whereas the United States says it is not. This issue, and many others, must be nailed down in order to avoid the very disputes the treaties purport to prevent.

Further, there is the question of whether or not the \$10 million annuity to Panama is to be paid from canal tolls or by direct payment from the U.S. Government.

Still another example is the fact that the treaties do not address the quality of the services to be rendered to the new Canal Commission by Panama. Comptroller General Elmer Staats testified:

It is essential to establish standards for those services before they are assumed by Panama.

This involves a \$10 million annual payment to Panama, although it is generally recognized Panama's costs to deliver these services will only be about \$4.4 million. This is another subsidy to Panama.

The Senate should ponder carefully why these treaties are now being debated on the Senate floor when so many important questions remain unanswered. The Senate must demand all questions be fully answered. Further, the treaties are certain to lead to conflicts with Panama if allowed to stand in their present form.

Mr. President, all of these economic issues are dealt with in greater detail in the excellent report of the Armed Services Committee on its hearings. I invite the attention of my colleagues to that report as well as the hearings. It is my opinion, however, that these problems are so great that only through new negotiations could suitable documents be achieved.

NATIONAL SECURITY ISSUES

Aside from the economic issues, the flaws in these treaties relative to the national security areas were well documented in the Armed Services hearings.

All defense witnesses testified that the canal was vital to our national security in future years. This is even more so the case when our own Navy has shrunk from 976 ships in 1968 to less than half that number today, about 475. At the same time the Soviets have built a huge navy designed to challenge us in the various "choke points" of the world, the Panama Canal being one of the most important.

Mr. President, future Navy commanders cannot develop strategy or base contingency plans on passage through the canal unless that passage is certain. Can we be certain after the year 2000 that our ships can transit the canal in times of emergency? I do not think so.

CANAL CONTROLS CARIBBEAN

The canal is critical to U.S. control of the Caribbean Sea, an important body of water almost at our shores. Our military withdrawal from Panama will greatly hamper the ability of our fleet to control vital passageways in the Caribbean such as the Yucatan Channel, the Mona Passage, and the Windward Passage.

Also, the Senate should be aware that our position at our naval base at Guantanamo Bay in Cuba will become even more precarious if these treaties were negotiated in 1903 and efforts to get the United States out of Guantanamo will likely escalate if we hand over the Canal Zone to Panama.

ADMIRAL MOORER ISSUES WARNING

Adm. Thomas Moorer, former Chairman of the Joint Chiefs, made a strong statement in opposition to the treaties. He disputed the idea the canal could not be defended from internal threats. He

also debunked the claim 100,000 troops would be needed to defend the canal terming it a "gross overstatement."

Both Admiral Moorer and Maj. Gen. George Mabry testified there was absolutely no comparison between the Canal Zone and Vietnam. The location of Panama in this hemisphere, the lack of road along its borders, the fact it is a land bridge between two oceans all tend to make military operations there quite different from Vietnam.

Admiral Moorer also seriously questioned the ability of a small nation like Panama to run the canal. He cited Panama's weak economic base, lack of skilled labor and historical political instability as major problems in such a mammoth undertaking.

TORRIJOS-CASTRO CONNECTION

General Torrijos and Fidel Castro make no secret about their friendship and common views. Investigations of the 1964 riots revealed a strong Cuban hand as testified to by General Mabry, the main U.S. Army ground commander during the riots. It is likely that if these treaties are ratified, Cuban and Soviet influence in Panama will grow to an extent the United States cannot be certain of the canal's use in emergencies. Further, if problems develop, any U.S. military action could easily result in a confrontation with Cuba or the Soviets. Such prospects could be avoided if the United States insists on retaining control of the canal.

During testimony on national security matters, former Deputy Secretary of Defense William Clements testified that in 1975 he had negotiated with General Torrijos a security clause insuring U.S. rights of unilateral intervention. Why then—I repeat, why then—has the current administration, in the brief span of about 6 months, junked this clause in favor of the weak and ambiguous "regime of neutrality"?

Administration witnesses claimed in testimony the treaties represent all possible concessions from Panama. Yet a stronger national security provision, agreed to by General Torrijos, was junked. This represents firsthand evidence that the administration failed to get the most favorable agreements possible from Panama.

BASE RIGHTS SURRENDERED

The Senate should also be aware that under these treaties defense of the canal will be costly in lives and resources. The Defense Department sought base rights for well into the 21st century, but the negotiators not only gave up these requirements, they also failed to even establish specified areas for U.S. forces to occupy, should U.S. forces be required to return to the canal after the year 1999. As a minimum, the United States should retain military bases in Panama after the year 2000.

General Mabry told our committee, as one who has had experience enforcing the 1903 Treaty, it was essential that any future agreement be explicit if it is to be effective. These treaties are anything but explicit and are certain to lead to disputes rather than prevent them.

Mr. President, there are many other elements in the treaties which I find totally inconsistent with the best interests of this Nation. These include the following:

The provision prohibiting the United States from even negotiating with another nation the right to build a sea level canal prior to the year 2000, as well as the requirement such a canal be built in Panama if undertaken prior to termination of the main treaty.

The provision which permits passage of ships of nations unfriendly to the United States even in wartime.

The practice of entering into treaties of this import with a dictator who has denied the human rights of his people and demonstrated through fiscal mismanagement he is incapable of responsible leadership.

The assumption by the Senate that the House of Representatives does not have a legitimate role in the disposal of publicly owned property as is the case with the Canal Zone.

The failure of the treaties to adequately provide for maintenance of American cemeteries in the Canal Zone.

The dangers represented by the language difference, Spanish and English, in which the treaties are written.

The abandonment of U.S. citizens and employees in the Panama Canal area to the laws of Panama, the very same laws the Torrijos government has so often ignored when it served their purposes to do so.

Mr. President, these remarks today represent some of my broad concerns relative to these treaties. As the debate progresses, I intend to say more about the specific articles as they are taken up in turn by the Senate acting as a Committee of the Whole.

In conclusion, I find these treaties totally unacceptable for many reasons. The flaws of the treaties are basic and numerous. Even with the Senate acting as a Committee of the Whole, it is my opinion the treaties could not be amended sufficiently to make them in the best interests of the American people. The Senate's responsibility is clear. Our responsibility is not to bail out the President, but to protect the interests of the American people. We can meet that responsibility only by refusing to consent to these treaties.

THE PRESIDING OFFICER. The Senator from Alaska (Mr. Gravel) is recognized.

MR. GRAVEL. Mr. President, since it first intruded on the Nation's consciousness three quarters of a century ago the Panama Canal has with dogged regularity generated more than its share of high emotion and partisan rancor in American politics. And unlike most other foreign policy disputes, the lines have not been drawn between those who favor a canal and those who oppose it. Americans as a whole consistently have supported the idea of an Isthmian Canal. The controversy has always been not over what we should do, but how we should do it.

That is again the situation today as we open debate on the question whether the Senate should advise and consent to the ratification of the new Panama Canal treaties.

The U.S. public at large still holds to its historical perception that the Panama Canal is an important commercial and defense asset for the United States and the world. But the new treaties

now serve to polarize the debate between those for status quo and those for change, the protreaty forces.

Those of us who place ourselves among the latter group, argue that a new treaty which accommodates Panamanian grievances is the surest way of guaranteeing the United States basic interests in the continued fair, efficient, and neutral operation of the canal, the status quo position, on the other hand, emphasizes the legitimacy of U.S. rights assured in the 1903 treaty. Proponents of this position, though willing to fine tune the existing treaty, adamantly oppose a new treaty in accord with the principles of the one now before us. They raise the following particular objections:

First. The new treaty would relinquish U.S. sovereignty in the Canal Zone, thus abandoning U.S. citizens there and diminishing U.S. power and standing abroad.

Second. The new treaty would abandon huge U.S. capital investments in the Canal Zone, which rightfully belong to the American people.

Third. The new treaty would relinquish the U.S. right to operate the canal to the Panamanians, whose political instability and lack of technical and managerial skill make them poor candidates to assume the role so efficiently and impartially performed by the United States for the past 60 years.

Fourth. The new treaty would abandon U.S. citizens in the Canal Zone, who for generations have given their lives to the Canal's construction and operation.

Fifth. The new treaty would threaten hemispheric defense and U.S. security, to which the canal is vital.

Sixth. The new treaty would endanger the U.S. economy by relinquishing operational control of the canal.

Seventh. The new treaty would relinquish an important U.S. right to build a sea-level canal in some other central American country by committing us until the year 2000 to undertake such a project only in Panama.

The validity of these objections to the new treaties is, of course, subject to challenge.

I have concluded that in fact each of these objections is, in one way or another, invalid. I hope to show that this is so. But let me first point out that each of these arguments against the new treaty contains a suppressed premise; namely, that the present treaty is fair and serves U.S. interests. If this premise is false, as I believe the evidence compels us to conclude it is, then all of the above arguments fail as a rationale for maintaining the status quo.

Let us look at the background to the present controversy. Almost from the start, the Panamanians have been dissatisfied with the present treaty. This is not hard to understand. Its terms grant to the United States "in perpetuity the use, occupation, and control of a zone of land and land under water for the construction, maintenance, operation, sanitation, and protection" of a canal "of the width of 10 miles." The treaty further grants to the United States "all the rights, power, and authority within the zone mentioned— which the United States would possess and exercise if it were the sovereign—to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power, or authority." In return for these generous concessions the United States agreed to

pay the Republic of Panama \$10 million and an annuity during the life of the treaty of \$250,000, raised to \$1.9 million in 1955 and subsequently adjusted for inflation in 1971 to \$2.3 million, which is what we presently pay the Panamanians.

The events immediately preceding and leading up to the conclusion of the 1903 treaty with the Panamanians provide important perspective on the controversy over the new treaties. It is an historical record which, I believe, compels us to conclude that the present treaty arrangement is fundamentally unfair, and hence, that the demands of elemental justice require a redress of Panamanian grievances.

It is, of course, a separate issue whether or not the new treaties do this in a way that preserves U.S. interests. I am convinced they do, and I will point out how in due course. But first, let us take a brief look at history.

In 1902, Congress authorized the President to acquire a specified strip of land and additional rights and territory from Colombia, of which Panama was then a part, for the construction and operation of a ship canal. But negotiations with Colombia fell apart when the Colombian Senate unanimously rejected a proposed treaty as not in her best interests.

Then President Roosevelt took things more into his own hands by sending gunboats to stand offshore while the Panamanians declared their independence. The dust had not been settled when, 3 days later, the Roosevelt Administration hastily recognized the new republic and immediately set about negotiating a canal treaty with a Frenchman named Philippe Bunau-Varilla, who came to Washington from Paris, by way of New York carrying an honorary Panamanian citizenship and the title minister plenipotentiary to the United States.

Bunau-Varilla, who had financial interests in the construction of a Panamanian canal dating from the earlier French effort to join the oceans, had managed by a combination of brazen self-assurance and shrewd maneuvering to have himself appointed to the auspicious post of Panamanian envoy, even though he was a French citizen and had not set foot in Panama for years—almost two decades. At first, the provisional junta of the Government of Panama had been reluctant to accord him such high position, but Bunau-Varilla was not one to be outmaneuvered. He simply withheld funds the junta desperately needed and refused to take any formal actions on the new government's behalf until he had been granted the powers he felt proper to his station. Once they were in hand, he immediately set about taking necessary steps for the negotiation of a canal treaty.

Meanwhile, back in Panama, the members of the junta were taking what they regarded as necessary steps to assure their interests were properly represented by their French minister. They appointed Manuel Amador Guerrero and Federico Boyd delegates of the Republic of Panama and provided them written instructions to carry to Bunau-Varilla. He was to negotiate a treaty, "all causes" of which were to be "previously consulted" with Amador and Boyd.

So it was obviously their specific wish that he would not be able to do anything unilaterally. "You will proceed in everything," the

junta directed, "strictly in agreement with them." That is, Amador and Boyd. And the treaty's provisions "must not be any less favorable for Panama than were those of the Hay-Herran treaty for Colombia."

That is very important. That was the intent of the junta at that time, that, minimally, they would not have anything less than what the United States had already signed with the nation of Colombia.

With these documents in hand, the Panamanian delegates sailed for New York on November 10, just 1 week after the uprising.

Bunau-Varilla, having received word of the Amador-Boyd mission, knew his time was short. He arranged to be formally received by President Roosevelt on Friday, November 13. That day, as he left the White House reception, he turned to Secretary of State John Hay and delivered a warning:

For 2 years you have had difficulties in negotiating the canal treaty with the Colombians. Remember that 10 days ago the Panamanians were still Colombians and brought up to use the hairsplitting dialect of Bogota. You have now before you a Frenchman. If you wish to take advantage of a period of clearness, in Panamanian diplomacy, do it now! When I go out, the spirit of Bogota will return.

That is the quote from Philippe Bunau-Varilla to the Secretary of State of the United States of America about another country for which he had no citizenship.

Hay acknowledged that he understood and promised an early draft of a treaty that he would deliver to Bunau-Varilla.

The Frenchman did not have long to wait. On Sunday the 15th Hay's draft was delivered to his room at no other place than the Willard Hotel, right down the street. It was essentially the Hay-Herran Treaty with a few minor changes. Bunau-Varilla set to work feverishly. He felt the Hay-Herran Treaty carried the stigma of the long struggle with Colombia and must be changed. As he himself was to write later:

I reached the conclusion that in order to succeed it was necessary to draft a new treaty so well adapted to the American requirements that it could defy any criticism in the Senate.

The amounts were to remain the same—a flat \$10 million plus a \$250,000 annuity—but the zone was to be increased from 10 kilometers to 10 miles, and it was to be "granted," not leased, to the United States "in perpetuity." Moreover, the United States was to be given even greater attributes of sovereignty than in the Hay-Herran Treaty, which, I want to say, was unanimously turned down by the Colombia Senate.

Even though this was the very point on which the Colombians regurgitated.

By 10 o'clock on the night of the 16th, which is now Monday, Bunau-Varilla, in his hotel room, had finished his task. Despite the late hour, he proceeded to Hay's home. On finding it darkened, he had to return the next morning.

On November 17 he presented Hay his draft and expressed his willingness to sign either it or the draft Hay had given him, however he expressed a preference for his draft because it "has the advantage of conferring upon the United States in broad and general terms the rights she is entitled to have * * *."

Time was now precious, indeed, as Amador and Boyd had arrived that very morning in New York, Tuesday morning. They had been delayed 1 day, but on the 18th the Panamanians would be in Washington to instruct their minister. On the night of the 17th Bunau-Varilla informed Hay that he wished to sign the treaty the next day before Amador and Boyd arrived in Washington. He stated:

So long as the delegation has not arrived in Washington, I shall be free to deal with you alone, provided with complete confidence and absolute powers. When they arrive, I shall no longer be alone. In fact, I may perhaps no longer be here at all.

We can begin to sense the drama here of days and hours of moving forward on this crucial document on which we place such sanctity and justice and morality.

Alone, Hay was more than willing to accommodate.

After a hurried meeting the next day, that morning, with a group of influential Senators, he requested Bunau-Varilla to call at his home at 6 p.m.

There, at 6:40 in the evening, November 18, 1903, the Hay-Bunau-Varilla treaty was signed in the Secretary's private home—not at the State Department or some official place, in the Secretary's private home.

In fact, the Secretary had to use his own signet ring as a seal. Not a single Panamanian was present or had ever laid eyes on the document that was being signed in their behalf.

Bunau-Varilla had achieved his goal none too soon. That very evening at 10 o'clock, now mind, the treaty was signed at 6:40 in haste, at 10 o'clock, Amador and Boyd arrived at Union Station from New York. When Bunau-Varilla met the train, document in hand, and gave them the news of the signing, Amador almost passed out, for obvious reasons.

The next day, the Panamanian delegates who had the real power attempted to reopen negotiations with the Department of State. They obviously failed.

Hay, not to mention Bunau-Varilla, had now turned their attentions to getting the treaty ratified. Both men entreated the Panamanian delegates to ratify the documents on the spot, but they demurred, insisting they had no such authority.

So on November 24, Bunau-Varilla dispatched the treaty to Panama by boat. He then pressured the junta to ratify it immediately upon arrival, suggesting darkly—and we can just feel the flavor of the situation—suggesting darkly that if they did not act with dispatch, the Colombians might make a better treaty and leading the United States to withdraw its support.

Although the Roosevelt administration had no such intention, rumors were abroad in Panama that Colombia might get—try to retain its lost territory and the junta feared the worst. In fact, they had to fear for their very lives, because the gunboats, to leave the shores, obviously, the Colombian troops would come back, and what do you think would happen to the junta? They would be promptly executed.

So when these people were pressured, they were not pressured with niceties of the international byplays. They were pressured with their very lives at stake.

So on November 26, with that element of duress at their backs, they cabled their willingness to ratify the treaty as soon as it arrived.

Now, mind, they had not even read the document, but they cabled back they would sign it as soon as it got there.

Six days later, on December 2, they did so, signed the treaty, having had the 31-page document for only 20 hours, and at that, only the English version and nobody in the junta could read English.

Mr. CHURCH. Will the Senator yield?

Mr. GRAVEL. I am happy to.

Mr. CHURCH. Under similar circumstances, would not the Senator have signed it even if he could not read it?

Mr. GRAVEL. If it is my life for a signature, obviously it is my signature you get with very great ease.

I may not like it and I may spend the rest of my life trying to get this great injustice corrected. It is like a person making a contract.

If I went over to the Senator right now with a gun and said, "Sign your name on a deed to your house right now that you have here in Washington, if you don't, I will blow your brains out," you are going to sign the deed.

Under American law, we have recourse in not delivering the house, but under international law we do not have those niceties.

Mr. CHURCH. I had a father-in-law who used to practice law in the mountains of Idaho. As a young man, he said he often wondered what he would do if he ever had to look into a gun barrel. He said he found out one afternoon when a deranged farmer came in, pulled a pistol and said, "Turn around, put your hands up and lean against the wall."

He turned around, put his hands up and leaned against the wall.

This was what the Panamanians were up against when they felt constrained to sign a treaty they had not negotiated and could not read. They were up against the wall. Small wonder that, in the years that have followed, they have sought to correct this wrong. And they have made a little headway. From time to time, rectifications have been made in the original treaty, minor rectifications. Nevertheless, the Panamanians have persisted, pressed on by their sense of outrage, their sense of diminished nationhood, their sense of pride. So now we come to the final rectification of that wrong. This is how we ought to judge these treaties.

A big power that can be generous enough to correct a wrong is a great power. To make amends is not a sign of weakness. It is a sign of strength. To do right is never wrong. But to hold that our might makes right would be to repeat again the mistake of 1903 in a world that has changed completely.

The Panama Canal Zone is the only strip of foreign territory, the only strip of land, that we hold anywhere in the world against the will of the inhabitants.

That may have been customary back in Teddy Roosevelt's time—indeed, that was the pattern—but the old empires are gone. The old colonies have given way to new, independent governments throughout the world.

We still retain territories abroad, to be sure: the Virgin Islands, the Commonwealth of Puerto Rico, Guam and American Samoa in

the Pacific. But in none of these cases do we hold the land against the will of the people. The day that a majority of the Puerto Ricans vote in a free election to be independent, that day, if I am here, I will stand up on the floor of the Senate and say, "Grant them their independence; they are entitled to it, if that is what they want"—even as we were entitled to it, though we had to fight a revolutionary war to obtain it, 200 years ago.

Only the Panama Canal Zone, obtained from the Panamanians in a situation in which they either had to accept our terms or face a Colombian firing squad—only that strip of land in all the world—do we hold against the will of the people of that little country.

That can be rectified by these treaties, by an act of generosity that will enhance our stature throughout the world, not weaken it, and, in addition, will help to improve our relations with our neighbors south of our borders; for in this they are all agreed: that Panama is right in its claim to a restoration of its sovereign rights in the Panama Canal Zone. The world is agreed.

The Senator may recall, not so long ago, in the Security Council of the United Nations, that the question of the Panama Canal Zone came up. Even our trusted allies would not stand with us, not one of them. Not a country anywhere would uphold the proposition that we were entitled to keep this zone against the will of the people of the country. For this is the very definition of colonialism; it is a part of a past which is dead.

So it was that we had to veto the resolution in the Security Council. Ours was the single dissenting vote. Not one other member of the Council voted with us.

Thomas Jefferson wrote in the Declaration of Independence that "a decent respect to the opinions of mankind requires that they should declare the causes which impel them to the separation." Even 200 years ago, he understood the importance of showing a decent respect for the opinions of mankind. How can we be blind to such considerations in this case?

I commend the Senator for going back and retracing the history, because it underscores the fact that the United States is big enough to rectify a wrong and strong enough to do right.

Mr. GRAVEL. Mr. President, I thank my colleague, because I believe he has touched upon what is the most important element in these deliberations on the treaty. We will go into a lot of the argument about the economics and defense and all those facets of it, but I think the most important thing for us as a nation is to be just and to be fair.

Too often, we measure strength, as the Senator has pointed out, by might, muscle, aircraft carriers, nuclear capability. That is not the strength of the United States of America. Our strength is our moral strength. It is our ability to give an example to the world as to the kind of people we are, and I think we are a very fair people.

I believe that when the facts are known, the American people will rally to this new change in establishing justice toward the Panamanian people.

Let us look at the matter of justice with respect to the treaty. As I already have indicated, any reasonable effort to come to terms with the objections to a new treaty raised by status quo forces must first of all assess the overall fairness of the existing agreement. If,

upon examination, we are forced to the conclusion that the 1903 Treaty is fundamentally unfair, then surely we must abandon our objections to requesting it in more equitable terms.

Quite frankly, the more I have learned of the history of our present relationship with Panama, the more I am convinced that we must come to that simple, elemental decision of being just and that justice is lacking from the present equation.

The historical record is unequivocal on this point. Our own Secretary of State, Mr. Hay, at the time described the treaty as "vastly advantageous to the United States and not so advantageous to Panama."

These inequitable arrangements, moreover, were effectively imposed under a state of duress. Panama's very existence as a nation hung in the balance between her consent to the treaty and continued U.S. protection from Colombia.

As I stated earlier, her leadership, the gentlemen who were part of the junta, feared for their lives. She was encouraged to believe that without the one—that is, having the treaty with the United States—the other, her very independence, would fall asunder. Under such circumstances, she was pressured to ratify the treaty virtually sight unseen.

Panama's agent and spokesman in all of this was a Frenchman who failed at almost every turn to act in the Panamanian interests. Their rights were, therefore alienated by a man not even their countryman, acting purely in his own self-interest, and who repeatedly engaged in deceit to seek approval for actions detrimental to the Panamanian national interests.

What is more, U.S. officials at the time were aware of and therefore complicitous in these injustices. President Roosevelt so characterized it in 1911, when he stated: "I took the Isthmus," and a statement upon which he later elaborated by explaining, "I took the Isthmus because Bunau-Varilla brought it to me on a silver platter."

Mr. CHURCH. Mr. President, will the Senator yield at that point?

Mr. GRAVEL. I am happy to yield.

Mr. CHURCH. It was indeed a silver platter. I believe, following the consummation of the treaty, that Bunau-Varilla said, "I have served the French well"—not the Panamanians mind you, but the French.

Indeed, the French had a big interest at stake. Having tried and failed to build the canal, they had spent an enormous fortune in the effort. The United States paid the French company \$40 million to acquire the machinery, the buildings and the uncompleted works of the French company on the Isthmus.

Mr. Bunau-Varilla was a big stockholder in that company. This was the man who negotiated for the Panamanians, whose whole connection and financial interest and, by his own admission, whose motivation, was to serve the French; to recoup what he could for them and for himself. Is it any wonder that there has been a smoldering resentment through the years in Panama?

Mr. GRAVEL. As a footnote to history, it is interesting to note that the charter that the French company had, or the new company that was reorganizing, was to expire in a year. That was the

charter with Colombia. With a new republic, probably no legal charter would have been involved.

So they would not have had to pay the French company and French stockholders—I might say not all were French stockholders. There were quite a number of American stockholders who did quite well in that enterprise—that \$40 million that was paid through an American investment house in New York.

So I think it is difficult to get to the bottom of it. But if it could be aired with any finality, and scholars are laboring in this regard, I think it would be most interesting and I think a most disgusting page in American history.

I think we must try to put ourselves in the Panamanians' shoes, to see it as they do. The best way I know to do this is to cite an analogy which has great currency in Panama. It has been succinctly stated by Wayne D. Bray. It goes like this:

To get an idea of how this situation looks to the people of Panama in 1977, imagine a strip of land extending 5 miles on each side of the Mississippi River within which a foreign power, by virtue of treaty rights granted under suspicious circumstances in 1783, exercises complete control as "if it were sovereign" and through which a resident of Illinois must pass to go to Missouri, during which passage he is subject to arrest by a foreign power and trial in a foreign court under a foreign system of laws.

Just imagine. I wonder how Americans would tolerate such a situation within our borders. That is exactly what the situation is in Panamanian borders.

The United States is a superpower and, of course, the Panamanians do not have much choice because they are one of the weakest nations in the world. Our military forces stationed in the Canal Zone are equal in size to Panama's entire national guard. It is really not much of a match.

On their side the Panamanians have only logic. They ask us to approve a new treaty. They point out that total U.S. control over a portion of Panamanian territory is a vestige of colonialism. They ask us to understand how it offends their national honor and pride as a people to have a U.S. police force, U.S. courts, and U.S. jails enforcing U.S. laws on Panamanian citizens within their own country. How it offends their pride. They show us how total U.S. control over land area in the Canal Zone limits the urban growth of their two largest cities, how U.S. control of all deepwater port facilities restricts the productivity of their country.

I was horrified when I found out that their ports, the best they have in their country, they do not even have access to. It is ours. It is the United States of America that has their ports. And how U.S. commissaries unfairly compete with local businessmen.

What Member of this body has not had a delegation from his State, from communities next to military bases, talking about the commissary problems? I think there is some knowledge and sympathy as to what is happening to the people of Panama, the business community of Panama, in this regard.

How do we answer these charges?

The most common way of justifying the present treaty arrangements is to cite the benefits which have accrued to Panama, not what we have taken from them but what we have given them.

Obviously, the most important of these, it can be conceded, is her independence.

We say this unfortunately with a certain arrogance. They would not have a country if it were not for us.

Without the United States where would they be? Admittedly, that is essentially what happened. We guaranteed at a point in time that they were able to become independent. But I think to be fair, we must recognize that they hankered for their freedom for some three-quarters of a century before our gunboats showed up on the scene. They had quite a few efforts of revolution before that. So, they were not johnnie-come-latelys at thirsting for freedom and independence. There is no question that their freedom is a great blessing. What is doubtful is that this justifies an arrangement under which she signed away "in perpetuity" the most important part of her birthright. To say that it does is like saying that the United States should be forever indebted to France, without whom our own revolution could never have succeeded.

And I think if you want to look close at history, you would know that we would not be a free country today had it not been for the support of France, a royal government at that time.

This is history now.

And the United States has profited immensely in the interim. The relevance of that history for today is that it shows the very structure of the relationship from the beginning was one in which we consciously took advantage of the Panamanians. All the real sacrifices were on their side. They yielded up, forever, their nation's greatest resource—the land over which the canal was constructed. What should have been theirs became ours.

Some would suggest that Panama has been adequately compensated for this "use" of her territory by the \$10 million the United States paid when the treaty was signed, plus the annuity she has been granted since. The facts belie the truth of this assertion, however, the annuity, for years set at \$250,000 per annum, is today only \$2.3 million per year; \$2.3 million is what we now give Panama for its birthright. This is a mere pittance when compared, for instance, with the Panama Canal Company's fiscal year 1976 total operating revenues of more than \$250 million. What is more, the U.S. Government has always set Panama Canal tolls at a breakeven level. The Panama Canal Company does not lose money, but neither does it make a profit.

This revenue policy of the Panama Canal Company has been analyzed by International Research Associates, IRA, of Palo Alto, Calif., and I believe—I will not assert here with certainty—but I believe that analysis was paid for by the Panama Canal Company, so I think we could assume that this is an objective study.

Mr. CHURCH. Mr. President, will the Senator yield at that point?

Mr. GRAVEL. I am happy to yield.

Mr. CHURCH. The committee has asked for figures showing the total payment to Panama since the United States commenced operations there in 1903. The Senator has alluded to the \$10 million initial payment under the terms of the treaty and the annual payments since.

These payments total about \$66 million, to be exact, \$66,600,992. That is the total since 1903, which is nearly 75 years ago.

It comes to less than \$1 million a year for a tract of land running right through the middle of the country, 10 miles wide and 40 miles long, good productive land.

I ask the Senator if he would not like to obtain property 10 miles wide and 40 miles long—a good big chunk of land, bigger than some countries in this world for less than \$1 million a year?

Mr. GRAVEL. I might say to my colleague from Idaho that in the real estate parlance we might call it a steal.

Mr. CHURCH. Perhaps. Now, when I hear opponents of the treaty say that we are paying the Panamanians a fortune to take the canal I think back over that long period of time when they received less than a million dollars a year for the rights we exercised in this Canal Zone, 10 miles wide and 40 miles long, which bisects their little country. The provisions of these treaties help to rectify that wrong; because the \$40 million that Panama will receive will be taken out of the tolls of the canal itself, which incidentally are only 9 cents a ton above what they were when we opened the canal in 1914, \$1.29 now compared with \$1.20 then.

I mean it is amazing, when you consider how much the dollar has depreciated. The United States has subsidized the maritime fleets of the world by holding that toll down to a level barely above what it was when we opened the canal in 1914.

Mr. GRAVEL. Would the Senator state that again? I think it is a preposterous situation.

Mr. CHURCH. Well, it is preposterous; and who has been the beneficiary of all this? Not the American taxpayers. No, indeed. The beneficiaries have been the maritime fleets, subsidized all these years because of our refusal to impose a fee commensurate with the value of the passage.

As the Senator knows, our maritime fleet has grown smaller and smaller, so the principal beneficiaries have been the foreign-flag fleets of the world.

So why should we be upset at the prospect of a modest increase in the fare?

Mr. GRAVEL. Still less than the fuel that it takes.

Mr. CHURCH. Yes. It is modest. And if it generates the revenue that will enable the Panamanians to receive a \$40 million payment from the canal each year, then this will go far toward rectifying the parsimonious payments of the past.

I say this again underscores the reason we should ratify these treaties: Because they are right. I just have no respect for that particular attitude which holds: "Let us be weak with the strong, but strong with the weak." If there was ever a time for us to be generous, it is when we are dealing with this little country, trying to work out an arrangement that will be acceptable to the Panamanians, protect the interests of the United States, and make for an orderly transition stretching out to the end of this century.

Mr. LAXALT. Will Senator Church yield for a question?

Mr. CHURCH. I do not have the floor.

Mr. GRAVEL. I have the floor.

Mr. LAXALT. Do you mind if I ask Senator Church a question concerning the financial deprivation of the Panamanians all these years?

Mr. GRAVEL. I think, in view of the fact that I have just received the floor here at almost 6 o'clock, I would like to finish my statement. If you want to make a brief observation——

Mr. LAXALT. Just one short observation, prompted by Senator Church here. I do not want to take all your time, but I would not want to leave the impression that the total benefit to the Panamanians under the present treaty has been \$66 million. I would suggest that the Senator inquire as to the \$250 million that our facilities there have pumped into the Panamanian economy. There is no question about that, is there, Senator Church?

Mr. CHURCH. Let me just say to the Senator that I have never pretended that our presence and our payrolls there have not had an economic impact upon Panama.

Mr. LAXALT. Substantial economic impacts.

Mr. CHURCH. Of course they have. But——

Mr. LAXALT. To the point that the Panamanians now, their living standards are No. 1 in that part of the world, and No. 4 in all of Latin America, due almost entirely to the presence of the Panama Canal.

Mr. GRAVEL. If the Senator will permit the repetition of an analogy made earlier, if I hold you up at gun point and take your home away from you, and I turn around and give you a job in the house, am I then entitled to say, "Aren't you lucky I gave you a job?"

Mr. LAXALT. Considering how the Panamanians have done over the years, I would love to have that job.

Mr. GRAVEL. Well, I do not think we have done such a hot job. Who is to say they would not have prospered even more with the management of their own assets and their own canal? Who is to say that 10 years later on, someone else would not have come along and built it?

Mr. LAXALT. The point is, had we not done it then it would not have happened there; that canal would have been built in Nicaragua.

Mr. GRAVEL. History shows there was an earthquake in Nicaragua, and had we gone ahead and constructed it there, we would have looked like fools.

Mr. LAXALT. I suggest that history does not support you. But I would not want the record to show that Panama's arrangement with our country has been a poor one financially. To the contrary, it has been extremely beneficial.

Mr. GRAVEL. I beg to differ with you. If you look at our standard of living and look at their standard of living, theirs is considerably less than ours. It is around \$1,000 per capita, or \$800 per capita. So when you say to someone, when you have taken his birthright, "Why, you are well off," while I walk around in a \$200 suit and he has got rags, and tell him, "You should be happy with the rags I gave you," oh, no. That does not wash at all.

Mr. CHURCH. In any case, I would point out to the Senator that the benefit from investments we have made in the Canal Zone is one question, whereas our payments to the Government of Panama under the rights we exercise in the Canal Zone is quite a different one. The figures I have given accurately reflect what we paid the

Panamanians for exercising complete possession and control of the Canal Zone.

I think any good realtor would agree that if you can acquire a stretch of land 10 miles wide and 40 miles long under an arrangement that requires you to pay less than a million dollars a year, you have a good deal.

Mr. GRAVEL. The real estate terminology on that is a steal, not a deal.

Mr. CHURCH. Very well.

Mr. LAXALT. I object to that terminology. If the Senator would permit me to make an additional observation, under the terms of this—

Mr. GRAVEL. Who has the floor, Mr. President?

The PRESIDING OFFICER. If the Senators will suspend for a moment, the Chair would remind the Senators it is getting into the shank of the afternoon, and perhaps the Senate might suspend for the evening in a little bit. The Senator from Alaska (Mr. Gravel) has the floor.

Mr. CHURCH. Mr. President, is this like the 2-minute warning in a football game?

The PRESIDING OFFICER. The Chair recognizes that this is perhaps the most volatile of issues, but would not want Senators to stray away from the issue at hand.

Mr. GRAVEL. Mr. President, I apologize, maybe, for the lack of decorum in my distinguished colleagues, whom I have great reverence for, and understanding, but I was just trying to make a point with respect to the paltry sum of money we have been paying the Panamanians over the years, by comparison. I was going to elaborate upon a study by a firm in Palo Alto called International Research Associates. The study that they did was entitled "The Economic Value Of The Panama Canal."

The study concludes that over the past 60 years (PCC) has chosen to operate the canal as an international public utility and has followed a revenue policy which just provides for recovery of annual costs, including depreciation of tangible assets, and a moderate rate of interest on investment funds originally advanced by the U.S. Treasury. The effect of this policy has been to produce a surplus to users of an amount equal to the difference between the maximum possible revenues recoverable under an alternative tolls policy and the breakeven costs actually recovered. The IRA study projects that for 1975 the magnitude of the surplus would be equal to approximately 55 percent of the revenue recovered under present toll structures. Applying this to the IRA-projected 1975 toll revenue figure of \$119.5 million, we see that the surplus which could have been recovered was on the order of another \$65.5 million. The benefits of this surplus, rather than going to the people of Panama, now accrue to three groups: First, those who purchase commodities that pass through the canal assuming they are passed on to them; second, those who produce such commodities assuming the maritime interests pass it on to those people; and third, those who move the commodities from producers to purchasers. Rightfully, this \$65.5 million should have gone to Panama as its earnings on its fundamental resource.

To better appreciate the significance this \$65.5 million could have had for Panama, it is worth noting some additional statistics. In 1975 the total revenues of Panama's central government were only \$462 million; an additional \$65.5 million would have increased the national budget by 14 percent. Still another way to look at this figure is in relation to Panama's debt-service costs, which constitute a crippling drain on the national economy. In 1975 international and external debt service was \$64.8 million, or approximately the same as the toll revenue Panama lost due to policies pursued by the United States. Finally, the \$65.5 million for just 1 year, which to my mind they were due, may be compared with the total direct income as Senator Church stated earlier, Panama has, in fact, received from the canal since the inception of the treaty. That figure is only \$67 million for the entire life of the canal, including the initial \$10 million payment.

Imagine that. We gave the French company \$40 million for their interests which would have expired with Colombia within a year and which were dubiously legal with the new Panamanian Government. We gave them \$40 million at one fell swoop which went through an American company's coffers in New York, and we have given since then, in the 60-odd years, \$66 million.

As startling as these figures are, they probably do not give the true picture of the revenue Panama has forfeited through U.S. operation of the canal. This is so because the operating expenses of the Panama Canal Company include not only actual costs of running the canal, but also large subsidies for education and other social services for Canal Zone employees, even though these employees pay Federal taxes for that purpose.

They pay taxes for their education, but the education is paid from the tolls of the canal.

For instance, included in the PCC's 1975 operating expenses is \$23.5 million for functioning of the Canal Zone Government. While not all such expenses could be eliminated through Panamanian operation of the canal, substantial savings could be expected through the integration of duplicative governmental functions on the one hand and the introduction of free market efficiencies to replace certain present governmental responsibilities on the other. Great inflation in costs associated with the Panama Canal appear to arise from the fact that its operation is not integrated with the local economy. The Panama Canal Company maintains an entire governmental and economic infrastructure, which cannot help but be inefficient. Clearly, there is a great deal of slack in the Panamanian operation.

One final way to measure the economic injustice of the present annuity arrangements is to examine what we pay for use of military facilities around the world. Recently the United States and Spain signed a treaty of friendship and cooperation which grants the United States the right to use military facilities at Torrejon, Zaragoza, and Moron air bases; the Rota naval bases; the Bardenas Reales firing range; and 18 other minor installations. In turn, the United States guaranteed Spain 190 million dollars' worth of military grants and credits over the 5-year life of the treaty, a far cry from in perpetuity.

Similarly, in 1947 we entered into a 99-year, rent-free agreement with the Philippines for the use of Clark Airfield, Subic Bay, and the Naval air station at Cubi Point. In 1959 we found it necessary to renegotiate this agreement, at which time we agreed that it should have a term of 25 years. We are now renegotiating it again, and while no agreement has yet been reached, discussions have centered around a proposal for a 5-year treaty, in return for which we would provide \$1 billion, split equally between economic and military aid. These agreements may be compared with the \$2.3 million annuity we pay Panama for the use of the canal and the land on which military bases are authorized. We have never compensated Panama for our military presence.

It can, of course, be argued that Panama has received extensive indirect economic benefits from the canal, as stated earlier, as well as improved health conditions, sanitary facilities, etc., all of which must be taken into account in assessing the present treaty. All these things are indisputably true, but they completely miss the point. They alone cannot make the arrangement either just or unjust. It is unjust by the fact that it prevents Panama from reaping the economic advantage of her primary resource. Moreover, it does so almost gratuitously. Panama could be returned the control over her resource without it materially affecting our own economic or strategic interests. In truth, our strength and greatness will lie not in continuing to demean ourselves by insisting upon some legalistic interpretation of our "rights," but in recognizing that an injustice has been done and acting to correct it. It is time we quit priding ourselves on how much we have done for the Panamanians in order that we may see what we took from them in the process.

SOVEREIGNTY

The most confused, but perhaps the most popular, objection raised against abrogation of the 1903 treaty is that to do so would entail relinquishing sovereignty over territory that is as much a part of the United States as the territory acquired by the Louisiana purchase or my home territory of Alaska purchased from Russia.

Nothing could be more wrong. In the language of the treaty, the United States is granted certain rights which are described as the sort the United States would have "if it were the sovereign." Surely, the commonsense meaning of this is that the United States is not the sovereign. This contrasts markedly with the treatment of sovereignty in the cases of Louisiana and Alaska. In 1803 France ceded the Louisiana Territory to the United States "forever and in full sovereignty." All public lands were transferred and all inhabitants were given U.S. citizenship.

The same is true in the case of Alaska. Russia ceded the United States all its territory on the American continent, including all rights and privileges previously belonging to Russia. Inhabitants were given the choice of returning to Russia within 3 years or becoming U.S. citizens. In neither case was provision made for an annuity or any other sort of continuing relationship regarding matters covered in the agreement.

Three additional points may be cited as evidence that the United States does not have the attribute of sovereignty in the Canal Zone:

First. A person born in the Canal Zone of Panamanian parents is a U.S. citizen, as he or she would be if born in Louisiana or Alaska.

Second. The exercise of power and authority by the United States in the Canal Zone is dependent upon the use to which the territory is put. If it ceased to be used for the operation of a canal, jurisdiction would revert to Panama.

Third, the United States has no authority to cede the Canal Zone to a third sovereign power, as it obviously would if the territory were its own.

Let us now look at economic importance of the canal. Despite widespread impressions to the contrary, the Panama Canal is not of any great economic significance to the United States. It is often said that approximately 70 percent of canal traffic either originates or terminates in U.S. ports, thus making the canal vital to the U.S. economy. While this figure is correct, the manner in which it is usually presented tends to misrepresent the truth. The "approximately 70 percent" figure is derived by adding the 40 percent of cargo tonnage originating in the United States to the 28 percent terminating here. But it is incorrect then to conclude that the United States accounts for 68 percent of the tonnage passing through the canal. The United States, both as shipper and receiver, is on only one end of the transaction. Therefore this figure must be halved, revealing that only 34 percent, or one-third, of all canal cargo is U.S. oriented.

But even this figure does not provide a proper measure of the economic importance of the canal. We have to ask, 34 percent of what? If the Panama Canal is largely not used, then the fact that 34 percent of its use is attributable to the United States becomes rather meaningless.

The United States is, in fact, the major user of the canal, but many alternative trade routes now exist for the most important products and commodities, and more would become economically competitive if the canal were closed. In terms of overall importance, the canal is much more significant to certain Latin American countries, particularly those on the west coast of South America, than it is to the United States. For instance, in 1972, only 16.8 percent of U.S. waterborne commerce passed through the canal. For Nicaragua, the figure was 76.8 percent, for Panama 29.4 percent, for Peru 41.3 percent, for Chile 34.3 percent, and for Colombia 32.5 percent.

Increasingly, the Panama Canal is becoming outmoded. Larger and faster ships, plus innovations such as container technology, are making the canal outmoded.

The shipbuilding industry, in constructing supertankers, increasingly discount the canal. In fact, 76 percent of the world tanker tonnage today cannot go through the Panama Canal.

The total world tonnage is already above 50 percent in its inability to go through the Panama Canal. In fact, the figure is somewhere around 54 percent of the world tonnage that cannot go through the present Panama Canal. This has been a drastic change in the last 10 years.

Increasingly, the Panama Canal is becoming outmoded. Larger and faster ships, as well as innovations such as container technology, are making alternatives to the canal more and more attrac-

tive. The shipbuilding industry—in constructing supertankers—increasingly discounts the canal, which cannot handle their size. More than half the world's tonnage is already too large for the canal.

The most meaningful perspective from which to view the economic value of the canal is an assessment of the impact it has on the total U.S. and world economy.

At present only 5 percent of total annual world seaborne trade transits the Panama Canal. According to the IRA study on "the economic value of the Panama Canal," if the canal were to be closed through an act of sabotage or some other means, the total impact on the world economy for the decade 1975-85 would be only \$100 million per annum. Of this amount, the U.S. share would be only \$34 million annually. In our trillion dollar-plus economy, which exports in excess of \$100 billion a year, this impact is utterly trivial.

This minimal impact of complete loss of the canal must be counterpoised against the harm which this volatile issue can cause in our relationship with all of Latin America, and in fact the entire Third World.

The minor economic benefit which accrues to us from the canal would certainly be more than offset by the hostility we may engender by failing to resolve the canal issue in a way viewed as equitable by the world community. Even the strictly economic effect alone would surely be in excess of \$34 million. This does not mean that the Panama Canal is of no importance. It is now and will continue to be for some time into the future a convenient means for waterborne transport. But in the words of the IRA study, "It cannot in any sense be regarded as either overwhelming or crucial."

THE ZONE AND THE ZONIANS

The Panama Canal Zone is surely the biggest company town to be found anywhere in the world. It consists of a 10-mile-wide swath of land, running the full 50-mile width of this small country. Its 400 square miles is the heartland and most valuable economic area of Panama. But it contains no Panamanian enterprises, no Panamanian farms, and no Panamanian officials. It is wholly controlled and administered by the United States, in the corporate person of the Panama Canal Company/Government. It has its own Governor, its own courts, its own police force, its own transportation facilities, its own housing units, and its own public utilities. It also operates its own retail stores, food service units, gasoline stations, theaters, and bowling alleys. It is, in fact, a colonial-socialist enclave under the American flag.

U.S. citizens have resided in the Canal Zone for three generations now. Understandably, they do not want to give up their life there. But just as certainly, the present arrangements cannot be allowed to continue. First of all, the socialistic enclave of the zone cannot be squared with our own commitment to a free enterprise economy as the most efficient and democratic social structure. In addition, the zone constitutes a direct affront to the national integrity of Panama, which cannot with honor tolerate a foreign governmental and legal structure imposed upon its people. The U.S. citi-

zens who live in the zone will, of course, have to be protected. As individuals they are not responsible for the actions of their Government. They have acted in good faith in accepting the arrangements which exist today, and it would be unfair to leave them without recourse. In all probability, when the Canal Zone and its operation are returned to the Panamanians, these Americans will find suitable employment and living arrangements under Panamanian auspices. But should they be unable to, or should any of them choose not to, provision should be made for their relocation to the United States with a guarantee for appropriate new employment, job training, and vested retirement.

The guarantees that these Americans who are in Panama should receive, guarantees along these lines have been set out in the treaty, and I am confident the Congress will be quite liberal in its dealings with the Canal Zone citizens.

While even this will no doubt be somewhat unsettling to these 3,000 or 4,000 individuals, it is the only way that we can reasonably proceed as a matter of national policy.

OPERATION OF THE CANAL

Americans are understandably proud of their role over the last 70-some-odd years in the construction and operation of the Panama Canal. When the canal was built at the beginning of the century it was the engineering marvel of the day, much as the Moon landing is in our own time. And since its completion in 1914, the canal has been efficiently and impartially operated for the benefit of the whole world.

SUMMARY

The ultimate ratification of the treaties before us is dependent, first of all, upon the perceptions of the American and Panamanian people. Panamanians are convinced that the Canal rightfully is theirs, and that for years they have been dealt with unfairly by the United States, which has used her great power and the preemptory provisions of a 70-year-old treaty to treat them as second-class citizens within their own country. Americans, on the other hand, are inclined to believe that the canal belongs to the United States, that it is vital to our interests, and that if anything, Panamanian agitation over the issue in recent years proves that Panama cannot be trusted to run the canal alone. Clearly, for both parties it is a very emotional issue and one in which national pride plays no small part. But when the emotion is stripped away, the Panamanians have the better side of the argument, as I am convinced most Americans would agree if they only had the facts. Be that as it may, after a careful examination of the case, I find the following conclusions compelling:

First. The Panamanians are justified in their demand that we relinquish the canal to their control, and we perpetuate an historic injustice so long as we fail to do so.

Second. The United States in no legal sense owns the Canal Zone; we would not be forfeiting U.S. territory to return its control to Panama.

Third. The economic value of the canal is miniscule in terms of the entire U.S. or world economy; failure to resolve the canal issue

in fact causes us great economic harm by exacerbating relations with the third world.

Fourth. The Canal Zone, as currently operated, is a colonial-socialistic enclave and thus incommensurate with the American taxpayers' ideals and national goals.

Fifth. The canal, while still militarily significant, is by no means vital to our national defense. It is almost indefensible against either sabotage or overt attack, and military contingency plans must allow for its blockage at any time.

Sixth. The Panamanians could assume operation of the canal in a very few years; they could easily contract for any skills they do not already possess.

Seventh. The construction of a sea-level canal across Panama appears to be a very viable and cost-effective alternative for moving Alaskan oil and gas surpluses to markets on the east and gulf coast. Such a canal could also save the United States costly new investment in energy supply infrastructures, provide important foreign policy flexibility, and greatly enhance our defense capability while simultaneously reducing defense costs. These advantages which could accrue to the United States through construction of a sea-level canal make it well worth our while to maintain the good will of the Panamanians, which I feel certain can be done if we ratify the new treaties. I therefore hope the Senate will vote affirmatively on the question of advising and consenting to the ratification of the treaties.

Mr. GARN. Will the Senator yield for one quick question?

Mr. GRAVEL. One quick question.

Mr. GARN. The Senator speaks of this great moral degradation of a country that I have listened to and which I cannot accept, and how badly we have treated Panama. I just ask the question, with the unbelievable beauty of the State of Alaska, its fantastic resources, should we not renegotiate with the Soviet Union? Because we bought this from them, I think, for \$7 million—all legal, no doubt about it.

If we talk about moralism and something we ought to redress, I would suggest that, from the military standpoint, the Soviets might like to have it back. It is rather strategic. It is a fantastic State; \$7 million for Alaska and we have not ripped off the Soviet Union?

Mr. GRAVEL. We bought Alaska.

Mr. GARN. For \$7 million.

Mr. GRAVEL. A good deal. I am sure they regret it every day.

Mr. GARN. That is called a steal in real estate terms. I say to the Senator.

Mr. GRAVEL. It sure is. The only difference is that we do not continue to pay them an annuity, which is proof of the fact that we do not have sovereignty.

Mr. GARN. Oh, but did we rip them off, though.

Mr. GRAVEL. If my colleague will indulge me, I shall answer his question and go on with my statement.

It is very simple. If the Senator cannot understand what I just put forth here in the legal argument of the difference between the Alaska and the Louisiana purchases and the Canal Zone, then the Senator is entitled to his views. I do not share them. I shall go on with my statement.

Mr. GARN. I say to the Senator, I did not address myself to the legal issue. I am sure it was purchased legally. That is not what I am debating. I am talking about the moralistic aspect the Senator from Alaska was talking about, how we were ripping off the Panamanians and have done so since 1904. I am saying that with what we got for \$7 million, we ripped off the Russians like nobody in the history of this Earth and we should go back because of this moralistic feeling.

Mr. GRAVEL. Mr. President, who has the floor?

The PRESIDING OFFICER. The Senator from Alaska (Mr. Gravel) has the floor.

Mr. GRAVEL. The big difference is when we signed a treaty for the purchase of Alaska, a Russian signed it. When we signed the treaty that permitted us to act as sovereigns in Panama, a Frenchman signed it and not one Panamanian had seen it.

Mr. GARN. The Senator is not responding to my question.

Mr. GRAVEL. I shall be happy to go back to my statement.

Mr. SARBANES. Will the Senator yield?

The PRESIDING OFFICER. The Chair asks the Senators to speak one at a time and observe the normal routine of yielding.

Will the Senator from Alaska yield to the Senator from Maryland?

Mr. GRAVEL. I am happy to yield for a brief question.

Mr. SARBANES. Of course, Manhattan was bought from the Indians for \$24. We can go through the whole chronology of American history. The important thing is that the United States is in a situation where we have to have a continuing relationship with the Republic of Panama and with the Panamanian people if we are to most effectively make use of the Panama Canal. We have not, in effect, taken over that entire country and incorporated it into the United States, as we have incorporated other areas that have been acquired into the States of the Union. Therefore, we have a continuing relationship. It is pertinent to that continuing relationship, it seems to me, to understand the history of it, if for no other reason than to gain an understanding of the attitudes and the feelings of the Panamanian people.

Members of this body may differ on how attentive we should be to those feelings. Obviously, there may be some differences. But I think the history is important to understand the attitude of the Panamanian people toward this continuing relationship over time, which continues to be important, because we are in a situation where we have a relationship and we have to deal with one another. The question is, can we work out a means of doing that, hopefully in a friendly and constructive way, or are we going to have a relationship which has hostility running through it?

Therefore, I think that the historical recitation which the Senator from Alaska made—which I think has been extremely interesting—is most helpful in developing the basis for the considering of these treaties.

Mr. GRAVEL. I thank my colleague.

Mr. GARN. Will the Senator from Alaska yield to me to respond briefly?

Mr. GRAVEL. No. I just have 10 minutes left. I have a long statement. I will not complete it the way it is right now. I am in the middle of an economic argument.

Mr. GARN. Thirty seconds?

Mr. GRAVEL. I am happy to.

Mr. GARN. I just simply say once again, neither of my distinguished colleagues reverted to the issues that will be debated on this treaty, again examples that refer to the economics of the situation. Whether it was a steal, or not, my statement stands on its own merits.

Mr. GRAVEL. I want to apologize to my colleague in not being generous with what little time I have left. We will have 30 days to really go after this. I would enjoy further colloquy with my colleague. I did not mean to be abrupt in the point he makes. He feels deeply about his side of the issue, as I do about mine.

I certainly have that appreciation.

Mr. HELMS. Mr. President, there has been much discussion on the floor today alleging that Panama's consent to the 1903 Treaty was not freely given, but, in fact, represented capitulation to outside interests. I think that an impartial reading of history will demonstrate that not only the 1903 Treaty, but also the subsequent treaties and related agreements were in fact reasonable compromises, with give and take on both sides. Indeed, it was a situation involving mutual benefit for both sides, in which various alternatives had been tried and discarded as unworkable.

The 1903 Treaty cannot be viewed in isolation. In the United States, the Nicaraguan route had had strong proponents; negotiations had actually been started at one point. The negotiations with Colombia had resulted in a treaty that was stillborn, both because of the tremendous political opposition in the U.S. Senate—opposition that led to filibusters and a special session—and opposition in the Colombian Senate that led to failure to ratify.

On the Panamanian side, there was an enormous frustration with the actions of the Colombian Senate—not only in its failure to ratify, but in its refusal over the period of many years to treat Panama as an integral part of the nation. As a matter of fact, the confederation between Panama and Colombia had long been strained. There had been at least six revolutions against Colombian rule; and, during the debate in the Colombian Senate, the Panamanian representatives threatened that there would be a revolution if the Hay-Herran Treaty were not ratified.

Once the die has been cast, the political leadership of both nations were faced with the very real possibility of the defeat of the project—a defeat which would have meant a political disaster on one side, and crushing repression by Colombia on the other. Thus the draft of the Hay-Bunau-Varilla Treaty was based upon the Hay-Herran Treaty, with the addition of the amendments which had been proposed in the U.S. Senate and which had almost led to its defeat in the United States. Neither side could take the chance that the treaty would be defeated in the U.S. Senate. The concessions by Panama were not made out of unwilling weakness, but out of a very healthy desire to induce the United States to come to its aid.

Nor were the concessions all on one side. The United States made many important concessions which went against the grain of the U.S. Senate and the American people. The most important of these was the guarantee of Panama's independence—a guarantee that the military forces of the United States would be used to protect a far-away country, a guarantee that was no more popular in its day than it would be today.

We, however, kept to our promises. Our relations with Panama have had an honorable record, demonstrating mutual benefit to both nations and to the whole world. Far from taking advantage of a small and helpless nation, the United States has protected it in its infancy, assisted in its growth, contributed to its stability, and made its independence possible. The record shows clearly that we have made every effort to make adjustments in our relations with Panama, and we have been exceedingly generous in our concessions. There are occasions, I believe, when we have been too generous. Be that as it may, I fail to see how anybody could complain that we are arbitrarily imposing our will upon a reluctant neighbor.

Our relations with Panama, as I said, have been characterized by give and take. Moreover, the record shows that we have given to Panama far more than we have ever received in return. In the nature of things, considering the capabilities and needs of the two nations, this relationship has been one that is entirely correct. Generally speaking, we have freely given Panama various public works and projects worth many millions of dollars. We have relinquished many of the legal rights to activities which we have conducted in the territory of Panama. We gave to Panama concessions of property and the right to use property within our own territory of the Canal Zone. Furthermore, the annuity that was paid—an annuity that was derived from payments for the concessions of the Panama Railroad, not from "rent" for land—has been raised several times to adjust for the devaluation of the dollar.

In short, I would say that our concessions to Panama have been characterized by an increasing withdrawal from activities within Panama, and an increasing penetration of Panamanian activities within the Canal Zone. I recognize that the relationship of the Canal Zone to Panama is unique. It is inevitable that the proper operation and security of the canal will require some interchange between the two. Nevertheless, our sovereignty in the Canal Zone should not be negotiable. Other concessions may prove necessary or desirable, but the surrender of our sovereign rights is so radical as to make impossible any effective mechanism for guaranteeing the safe and continued operation of the Canal.

Mr. President, every Member of this body should become familiar with the generous concessions which the United States has made freely to the Republic of Panama, even before the negotiations for these present treaties began in earnest. Let us not demean ourselves, or beat our breasts in guilt. Our record will stand impartial examination.

Accordingly I would like to present to the Senate a list of the major U.S. concessions to Panama up to but not including the present treaties. These concessions are so numerous and so great that they are presented in chronological order. A brief of each

concession stands next to the document and to the appropriate citation in the Canal Zone Code. I note that this is not a comprehensive list; a comprehensive list would include diplomatic and reciprocal arrangements, and technical matters such as control of radio frequencies and air traffic control. It would be so long that it would obscure the main point.

Mr. President, I ask unanimous consent that this compilation be printed in the Record at the conclusion of my remarks as exhibit 1.

The PRESIDING OFFICER. Without objection, it is so ordered.

[See exhibit 1.]

Mr. HELMS. Mr. President, I also have a list of Panamanian concessions to the United States. I have construed the concept of "concessions" as widely as possible to give Panama the benefit of the doubt. For the most part, these are items of little significance. The major concession was the Defense Agreement of 1942. In that agreement, for example, besides the Rio Hato base, which has since been given back, Panamas concessions included such items as the following: Panama agreed to ask the United States cooperation in maintaining roads in the Republic which were used for common defense. In the 1955 Treaty, Panama gave up certain rights to free transportation on the Panama Railroad, a cause written in anticipation that the railroad would be given to Panama. Only intervention by Congress prevented the United States from losing the railroad at that time.

Because of the nature of the Panamanian concessions, they are more scattered than the U.S. concessions, and chronological order is of less significance. I have therefore summarized them by topics.

Mr. President, I ask unanimous consent that the Panamanian concessions be printed as exhibit 2.

The PRESIDING OFFICER. Without objection, it is so ordered.

[See exhibit 2.]

TREATY

Convention for the construction of a ship canal—Signed at Panama, 1903 (Hay-Bunau-Varilla Treaty).

EXHIBIT 1

U.S. CONCESSION

1. The United States pledged itself to guarantee the independence of the new Republic of Panama.
2. The United States granted permission to have official dispatches of the Government of Panama transmitted over Canal Zone telegraph and telephone lines at rates not higher than those of officials in the service of the United States.

3. Panama was awarded \$10,000,000 in gold coin by the United States and an annual payment of \$250,000, beginning 9 years after ratification.

4. Panama was given the right to transport over the Canal its ships, troops, and war material without having to pay charges of any kind. This exemption was also extended to the auxiliary railway for the transportation of Panamanian governmental personnel.

CITATION FROM CANAL ZONE CODE

Art. I, sec. 62: The United States guarantees and will maintain the independence of the Republic of Panama.

Art XI, sec. 72: The United States agrees that the official dispatches of the Government of the Republic of Panama shall be transmitted over any telegraph and telephone lines established for canal purposes and used for public and private business at rates not higher than those required from officials in the service of the United States.

Art XIV, sec. 75: As the price or compensation for the rights, powers and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars (\$10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars (\$250,000) in like gold coin, beginning nine years after the date aforesaid.

Art. XIX, sec. 80: The Government of the Republic of Panama shall have the right to transport over the Canal its vessels and its troops and munitions of war in such vessels at all times without paying charges of any kind. The exemption is to be extended to the auxiliary railway for the transportation of persons in the service of the Republic of Panama, or of the police force charged with the preservation of public order of said zone, as well as to their baggage, munitions of war and supplies.

5. The United States promised to compensate for any damages that might be caused to property owners during the construction, maintenance, operation, sanitation and protection of the canal.

Art. VI, sec. 67: * * * all damages caused to the owners of private lands or private property of any kind by reason of the grants contained in this treaty or by reason of the operations of the United States, its agents or employees, or by reason of the construction, maintenance, sanitation, and protection of the said canal or of the works of sanitation and protection herein provided for, shall be appraised and settled by a joint Commission * * * whose decisions as to such damages shall be paid solely by the United States * * *

6. It was agreed that after 50 years, the system of sewers and waterworks constructed and maintained by the United States would become the property of the cities of Panama and Colon.

Art. VII, sec. 68: All such works of sanitation, collection and disposition of sewage and distribution of water in the cities of Panama and Colon shall be made at the expense of the United States, and the Government of the United States, its agents or nominees shall be authorized to impose and collect water rates and sewage rates which shall be sufficient to provide for this payment of interest and the amortization of the principal of the cost of said works within a period of fifty years and upon the expiration of said term of fifty years the system of sewers and waterworks shall revert to and become the properties of the cities of Panama and Colon respectively, and the use of the water shall be free to the inhabitants of Panama and Colon * * *

Treaty between the United States of America and the Republic of Panama—signed in Washington, March 2, 1936 (Hull-Allaro Treaty).

1. The United States renounced its right to guarantee the independence of Panama.

2. The right to expropriate without restriction additional land for Canal use was nullified. Henceforth, in the event of any unforeseen contingency, the 2 governments would attempt to agree upon such measures as necessary for the efficient operation of the Canal.

Art. I, sec. 32: Article I of the Convention of November 18, 1903, is hereby superseded.

Art. II, sec. 33: * * * under Article II of the Convention of November 18, 1903, by which it granted in perpetuity to the United States the use, occupation and control of the zone of land and land under water as described in the said Article, of the islands within the limits of said zone, of the group of small

islands in the Bay of Panama, named Perico, Naos, Culebra, and Elamerco, and of any other lands and waters outside of said zone, necessary and convenient for the construction, maintenance, operation, sanitation and protection of the Panama Canal or of any auxiliary canals or other works * * * the United States of America renounces the grant made to it in perpetuity by the Republic of Panama of the use, occupation and control of lands and waters, in addition to those now under the jurisdiction of the United States of America outside of the zone described in Article II of the aforesaid Convention * * *.

While both Governments agree that the requirement of further lands and waters for the enlargement of the existing facilities of the canal appears to be improbable, they nevertheless recognize * * * in the event of some now unforeseen contingency, the utilization of land or waters additional to those already employed should be in fact necessary for the maintenance, sanitation or efficient operation of the canal * * * the Governments of the United States of America and the Republic of Panama will agree upon such measures as it may be necessary to take in order to insure the * * * efficient operation and effective protection of the canal, in which the two countries are jointly and vitally interested.

Art. VI sec. 37: The first sentence of Art. VII of the Convention of November 18, 1903, is hereby amended so as to omit the following phrase: "or by the exercise of the right of eminent domain."

3. The United States gave up its right of "eminent domain" in the cities of Panama and Colon.

4. The United States' unlimited right to defend the canal was renounced. In the event that the security of Panama became threatened, the 2 governments would consult each other.

5. The annuity was increased from \$250,000 gold to \$430,000 in standing currency.

6. American authority over sanitation activities in the cities of Panama and Colon was transferred to the Republic of Panama.

7. Persons not connected with the operation or administration of the canal were barred from renting dwellings in the Canal Zone belonging to the U.S. Government and forbidden to reside in the zone.

Art. X sec.—: In case of an international conflagration or the existence of any threat of aggression which would endanger the security of the Republic of Panama or the neutrality or security of the Panama Canal, the Government of the United States of America and the Republic of Panama will take such measures of prevention and defense as they may consider necessary for the protection of their common interests. Any measures, in safeguarding such interests, which it shall appear essential to one Government to take, and which may affect the territory under the jurisdiction of the other Government, will be the subject of consultation between the two governments.

Art. VII sec. 38: Beginning with the annuity payable in 1934, the payments under Article XIV of the Convention of November 18, 1903, between the United States of America and the Republic of Panama, shall be four hundred and thirty thousand Balboas (B/430,000.00) as defined by the agreement embodied in an exchange of notes of this date * * *.

Art. VI sec. 37: The third paragraph of art. VII of the Convention of November 18, 1903, is hereby abrogated.

Art. III sec. 34: (2) No person who is not comprised within the following classes shall be entitled to reside within the Canal Zone.

(a) Officers, employees, workmen or laborers of the United States of America, the Panama Canal or the Panama Railroad Company, and members of their families actually residing with them;

(b) Members of the Armed Forces of the United States of America and members of their families actually residing with them;

EXHIBIT 1—Continued

U.S. CONCESSION

TREATY

CITATION FROM CANAL ZONE CODE

8. In order to aid commercial activities in Panama, the United States agreed to limit the sale of goods imported into the zone or purchased, produced, or manufactured there by the U.S. Government.

9. All private business in the zone, with the exception of concerns having a direct relation to the canal, were prohibited.

10. The United States extended to merchants residing in Panama the opportunity to make sales to vessels transiting or arriving at terminal ports of the canal.

11. Permission was granted by the United States for vessels, entering or clearing Canal Zone ports, to use the facilities of these ports.

(3) No dwellings belonging to the Government of the United States of America or to the Panama Railroad Company and situated within the Canal Zone shall be rented, leased, or sublet except to persons within classes (a) to (e), inclusive of sec. 2 hereinabove.

Art. III sec. 34: (1) The sale to individuals of goods imported into the Canal Zone or purchased, produced or manufactured therein by the Government of the United States of America shall be limited by it to the persons included in classes (a) and (b) of section 2 of this Article * * *

Art. III sec. 34: (5) with the exception of concerns having a direct relation to the operation, maintenance, sanitation or protection of the canal, such as those engaged in the operation of cables, shipping, or dealing in oil or fuel, the Government of the United States of America will not permit the establishment in the Canal Zone of private business enterprises other than those existing therein at the time of the signature of this treaty * * *

Art. III, sec. 34: (7) The Government of the United States of America will extend to private merchants residing in the Republic of Panama full opportunity for making sales to vessels arriving at terminal ports of the canal or transiting the canal, subject always to appropriate administrative regulations of the Canal Zone.

Art. III (6) * * * the United States of America will continue to permit, under suitable regulations and upon payment of the proper charges, vessels entering at or clear-

ing from the ports of the Canal Zone to use and enjoy the dockage and other facilities of the said ports for the purpose of loading and unloading and receiving or disembarking passengers to or from the territory under the jurisdiction of the Republic of Panama.

Art. V, sec. 35: The Republic of Panama has the right to impose upon merchandise destined to be introduced for use or consumption in territory under the jurisdiction of the Republic of Panama and upon vessels touching at Panamanian ports and upon the officers, crew or passengers of such vessels, the taxes or charges provided by the laws of the Republic of Panama; it being understood that the Republic of Panama will continue directly and exclusively to exercise its jurisdiction over the ports of Panama and Colon and to operate exclusively with Panamanian personnel such facilities as are or may be established therein by the Republic or by its authority.

Art. V, sec. 36: The United States of America will furnish to the Republic of Panama free of charge the necessary sites for the establishment of customhouses in the ports of the Canal Zone for the collection of duties on importations destined to the Republic . . . and the Republic of Panama will exercise exclusive jurisdiction within the sites on which the customhouses are located so far as concerns the enforcements of immigration or customs laws of the Republic of Panama, and over all property therein contained and the personnel therein employed.

Art. VIII, sec. 39: In order that the city of Colon may enjoy direct means of land communication under Panamanian jurisdiction with other territory under jurisdiction of the

12. Panama was given the power to collect tolls and impose taxes on those merchant ships with goods destined to be sold in Panama.

13. The United States agreed to furnish free of charge to Panama sites for the establishment of customs houses in the ports of the Canal Zone. Also, Panama was given exclusive jurisdiction to enforce its laws at these sites.

14. Certain lands transferred to Panama.

EXHIBIT 1—Continued

U.S. CONCESSION

TREATY

General relations agreement, effected by exchange of notes signed at Washington, May 18, 1942.

1. The United States transferred to Panama, free of cost, the waterworks and sewerage systems of the cities of Panama and Colon.

CITATION FROM CANAL ZONE CODE

Republic of Panama, the United States of America hereby transfers to the Republic of Panama jurisdiction over a corridor the exact limits of which shall be agreed upon and demarcated by the two Governments * * *

1. The waterworks at Colon and Panama: When the authority of the Congress of the United States shall have been obtained therefor, the Government of the United States will transfer to the Government of the Republic of Panama free of cost of all its rights, title and interest in the system of sewers and waterworks in the cities of Panama and Colon.

At that time the United States will renounce the right which it obtained in the first paragraph of Article VII of the Convention between the United States and Republic of Panama signed at Washington, March 2, 1936, to acquire lands, buildings, water rights or other properties necessary for purposes of sanitation such as the collection of disposal of sewage and the distribution of water in the cities of Panama and Colon.

2. Railroad lots in Panama and Colon: The President will seek the authority of the Congress of the United States to transfer to the Republic of Panama free of cost all of its rights, title and interest to the lands belonging to or of which the Panama Railroad Company now has usufruct in the cities of Panama and Colon which are not current or prospectively needed for the maintenance, operation, sanitation, and protection of the Panama Canal * * * The Panama Railroad Company will convey to the Republic of

2. Free of cost, the United States agreed to transfer to Panama all lots of land owned by the Panama Railroad in the cities of Panama and Colon. The value of these lands was fixed at \$12,000,000.

Panama those lands which it possesses within that portion of Manzanillo Island * * *

5. Jurisdiction over roads and highways in Panamanian Territory: The Government of the United States will bear one-third of the total annual maintenance cost of all Panamanian roads used periodically or frequently by the armed forces of the United States * * *

8. Provision of electrical current from the Alhajuela Dam for use in the Republic: The Government of the United States agrees that electrical energy, whenever an excess beyond the needs of the United States is available in commercial quantities at the generating station of the Panama Canal at Madden Dam, will be furnished upon request of the Panamanian Government, to the cities of Panama and Colon at a price and at points to be agreed upon by the two Governments.

9. The assumption by the United States of the entire cost of the Rio Hato Highway: The Government of the United States will after the necessary funds have been obtained by appropriations from the Congress, liquidate the credit of \$2,500,000 made available to the Republic of Panama by the Export-Import Bank for the construction of Panama's share of the Chorrera-Rio Hato Road.

10. The desire of the Panamanian Government for 3 gasoline or oil tanks at Balboa: The Government of the United States will make available to the Republic of Panama a right-of-way beginning in the port of Balboa and ending at the Canal Zone-city of Panama boundary at a point to be agreed by the 2 Governments for the construction of a petroleum pipeline. It will also agree that the facilities of the Panama Canal for discharg-

3. The United States promised to provide one-third of the total annual maintenance cost of all roads used by U.S. military forces in Panama.

4. Whenever there is produced an excess of electrical energy from the Panama Canal's generating plants, it shall be furnished at an agreed price to the cities of Panama and Colon.

5. The United States agreed to assume the entire cost of the Rio Hato Highway.

6. Right-of-way for the construction of an oil pipeline, connecting Panama with the port of Balboa, was granted by the United States.

Treaty of Mutual Understanding and Cooperation, signed at Panama Jan. 25, 1955.

[Out of 21 demands sought by the Republic of Panama, the United States agreed to 11 major concessions.]

1. The annuity was increased from \$430,000 to \$1,930,000 (the State Department assumed the obligation to include the additional \$1,500,000 in its annual budget although there was no need so stipulated in the treaty).

2. Subject to certain conditions, Panama was granted the power to levy income taxes on personnel employed by Canal Zone agencies, regardless of their place of residence.

CITATION FROM CANAL ZONE CODE

ing bulk petroleum products from ships berthed at Balboa and for the direction of such products into the pipeline above mentioned would be made available in regular turn to the Republic of Panama at reasonable cost.

Art. I sec. 122: Beginning with the 1st annuity payable after the exchange of ratifications of the present treaty, the payments under art. XIV of the Convention for the Construction of a Ship Canal * * * as amended by art. VII of the General Treaty of Friendship and Cooperation * * * shall be one million nine hundred thirty thousand and no/100 Balboas (B/1,930,000) as defined by the agreement embodied in the exchange of notes of Mar. 2, 1936 * * *

Art. II sec. 123: * * * the United States of America agrees that the Republic of Panama may, subject to the provisions of paragraphs (2) and (3) of this Article, impose taxes upon the income (including income from sources within the Canal Zone) of all persons who are employed in the service of the Canal, the railroad, or auxiliary works, whether resident within or outside the Canal Zone, except:

(a) members of the Armed Forces of the United States of America.

(b) citizens of the United States of America, including those who have dual nationality, and

(c) other individuals who are not citizens of the Republic of Panama and who reside within the Canal Zone.

3. The United States renounced its monopoly with respect to the construction, maintenance, and operation of trans-Isthmian railways and highways, with the provision that no similar system would be financed, constructed, maintained or operated by a third country or nationals unless such action would not affect the security of the canal.

Art. III sec. 124: Subject to the provisions of the succeeding paragraphs of this Article, the United States of America agrees that the monopoly granted in perpetuity by the Republic of Panama to the United States of America for the construction, maintenance, and operation of any system of communication by means of canal or railroad across its territory between the Caribbean Sea and the Pacific Ocean, by Article V of the convention signed November 18, 1903 shall be abrogated as of the effective date of this Treaty insofar as it pertains to the construction, maintenance and operation of any system of trans-Isthmian communication by railroad within the territory under the jurisdiction of the Republic of Panama.

Subject to the provisions of the succeeding paragraphs of this Article the United States further agrees that the exclusive right to establish roads across the isthmus of Panama acquired by the United States as a result of a concessionary contract granted to the Panama Railroad Company shall be abrogated. * * *

In view of the vital interest of both countries in the effective protection of the Canal, the High Contracting Parties further agree that such abrogation is subject to the understanding that no system of interoceanic communication within the territory of the Republic of Panama by means of railroad or highway may be financed, constructed, maintained or operated directly or indirectly by a third country or nationals thereof, unless in the opinion of both High Contracting Parties such financing, construction, maintenance, or operation would not affect the security of the canal.

EXHIBIT 1—Continued

U.S. CONCESSION

It was contemplated that the Panama Railway would be liquidated. (Congress, however, after studying the situation, refused to cede the main line and as a result the 2 termini were given to Panama.)

CITATION FROM CANAL ZONE CODE

Memorandum sec. 139: Legislation will be sought to authorize and direct the Panama Canal Company to remove its railway terminal operations from the city of Panama and to transfer to the Republic of Panama free of cost all of right, title and interest of the Panama Canal Company in and to the lands known as the Panama Railroad Yard, including the improvements thereon and specifically including the railway passenger station. This action will also relieve the Government of the Republic of Panama of its obligation under Point 10 of the General Relations Agreement between the United States of America and the Republic of Panama signed May 18, 1942, to make available without cost to the Government of the United States of America a suitable new site for such terminal facilities.

Art. III sec. 125: The second paragraph of Article VII of the Convention signed November 18, 1933, having to do with the issuance of, compliance with, and enforcement of, sanitary ordinances in the cities of Panama and Colon, shall be abrogated in its entirety as of the date of entry into force of this Treaty.

Art. V sec. 126: The United States of America agrees that, subject to the enactment of legislation by the Congress, there shall be conveyed to the Republic of Panama free of cost all the right, title and interest held by the United States of America or its agencies in and to certain lands and improvements determined by the United States in and to certain lands and improvements determined

4. The United States renounced its right to prescribe and enforce sanitary measures in the cities of Panama and Colon.

5. Certain lands, with their improvements were transferred free of cost to Panama. In Panama City, these included Paitilla Point, the Panama railroad yard and its station. In Colon, there was transferred New Cristobal, Colon Beach, the Fort de Lesseps area, Hotel Washington and Colon Hospital.

by the United States to be no longer needed for the operation, maintenance, sanitation or protection of the Panama Canal * * * The United States also agrees that * * * there shall be conveyed to the Republic of Panama free of all cost of its rights, title and interest to the land and improvements in the area known as Paitilla Point * * *

Art. VI sec. 127: * * * This article shall become effective upon completion of the withdrawal by the United States of America from the sections of the city of Colon known as New Cristobal Colon Beach, and the de Lesseps area * * *

Art. XII sec. 133: * * * there will be excluded from the privilege of making purchases in the commissaries and other sales stores in the Canal Zone all those persons who are not citizens of the United States of America, except members of the Armed Forces of the United States, and who do not actually reside in the Canal Zone but who are included in the categories of persons authorized to reside in said Zone: it being understood nevertheless that all personnel of the agencies of the United States of America will be permitted under adequate controls to purchase small articles such as meals, sweets, chewing gum, tobacco and similar articles near the sites of their jobs.

Memorandum sec. 138(a): The basic wage for any given grade level will be the same for any employee eligible for appointment to the position without regard to whether he is a citizen of the United States or of the Republic of Panama. * * * Legislation will be sought to make the Civil Service Retirement Act uniformly applicable to citizens of the United States and of the Republic of Panama em-

6. Commissary and import privileges were withdrawn from non-U.S. employees of Canal Zone agencies.

7. The U.S. Congress was to be requested to enact legislation authorizing the establishment of a single basic wage scale and uniform application of the Civil Service Retirement Act to citizens of the United States and Panama employed by the U.S. Government in the Canal Zone.

EXHIBIT 1—Continued

U.S. CONCESSION

8. The United States promised to guarantee equality of opportunity to citizens of Panama for employment in all U.S. Government positions in the Canal Zone for which they are qualified and in which the employment of U.S. citizens is not required for security reasons.

9. Citizens of Panama were granted permission to participate in training programs conducted for employees by U.S. agencies in the Canal Zone.

10. Panamanian products, when purchased for use in the Canal Zone, were exempted from the Buy American Act.

11. It was agreed that Congress would be asked to appropriate and authorize building a bridge across the Panama Canal to replace the Thatcher Ferry (estimated to cost \$20,000,000).

CITATION FROM CANAL ZONE CODE

played by the Government of the United States in the Canal Zone.

Memorandum sec. 138: The United States will afford equality of opportunity to citizens of Panama for employment in all U.S. Government positions in the Canal Zone for which they are qualified and in which the employment of U.S. citizens is not required, in the judgment of the United States for security reasons.

Memorandum sec. 138: Citizens of Panama will be afforded opportunity to participate in such training programs as may be conducted for employees by United States agencies in the Canal Zone.

Memorandum sec. 140: Articles, materials and supplies that are mined, produced, or manufactured in the Republic of Panama, when purchased for use in the Canal Zone will be exempted from the provisions of the Buy American Act.

Memorandum sec. 142: Legislative authorization and the necessary appropriations will be sought for the construction of a bridge at Balboa referred to in Point 4 of the General Relations Agreement of 1942.

EXHIBIT 2

PANAMANIAN CONCESSIONS TO THE UNITED STATES

I. BOUNDARIES

A. Boundary Convention—Panama 1914

(Mainly concerned with demarcation of territory ceded by the Republic of Panama to the United States of America in perpetuity, transfer of railway rights, employment of Panamanian citizens, and jurisdictions of pending actions)

B. Colon Corridor and Certain Other Corridors—Panama 1950

Article II

§ 73 The tracts of land transferred from the City of Colon to the Canal Zone by the boundary change stipulated in Article I of the present Convention are considered to form part of the Canal Zone in the same manner as though they had been included within the grants contained in the Convention of November 18, 1903 * * *

Article III

§ 74 * * * The corridor road, between Randolph Road, and the boundary line between the City of Colon and the Canal Zone, including storm and sanitary sewerage facilities made necessary by such road will be constructed, by or at the expense of the Government of Panama. * * *

The Government of the United States of America shall have the right to construct highways connecting Bolivar Highway and the highway forming the Colon entrance to the corridor.

The United States of America shall enjoy at all times the right of unimpeded transit across the said corridor at any point, and of travel along the corridor and along the Colon entrance to the corridor, subject to such traffic regulations as may be established by the Government of the Republic of Panama. * * *

II. CANAL CONSTRUCTION AND RIGHTS

A. Convention for the Construction of a Ship Canal—Panama 1903

Grants perpetuity by Panama of use, occupation, and control of U.S. Canal Zone.

III. CLAIMS

A. Claims Convention—Panama 1926

(Established ad hoc joint commission for hearing certain claims)

B. Claims Convention—Panama 1950

Article III

§ 64 The Government of the Republic of Panama agrees to pay and the Government of the United States of America agrees to accept the amount of \$349,356.00, currency of the United States of America, as the net balance due the latter, in accordance with the provision of Article II. * * *

IV. DEFENSE

A. Agreement for the Lease of Defense Sites in the Republic of Panama—Panama 1942

Article I (Temporary use of certain lands for defensive purposes)

The Republic of Panama grants to the United States the temporary use for defense purposes of the lands referred to in the Memorandum attached to this Agreement and forming an integral part thereof. These lands shall be evacuated and the use thereof by the United States of America shall terminate one year after the date on which the definitive treaty of peace which brings about the end of the present war. * * *

V. GENERAL RELATIONS

A. General Treaty of Friendship and Cooperation—Panama 1936

Article IV

§ 35 The Government of the Republic of Panama, shall not impose import duties or taxes of any kind on goods destined for or consigned to the agencies of the Government of the United States of America in the Republic of Panama when the goods are intended for the official use of such agencies.

Article IX

§ 40 In order that direct means of land communication, together with accommodation for the high tension power transmission lines, may be provided under jurisdiction of the United States of America from the Madden Dam to the Canal Zone, the Republic of Panama hereby transfers to the United States of America jurisdiction over a corridor, the limits of which shall be demarcated by the two Governments pursuant to the following descriptions:

* * * * *

The Government of the Republic of Panama will extinguish any private titles existing or which may exist in and to the land included in the above described corridor.

B. General Relations Agreement—Panama 1942

5. Jurisdiction over roads and highways in Panamanian Territory.

* * * * *

The Government of Panama guarantees that all roads under its jurisdiction used periodically or frequently by the armed forces of the United States will be well and properly maintained at all times. The Government of Panama will ask for the cooperation of the Government of the United States in the performance of repair and maintenance work. * * *

* * * * *

In consideration of the above obligations and responsibilities of the United States, the Government of the Republic of Panama grants the right of transit for the routine movement of the members of the armed forces of the United States, the civilian members of such forces and their families, as well as animals. * * *

C. Treaty of Mutual Understanding and Cooperation—Panama 1955

Article II

(3) The Republic of Panama agrees not to impose taxes on pensions, annuities, relief payments, or other similar payments, or payments by way of compensation for injuries or death occurring in connection with, or incident to, service on the Canal, the railroad, or auxiliary works paid to or for the benefit of members of the Armed Forces or citizens of the United States of America. * * *

Article VIII

§ 129(b). The United States Armed Forces, the members thereof and their families actually residing with them, and United States nationals who, in an official capacity, are serving with or accompanying the Armed Forces of the United States and members of their families actually residing with them will be exempted within the said area from all taxation by the Republic of Panama or any of its political subdivisions.

Article IX

§ 130. The Republic of Panama hereby waives the right under Article XIX of the Convention signed November 18, 1903, to transportation by railway within the Zone, without paying charges of any kind, of persons in the service of the Republic of Panama, or of the police force charged with the preservation of public order outside of the Canal Zone, as well as of their baggage, munitions of war and supplies.

Article X

§ 131 * * * in the event of the discontinuance of the Panama Railroad, and of the construction or completion by the United States of a strategic highway across the Isthmus lying wholly within the Canal Zone * * * the United States of America may in its discretion either prohibit or restrict the use, by busses or trucks not at the time engaged exclusively in their servicing of, or the transportation of supplies to, installations, facilities or residents of the Canal Zone, of that portion of such highway which lies between Mount Hope, Canal Zone and the intersection of such highway with the Canal Zone section of the Trans-Isthmian Highway. * * *

Article XI

§ 132 The Republic of Panama agrees * * * that the United States of America may extend the privilege of purchasing at post exchanges small items of personal convenience and items necessary for professional use, to military personnel of friendly third countries in the Zone under the auspices of the United States.

C. Memorandum of Understanding Reached—Panama 1955

On the Part of the Republic of Panama:

§ 149 1. The Republic of Panama will lease to the United States of America, free of all cost save for the recited consideration of one Balboa, for a period of 99 years, two parcels of land contiguous to the present United States Embassy residence side, as designated on the sketch. * * *

§ 151 3. So long as the United States of America maintains in effect those provisions of Executive Order No. 6997 of March 25, 1953, governing the importation of alcoholic beverages into the Canal Zone, the Republic of Panama will grant a reduction of 75 percent in the import duty on alcoholic beverages which are sold in Panama for importation into the Canal Zone pursuant to such Executive Order.

§ 153 4. * * * the United States shall have free access to the beach areas contiguous to the maneuver area described in said Article VIII for purposes connected with training and maneuvers, subject to the public use of said beach as provided under the Constitution of Panama.

Mr. SARBANES. Mr. President, I ask unanimous consent that Steve Ward of Senator Bentsen's staff be granted privilege of the floor during consideration of this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GOLDWATER. Mr. President, we have now commenced the opening debate on the crucial treaty with Panama. I have often said over the last 15 years that I think some kind of a treaty could be negotiated that I could accept, but I have to admit that the longer I hear about this one from experts, the longer I read about it, the more dangerous it becomes. I am greatly impressed, for example, with the ability of the Panama Canal Company to run the finances of that Company and not have to come to the Congress for funds.

The finances of this whole treaty has become intriguing to me because I have mentioned before that I think our large banks and international banks have a lot more to do with this treaty than meets the eye, and I have made a rather detailed study of the history of the financial record of Panama over the last 8 years. I offer for the perusal of my colleagues, a breakdown of the moneys that have been borrowed by Panama and the results. I think we can safely say that Panama is bankrupt, and I think we can also safely say that beginning with the year 1969 Panama got into more and more trouble, and this alone causes me to have great question as to whether or not the Government of Panama will be able to run the canal company in the same excellent way that it has been run for 70 years. I doubt it. At the end of the study you will see the sources of my information and, in the future, and I hope in the not

too distant future, I will make additional comments along these same lines.

It has been interesting to me to read the membership of the Trilateral Commission which I placed in the Record January 19, 1977, and realize that almost every member of the Carter administration, including the negotiators, members of our Senate Foreign Relations Committee, and other people close to our Government, are members of this organization. I believe that this is the reason we are getting all the pressure to push this treaty through, even though we do not have any legislation handed to us yet from the State Department, and it was supposed to be ready in early October; even though we have not completed hearings before the Senate Armed Services Committee; and even though we have not been told an honest story about how much this treaty is going to cost the American people.

For example, we are told it will not cost one red cent to the American taxpayer.

I strongly dispute this and while we have no one person nor even a source, at this time, who can guess at the ultimate expense to the American taxpayer, I am willing to put my neck out and say it is going to cost over a billion dollars. My feelings about the uncertainty of this whole treaty, particularly as it relates to finances, is that within 5 years after we hand the canal over to the country of Panama, we will be back running it and financing it ourselves. I will have more to say on this at a later date. I ask unanimous consent that the paper I referred to earlier be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

1. Loans approved for the Republic of Panama by the World Bank, International Finance Corporation, Inter-American Development Bank, Export-Import Bank, and AID.

(a) Total loans approved from 1960 to 1968 (9 years) U.S. \$134,400,000.00.

Year	World Bank	International Finance Corporation	Inter- American Development Bank	Export- Import Bank	AID	Total
1969.....	0	0	9.8	0	4.8	14.6
1970.....	42.0	0	1.7	2.5	12.2	58.4
1971.....	23.4	1.5	17.4	21.5	11.0	74.8
1972.....	0	0	15.7	22.5	18.8	57.0
1973.....	34.7	0	18.0	41.6	0	94.3
1974.....	0	0	14.5	0	8.1	22.6
1975.....	24.0	0	42.2	27.7	21.2	115.1
1976.....	12.0	0	27.0	3.7	9.5	52.2
Total.....						489.0

Total loans from these agencies: 1960-1968—U.S. \$134,400; 1969-1976—U.S. \$489,000,000.00.

2. Loans approved by the International Monetary Fund for Panama. Total loans approved from 1960 to 1968; U.S. \$10,000,000.00.

Year:	
1969	3.2
1970	10.0
1971	15.0
1972	9.8
1973	10.9
1974	31.1
1975	22.5
1976	29.2
Total	131.7

Total loans from this agency 1960-1968: U.S. \$10,000,000.00; 1969-1976, \$131,700,000.00.

3. Loans approved by private banks to the Republic of Panama: Total loans approved from 1960 to 1968 \$3,700,000.00.

Year:	
1969	7.5
1970	0.0
1971	58.2
1972	65.1
1973	205.1
1974	86.9
1975	216.8
1976	247.0
Total	886.6

Total loans from private banks 1960-1968: U.S., \$3,700,000.00; 1969-1976, \$886,600,000.00.

4. Total loans from all sources: 1960-1968 (9 years), U.S. \$148,100,000.00; 1969-1976 (8 years), U.S. \$1,507,000,000.00.

5. Revenues and deficits of the Government:

Year	Revenue	Deficit
1968	127.0	8.0
1969	133.0	62.1
1970	160.1	48.5
1971	181.2	32.3
1972	197.9	105.7
1973	226.0	144.7
1974	271.4	195.2
1975	297.1	148.0
1976	281.6	164.2
1977	¹ 250.5	77.4

¹9 months.

(a) Debt amortization has been excluded from expenditures. Therefore, the deficits are substantially larger than the ones shown above.

(b) Sources: "External Financing of Latin American Countries", Oct. 1977, published by the "Division of General Studies", of the "Economic and Social Development Department" of the "Inter-American Development Bank."

(c) "International Financial Statistics", January 1978, published by the "International Monetary Fund."

Mr. STEVENSON. Mr. President, 75 years ago the United States began a relationship with Panama that enabled us to build the Panama Canal and develop it into one of the world's great waterways, an economic boon in peacetime and a vital defense link in wartime.

Now the U.S. Senate is in the midst of a historic debate on the Panama Canal Treaties, treaties designed to modernize that relationship, to build a partnership that will meet the needs and pro-

tect the interests of the United States in the next 75 years. I am ready to vote in favor of ratification of these two treaties. They represent the collective negotiating effort of four administrations and reflect a wise and just accommodation of the interests of the United States and Panama. President Carter and his associates deserve admiration for the skill and perseverance they have shown in reducing long-agreed general principles to the treaty texts we are considering today.

The distinguished majority leader and the distinguished minority leader have earned the thanks and respect of their colleagues for the way they have promoted consensus on this significant, but contentious, issue. I have joined with them, as well as the distinguished chairman of the Foreign Relations Committee, Senator Sparkman, the distinguished ranking minority member, Senator Case, and many others in sponsoring amendments to articles IV and VI of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. These amendments incorporate language from the Carter-Torrijos statement of last October regarding the right of the United States to defend the neutrality of the Panama Canal after the year 2000 and the right of the U.S. vessels to expeditious passage through the canal, including going to the head of the line in emergencies. These amendments are sound ones, making explicit in the text of the treaty what I believe was already implicit.

Of the two treaties we are considering, the Panama Canal Treaty governs the operation of the canal until the year 2000. The other treaty, the Neutrality Treaty, insures the permanent neutrality of the canal after that date. The treaties grant the United States the primary right to protect and defend the canal until 2000, insure access by the United States and other nations, and guarantee its neutrality indefinitely after 2000.

The Senate Foreign Relations Committee has completed extensive hearings on the treaties in which the whole range of opinion, pro and con, was thoroughly explored. In its current debate the Senate is examining in the most minute detail the text of these treaties and their implications for the economy and defense of the United States.

Our chief concern should be the protection of long-term American interests in the canal—specifically its continued efficient operation and our access to it on a nondiscriminatory basis. The problem facing the United States is to insure our continuing military and commercial interests by putting relations with Panama on a realistic footing instead of trying to defend an indefensible status quo. Even most critics of the present treaties accept the fact that continuation of the status quo does not represent a practical alternative.

This subject has inflamed feelings and produced misunderstanding, although I have noticed from my mail that there is an increasing awareness of the long-term benefits these treaties will bring to the United States. We should keep in mind that, while protecting our own basic interests, we have to take into account the legitimate interest of the Panamanians in regaining control over their own land. Failure to reach a reasonable agreement with the Panamanians on this issue would diminish American influence, especial-

ly in Latin America, and could result in serious threats to the secure operation of the canal itself.

Far from forfeiting all control over the canal, the purpose of the Carter administration, like that of the Ford, Nixon, and Johnson administrations before it, has been to preserve the essential U.S. interests in the use and protection of the canal, to assure our right of access, and, finally, to assure the canal's neutrality indefinitely.

The questions that have been raised about the right of the United States to take military action, if necessary, to preserve the neutrality of the canal, and to enjoy expeditious passage of its warships through the canal have been dealt with satisfactorily by the assurances and clarifications provided by the administration and the Government of Panama. These assurances and clarifications are now incorporated in the amendments to the Neutrality Treaty I spoke of earlier.

Another matter of potential importance to the United States is the possibility of building a sea-level canal in Central America. The provision of the Panama Canal Treaty which prevents the United States from building an interoceanic canal in any other country in the region without Panamanian approval initially raised a question in my mind. I found, however, after investigating this that our studies indicate that the best route for another and more adequate canal is in Panama. The overall effect of this provision is to protect an important potential interest of the United States by preventing Panama from negotiating with another country for a new canal without our consent.

We are all dedicated to finding a workable and honorable arrangement that meets our needs and the valid aspirations of the Panamanians, one that looks ahead rather than is transfixed by a romantic vision of a noble but distant past. These treaties do that; I support them for that reason.

PANAMA CANAL TREATIES—EX. N, 95-1

AMENDMENT NO. 28

(Ordered to be printed and to lie on the table.)

Mr. Scott submitted an amendment intended to be proposed to Ex. N, 95-1, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

AMENDMENT NO. 29

(Ordered to be printed and to lie on the table.)

Mr. Scott submitted an amendment intended to be proposed to Ex. N, 95-1, the Panama Canal Treaty.

AMENDMENT NO. 30

(Ordered to be printed and to lie on the table.)

Mr. Stevens submitted an amendment intended to be proposed by him to amendment No. 21 intended to be proposed to Ex. N, 95-1, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

(The remarks of Mr. Stevens when he submitted the amendment appear earlier in today's proceedings.)

AMENDMENT NO. 31

(Ordered to be printed and to lie on the table.)

Mr. DeConcini (for himself and Mr. Ford) submitted an amendment intended to be proposed by them jointly to Ex. N, 95-1, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

Mr. DeCONCINI. Mr. President, a good deal of the discussion involving the Panama Canal treaties has centered upon threats to the canal which might come from third parties—more specifically—Communist countries. While this concern is certainly justified, I have been equally bothered by the possibility that internal Panamanian activities might also be a threat to the waterway, should we give it up. Labor unrest and strikes; the actions of an unfriendly government; political riots or upheavals—each of these alone or in combination might cause a closure of the canal. In February 1975, for example, there was a “sickout” which disrupted the efficient operation of the canal. Yet as I read the treaties, there does not appear to be any specific guarantee that a disruption of the canal arising out of internal Panamanian activities can be swiftly and adequately dealt with.

Although General Torrijos has brought a welcome degree of stability to Panama in recent years, it can be argued that the history of Panama is one of substantial political instability and turmoil. Under normal circumstances, the United States would not or should not contemplate intervening in the internal affairs of another nation. However, there are extremely unique and special circumstances surrounding the relationship between the United States and Panama. Since the beginning of this century, the United States has exercised de facto sovereignty over the Panama Canal Zone, and has been responsible for the defense and operation of the canal. We have maintained this control over the canal for one very simple reason: the Panama Canal is vital to the security, economic and military, of the United States. This fact must be recognized in any treaty which contemplates a fundamental change in the American-Panamanian relationship.

The amendment being offered by Senator Ford and myself is designed to clarify and expand the language of the neutrality treaty even beyond the amendments offered by the leadership. It is still unclear from the treaty language or the clarifying amendments whether the United States possessed the right to intervene to maintain the operation of the canal in circumstances when the closure of the canal is the result of an action other than external aggression. Our amendment makes it perfectly clear that the United States has the right to insure that the canal continues to operate regardless of the cause of its closure.

We neither believe nor expect that this language gives to the United States an indiscriminate right to meddle in the affairs of Panama. It does, however, take the view that the continued operation of the canal for the benefit of all nations is of paramount importance. Thus, the language of our amendment states that—

If the Canal is closed, or its operations are interfered with, the United States of America shall have the right to take such steps as it deems necessary to reopen the Canal or restore the operations of the Canal, as the case may be.

We contemplate that if the Senate chooses to adopt this amendment that the American Government will act with restraint and with discretion. Without this amendment, however, the United States is essentially powerless under the terms of the treaty to insure free passage through this vital waterway.

I commend the amendment to our colleagues, and I hope they will regard it with favor during the deliberations of the next few weeks. I ask unanimous consent that the text of the amendment be printed in the Record at this point.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 31

At the end of article V add the following: "Notwithstanding the provisions of the preceding sentence, if the Canal is closed, or its operations are interfered with, the United States of America shall have the right to take such steps as it deems necessary to reopen the Canal or restore the operations of the Canal, as the case may be."

AMENDMENT NO. 32

(Ordered to be printed and to lie on the table.)

Mr. DeConcini (for himself and Mr. Ford) submitted an amendment intended to be proposed by them jointly to Ex. N, 95-1, the Panama Canal Treaty.

Mr. DeCONCINI. Mr. President, on numerous occasions I have stated that there are a number of questions raised by the Panama Canal treaties which have not been satisfactorily answered. National security concerns which have rightly been given the most attention are now being addressed through the amendment process. Some of the flaws so apparent in the ambiguous language of the Neutrality Treaty are now the object of remedial action, although these corrective measures may still be insufficient.

But there are other issues that have emerged from the debate. Some of those involve the ultimate cost of the Panama Canal treaties to the American taxpayer. Testimony last week before the Armed Services Committee was particularly troublesome for it suggested that contrary to the repeated assertions of the administration, American citizens might be saddled with heretofore unsuspected and unjustifiable costs over the next 22 years, and beyond.

Let us consider for a moment the value of the asset we are giving to the Republic of Panama. A very conservative valuation for interest purposes places the value at \$319 million. The total replacement value, however, is \$8.5 billion. Panama will also receive anywhere from \$50 to \$70 million per year from a combination of increased tolls and annuity payments. Finally—although it is not a formal part of the treaty—Panama will receive loan guarantees and credit of up to \$295 million. This is above and beyond the \$331.5 million in economic foreign aid Panama has already received from the United States.

The information presented at the Armed Services hearings, particularly from Governor Parfitt, suggests that there may be some hidden costs about which we have not been informed. More importantly, he pointed out that the United States may be unwittingly accepting substantial further financial obligations.

I was particularly disturbed to discover that some Panamanian officials believe that the \$10 million optional payment to Panama provided for in article XIII of the Panama Canal Treaty which is supposed to come from surplus revenues, will actually accumulate so that on the date we are supposed to leave their country, we shall owe them a \$220 million lump sum payment. I find this incredible. The administration assures us that this interpretation is incorrect. If so, surely they can support the clarifying amendment which I now offer. Simply put, the amendment adds language to article XIII to the effect that the United States is not committed to any lump sum payment to Panama at the expiration of the Panama Canal Treaty. I do not believe that the American people are in a mood to pay more millions of their tax dollars for the privilege of giving up the canal. I hope my colleagues agree that we need to guard against this eventuality.

I ask unanimous consent, Mr. President, to have the text of the amendment printed in the Record.

There being no objection, the amendment was ordered to be printed in the Record, as follows:

AMENDMENT NO. 32

At the end of paragraph 4(c) of article XIII, add the following: "Nothing in this subparagraph may be construed to commit the United States of America to make any payment to the Republic of Panama after the date of the termination of this Treaty."

[From the Congressional Record—Senate, Feb. 10, 1978]

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The PRESIDING OFFICER. Under the previous order, the hour of 10:30 having arrived, the Senate will now resume consideration of Executive N, 95th Congress, 1st session, which the clerk will report. Debate thereon is not to extend beyond 5 p.m. today.

The legislative clerk read as follows:

Executive N, 95th Congress, First Session, Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. ROBERT C. BYRD. Mr. President, on yesterday I spoke at some length in support of the treaties. I desisted from completing my speech yesterday in deference to other Senators who had been waiting. As a courtesy to the minority leader and other Senators who wanted to speak, I withheld the completion of my speech. At this time I shall continue on that speech, but I want first to yield to the distinguished Senator from Arizona (Mr. Goldwater) who very patiently awaited yesterday a turn at which he could deliver his own remarks in connection with the treaties.

So, Mr. President, without yielding my rights to the floor at this time, I yield to the distinguished Senator from Arizona (Mr. Goldwater) for such comments as he wishes to make.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. GOLDWATER. Mr. President, I thank the majority leader very much for his generosity, and I promise him it will not be a lengthy speech.

Of course, it is on the Panama Canal Treaty, and I am in opposition to this Treaty. Even though most of my original opposition was based on the lack of proper language in my opinion to guarantee our right to defend the canal. I believe that the amendments that have been offered to allow us to have the right to intervene at any time will remove that objection, but it will not change my vote.

Mr. President, the other day we had hearings before the Armed Services Committee, and I only wish that those hearings could have been held before the Foreign Relations Committee. To me, our hearings only confirmed further that the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality of the Panama Canal should not be ratified. If these treaties had formally been before our committee, I doubt they would have been recommended to the Senate for approval. In fact, there is serious question that the treaties can even be made acceptable by amendment and I do not believe that they can. At the least, further negotiation is required.

Militarily, arrangements in the proposed treaties are contrary to what most military experts say is in our best national interest. If we insist upon giving the canal to Panama, we must then through further negotiation better assure the continued right of the United States to keep the canal operating. We seem to have lost sight of

the point that the canal is far more important to us than to Panama.

Financially, the testimony on the canal turnover was even more disturbing. If the Panama Canal Treaty is ratified, we could be committing ourselves to pay Panama hundreds of millions of dollars over the life of the treaty, due to possible, and quite probable, deficit operations. In fact, the financial forecast made for the proposed Panama Canal Commission is so shaky that the present Governor of the Canal Zone said he would not buy stock in the Commission if it was available and if he was able. Too much risk and uncertainty.

In my judgment, based on the testimony before the committee, I believe that the Panama Canal Commission will operate at a deficit after 1984, and that is after tolls have been raised to the point where additional increases would only drive away users and not produce additional revenue. This means it is likely that the canal will operate with an annual deficit through the time we would turn the canal over to Panama in 1999. Since the Panama Canal Treaty requires the canal to be turned over free of liens and debts, Uncle Sam is going to have to pick up a substantial tab.

At the same time the canal is operating in the red. Panama, as prescribed in the Panama Canal Treaty, will receive about \$70 million annually through payments from the Commission, or a minimum of \$1.5 billion cumulatively by 2000.

There is also the matter of the \$20 million annual interest payment, required by law, paid the United States by the Panama Canal Company on the U.S. net direct investment. The State Department witness before our committee stated that the implementing legislation would contain a provision that the U.S. Treasury forego this payment.

And, Mr. President, I might say that we have yet to see this legislation. It was promised in October. We have been waiting since the hearings closed this week to hear from the State Department if anything has been done about it. Frankly, I do not know how we can proceed much further without the implementing legislation coming over from the State Department.

Over the life of the treaty these payments I am talking about mean the loss of over \$400 million to the Treasury, another significant cost to the American people.

These kinds of financial arrangements just do not make sense and the American people should not be asked to support them.

The other evening at the end of the President's fireside chat. I was called by the press and asked what I thought about it and in simple English I said:

I wish he would level with the American people and tell the American people the truth if he can about the amount of money that it is going to cost the taxpayers of this country.

The President, as I say, was misinformed when he says this turnover will not cost the American people.

For that to be correct, we will need to reopen negotiations on these financial points. There is no requirement to pay Panama huge sums to take a canal that is worth \$9.8 billion. That is quite a bit more than we have been hearing about, but I have added up all

the available figures and it comes to \$9.8 billion that this country is going to turn over to Panama.

Finally, the Senate requires the implementing legislation before it will have all the data necessary to determine what the full impact of the treaties will be. This legislation, as I said, was promised last October, but it is still not here.

To ratify these treaties without knowing the details of this particular legislation is like signing a contract without reading the fine print. I suggest this legislation is deliberately being delayed because disclosure of its contents would further jeopardize support for the treaties.

In summary, Mr. President, the military and financial conditions of the treaties are unsatisfactory and to the disadvantage of the United States. The administration continues to push for their ratification but apparently will not give Congress the necessary implementing legislation.

Mr. President, there has been quite a bit said about the probable cost to the American people, and there has been quite a bit of conjecture of what these large sums of money will be used for.

I have to say, in my opinion, Panama is a bankrupt country, and I honestly do not believe that the payments earned by the operation of the canal will ever correct the economic chaos that exists in that country.

For example, they have total loans from 1969 to 1976 of \$489 million obtained from the World Bank, the International Finance Corporation, the Inter-American Development Bank, Eximbank, and AID. And then from that relatively small amount, the loans from 1969 to 1976 were \$131.7 million. So total loans from this agency from 1960 to 1968 were \$10 million and then they jumped to \$131 million.

We have the question of private banks and the money that is owed by the Republic of Panama. Private bank loans in our country and abroad have totaled today \$886.6 million.

I have often in my debate suggested that maybe this treaty was written by the trilateral commission because the trilateral commission is headed by bankers, not just our own bankers but international bankers around this world.

I find it rather unusual that we have increased our foreign aid to the so-called developing nations, mostly of Africa, where these financial institutions have loaned money to these countries—and they are not getting the interest paid back—that we have increased our foreign aid to these countries. Again why? And I hope some day that answer will be coming.

The total loans from private banks now is \$886.6 million, and the total loans from all sources is \$1.5 billion.

The deficit of the Government has run from \$8 million in 1968 to a high of \$195.2 million in 1974, and in 1977 it was \$77.4 million.

I ask unanimous consent that this compilation of debts be printed in the Record at this point.

There being no objection, the table was ordered to be printed in the Record, as follows:

1. Loans approved for the Republic of Panama by the World Bank, International Finance Corporation, Inter-American Development Bank, Export-Import Bank, and AID.

(a) Total loans approved from 1960 to 1968 (9 years) U.S. \$134,400,000.00.

Year	World Bank	International Finance Corporation	Inter- American Development Bank	Export- Import Bank	AID	Total
1969.....	0	0	9.8	0	4.8	14.6
1970.....	42.0	0	1.7	2.5	12.2	58.4
1971.....	23.4	1.5	17.4	21.5	11.0	74.8
1972.....	0	0	15.7	22.5	18.8	57.0
1973.....	34.7	0	18.0	41.6	0	94.3
1974.....	0	0	14.5	0	8.1	22.6
1975.....	24.0	0	42.2	27.7	21.2	115.1
1976.....	12.0	0	27.0	3.7	9.5	52.2
Total.....						489.0

Total loans from these agencies: 1960-1963—U.S. \$134,400; 1969-1976—U.S. \$489,000,000.00.

2. Loans approved by the International Monetary Fund for Panama. Total loans Approved from 1960 to 1968; U.S. \$10,000,000.00.

Year:	
1969.....	3.2
1970.....	10.0
1971.....	15.0
1972.....	9.8
1973.....	10.9
1974.....	31.1
1975.....	22.5
1976.....	29.2
Total	131.7

Total loans from this agency 1960-1968: U.S. \$10,000,000.00; 1969-1976, \$131,700,000.00.

3. Loans approved by private banks to the Republic of Panama: Total loans Approved from 1960 to 1968; U.S. \$3,700,000.00.

Year:	
1969.....	7.5
1970.....	0.0
1971.....	58.2
1972.....	65.1
1973.....	205.1
1974.....	86.9
1975.....	216.8
1976.....	247.0
Total	886.6

Total loans from private banks 1960-1968: U.S., \$3,700,000.00; 1969-1976, \$886,600,000.00.

4. Total loans from all sources: 1960-1968 (9 years), U.S. \$148,100,000.00; 1969-1976 (8 years), U.S. \$1,507,000,000.00.

5. Revenues and deficits of the Government:

Year	Revenue	Deficit
1968.....	127.0	8.0
1969.....	133.0	62.1
1970.....	160.1	48.5
1971.....	181.2	32.3
1972.....	197.9	105.7
1973.....	226.0	144.7
1974.....	271.4	195.2
1975.....	297.1	148.0
1976.....	281.6	164.2
1977.....	¹ 250.5	77.4

¹ 9 months.

(a) Debt amortization has been excluded from expenditures. Therefore, the deficits are substantially larger than the ones shown above.

(b) Sources: "External Financing of Latin American Countries", Oct. 1977, published by the "Division of General Studies", of the "Economic and Social Development Department" of the "Inter-American Development Bank."

(c) "International Financial Statistics", January 1978, published by the "International Monetary Fund."

Mr. GOLDWATER. I will say, for those who are interested in where these figures came from that I have listed on this paper, it is chiefly from "External Financing of Latin American Countries," published in October 1977 by the Division of General Studies of the Economic and Social Development Department of the Inter-American Development Bank.

Mr. President, returning to the value of the canal, which we have never been able to get down in black and white from the Panama Canal Company itself, I have obtained miscellaneous values of the canal.

The original cost of building the canal was \$387 million, and the original cost value of the Panama Canal enterprise was \$993.1 million. That includes \$10 million paid to Panama under the 1903 treaty.

The book value of the Panama Canal Company is \$551.8 million, and the Canal Zone government, \$59.6 million, for a total of \$561.4 million; but the replacement value of canal operations, including armed forces facilities, totals \$9.8 billion, including property at \$3.5 billion, the Panama Canal itself at \$5 billion, and the military, naval, and air plant at \$1.2 billion.

So, Mr. President, when we hear from our President that this is not going to cost the taxpayers of this country anything, that is just plain wrong, and I would hope in his next fireside chat the President will carefully review what he said in his last fireside chat, and give the American people as honest an appraisal as we can get. I think "appraisal" is the only word we can use, because we feel rather certain that up until the year 1984 the Panama Canal Company will operate either at a profit or a slight loss, but after 1984 it is pretty much anybody's guess. In my estimation, the loss could reach, by the year 2000, or 1999, over a billion dollars, this would have to come out of the taxpayers' pockets.

At the same time, I repeat, I do not honestly believe that the Government of Panama as now constituted will be able to help themselves, help their people, with the money that comes from the canal. We find today that every cent that comes out of the canal operation goes back into the maintenance of that canal. People do not realize that we have dug enough dirt out of the canal since it has been finished to make a hole 1,600 feet square through the entire Earth. That is a lot of dirt to be dug out of anyplace, and it cost a lot of money. Our people are there dredging 24 hours a day.

I question, as I have questioned publicly before, that when the Panamanians begin to see these large sums of money come across their desks daily, weekly, and monthly, they are going to be able to resist the temptation to use that money for other purposes than maintenance of the canal. It is my feeling, therefore, that even if we do approve this treaty, within 5 years after the canal has been turned over the canal will be closed, or the United States will be back running it the way we are running it today.

I hope during the course of the debate we can spend more time on the cost element. I was particularly impressed by the minority views put in the report by the distinguished Senator from Michigan (Mr. Griffin), because he covered quite thoroughly the financing of the canal operations, starting on page 194. I would advise my colleagues to read that and any other information they can obtain in this particular area.

Mr. President, this is my opening speech on the treaties. I wanted to make this speech before the Lincoln Day period started, because we Republicans will be out extolling the virtues of Abraham Lincoln and the poverty of the Republican Party. Hopefully we will come out with as bright a shine on the nose as Mr. Lincoln has in his place in Illinois.

Mr. President, the U.S. operational control of the canal and the attendant U.S. military presence in Panama to assure the continuation of that control have become, to me, the foundation of the security of both the United States and the Western Hemisphere against a Communist takeover of Latin America. Now this is true from the military as well as in a political and psychological standpoint. Panama, because of its geographical location at the crossroads of the Atlantic-Pacific transportation, because of its dominant position in relation to the Caribbean, and because of the existence of the canal, is at once both symbolically and practically the key to hemispheric defense. It is also the Achilles heel of that defense. The continuation of the U.S. military presence in Panama is, therefore, to me, the all important factor. As long as we have an adequate force in Panama to hold the fort until reinforcements, if needed, can be sent in, there seems to be little likelihood that defense of the canal will ever become necessary.

It is almost inconceivable that in the face of that military presence, any nation, unless it were bent on precipitating World War III, would launch a significant effort to wrest control of the canal from the United States. Defense from within, let me remind you, is a far different thing than defense from without. It is the latter that the new treaties would require the United States and the Western Hemisphere to rely on. Now from a military standpoint, in the absence of a preliminary holding capability, any attacking or infiltrating forces would become speedily entrenched in all strategic locations and the task of dislodging them from without would be a major costly and highly destructive one as compared with that of repelling such forces at the outset. And from a political standpoint, there is also a vast difference between, on the one hand, augmenting military forces already legitimately positioned within a country and, on the other, introducing forces into a country where there are none, no matter how firm the legal right to do so may be. The latter would be the case after 1999, and again, in my opinion, before that, under the proposed new treaties.

Even if it were quite clear that the United States had the right to send force into Panama to defend the canal, and the proposed new treaties are wholly unclear on this point, and I might say I've read both the treaties in Spanish and, of course, in English—the cries of imperialist aggression and imperialist intervention would be so orchestrated internationally as to effectively deter any such action on the part of the United States, woefully sensitive as we

Americans seem to be to world opinion. Even then rightful defense of lives and property are involved. Not much less important in the military considerations regarding a continuing U.S. military presence in Panama are the psychological ones.

SOUTHCOT—that is the Southern Command—has become to most Latin American military leaders and, therefore, to most Latin American governments, the energizing center of their Latin American defense system. They feel possessive about it—they are proud of it. This has come about by virtue of SOUTHCOT's military assistance and representative functions throughout Latin America, all headquartered in Latin America. The very fact that the United States deems Latin America of such strategic importance as to maintain the hub of its operations in defense of the area in Panama is a matter of considerable significance to Latin American leaders. That significance is appreciably enhanced by the additional fact that the Commander of SOUTHCOT has consistently been a U.S. general officer of a rank substantially higher than the size of the forces under his command would ordinarily call for.

If the functions and responsibilities of SOUTHCOT were to be transferred to a command headquarters within the continental United States, as the proposed new treaties would, in effect, require, U.S. military rapport with Latin America and, hence, U.S. diplomatic rapport with Latin American governments, would diminish greatly.

A tendency would inevitably be generated for Latin American nations to look elsewhere for military assistance and cooperation. The basic nexus of current United States-Latin American relations would be destroyed. The recognition of this fact is, of course, anathema to those who view foreign relations only in terms of universal sweetness and light. Nevertheless, it is a reality and a transcendent one.

One of the major contributing factors to the development of this situation—the close military bonds between the United States and the Latin American nations, has been the various military schools operated by SOUTHCOT in Panama for the benefit of all Latin American military establishments. Many of these schools are staffed to a substantial degree by their own Latin American honor graduates.

The alumni body of these institutions spread throughout Latin America now numbers around fifty thousand, and while I do not think any North American has any liking for dictators, as long as we have to live occasionally with dictators, I would rather have them be friends of ourselves than against us. To cite just one example of the effectiveness of these military educational facilities, the counterinsurgency curriculum conducted over the years in one of the schools, the prestigious School of the Americas, has played a leading role in thwarting the Latin American communist insurgency problem instituted by Fidel Castro as far back as the 1960's.

Now to give all this up—to place ourselves in a position of being unable to resist a takeover of the Panama Canal by the Soviets or by any other country dominated by what I call "slave" governments, to place Panama in the position of a sitting duck and to destroy our close military and hence governmental ties with Latin America, to me, would be the height of national folly.

The proposed new treaties are a blueprint for just such a course of action. And, in closing, I might say that I have talked with President Carter about this and I have written him the same suggestion I made to his face—namely, with all due respect to the work done by Mr. Bunker and Mr. Linowitz, and others, that we begin negotiations again and keep the Panama Canal up on the shelf and work out some kind of a Marshal plan or something that we can do in that way to help the Panamanian people, thereby taking care of the great inequities that we, ourselves, by the establishment of the Canal Zone, are mostly responsible for.

Mr. GRIFFIN. Mr. President, will the Senator from Arizona yield?

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Arizona (Mr. Goldwater) for the purpose of his being able to yield to Senator Griffin.

Mr. GRIFFIN. I thank the distinguished majority leader. I want to thank the distinguished Senator from Arizona for his reference to my minority views, and perhaps to add a footnote or a little addendum to some of the things that he has said concerning the matter of bank loans having been made to the Panamanian Government.

It use to be said, or was said at one time, that what is good for General Motors is not necessarily good for the United States; and even though I am from Michigan I think that is true. I do not think that the interests of General Motors necessarily are always the same as the interests of the United States.

By the same token, the interests of the big New York banks, which have made huge loans to the Government of Panama under the Torrijos regime, are not necessarily the same as the views or the policies that the United States should follow.

I called attention to the fact—I regret it that I had to do it, but I really felt that it should be done, because there was an affront to the Senate involved—when President Carter circumvented the confirmation process in submitting the name, as chief negotiator, of Mr. Sol Linowitz by putting him up only on a temporary basis, and not having his qualifications and possible conflicts of interest subjected to scrutiny.

I thought it was too bad that Mr. Linowitz did not come forward with the information and in fact want a hearing, to reveal the fact that he had been on the board of directors of one of these big New York banks that participated in the huge loans made to the Torrijos government in Panama, and furthermore, to have acknowledged and given his explanation, which I feel confident would have been adequate, about the allegations that earlier, as a lawyer, he had represented the Marxist Allende government of Chile, and the allegation that his law firm and he had to register as an agent of the foreign government in connection with that activity. To have these things surface later and to have the administration put his name up on a temporary 6-month basis puts him under a time deadline, so that he has got to get the treaty negotiated before his 6-month period is up, does not exactly build confidence in the Senate as far as the process is concerned, and I think the Senate ought to resent having been treated that way.

Under the Constitution, the Senate is an integral part of the treaty-making process, and a chief negotiator who is going to negotiate a treaty should have had his name submitted to the Senate,

and we should confirm him. I think not only that, but it would have been wise if the administration had taken the Senate into its confidence more, not only this administration but prior administrations, in terms of what was going on in the negotiations. Certainly as we were nearing the final product the Senate should have been a part of it.

This has happened in the negotiation of many treaties in the past.

Those observations do not go precisely to the text of the treaty, but when we see so many ambiguities in language and we see measures which were adopted at the last minute that, in my humble opinion, do not serve the interests of the United States, then we look at the background and say, "Well, how did this come about?"

That aspect of it, the fact that there are these big loans outstanding to the Torrijos government of Panama, and the circumstances under which Mr. Linowitz' nomination was made, just do not help anybody who is on the fence in trying to decide which way to go.

Mr. GOLDWATER. I agree with my friend from Michigan. In fact, I was inclined toward voting for the ratification of these treaties. We had a meeting over here one afternoon in the majority leader's office in which Mr. Bunker and Mr. Linowitz were in attendance. I told them my turn was not 180° but maybe 120°; that I could not go much further until I saw the text of the treaties. He told me I would see them within the next day. It was 2 days after the President and Torrijos had the ceremony that I saw copies of the treaties.

Since that time I have debated Mr. Linowitz in Atlanta before the Georgia Bar. I made the proper apologies for just having to assume the presence of the trilateral commission, because I recognized that he was a member of this. In fact, I would not say I could safely say but nearly every member of the Carter administration is a member of this. I put their purposes into the Record sometimes ago. I believe I will put them in again.

They are very loyal men. They are patriotic, good Americans. But I do not quite agree with all of their purposes. One of those purposes is sort of making the world over, not in the nature of the United States but in the nature of what they feel it should be. In this making over is the making over of the monetary system of the world. We have heard Mr. Robert McNamara speak on that subject many times.

I would like to know sometime, and I would hope that during the course of this debate we could get into this matter, why these big banks in this country and abroad are so vitally interested in the canal treaty. The only conclusion I can come to is that they are in trouble, and they are in trouble because they have made stupid loans to countries which are not paying them back.

I agree with my friend from Michigan that it is not the job of the U.S. Government to pay people who have lost money. That is the way of doing business in this country: You either succeed or you do not. It is not our purpose to bail out banks, railroads, airlines, or anybody else.

Again, I am happy that the Senator wrote what he did in his minority views. I hope that the people of the United States will

slowly come to realize that giving the Panama Canal away is not just giving away something we have paid for throughout the 70 years, but we are going to keep on paying for it, and paying for it to the benefit of some other country.

Mr. President, again I want to thank the distinguished majority leader for his generosity in yielding time to me. I yield back the floor.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Arizona (Mr. Goldwater) for his patience of yesterday and his forbearance in waiting, as he did, in presenting his remarks. He has certainly waited long and patiently. I was glad to yield to him before proceeding with my comments today.

Mr. President, the distinguished Senator from Michigan (Mr. Griffin) has referred to the expiration of the term of Ambassador Linowitz in a way that would imply that simply because the 6-month term of Mr. Linowitz as Ambassador was coming to an end, the treaties somehow had to be hurried, and the completion of the negotiations was hastily made, leaving the inference for some to draw, perhaps, because Mr. Linowitz' term was about to come to an end that, ipso facto, the negotiations were summarily and prematurely brought to a close.

Well, Mr. Griffin asked Mr. Linowitz some questions during the Foreign Relations Committee hearings. But as far as I have been able to determine in a cursory reading of the hearings, I cannot see that Mr. Griffin made much of a point of that matter during his questioning of Mr. Linowitz.

The truth of the matter is that Mr. Linowitz did not have to have the title of Ambassador to continue to assist Mr. Bunker in the negotiations. He continues to assist even up to today in the efforts to bring about the proper understanding of the contents of the treaty.

Let it not be said that Mr. Linowitz had to retain that title of Ambassador in order to continue to assist Ambassador Bunker in the negotiations.

Mr. President, I spoke on yesterday at some length, and I responded to questions from other Senators. I indicated then that I had not completed my speech, but that out of deference and as a courtesy to other Senators, particularly the minority leader, I would forgo the completion of my remarks until another day, perhaps today.

I shall not detain the Senate overly long today because I expect to be discussing the treaties further following the nonlegislative-day period.

The matter of economics, for example, is going to be addressed at considerable length and in appropriate depth by me and by others at the proper time.

Mr. President, the core of American concern over the Panama Canal treaties extends beyond the technical arguments of sovereignty and defense and use of the canal.

These are important, vital arguments and issues, but the fundamental concern of the American people, I believe, goes deeper than even these fundamental technical arguments.

I believe that a fundamental uneasiness felt by the American people is that in approving the new treaties, we are in some way

retreating from the spirit, or the fervor, or the esprit de corps that made this country great.

There are those who would say that we are sliding down the mountain of greatness; that we have reached the zenith, that we have reached the apex of our national greatness, and that we are receding from that zenith of power; that the Vietnam war, and now the possibility of what some of the opponents refer to as "giving up" the Panama Canal, are signs that our nationalistic fiber is being peeled away; that we are soft—soft.

Such an argument is not worthy of a great people. Such an argument is not worthy of the American people, and it is not worthy of our maturity as the leading world power.

We must not be so insecure as a great nation as to insist upon an anachronism, a colonial presence in Panama.

It is because we are a strong nation that we can act with vision, a vision that is in our country's best interests and that we can change with the times; that we not only can see the pebble in the road today, but that we can see the distant mountain on the horizon tomorrow. We must not let this historic Panama Canal debate become clouded with the politics of fear, the arguments of fear, the concept of fear—fear of loss of power, fear of loss of face. In approving the ratification of these treaties, we lose neither; there is neither loss of power nor loss of face.

We must remember that Panama is a sovereign nation. Its people have the same basic feelings, basic aspirations and nationalistic pride that we have. Let us walk in the shoes of the Panamanian people. But, more importantly, let us make sure that we are filling our own giant shoes.

We seek approval of these treaties not for Panamanian interests. Panamanian interests are a byproduct. We seek approval of these treaties for our own national security, our own commercial and political interests. And when all of the fancy trappings are stripped away, and when the historical arguments over the 1903 treaty to which we addressed our remarks yesterday and the subsequent intentions or misintentions are put aside, it remains that these treaties today promote our interests and will add immeasurably to the backbone of our foreign policy in Central and South America.

It would be a mistake for us to turn our backs on these treaties through some false sense of nationalistic bravado. The treaties must be judged with common sense, and with a clear perception of the realities of today and the realities of tomorrow, and with a simple sense of justice and fairness.

Mr. President, yesterday, as I have indicated, I spoke of the history of the Panama Canal Treaty of 1903 and our Nation's longstanding interest in a secure international waterway linking the Atlantic and the Pacific Oceans, open to the United States and all of the nations of the world. In the long, tenuous history of the canal, nothing has come easily. Certainly not the construction of the waterway, which, even in this space age, remains one of history's outstanding engineering achievements.

Nor was agreement on these two treaties which are now before us easily achieved. There is a tendency to overlook the fact that the negotiations which led to the treaties involved a two-sided process, attempting to reconcile the interests of both nations. It is

my firm belief that the U.S. negotiators have secured an agreement which, as President Carter has stated, "is in the highest national interest of the United States and will strengthen our position in the world."

Mr. President, that is the mudsill, that is the benchmark, that is the cornerstone on which we should base our decision in this debate: what is in the best interests of the United States of America. Our primary objective is to have continued access to and continued use of the canal. Because of its importance to United States and world commerce and because of its strategic value, such use is best assured by ratification of the new treaties, which would result in an atmosphere of cooperation rather than confrontation in Panama.

Yesterday, Mr. President, when I alluded to cooperation versus confrontation, the question was asked of me by the very distinguished Senator from Nevada (Mr. Laxalt)—and I paraphrase. Whether it was a question or an observation, it added up to the same: To wit, that it is to be hoped that we do not reach our decision on these treaties based on the fact that there may be confrontation somewhere down the road and based on the fact that there are extremists in Panama who might stir up trouble if the treaties are rejected.

I said at that time that there have always been extremists in Panama and in the United States of America and in every country. But I stated also that we were not—to use the words of some of the opponents—running, not bending the knee, not making a decision out of fear. And I stated that there is no conceivable situation which could arise, if the treaties were rejected, which the U.S. military could not handle.

By that, I meant that there is no conceivable situation the result of which would mean the ouster of U.S. forces. Of course, difficult situations could arise, there could be a very hostile environment that would necessitate additional American manpower. Yes, in any conceivable situation, we could continue to hold onto the facilities. We could continue to control the Canal Zone. But there is no way under heaven that we could guarantee—no matter how many American soldiers and marines and airmen and naval personnel that we should send to Panama—no way that we could guarantee the continued, uninterrupted use of the canal at any and all times by our own country, or the other countries of the world.

Of course, we could convoy ships through the canal as they were convoyed across the Atlantic during World War II, but we could not assure uninterrupted use of that canal at all times.

That was what I meant.

But there is an easier way, a way to avoid that kind of circumstance, a way to avoid the confrontation, a way to avoid the hostile environment that would bring about certain interruptions of use of the canal and have a detrimental impact upon world shipping through that international waterway.

There is a better way, and that better way is to work in the context of the good neighbor policy, to work with, rather than in opposition to, the country that is sovereign over that strip of land, 10 miles wide and 50 miles long.

What is desirable and necessary is an atmosphere of good will and understanding and mutual respect and faith and trust. That is the way best to keep the canal open, to best guarantee access to it, and best to assure the unimpeded and uninterrupted use of it by our country and the other countries of the world in peace and in war.

The President in his recent fireside chat said, and I quote:

Military experts agree that even with the Panamanian armed forces joined with us as brothers against a common enemy, it would take a large number of American troops to ward off a heavy attack. I, as President, would not hesitate to deploy whatever armed forces are necessary to defend the canal and I have no doubt that even in a sustained combat that we would be successful. But there is a much better way than sending our sons and grandsons to fight in the jungles of Panama. We would serve our interests better by implementing the new treaties, an action that will help to avoid any attack on the Panama Canal.

That is the close of the quotation which I shall use from the President's fireside chat.

So let it not be said, Mr. President, that we would vote to approve the treaties because we have lost our nerve, that we are running, that we are retreating, that we are receding, that we are losing face.

We will be acting in the best interests of the United States to assure the continued use of that canal by our own country and other countries.

Mr. President, I yield to the distinguished Senator from Idaho (Mr. Church), who is a very fine, useful member—and may I say an eloquent one—of the Foreign Relations Committee.

Mr. CHURCH. I thank the majority leader for yielding. I appreciate his kind remarks.

He goes to the very core of the argument over the treaties when he emphasizes that this is not a question of yielding. It is not a question of genuflecting before Omar Torrijos. It is not a question of being pushed around by one of the smallest and weakest countries in the Hemisphere.

Such arguments are absurd on their face. Neither, I suggest, is it a question of what radical elements might do.

Whether the Senate chooses to ratify or reject these treaties, as the distinguished majority leader has correctly observed, every nation on Earth has its radical elements and there is no way to guarantee, one way or the other, that these elements in Panama might not cause trouble in the future.

What we are discussing here is not the irresponsible action of radical elements. It is, rather, the legitimate aspirations of the Panamanian people, the whole people, to reclaim jurisdiction over their land.

A plebiscite has recently been held in Panama and two-thirds of the Panamanian people have endorsed these treaties as the way to reclaim their jurisdiction. That, in itself, demonstrates how strongly the great majority of Panamanian people feel.

Mr. ROBERT C. BYRD. And with a 95 percent turnout.

Mr. CHURCH. Yes, indeed.

Mr. ROBERT C. BYRD. Which ought to teach us a lesson in our own elections.

Mr. CHURCH. Moreover, I say to the Senator that many of those who cast their ballots against the treaties did so because they

believed that the gains in the treaty for Panama were insufficient, that it was unfair to make them wait until the end of the century to assume the management of the canal, that the United States, in effect, had retained too much at the bargaining table.

If the question in the plebiscite had been confined to the right of Panama to reassert her jurisdiction over the Canal Zone, I dare say that the vote would have been very nearly unanimous.

So let us not get this debate diverted into a discussion of what radical elements may do. The real question, as the Senator has correctly put it, is whether the United States is going to recognize the legitimate aspirations of the Panamanian people. The Canal Zone is the only sizable piece of foreign real estate that we hold anywhere in the world today against the wishes of the people of the country in which that holding is located.

Mr. ROBERT C. BYRD. Mr. President, will the Senator yield at that point?

Mr. CHURCH. I am happy to yield.

Mr. ROBERT C. BYRD. Will the Senator allow me to interrupt him at that point?

Mr. CHURCH. The Senator has the floor, I have been the interrupter.

Mr. ROBERT C. BYRD. Will the Senator allow me to intervene at this point?

Mr. CHURCH. Yes, indeed.

Mr. ROBERT C. BYRD. How would the people of Idaho feel if, through the State of Idaho, there were a strip of land 10 miles wide and 50 miles in length, under the control and jurisdiction of a foreign power?

I ask this rhetorical question: How would the people of West Virginia feel—a State whose motto is "mountaineers are always free," always, always free—if, through those million hills there ran a strip of land 10 miles wide and 50 miles long or 5 miles long or a half-mile long, which was controlled by a foreign power? How would the mail then run?

Mr. CHURCH. The Senator knows full well the answer. The people of Idaho and the people of West Virginia would not put up with it for a minute.

Mr. ROBERT C. BYRD. There would not be a foot of territory along that strip in West Virginia that would be safe, at day or at night, for those of the foreign power. And that is the situation that the Panamanians have faced for over 70 years.

Mr. CHURCH. No American listening to this debate would have any doubt about what we would do.

The only reason the Panamanians have refrained from taking matters into their own hands for the last 75 years is the enormity of our power, the immensity of our military presence, as contrasted to their own weakness.

The opponents of these treaties have the argument turned on its head. It is not the United States that will be weak by being magnanimous. Just the reverse. It has been the weakness of Panama which has made it impossible for the people of that country to rectify an imposition which, if it existed in this country, our people would not condone for a moment.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. ROBERT C. BYRD. Mr. President, I will yield shortly.

On this point, I wish to quote for the record Secretary of Defense Brown during his appearance before the Committee on Foreign Relations of the U.S. Senate, at the time he addressed his remarks to the subject of the Panama Canal Treaties. I quote Secretary of Defense Brown:

The canal was built for shipping, not slogans. We seek to guarantee transit of vessels, not theoretical claims of title. These goals we have sought, as I said at the beginning, are practical. The issues before you are practical ones. Our negotiations have obtained instruments which, more certainly than thousands of forces and their armaments on the spot, will assure those practical objectives for generations to come.

That is the close of the quotation which I shall use at this moment.

I now yield to the distinguished Senator from Utah (Mr. Hatch).

Mr. HATCH. I thank the distinguished majority leader for yielding to me.

I have had difficulty believing what I have been hearing here, making comparisons between West Virginia and other States and the situation in Panama.

I suggest and submit that if Congress does not do something for New York City very soon, New York City would be happy to have somebody like the United States come in and assist them, rather than go down the drain.

Mr. ROBERT C. BYRD. The United States has assisted New York City.

Mr. HATCH. The Banking Committee has refused to assist them this year.

All I am saying is that there are a lot of differences.

It does annoy me somewhat to hear the argument that we have mistreated and tramped all over Panama, when in fact we have given them, per capita, the highest foreign aid of any nation in the world, when we have done a great deal for Panama. I think we should do a great deal more—if we were permitted to continue to manage the canal in the same expeditious, inexpensive, and indiscriminate manner that we have in the past, for the benefit of all nations; especially if we did not have to give up that control, which may be very unbeneficial to this country, and especially under the terms submitted by the President and others, that it will never cost us a dime, when we all know that it will cost us hundreds of millions of dollars for the next 20 years.

Mr. ROBERT C. BYRD. Mr. President, I do not yield at that point.

Mr. HATCH. May I ask a question, then?

The PRESIDING OFFICER. The Senator from West Virginia has the floor.

Mr. ROBERT C. BYRD. The President, in referring to the revenues of the canal as being the total to Panama, said:

Under the new treaty, any payments to Panama will come from tolls paid by ships which use the canal.

The President was preeminently correct in that statement, and it is a misplay on words to accuse the President of the United States of having said something that he did not say. Payments to Panama will come from the tolls that result from the traffic through the canal. We will talk more about the economics of the canal.

The distinguished Senator does not put words in my mouth. I have not said we "mistreated" the Panamanians. But I have said that the time has come, in the best interests of the United States, to approve these treaties and by the year 2000 to relinquish the control over the Canal Zone and the operations of that zone and that the sovereignty of Panama, which always has resided in Panama since the 1903 treaty was written, be fairly and justly recognized.

Mr. President, with inclusion of the two amendments I have proposed together with the distinguished minority leader and 77 other Senators, I am convinced that there can be no doubt that the treaties will better protect our long-term interests than does the 1903 treaty.

Since I first reviewed the treaties in September, it has been apparent to me that it would be necessary to clarify two important points concerning our interests and our rights, and these two amendments, if adopted, will guarantee our rights on these two matters.

First, the right of the United States to take action to defend the canal and to assure that it will remain open; and

Second, expeditions or "head-of-the-line" passage through the canal for U.S. military vessels in time of need or emergency.

I stressed to President Carter the importance of clarifying these matters prior to the Panamanian plebiscite which occurred on October 23, and they were dealt with in the statement of understanding agreed to by President Carter and General Torrijos on October 14.

In November, when I led a Senate delegation to Panama, we discussed the statement of understanding with General Torrijos, and he unhesitatingly indicated his adherence to the agreement. Further, it was clear that the Panamanian people had been informed about these points prior to the plebiscite. In a television address to the citizens of Panama on October 20, General Torrijos discussed the statement and said he should have signed it. The transcript of that address is included in the published report of our senatorial delegation to the Republic of Panama. General Torrijos had the text of the understanding read to the audience. He said,

Let the people know that when they go to vote on October 23, everything will have been said. There is nothing, absolutely nothing, hidden.

I do not think there should be any question that we have the right to defend the canal or the right of expeditious passage under the treaties. But in order that no doubt about that interception be left for future generations, I have consistently taken the position that the substance of the October 14 statement should be incorporated in the treaties or into the resolution of ratification by some parliamentary technique, and that is the purpose of the amendments.

Mr. DOLE. Mr. President, will the Senator yield at that point just for an observation?

Mr. ROBERT C. BYRD. I yield.

Mr. DOLE. I think it would be fair to say that without the distinguished majority leader's insistence that that be the procedure we would probably not be on the floor now with 77 or more

cosponsors, or there will be more cosponsors. And I think the distinguished majority leader has performed a great service, as has the minority leader and the distinguished Senators on the Foreign Relations Committee.

Mr. ROBERT C. BYRD. And as has the distinguished Senator from Kansas (Mr. Dole) who now speaks, who from the beginning has insisted that these points be clarified.

Mr. DOLE. But the point is that the two amendments go a long way in satisfying the fears that many Americans have, and whether we are now in a position to be able to support the treaties, there is no doubt in my mind that we would not be on the floor today with the treaties had it not been for the leadership provided and we may still have some difference, but I think the American people understand, and should understand, that we have gone this far, and we have gotten this far for a number of reasons. First, the leadership provided by the distinguished majority leader and those on the Foreign Relations Committee and the distinguished minority leader, Senator Baker, the willingness of the leader of Panama to accept, maybe not with enthusiasm, but at least to understand the problem we had in the Senate, and I think the President of the United States understanding the problem we had in the U.S. Senate. There may still be differences that can or cannot be resolved, but I hope and I believe that the American people understand that these are two giant steps in the right direction. I commend the distinguished majority leader.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from Kansas. He has rendered a contribution to the national debate and he has rendered a service to the people in pressing for action on these two points. He may have other points in mind. I do not know. There may be, and there will be others in the Senate who will have additional suggestions. And I think we should all keep an open mind to such suggestions as may come forth in the form of declarations and statements, and so on, keeping in mind, however, that we ought not go beyond a certain line, a line that is consistent with the best interests of the United States and one which will not require renegotiation of the treaties and hopefully will not require another plebiscite on the part of the Panamanians.

I want to turn now, and I shall not overly detain those of my colleagues who have not yet spoken—I will not complete my remarks today—but I do want to turn for a few minutes to some or at least one or two of the major points at issue in this debate. I shall not attempt to discuss all of these major points today. In some cases, I believe there has been a considerable amount of misinformation. There are several key points that should be kept in mind.

One of the basic reasons I support these treaties and one of their essential features is that whenever and however the neutrality of the canal is threatened we shall have the right to take whatever action necessary to protect that neutrality.

That right is established in article IV of the canal treaty and will be assured after the year 2000 by the permanent neutrality treaty reinforced by the amendment proposed by the joint leadership, amendment No. 20 to article IV.

And I shall read from this amendment, which is sponsored and cosponsored by 78 Senators, the following extract:

Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat.

Not just some threats, not just certain threats—but any threat; not just any threat emanating from a certain source, but any threat no matter from whence it may come.

"Any" is all-inclusive, all-encompassing, and all-embracing.

The Foreign Relations Committee, in its report on the Panama Canal Treaty, stated its interpretation of the understanding of this amendment which that committee recommended:

It allows the United States to introduce its armed forces into Panama whenever and however—

Whenever and however—the canal is threatened.

Let me say it again:

It allows the United States to introduce its armed forces into Panama whenever and however the canal is threatened. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, have the right to act against aggression or threat directed against the canal or against the peaceful transit of vessels through the canal.

So, Mr. President, let there be no doubt as to the meaning, as to the clear meaning, of those words.

I would also mention another feature of these treaties which is often overlooked, but which is an additional reason why the new treaties are an improvement over the 1903 treaties. Listen to this:

Under the existing 1903 treaty, it is conceivable that Panama could invite or allow another country or countries to garrison troops within its borders—

And we would have no legal basis whatsoever on which to lodge a complaint or an objection, as long as those troops were garrisoned outside the Panama Canal Zone. Let me repeat that:

Under the existing 1903 treaty, it is conceivable that Panama could invite or allow another country or countries to garrison troops within its borders outside the canal zone, and the United States would have no legal basis to object.

However, article V of the Neutrality Treaty now before the Senate provides that after the year 2000, when U.S. troops have departed, only the Republic of Panama shall maintain military forces, defense sites, and military installations within its national territory.

Mr. DOLE. Mr. President, will the distinguished Senator yield at that point?

Mr. ROBERT C. BYRD. Yes.

Mr. DOLE. As the Senator may know, the Senator from Kansas is interested in that particular point. What concerns this Senator is the gap between the date that these treaties are effective and the year 2000. Is that covered anywhere in the treaties, that 23-year period?

Mr. ROBERT C. BYRD. They can bring in troops now. They can garrison troops in Panama today, as long as they are not garrisoned within that 10-mile-wide strip 50 miles long of the Canal Zone, and we would have no legal basis whatever to object.

But under article V of the treaties now before us, after termination of the Panama Canal Treaty; that is, after the United States relinquishes its complete control and operation of the canal, only the Republic of Panama shall operate the canal and maintain military forces, defense sites, and military installations within its national territory.

So article V of the neutrality treaty is indeed an improvement over the 1903 treaty, in that it gives us assurance, it gives us a guarantee that once the United States moves out of the zone, no other country in the world can locate a military installation or a military force anywhere in Panama.

Mr. HATCH. Mr. President, will the Senator yield on that point?

Mr. ROBERT C. BYRD. If the Neutrality Treaty is rejected, then we will continue to live under the 1903 treaty, and we will not have that guarantee against the location of a foreign military garrison in Panama that will be afforded by the treaty if it is approved and ratified.

Mr. DOLE. Right. The Senator from Kansas understands that, if the Senator will yield further, and that will be a matter of some contention. I have an amendment to amendment No. 11, and also an amendment about some presence after the year 2000, that will be debated at the appropriate time; but I think the explanation offered by the distinguished majority leader is helpful, and I can understand the logic that if our troops are phased out, then they lose that right for any other nation to have troops there. The logic of it does make a great deal of sense, but I believe we should examine it carefully, because it makes a difference as to whether we pursue amendment No. 11, offered by Senator Goldwater and others.

Mr. ROBERT C. BYRD. I thank the Senator. I read from the Foreign Relations Committee report on the Panama Canal treaties, page 143, an extract from a section-by-section analysis of the articles, and as to article V, this is what the committee has to say:

This important element of the regime of neutrality precludes the operation of the Canal, or the garrisoning of military forces or the maintenance of defense sites or other military installations in Panama, by any foreign nation after the termination of the Panama Canal Treaty. Both Parties strongly supported inclusion of this prohibition in the regime of neutrality to ensure that neither Panama nor any Canal in Panama will come under foreign domination in the future.

So, Mr. President, article V of the Neutrality Treaty now before the Senate represents an improvement over the 1903 treaty insofar as our interests are concerned, in seeing to it that no foreign power establishes military forces, defense sites, and military installations within the national territory of Panama after the year 2000. It gives us a legal basis which will be recognized in international law on which to object and to complain, and that we do not now have under the 1903 treaty.

Mr. HATCH. Will the Senator yield on that precise point for a question or two?

Mr. ROBERT C. BYRD. Yes, I do.

Mr. HATCH. As I remember that article V, it is not quite as clear to me as it apparently is to the distinguished majority leader, in whom I have a great deal of confidence.

It says:

After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the canal and maintain military forces, defense sites and military installations within its national territory.

As I understand it, we are reducing our military bases from 17 down to 4, and turning all civil and criminal jurisdiction over to the Canal Zone.

What would stop Panama from allowing military advisers from unfriendly powers to the United States, including, as long as Panama paid for them, and there are many ways that could occur, military troops?

Mr. ROBERT C. BYRD. Nothing under the 1903 treaty would prevent that.

Mr. HATCH. And nothing under this treaty would prevent it.

Mr. ROBERT C. BYRD. And nothing under the 1903 treaty would prevent it.

Mr. HATCH. Except for 17 major U.S. bases and an inviolate 10-mile zone 40 miles long, that is very well protected by the United States of America, which will not be able to protect it as well then.

I do not see where this provision is well written. I think it is ambiguous. I do not think it is helpful, and I would be glad to hear the distinguished majority leader's viewpoint with regard to that.

Mr. ROBERT C. BYRD. The distinguished Senator—

Mr. HATCH. I appreciate the Senator's bringing this up; I think you are doing a great service to the Senate. You and I have had a very good relationship over this past year. I have great regard for you. I admire your ability, and I particularly respect your viewpoints on every occasion, even though we very often disagree.

I would like to have the Senator's viewpoint with regard to what I consider to be not only ambiguous but a very poorly written, very ill-defined, very inadequate text or provision with regard to the United States. I would also be interested in comments concerning my belief.

The Senator says he believes that we are better protected under this treaty. Concerning the 17 bases, they will gradually be reduced to zero by the year 2000. We will not have any military bases then. We will have given up all jurisdiction over the Panama Canal Zone. We will basically be totally unable to protect the zone. There is nothing in this provision which would prevent those alien to the interests of the United States from coming in and working with the Panamanians in their military installation sites, whose interests may be totally detrimental to the interests of the United States of America.

I would be interested in the Senator's comments. Again I express my fondest regards.

Mr. ROBERT C. BYRD. Mr. President, there is a bit of scripture which should be used in response to the Senator's expressions of felicitations toward me.

He that hath friends must show himself friendly.

The distinguished Senator from Utah (Mr. Hatch) has friends because he shows himself friendly.

It is for the purpose of assuring, beyond any semblance of doubt whatsoever, that the United States will have the right to act against any aggression from any source after the year 2000 that

the distinguished minority leader and I have offered the two amendments, one of which will address itself to this particular point, and which I hope the Senator from Utah will support.

If the amendment is adopted, that amendment in itself will make perfectly clear, as clear as the Sun in a cloudless sky, that the United States has the right to take whatever action is necessary against any aggressor.

What I am saying with respect to article V of the Neutrality Treaty is, as I have said before, it gives to us and other countries of the free world the guarantee that once the United States has relinquished its control over the Panama Canal Zone, no foreign military force or garrison can be located in the territory of Panama. That guarantee is not in the 1903 treaty.

What I am saying is, again and again and again, that under the 1903 treaty—that is what we are going to have to live with in the event these treaties are rejected—the United States would have no legal basis whatsoever upon which to complain should the Soviet Union or should Castro of Cuba locate in Panama a force of 10,000, 20,000, or 30,000 Soviet troops or Cuban troops.

What more can I say? The language of the article is clear. We all understand the import of those English words, so I think it speaks for itself. But I think it is a point which has been overlooked. I do not think the American people have realized that in this respect the Neutrality Treaty is an improvement over the 1903 treaty, in the respect I have addressed my remarks.

Mr. HATCH. Will the Senator yield for another question?

Mr. ROBERT C. BYRD. Yes, I yield to the distinguished Senator from Utah (Mr. Hatch).

Mr. HATCH. I thank the distinguished majority leader. Is it not true that by the year 2000 we will no longer have any U.S. troops quartered there and, concomitantly, under this particular viewpoint, under the Neutrality Treaty, article V, it does not say that no foreign troops will be garrisoned there? It just says that only the Republic of Panama can maintain military defense sites. To me, I believe that is ambiguous. I ask this question: Is it not true that we will not have any military presence after the year 2000?

Mr. ROBERT C. BYRD. That is correct, but—

Mr. HATCH. Is it not also true—

Mr. ROBERT C. BYRD. But nobody else will either.

Mr. HATCH. It does not say that.

Mr. ROBERT C. BYRD. The Senator asked me a question. He asked me if under this treaty, after the year 2000, the United States will not have any military forces stationed there. The answer is yes—yes, but, under this treaty, neither will any other nation have any military force, any military garrison, any military site, any military installation located anywhere, on any inch, of Panama's territory.

Mr. HATCH. Will the Senator point out in article V where it says that no military garrison, no military presence, no military troops of any other nation shall be in there, paid for by Panama or anyone else?

Mr. ROBERT C. BYRD. The Senator now wishes to split hairs.

Mr. HATCH. No, I would rather have you—

Mr. ROBERT C. BYRD. Let me read once again the clear, the indubitably clear, language of article V.

I see the distinguished Senator from Kentucky reaching for his microphone. Perhaps he would like to interject a statement here.

Mr. HUDDLESTON. I would just say that it is very proper that the Senator from West Virginia has pointed out this particular feature of the treaty which has been virtually overlooked in this country. I would just want to say that it has not been overlooked by the leaders of the Government in Panama nor the citizens of Panama.

When we were in Panama with the Senate in delegation which was headed up by the distinguished majority leader (Mr. Robert C. Byrd), it was a member of the Panamanian Government who pointed out to us this very feature. "It does not seem that they realize, those who are claiming that when the United States pulls out there will be a tendency for either Soviet or Russian troops, or troops from Cuba, to move in," the Government official said, "that cannot happen. The treaty specifically forbids the country of Panama from bringing into their country foreign troops of any kind."

This is a situation which does not exist now, as the distinguished Senator from West Virginia has pointed out. There is nothing now that would prohibit Panama from establishing, or allowing to be established on their territory, a base from any other country.

I think this is a very significant thing. It is one that the people of Panama recognize, and one which, in my judgment, they are very, very agreeable to.

They point out time and again:

If any troops are going to be here, if any other country is going to be in Panama exercising any kind of influence over our government, if any other country is going to have any control over the Panama Canal, we want it to be the United States of America. But we want to exercise our own control over our own property and over our own country.

They are willing to accept this feature, to put into treaty the fact that there will be no troops except Panamanian troops when the treaty is ratified.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Kentucky.

Once again, I read article V into the Record:

After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the Canal and maintain military forces, defense sites and military installations within its national territory.

Admiral Holloway, in his appearance before the Committee on Armed Services of the U.S. Senate said:

My position was that, ideally, I would prefer to see U.S. forces remain in the Canal indefinitely, both to operate and defend the Canal, but I would also like to see the Panamanians pleased with our presence.

In the course of the discussions that ensued, I became convinced as a result of conversations with my colleagues on the Joint Chiefs of Staff and subsequent briefings by Ambassador Bunker, Ambassador Linowitz, and the representative of the Chiefs, General Dolvin, that there was a very strong resentment to a U.S. presence in the Canal on the part of the Panamanians. I became convinced over a period of several years discussions that there was no chance of arriving at any kind of a treaty with Panama on the Canal, if the U.S. were to insist upon a presence in Panama into the indefinite future.

I decided that if we were to have a treaty, there had to be a specific date prescribed at which U.S. presence would be withdrawn.

Mr. President, there are other Senators who have been patiently waiting. I do not want to hold the floor. I wish always to respond courteously to questions from other Senators. If I may proceed now for another 5 minutes, I shall complete my statement for today and continue with my comments concerning the treaties at some point during the week after next.

At this point, Mr. President, it is appropriate to recall the strong support given the treaties by our top military officials—those who currently have the responsibility for our national security. I urge all Senators to review the statements made by these military leaders in their testimony before Senate committees. The Joint Chiefs have repeatedly emphasized that, as Gen. Louis H. Wilson, Commandant of the Marine Corps, has said:

The real value of the canal lies in its continued and assured use.

I also point to the words of Adm. James L. Holloway III, Chief of Naval Operations, who told the Committee on Armed Services:

Our adherence to these treaties, which make the Panamanians our direct partners in the defense of the canal, will substantially contribute to a friendly and cooperative attitude among all Latin Americans toward the United States on the Panama Canal issue. This favorable effect which I believe the treaties will have on the attitudes of Panamanians and Central Americans toward our continued use of the canal * * * will, in my opinion, substantially assist the United States to defend the canal against the internal threat. Therefore, I am convinced that the continuing use of the Panama Canal for national security purposes is best assured through the provisions of "the new treaties."

Mr. HATCH. Will the Senator yield for one more question?

Mr. ROBERT C. BYRD. If the Senator will allow me now to finish my statement so other Senators may speak, the Senator himself may wish to speak. I hope he does not feel me disrespectful.

Mr. HATCH. I do not. If he would yield on this one point, it would define my position better.

Mr. ROBERT C. BYRD. I hope so.

Mr. HATCH. I hope so, also.

I am interested to know if the distinguished majority leader is aware that in the 1936 modifications of the 1903 treaty—which is, of course, reaffirmed in the 1955 modification of the 1903 treaties—all of which must be considered together, in toto, and taking into consideration that the distinguished majority leader has made the point, as has the distinguished Senator from Kentucky, that we are better off under article V of the proposed Neutrality Treaty, is the distinguished majority leader aware of article 10 in the 1936 treaty regarding Panama? There, it says:

In case of an international conflagration or the existence of any threat of aggression which would endanger the security of the Republic of Panama or the neutrality or security of the Panama Canal, the Governments of the United States of America and the Republic of Panama will take such measures of prevention and defense as they may consider necessary for the protection of their common interests. Any measures, in safeguarding such interests, which shall appear essential to one Government to take, and which may affect the territory under the jurisdiction of the other Government, will be the subject of consultation between the two Governments.

I believe that that provides much more protection to the United States of America, considering our 17 bases, considering the inviolability of the Canal Zone, considering all matters, than this very loosely worded, ambiguous, shortly worded article V, which does

not include, I think, the very good language of the distinguished majority leader, which he thinks it does include.

Mr. ROBERT C. BYRD. The fact that article V is shortly worded does not mean that it is ambiguous and not clear. The Gettysburg Address was shortly worded. It did not take Lincoln over 3 or 4 minutes to make it.

Mr. HUDDLESTON. Will the Senator yield for one comment?

Mr. ROBERT C. BYRD. Yes.

Mr. HUDDLESTON. The Senator from Utah described a situation where a threat is present and imminent. We are talking about a situation where there may be no threat.

Mr. HATCH. If they move foreign government troops into a territory, that is not threatening?

Mr. HUDDLESTON. Of course not.

Mr. HATCH. Of course not?

Mr. HUDDLESTON. If the country of Panama should decide that they want to give a submarine base to a foreign country, I think we would be hard-pressed to prove that is a direct threat.

Mr. HATCH. With Russia, I would not be hard-pressed at all.

Mr. HUDDLESTON. In international law, I think we would have a hard time proving it. But this article would prevent that submarine base from being established.

Mr. HATCH. So does article X of the 1936 treaty and that is my point. It prevents it a lot better than this loosely worded article.

Mr. HUDDLESTON. I do not agree with that at all.

Mr. ROBERT C. BYRD. I agree with the distinguished Senator from Kentucky: I do not agree with that at all.

Article X to which Senator Hatch has alluded says, "In case of an international conflagration or in the existence of any threat of aggression."

Mr. HATCH. "which would endanger the security of the Republic of Panama or the neutrality or security of the Panama Canal," and so on.

Mr. ROBERT C. BYRD. Now the Senator from Utah is saying that if country X were to station some troops in Panama at the invitation of the Government of Panama, under article X of the 1936 treaty, we could consider that to be an international conflagration.

Mr. HATCH. Will the Senator yield?

Mr. ROBERT C. BYRD. In other words, he says that the presence of foreign troops in Panama would constitute an act, would, ipso facto, constitute an act of aggression. Does the presence of United States troops in South Korea today constitute an act of aggression?

Mr. HUDDLESTON. What about Cuba at Guantanamo Bay? Is that aggression?

Mr. ROBERT C. BYRD. What about Guantanamo Bay? What about the presence of American military personnel there? Does that constitute an act of aggression?

Mr. SARBANES. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes. I yield to the Senator from Maryland.

Mr. SARBANES. If I may say so, I think this is a very good example of treaty provisions that have been written that are extremely strong from the American point of view.

Mr. HATCH. Which one, the neutrality treaty or the other one?

Mr. SARBANES. I will develop why it is strong from the American point of view.

Mr. HATCH. Which one is the Senator reading from?

Mr. ROBERT C. BYRD. Mr. President, may we have order? I have the floor and I have yielded to the Senator from Maryland.

The PRESIDING OFFICER (Mr. Nunn). The Senate will be in order.

Mr. SARBANES. If the Senator from Utah will allow me to make my point, which I would like to make a developed way, I shall be happy to yield to him, or ask the majority leader to yield for him to raise the question. But I would at least like to be able to make the point.

I thank the Senator from Utah.

This is an example of a provision which is extremely strong from the American point of view. Under the treaties that are before us, the United States need not consult with anyone to take the action it deems necessary to protect the neutrality of the canal. I say to the Senator from Utah, I would rather have that provision and the ability to act as we deem necessary to protect American interests than the provision which the Senator has cited from the earlier treaty, which requires consultation and which may well prevent or impede the United States from acting with the speed that is necessary to defend our interests.

Mr. ROBERT C. BYRD. Now, Mr. President, I do not want to continue to hold the floor, but I yield the floor to the distinguished Senator from Utah for rebuttal.

Mr. HATCH. Mr. President, I respect the comments of the distinguished Senator from Maryland. However, just to make the record clear, I would suggest that this very loosely worked provision of article V of the Neutrality Treaty does not do nearly as much for us as having 17 bases controlling the jurisdiction of Panama Canal, operating it ourselves, and of course being able to prevent aggressors from coming into Panama.

I submit that we are far better off securitywise and in every other way if we would go back and renegotiate these treaties. They would be favorable to both nations, not just to Panama.

I would also suggest, with all due respect to the majority leader, that I do not believe article V says what he says it says.

I thank the Senator.

Mr. Huddleston addressed the Chair.

Mr. ROBERT C. BYRD. Mr. President, article V just nips the whole process in the bud—in the bud—and it is far more clearly and unambiguously worded than are the words of the 1936 treaty to which the distinguished Senator from Utah has repeatedly referred.

Now, I yield to the Senator from Kentucky.

Mr. HUDDLESTON. Mr. President, just to point out, the comment made by the distinguished Senator from Utah about his judgment puts him in direct conflict with the judgment of every military commander, including those who are in Panama today commanding the troops, who are there charged with the responsibility of defending the canal, including our Secretary of Defense who is charged with the responsibility of defending the United States of America, as to the security aspects of the two treaties that we are discussing.

We can all have our own opinions. But I think we have to give some weight to those individuals who have spent a lifetime in the service of this country, in the defense of it, and in their judgment as to what is best to secure the United States interests in Panama.

Mr. ROBERT C. BYRD. Mr. President, those of us who have visited Panama have had an opportunity to see the potential vulnerability of the canal and related facilities. When our delegation discussed this with U.S. military officials in Panama, Lt. Gen. Dennis P. McAuliffe, Commander in Chief of the Southern Command, told us that the canal is vulnerable to sabotage and said it would be literally impossible to keep a determined force—even a small one—from causing some disturbance, some interruption in use of the canal.

He said that the very first thing that would have to be done, the Panama Canal railroad would have to be written off—written off.

All of these military officials agree that our wisest course lies in the direction of cooperation with Panama, not confrontation. Ratification of the treaties would create an environment of cooperation and give Panama a greater stake in the efficient operation of the canal. Failure to ratify would not only heighten the prospects for confrontation in the canal area but would give new impetus to extremist elements throughout the region. As Defense Secretary Brown stated:

If I were Castro and I wanted to expand my influence and decrease that of the United States, I would certainly do all I could to prevent ratification of these treaties.

Mr. President, in my comments today I have stressed one or two important considerations related to the treaties, especially that consideration which deals with our own national security interests.

In summing up, a secure, open canal is our primary objective and interest.

There is almost no way, regardless of the number of American troops that might be stationed in the canal area, that we could guarantee 24 hours a day, 365 days a year, the unimpeded, uninterrupted operation of the canal in a hostile environment.

As Admiral Holloway, Chief of Naval Operations, has said, defending successfully against such threats in the formidable jungle terrain of the canal area would be extremely difficult, and uninterrupted operation of the canal could not be guaranteed. If we made an all-out effort we could generally manage to keep the canal open and operating, but we could not prevent interruptions, and even then it would be at an enormous price.

Think of the devastating impact it would have on U.S. relations on other nations in the hemisphere. Think of the disastrous effect on world commerce and the damage to U.S. business interests if transiting the canal became risky. There would undoubtedly be a sharp drop in its worldwide usage.

What good is the canal economically or militarily if it cannot be used?

I return again finally to this basic point, the value of the canal is in its use and that use is best guaranteed by cooperation, mutual respect, and understanding, which these treaties would create.

We are not, to use the words of some of the proponents of the treaties, giving away the canal. We are acting from strength and not from weakness.

This is a matter of the wise and judicious use of power—power. Power is one thing, but to know how to use it and when to use it is the important thing.

This is a matter of wise and judicious use of power by the most powerful nation in the world. These treaties are in the best interests of the United States and we should act now with vision and foresight and reason to approve them.

As author David McCullough stated so succinctly, "I support the treaties because I support the canal."

Mr. President, I thank Senators for their indulgence and patience. I shall continue the reading of my statement on another day.

I yield the floor.

Mr. Dole addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas (Mr. Dole) is recognized.

Mr. DOLE. Mr. President, first of all, I wish to thank the distinguished majority leader and others who participated in the exchange.

It seems to me that whether we are being turned on or turned off around the country may have a bearing on what finally happens with reference to the ratification process.

The Senator from Kansas would state at the outset that I do not really believe we will ever satisfy every Senator, either proponents or opponents, of every article, of every sentence, of every comma. So I guess perhaps what we must find is some way to come together, if we can, and if we cannot, then we will have to follow another course.

I would suggest, while we are all writing profiles in courage, that perhaps there are some who may oppose the treaties and some who may support the treaties who fit that category.

Certainly, the distinguished majority leader throughout the course of several weeks withheld his support because of reservations he had about the treaties. He made a judgment based on changes that would come about.

There is no doubt in this Senator's mind that with 77 cosponsors, it is fair to say the amendments referred to will be adopted and when adopted will strengthen the hand of the treaty proponents, as it should, or as the adoption should.

Now, as we square off in the proper way in the debate in the Senate, as some have noted, there must not be much interest in the Senate because at this very moment only six or seven Senators are present out of 100. If we apply the same percentage across America, perhaps only 6 percent to 7 percent of the American people have a real concern about the treaties. But I suggest that that would be a mistake.

Many Senators, of course, have other obligations. Many Senators have committee obligations, constituent obligations. Some are necessarily absent; some may be snowbound at this time.

The point is that whoever votes for or against the treaties will be casting a very important and a very difficult vote, from the stand-

point of politics. I am inclined to agree with those who say that we should not be tabulators, that there comes a time when we at least should listen to the people who sent us here, because they do have a right of recall that comes around every 6 years in the Senate and every 2 years in the House, although the House has no direct role to play in advising and consenting on treaties.

For some time, this Senator has been trying to figure out where to come down on the treaties. What is the right decision? Weighing all the factors, including the political factor, what is the right decision?

This Senator is not running for reelection in 1978, but others are. Some who are running are unopposed, and some may have opposition. That makes a difference, too. That is a factor we must consider.

When the people across America listen to the debate, they must understand that that factor is always present. There may be some pure statemanship in this body, but I think there is always a little dose of politics—not partisan politics, but a little dose of reality. We like it here. We run for office because we like our work. We are willing, as some say, to rise above principle. We are willing to bite the bullet. But I think we must be assured, whether we vote for or against the treaties, that we have made the right choice; because if we are not comfortable with the choice we make, we are in a great deal of trouble at the outset.

As I indicated 2 days ago, I have been in the Senate 10 years. I have felt proper pressure from the executive branch and other distinguished Americans, but never have I been so courted as I have been with reference to the Panama Canal Treaties.

I have had the high privilege of a private visit with the President of the United States in the Oval Office. He indicated his grave concern for the treaties. I will not discuss what was said, but I think it is fairly well understood that he would like to see the treaties ratified. He would like to see Senate approval of both treaties. That was on Friday of last week.

On Sunday of last week, a friend of mine, former President Gerald Ford, called me and just wanted to visit, and the treaties came up early in the visit.

He said, "Bob, are you locked in?"

I said, "Well, I am not certain. I'm probably leaning against, but I don't believe I'm locked in."

It seems to me that progress has been made; the American people are still concerned; but I am not one who has taken a firm position. I do not have the same concerns about the sovereignty issue as some of my colleagues who certainly are as well motivated as this Senator and as honest in their convictions as this Senator. But I do not have that particular problem.

We had a good visit. I think we even went over the campaign again, and it ended up the same. We lost. [Laughter.]

Then, on Monday, Ambassador Robert Strauss called the Senator from Kansas and in his own inimitable style, which I cannot repeat, discussed with me the treaties. He indicated that, for the first time, he was looking to me as a statesman, which I appreciated. I said nice things about him, too, and we had a good visit.

Then, as if it were all programmed, I had a call from former Vice President Rockefeller. We had a good visit, and he just happened to mention the treaties.

Then, on Tuesday, I heard from former Secretary of State Kissinger, who is a friend of mine, and he just happened to call to mention the treaties.

I say, first of all, that that indicates a very concerted, well-coordinated, proper effort by those who support the treaties in their present form. They certainly have that right. And we are somewhat flattered, I assume, as anyone would be if he were called by those particular people, outstanding men in this case, who have been leaders, in one way or another, of our country.

So it is a very difficult decision we have to make. I assume that some have already decided that those who oppose the treaties are wrong. Some have decided that those who support the treaties are wrong.

I suppose there is no possible way for Senators to make a determination on just which way they will finally go. It seems to this Senator that we are in one of those debates in which the debate itself can make the difference, where responsible amendments can make the difference.

I understand the dilemma faced by the distinguished majority leader and the distinguished minority leader. They have now decided that the best course to follow is to go forth with two amendments—if possible, to bring up these two amendments before we get into the Panama Canal Treaty. In other words, take the Neutrality Treaty first, which really should come second, but to take it first because it strengthens their hand.

The Senator from Kansas does not fault that. That is known as strategy, and probably pretty good strategy, because it does improve the treaties, and I would guess that perhaps one or two might vote against those amendments—maybe not many more.

The Senator from Kansas was trying to determine yesterday whether that was the end. Is there some agreement to fight back every other amendment, however meritorious, and say, "That is the end"? I would hope not, because it seems to me that there are some Senators—probably every Senator—who may be looking for flaws in the treaty, who may understand the need for some changes; and I hope they will be considered and voted upon without some stonewall effort by the Foreign Relations Committee or by the leadership.

So we will go through that process: There will be the amendments first, then the resolution of ratification, then understandings and reservations. Some will offer understandings; some will indicate that is enough for them. Others will have reservations that would not require another plebiscite or renegotiations.

However, there is another matter that I wish to speak to this morning, and I say it without any trepidation, but indicate that it does bear directly on the treaties themselves.

For the past several months—maybe it has been a wasted effort; maybe it should not have been pursued—there have been a number of allegations, and I stress the word "allegations" to whoever may be listening, about possible drug trafficking with leaders of Panama, international drug trafficking affecting the United States.

On three previous occasions, starting back on October 13, 1977, the Senator from Kansas has addressed this issue and made statements on the floor. Those efforts to get information and to get evidence have continued.

It is still my conviction that one way to bring about confidence and maybe pick up support in the Senate is to level with the Senate and to level with the American people.

So I am convinced that the Carter administration owes the American people and certainly Senators an honest and aboveboard explanation of the so-called Panama connection in international drug trafficking.

We are asking the American people to accept on faith the Panamanian guarantees. They have not seen the negotiating documents. I doubt that too many have read the treaties. They have not seen all the efforts that went into these treaties, some 13 years I understand. But they are being asked to accept much on faith insofar as Panamanian guarantees under the canal treaties are concerned. They are being asked to trust the credibility and integrity of Panama's leaders. They are being asked to consent to higher annual toll payments to Panama which will surely strengthen the political and economic position of the Torrijos regime. Since the American people and particularly the Senate itself, because we are going to vote, in the final analysis, are being asked to support these propositions, it is only reasonable that they expect answers to the drug-related questions that have been raised.

And I shall continue to ask the Carter administration to tell the full story. Failing that, I feel and believe very strongly it may be appropriate for the Senate to go in what we call a closed-door session where we literally lock the doors, close the galleries, admit Senators only and a few other people, and have a discussion, first of all, whether there should be a secret session and if it is agreed there should be, then we lay out to Senators some of this sensitive information that apparently is around here somewhere about drug trafficking.

It seems to me that not one Senator should be asked to vote until he has all the information possible. Let me say, also, that I have no interest in prolonging the debate on the treaties unnecessarily. We have a great deal of work to do in Congress this year in 1978.

I have no interest in dragging some irrelevant topic into the treaty issue, but the drug question and I emphasize the word "question" is a tangential matter that should be discussed and resolved in our own minds early in this debate.

Apparently the Senate leadership and members of the Select Committee on Intelligence have already been briefed on the matter by Attorney General Griffin Bell and by the Drug Enforcement Administrator Peter Bensinger, and perhaps their concerns have been resolved. They have had access to the full story. But others have questions and I have questions, and I know many of my colleagues have questions. And I would hazard a guess that many of the American people have questions. They want to know the facts, and they deserve an answer.

So I would hope that the Senate leadership would take the initiative as they have taken the initiative in many other areas in this debate in trying to propose or promulgate or otherwise come

across amendments that might strengthen the treaties. I would hope that they would take the initiative in calling for an early Senate discussion of this matter behind closed doors, if necessary, and I understand that because of the sensitivity of the information it might be necessary, but given the leadership's familiarity with the material, I would hope they would take the lead in advising the rest of us. But if for reasons that undoubtedly would be good the leadership should make that decision and decide not to follow that course, then the Senator from Kansas is prepared to offer a motion for a closed session. That motion will be supported by a number of Senators including the distinguished Senator from Utah, Senator Hatch, and the distinguished Senator from Arizona, Senator Goldwater, who is also a member of the Senate Intelligence Committee.

It just seems to me that if it takes that, then we ought to have the information. We ought to have it early in the debate and we ought to forget about it; we ought to push out the drug problems.

They ought to be explained, they ought to be explored and then if we are satisfied, they ought to be forgotten because we are here to debate the treaties and not some outside issue.

But I must say to my colleague and to anyone else who may be listening that I have been asked on several occasions why I did not exercise my privilege as a United States Senator to review confidence files on this subject, which are in the possession of the Senate Intelligence Committee. But quite truly I have considered that alternative a number of times, but I have so far rejected it. That decision requires further explanation for those who may be unfamiliar with the ramifications of going in and examining Intelligence Committee files.

I have been advised by the Administrator of the United States Drug Enforcement Administration that the Senate Select Committee on Intelligence has "copies of all DEA"—that is Drug Enforcement Administration—"files regarding this matter and material from other agencies as well."

That is fine. But what many people do not know and certainly the American people do not know is that under provisions of Senate Resolution 400, which was enacted by the 94th Congress when we established the Select Committee on Intelligence, the confidential materials may be reviewed by any Member of the Senate, but you cannot make notes, you cannot make copies, you cannot even leave that session saying whether it confirms or denies your suspicion. In other words, you are effectively gagged. Even if you found something that ought to be told to the American people, and I guess as long as it is covered up by some national security classification, there is not a thing you can do about it.

So it seems to me and I have had access—I have not rifled any files; I have not burglarized anyone—but I have had come to my office two documents that just ended up on my desk that contained certain allegations. I have had delivered to me from another unknown, unnamed source four or five documents. I have had a list showing 44 different file numbers indicating some connection between Torrijos and drug trafficking.

The Senator from Kansas would suggest that the American people are concerned about drug trafficking, particularly the parents in this country. I found in reviewing my mail, not the post-

cards, not the generated mail, but mail written long before we got into the struggle over who could send the most, nearly half the people who had written me from Kansas and other States had opposition to the treaties because of Torrijos, because they had no confidence in this dictator, despite his charm and despite the problems he has—and this treaty is not easy for General Torrijos either—but for wondering how to swing public opinion we better start addressing the problem and one of those problems is Torrijos himself.

Is he involved or has he been involved or should he be involved in an investigation concerning drug trafficking? I am putting in the Record today a letter from Mr. Bensinger, who is a little upset with me because I indicated he has not been cooperative.

He indicates that he is willing to be cooperative but he has already turned the material over and he says that Torrijos is not the target of an investigation and I quote:

As we indicated at that time, General Torrijos has never been a target of investigation.

Well, that is fine. But should he have been a target of investigation? And if some of the allegations set forth in some of the documents are true, though I have been cautioned many are based on hearsay, why was he not a target of an investigation?

So it seems to me that some of us are caught in a bind.

I attended a meeting the other morning of the Foreign Relations Committee where the distinguished Senator from Arizona and the distinguished Senator from Indiana, Senator Bayh, were going to brief members of the Foreign Relations Committee. I was invited because of my interest in the drug problem. I was treated with every courtesy. I did not go there to grandstand. I did not go there to walk out and have a press conference, and did not. I went there to find out if I could learn about the drug problem without being gagged.

And I was told properly so that "You know, if you listen to this sensitive material, this is the end." So I had no choice. Either you had to compromise your freedom to speak out, maybe your integrity later on if something leaked, and they said, "Ah, Senator Dole was in that committee room; maybe he did it."

So it seemed to me that the proper course was to leave that meeting of distinguished Senators and I did, on a very friendly basis and everybody understood that.

I do not know what was said. I am certain that everything was laid out cold turkey. Everybody had a chance to see what they saw and maybe everyone must be satisfied. I have not heard a single leak since the meeting.

But it seems to me that we have to make a choice. As I said, I have received two photocopies of U.S. Drug Enforcement Administration files directly implicating the leader of Panama, based on hearsay.

I also said recently that we live in Cynic City sometimes, where everybody is looking under a rock trying to name some Member of Congress or some member of the executive who may be involved in some hanky-panky. I do not want to leave any impression that we are trying to do this to General Torrijos, but there have been

allegations made, and the allegations come from responsible people.

Maybe Jack Anderson has a better source than we have in the Senate. He indicated he has just yesterday morning. He indicates he also has the facts, and that Torrijos is not involved. Maybe he should share those facts with those of us in the Senate. If we cannot get it from the Drug Enforcement Administration, maybe Mr. Anderson will give us the information, if he is satisfied. He is a good investigator, and he has made an investigation.

I understand from talking with the distinguished Senator from Arizona just 10 minutes ago that the Senate Intelligence Committee will issue a report. It may be somewhat sanitized. I had a report from the Drug Enforcement Administration of 75 pages that was almost totally sanitized. All I ended up with was a bunch of newspaper clippings. But that report, coming from the Senate Intelligence Committee as a result of the meeting of the Foreign Relations Committee, may be helpful.

I would just say finally that this is not a red herring. This is not an effort to sidetrack the debate on the treaties. The Senator from Kansas hopefully has offered responsible amendments. They may fail. They may be found to be without merit.

But I suggest that this is not some way to defeat the treaties. So I would just ask that we have that session early. And as one Senator who has talked about it at length in the past several months, if there is a clear indication of no involvement, that will be the last word this Senator has to say. If there is an indication of some involvement, and we are all in a secret session, I guess we could not say anything anyway. That poses another dilemma.

Mr. President, I ask unanimous consent that a letter I addressed to Mr. Bensinger dated February 3, 1978, and his response dated February 7, 1978, be printed in the Record at this point.

There being no objection, the letters were ordered to be printed in the Record, as follows:

U.S. SENATE,
Washington, D.C., February 3, 1978.

HON. PETER BENSINGER,
Administrator, U.S. Drug Enforcement Administration,
Washington, D.C.

DEAR MR. BENSINGER: I was recently provided with certain documents which appear to be copies of DEA Investigation Reports. These documents contain specific reports alleging involvement by General Omar Torrijos of Panama in drug-trafficking operations in the Western hemisphere. As a member of the United States Senate who will be requested to pass judgment on ratification of a new Treaty with the Government of Panama, I feel a responsibility to my constituents and to the national interest to make a formal inquiry concerning this information.

On October 14, I formally submitted a Freedom-of-Information request for specific DEA files which I understood contain information on this matter. The selected materials which I subsequently received from DEA on December 16 did not include the attached documents.

In particular, I want to know if you can confirm the authenticity of these documents and, further, I would like to know if the allegations contained in these documents have been verified or disproved by the Drug Enforcement Administration.

In my opinion, these reports, if authentic and verified, raise serious doubts about the personal integrity of the government leader with whom we have been dealing on a basis of mutual trust. They raise questions about the advisability of enhancing the financial and political base of General Torrijos through our ratification of the proposed Canal Treaties.

In view of these concerns, I respectfully request your assessment of the accuracy, and validity of the allegations contained in these reports. I will look forward to hearing from you at an early date, and would appreciate a written response for my files.

Sincerely yours,

BOB DOLE,
U.S. Senator.

DEPARTMENT OF JUSTICE,
DRUG ENFORCEMENT ADMINISTRATION,
OFFICE OF THE ADMINISTRATOR,
Washington, D.C., February 7, 1978.

HON. ROBERT DOLE,
U.S. Senate,
Washington, D.C.

DEAR SENATOR DOLE. This will confirm my telephone conversation with your Legislative Assistant, Bob Downen, regarding your letter of February 3, 1978 received in our office yesterday.

As I indicated to Mr. Downen, I will be pleased to brief you personally with respect to the two documents which were included with your letter. The two files in question reflect hearsay information which I am available to review with you in person and at your immediate convenience.

I also indicated to Mr. Downen that I felt your characterization of February 2, 1978 on the floor of the Senate with respect to withholding information from you and other Senators was less than fair and candid. Our agency is conforming to the specific request and direction of the Senate leadership of both parties that files regarding Panamanian officials and the family of General Omar Torrijos be made available specifically to the Senate Intelligence Committee. Furthermore, the release of information on individuals is subject to the Freedom of Information Act, and our response is governed not by personal arbitrary decisions, but by that Act.

On October 6, 1977, Attorney General Bell and I briefed the Senate leadership of both parties and Senators Byrd, Inouye, Baker, and Goldwater directed us to work with the Senate Intelligence Committee. We have complied fully with that directive and have furnished them complete file information. As we indicated at that time, General Omar Torrijos has never been a target of investigation.

I have been advised that the Senate Foreign Relations Committee has received a briefing on this matter from the Senate Intelligence Committee. I want to again reaffirm that I will be available to meet with you at your convenience in the immediate future.

Sincerely,

PETER B. BENSINGER,
Administrator.

Mr. BAKER. Mr. President, will the Senator yield to me for a moment on this point?

Mr. DOLE. I yield.

The PRESIDING OFFICER. The Senator from Tennessee (Mr. Baker) is recognized.

Mr. BAKER. I thank the Senator from Kansas for yielding. I was not on the floor at the beginning part of his remarks, but it is my understanding he suggested that the leadership of the Senate should possibly take the initiative in calling for an executive session.

I wanted to respond, if my information in that respect is correct, by saying I think that would be a fine idea. As the Senator from Kansas knows, on last Tuesday during our regular weekly Republican policy committee meeting, I indicated that I have favored a secret session of the Senate so that every Senator would have full access to all of the information that members of the Senate Intelligence Committee have had. I am a member of the Senate Intelligence Committee ex officio, as is the distinguished majority leader, by reason of our positions, not by reason of full membership on the

committee. But I would be most pleased to join with either Senator Byrd as majority leader, or, for that matter, with the Senator from Kansas, in asking for an executive session, which I think should be held as the first order of business when we return from the Lincoln Day recess.

I might say one other thing, Mr. President. It is my understanding of the rules that an executive session of the Senate is subject to the same constraints on security and the prohibition against release of information that a meeting of the Intelligence Committee would be. However, it is my further understanding that under the rules and precedents of the Senate, the Senate could lift that injunction of secrecy on a matter material to a measure under consideration by the Senate. So I would think we could publish any parts of that inquiry if generally relevant to the matter under debate by the Senate. I have no idea what the Senate would think of the details; but I, for one, do not want to have the Senate proceed with some Senators knowing more than others.

Mr. CASE. Will the Senator yield?

Mr. DOLE. Let me respond first to the remarks of the minority leader. I appreciate them very much, and know of Senator Baker's interest. In fact, he may not recall, but last October 13, when we had a hearing, the Senator was there, and he showed an interest in the effort at that time which has never faltered.

It seems to me that even if we did not, under some constraint, develop anything, we would know whether the allegations were based on an effort to discredit the leader of the country, and if so, we could wipe that out and proceed.

Mr. BAKER. I agree with the Senator.

Mr. DOLE. I yield to the Senator from New Jersey.

Mr. CASE. After the Senator left the meeting of the Foreign Relations Committee the other morning—

Mr. DOLE. On a friendly basis.

Mr. CASE. On a completely friendly basis, which he did in order not to compromise his freedom of action in the future or to raise any possible question as to where he got some information—specifically that he did not get it from a briefing by the Intelligence Committee which would have placed some restraint, I presume, on its use. After the Senator left, as I said, we did have a briefing. It was in complete detail. I know this because, as a member of the Intelligence Committee, I had had this before.

After the briefing was given, and questions asked and answered, we on the Foreign Relations Committee asked that a sanitized version of the report be prepared for the use of everyone as quickly as possible.

I also would join with the Senator from Kansas and the Senator from Tennessee in urging such lifting of restrictions as may be necessary to bring any relevant information out in public view, so that all Senators and all Americans can have it.

As the Senator knows, the Senate Intelligence Committee made a formal report on this matter some time ago, and made public the general conclusion that nothing that existed in this area had affected the negotiation of the treaties or the U.S. position on it. That, of course, is a matter of record also.

But I repeat again, if anything is found that needs to be done to reassure our Senate colleagues and the people of this country that there is nothing sinister or hidden in the matter, I would join in any proper request also.

Mr. DOLE. I thank the distinguished ranking Republican on the Foreign Relations Committee. I am aware of his willingness.

I do not have any objection to doing that. It seems to me that it may not be directly related to the treaties, but it still goes to the question of the credibility of the leader, whether or not we are prepared to support whatever may come from those sessions.

Mr. JAVITS. Will the Senator yield?

Mr. DOLE. I would be happy to yield.

Mr. JAVITS. Mr. President, first I want to associate myself with the remarks of both Senator Baker and Senator Case. I too, join in whatever lifting of the injunction of secrecy and any secret session we need in order to explore this matter. But I must say I think a word of caution should be injected at this point. The Senator used the right words. He used the words "red herring" and "diversion." Just a minute ago he used the words "question of the credibility of the leader," to wit, General Torrijos.

I think it should be made clear, because we are a very fair people, and because a lot of dust is thrown around about drug contacts, et cetera, that there are two questions: First, the big question, is what does this have to do with the treaty? General Torrijos will not be around forever. The first arrangement of these treaties is for 22 years. I doubt that I will be around in the year 2000. I hope I am, but I doubt it.

So the providence for the American people must be based upon what we are agreeing to. I know Senator Dole does not have it, I have absolute confidence in his good faith but we must not let anybody get an idea that if their arguments are going to break down on the treaty—and I believe the proponents have the best of that argument—that the next thing is going to be a personal attack on Torrijos, when it may not make any difference whether Torrijos is there or not.

That is the way the American people ought to judge this treaty. Would the Senator agree with me on that? Sure, let us find out all we can about this, investigate it any way anyone wants to, not have all this nonsense about secrecy; that really is not necessary. I have no objection to that whatever.

Is it not true that even if Torrijos had his hands in drugs, and nobody has that proof—as a matter of fact, Bensinger says no—still, the question before the American people is: Is this a good treaty for the American people? That is the issue. This may, in the minds of some, bear on it, but let us keep our eye firm on the real issue, especially as we get into this particular kind of corollary issue. Will the Senator agree with that?

Mr. DOLE. I believe with most of it. The point I made, perhaps before the Senator arrived, is that we are talking about public opinion having an impact. I have been trying to analyze some of the genuine mail which came to my office. About 48 percent are opposing in some way the treaties because of Torrijos. If we can erase this one issue, if there is not any reason to suggest any

possible charge that had any merit, that helps the proponents of the treaty.

As far as I am concerned, I certainly agree we ought to get it up, get it out, and get on with it.

Mr. JAVITS. Will the Senator yield for one more instant?

Mr. DOLE. I yield.

Mr. JAVITS. I think the Senator has put his finger on a very important point. The proponents of the treaty have to convince the American people that after all this is a good treaty and good for the American people. We do not have to prove that General Torrijos is an angel or not, whether he is involved in drugs or not. I do not know what he has been involved in. I do know he has been involved in the denial of political and human rights, which may be morally just as culpable. But I just plead that we keep our eye fixed on the ball, and the ball is, Torrijos or no Torrijos, is this good for America? I believe it is. Let us fight it out on that ground.

Mr. ROBERT C. BYRD. Will the Senator yield to me?

Mr. DOLE. I would be happy to yield to the majority leader.

Mr. ROBERT C. BYRD. Mr. President, I first of all want to applaud the Senator from Kansas for his perception of this issue as one which is not unimportant, but one which should be discussed, and be discussed in closed session.

I applaud the distinguished Senator from New York (Mr. Javits) for saying precisely what I believe—let us keep our eyes on the ball; let us keep our eyes on the treaties. In the final judgment of this, let us judge the treaties on the basis of their merits or demerits and not on what may be considered peripheral issues.

These peripheral issues, whatever they may be, are rightfully matters of concern, but the basic question in our decision should be, are the treaties themselves, Torrijos or no Torrijos, in the best interests of the United States?

Now as to a closed session, I heard what the distinguished minority leader said, and I heard what the distinguished Senator from Kansas said. I would agree that we ought to get these matters out of the way. Let us have a closed session. Let us discuss them. Then let us clear the air and get it behind us.

It takes only two Senators to put the Senate into closed session, but in order that all Senators may know when that closed session would occur I ask unanimous consent that on Tuesday, a week from next Tuesday—in other words, on February 21—the Senate, at 10 o'clock a.m. go into closed session for a discussion of the issues to which the distinguished Senator from Kansas had addressed himself.

Mr. BAKER. Mr. President, reserving the right to object——

The PRESIDING OFFICER. The Senator from Tennessee (Mr. Baker).

Mr. BAKER. I will not object, Mr. President. I simply want to say to the majority leader I think that is a good arrangement. The Senate will go out at approximately 5 o'clock today. We will be in a nonlegislative period until, I believe, the 20th of February.

Mr. ROBERT C. BYRD. And a nonexecutive period.

Mr. BAKER. We will be home. Anyway, that would be the day following the reconvening of the Senate, which I think is as quickly as we could do it under these circumstances. I think that is a good

date and time. If it is satisfactory to the Senator from Kansas, I would certainly be happy to concur.

Mr. DOLE. Reserving the right to object, and I will certainly not object, before we get into questions in that session could we have a briefing for Senators, the briefing which was made available to the Foreign Relations Committee? Could that be possible before that closed session?

Mr. BAKER. Mr. President, if I could reserve the right to object one moment further in order to answer the Senator, under Senate Resolution 400, the resolution creating the intelligence committee, each Senator is entitled to the information in the possession of that committee. I would hope the senior Senator from Arizona, the ranking Republican on the committee, and the distinguished Senator from Indiana, could arrange a way so that Senators would be fully prepared in advance of the executive session and be aware of all the documentation we are discussing before the 21st. I see the Senator from Arizona is on the floor. I do not see the Senator from Indiana, but I will talk to him as well.

Mr. DOLE. Reserving the right to object, Mr. President, would there be adequate time? If some come into the session not having been briefed by the Intelligence Committee, I am not certain how productive the session would be. I am just wondering as a matter of practicality—and I think the Senator from Arizona would have a thought on this—whether, on that date, the 21st of February, if the Senators from Arizona and Indiana could brief those of us who are here. Would that be possible or would it have to be done outside the Chamber?

Mr. GOLDWATER. Will the Senator yield?

Mr. DOLE. I yield.

Mr. GOLDWATER. Probably the best way to do it, if we want a briefing, is to use that part of S. Res. 400 which allows any Senator, at any time, to go to the committee headquarters and to view any subject which is top secret. It would not take the Senator long to peruse the material we have. I have just informed the staff and informed Senator Bayh of the decision of the leadership. I think it is a very wise idea. Whether we like it or not, reports on this matter are circulating all over the country. I think it would be wise to open it up to all Members so they can make their own judgments as to whether there is anything to these charges or not, or whether they would have a bad bearing on the treaty.

Mr. BAKER. Will the Senator yield?

Mr. GOLDWATER. Yes.

Mr. BAKER. Might it be possible to ask the Senator from Arizona to arrange, say, on Monday, the 20th of February, in advance of the executive session, for the documents to be together in one place with a sufficient number of the Intelligence Committee staff members so that Senators who care to avail themselves of that right could appear there in that hearing room on the 20th and prepare themselves for the executive session on the 21st?

Mr. GOLDWATER. I do not want to commit my chairman (Mr. Bayh). I am just the ranking Republican member. But I think it would be possible. It has been done before. We can probably do it over in the committee headquarters.

As I say, it would not take long. I hope that Senator Bayh will get to the floor, but the staff is aware of this and they are attempting to reach him now.

Mr. CASE. Will the Senator yield at that point?

Mr. GOLDWATER. Yes.

Mr. CASE. We still have to take into account the provisions of Senate Resolution 400, and disclosure would be made pursuant to the provisions of that resolution. I cannot imagine anybody being unwilling to accept those provisions as binding upon himself, but that would have to be done, of course.

Mr. GOLDWATER. We all understand that.

Mr. CASE. Well, Senator Dole was not very happy about it.

Mr. GOLDWATER. Nobody would be allowed to use that material—

Mr. CASE. Except pursuant to the resolution.

Mr. GOLDWATER. Pursuant to the resolution. We, of course, can use the sanitized version.

Mr. DOLE. That raises a question, because if we use that material and it is discussed on the Senate floor the following day and we vote to release that to the public, are we violating Senate Resolution 400?

Mr. GOLDWATER. You would have to have the permission of the Senate. As I understand Senate Resolution 400, we can vote in executive session whether or not it should remain so classified.

Mr. BAKER. If the Senator will yield, I think that is correct. The Senate, as a body, could determine whether or not certain information is to be declassified if that information were already in the possession of the Senate through the Senate Intelligence Committee.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I am awaiting word from Senator Bayh, chairman of the Committee on Intelligence, who is listening to this debate in his office. Shortly, I anticipate his arrival and response.

I merely want to amend my request, in case there is a misunderstanding of it, to have it include not only the drug issue, but also the intelligence issue, wiretapping, or any of these other issues that have been kicked around, so that it can all be done on the same day.

Mr. GOLDWATER. Will the Senator yield at that point?

Mr. ROBERT C. BYRD. Yes. Senator Bayh is on his way to the floor.

Mr. GOLDWATER. Senator Case and I have just briefly conferred on this matter. There is included in this classified report a case that we would not want to talk about, because it cannot be released. It has nothing to do with the subject we are talking about now, but we do have information such as the leader has mentioned that, when Senator Bayh gets here, we can interrogate him about. As I say, I am sort of Tail-End Charlie, just trying to uphold right for the Republicans.

Mr. SPARKMAN. Will the Senator yield?

Mr. DOLE. The Senator from Kansas has yielded.

Mr. SPARKMAN. Will the Senator yield to me?

Mr. DOLE. I am happy to yield to the distinguished chairman of the Foreign Relations Committee.

The PRESIDING OFFICER. (Mr. Hodges). The question is withheld for the time being.

Mr. SPARKMAN. Let me ask Senator Goldwater a question. He and Senator Bayh have appeared before us with regard to this letter. Is it not true that the statement came out of that to the effect that this material that the Intelligence Committee had did not reflect upon the negotiations?

Mr. GOLDWATER. That is true. In fact, it did not mention—it is not mentioned in the report. I can tell that much. We were told, of course, that it did not reflect.

Senator Bayh is here and I should like him to speak for the committee.

Mr. DOLE. While they are conferring, let me say that I do not suppose the report would mention the negotiations. The only point that some of us have—maybe no one but this Senator—is that if, in fact, the allegations are true and there is some drug trafficking by Torrijos, can he be trusted as a guarantor of the treaties? Is he trustworthy, and is he credible? I think those are the basic points that the American people would like to throw around, at least, and think about.

Also, we have to understand, if we pass these treaties, that we are going to insure Torrijos' power and going to give him a big boost economically and a great deal of strength in the years to come.

I think we should know about his activities and what type of regime we are about to strengthen. That is how they are related, though they may not be in any Senate intelligence report.

Mr. SARBANES. Will the Senator yield?

Mr. DOLE. I am happy to yield to the Senator from Maryland.

Mr. SARBANES. On that point, I want to follow on what Senator Javits said. The allegations are something we ought to look into but I suggest that we could be dealing with the most angelic person in the world and if the terms of the treaty did not protect American interests, I would oppose the treaty no matter how lovely the person on the other side was. So, in the end, we must go back to the terms of the treaty and see how they protect American interests.

There is one other point I wanted to make. Earlier in his statement the Senator from Kansas said that the DEA had not responded, had not been forthcoming. I simply want it understood that we established a procedure in the last session of Congress, unrelated to this issue, to deal with the whole question of how we should handle very sensitive intelligence information.

The Senate imposed those restrictions upon itself in its judgment that this was a responsible way to act. We are not being gagged. We decided that when we are dealing with extremely sensitive matters, there should be a procedure whereby we could be informed and yet sensitive intelligence be protected. We established a Select Committee on Intelligence that could act in an oversight capacity and we placed certain checks upon how that information will be made available and how it can be used by Members of the Senate.

I understand the situation of the Senator from Kansas. I was present at the Foreign Relations Committee when he came. I un-

derstand that he felt that for the sake of his own freedom of action, since he was getting information from an independent source—

Mr. DOLE. I might say an unknown source.

Mr. SARBANES. From an unknown source—that he did not want to come under Senate Resolution 400 with the limitations it carries. But I think it is important to understand that the procedure is not something which has just been developed here. This is a procedure that was very carefully thought through and developed by the Senate as the way to handle responsibly very extensive intelligence information. That procedure is that it is held in confidence. We can hold a closed session and the entire Senate assembled can discuss it.

As I understand it, the Senate, as a body, can make the decision to release such intelligence material publicly and openly, if it chooses to do so after it has had a chance to evaluate the dangers of compromising of intelligence sources or the endangering of people's lives who are involved in the intelligence gathering.

I recognize that the procedure limits us, but it is, acting responsibly. We are therefore trying to proceed in the regular course in this regard.

Mr. DOLE. Let me say that I certainly have no quarrel with the distinguished Senator from Maryland. I guess I did not fully understand the impact of Senate Resolution 400 until I testified before the Senate Committee on Foreign Relations and released a cable that was marked "Classified." I understand Senate Resolution 400 better now.

But I did not mean to infer that Mr. Bensinger, who is the Director of DEA, was not forthcoming. I think he has been as forthcoming as he could be under the circumstances. I did say in my statement that he indicated some frustration in his most recent letter, which is a part of the record. But certainly, he is under some restraint himself.

My only point is that he came to my office some weeks ago and indicated a willingness to cooperate. I was later told that, at the direction of the leadership, all the files were turned over to the Intelligence Committee. I knew at that time that if I walked into the Intelligence Committee, it was over. I do not know the last source that sent me information.

I might add, too, that I have not published any of the information. I have not put it in the Congressional Record. I have not revealed what is in the documents that I have. I have not done that. I know other people have the documents. I have no quarrel with the procedure outlined by the distinguished Senator from Maryland.

Mr. ROBERT C. BYRD. Mr. President, the distinguished Senator from Indiana (Mr. Bayh), chairman of the Committee on Intelligence, is now in the Chamber. He has heard the debate over his radio, so he knows what it is all about.

I am prepared to renew my unanimous-consent request that on Tuesday, February 21, at the hour of 10 a.m., the Senate resolve itself into a closed session for the purpose of hearing and discussing whatever information the Intelligence Committee has available in connection with the drug issue and—

Mr. DOLE. And anything else.

Mr. ROBERT C. BYRD. And intelligence intercepts, in an effort to dispose of these allegations once and for all and get them behind us.

Mr. BAYH. I hate to interrupt the unanimous-consent request, because I think it is a good one and I am prepared not only to support it, but join with the Senator in it as an important increment of our discussion of the matter before us.

As we know, we all have things to do, and I was listening to the debate in my office as I was trying to do some other things. Inasmuch as there may be some citizens out there also listening, perhaps before we deal with the unanimous-consent request, the Senator from Indiana, and perhaps the Senator from Arizona, or anybody else, ought to put this whole thing in proper perspective.

In light of everything that has gone on here, I do not want anybody to get the idea that there is any coverup to be involved here at all.

Would the Senator feel it is appropriate for me to maybe deal with that?

Mr. ROBERT C. BYRD. I thank the Senator. It is appropriate and I wish the Senator would do so for that purpose.

I think I will withhold my request.

Mr. DOLE. The Senator from Kansas will not lose his right to the floor.

Mr. ROBERT C. BYRD. No.

Mr. DOLE. I am happy to yield for that purpose.

Mr. BAYH. I think the Senator from Kansas and the Senator from Indiana are trying to accomplish the same thing, as far as disclosure, and saying my concern was about possible interpretations of a coverup does not go to the manner nor the substance of the Senator from Kansas presentation. But it goes to the fact that there are a lot of people out there listening that are just hearing this for the first time and do not understand all the substance behind it.

I think it is important for us to reach them as well as to remind ourselves what is involved here.

I see the distinguished Senator from Idaho here who chaired that Select Committee on Intelligence which conducted the investigations that brought out many of the shortcomings of the intelligence agencies. The Senator from Hawaii, Mr. Inouye, and the Senator from Arizona, Mr. Goldwater, then were chosen as chairman and vice chairman of the select committee, which was the first time the Senate had a committee fully empowered to deal with oversight, the drafting of charters, and authorizing their budgets. We have been working diligently.

The Senator from Indiana now finds himself in the role of chairman, ably supported by his friend and colleague from Arizona (Mr. Goldwater), as the ranking Republican.

I think I can speak for the Senator from Arizona because I know his feelings. He is here and he may want to amend or extend what I say now.

But what we are talking about here right now are intelligence questions—the reason the request has been made, and the Senator from Indiana supports that request.

Since the Select Committee on Intelligence was formed, we have had very forthright relations with our intelligence agencies. They have given us the necessary information, and I salute them for that, because if we as a body are to perform the oversight function, if our committee is to perform an oversight function, we must continue to have this kind of relationship where they will tell us everything with the understanding that we are, as loyal Americans and as Senators who have made an oath, not to divulge what will damage our country.

As one Senator who believes in free speech, who has been out there fighting to try to guarantee the rights of Americans protected under the Bill of Rights, I find myself in a rather difficult position. We must see that there is a balance between protection of fundamental constitutional rights and also give our intelligence agencies the tools they need to do the job to provide intelligence and to protect us against our adversaries who would take away our cherished liberties.

We are not living in an easy world. This is not a milk and honey, Sunday school world. We just read in other papers that the KGB was trying to subvert our neighbor to the north, the KGB had 9, 10, or 11 in Canada. We have to bet there are a lot more than that in the United States trying to do the kinds of things most Americans realize are going on. Our intelligence agencies are doing a good job to protect our country from this kind of attack.

But, by the same token, our system is different from any others. We require that our intelligence agencies conduct their intelligence function and, at the same time, abide by the rules of law and not transgress the rights of individual Americans.

That is the balance that brings us here.

We were shocked—we were shocked—to investigate two problem areas. We were asked to look into certain facts, certain occasions, certain individuals, involving events over the last several years.

We are not talking about events which occurred only yesterday or this last year. We are talking about a time period that goes back to the 1960's.

There is no politics in this. We are all trying to find out what the facts are about matters that have gone on over a rather extended period of time.

We were asked to investigate these matters, and we did. We, as the Intelligence Committee, were not asked, nor should we have been asked, to make a judgment on the rightness or wrongness of the Panama Canal Treaty. That, quite rightly, lies within the province of the Foreign Relations Committee.

But we were asked to investigate whether these two sets of circumstances had any impact on the negotiation process, or the terms of the treaty.

In other words, did these two problem areas put our negotiators in a position where they could be forced or coerced, or were we in a position to force or coerce the Panamanians, so that it really was not an equal negotiating session.

I can say without breaching, without breaching any confidence, that our study on both areas led us to conclude that the two problems did not influence the negotiating process.

Now, having concluded that, one could still be either for or against the Panama Canal Treaty. But to repeat, the committee did not find evidence that these two problems created an environment which undermined the negotiating process.

I think it is important, and I feel what the Senator from Kansas is after and has every right to request the right to reverse the report. The committee's report is as forthcoming and a full discussion of this matter. We presented it in the Foreign Relations Committee the other day in the private session. The committee reached the conclusion that the evidence shows that these events did not influence the negotiation process. I think it is perfectly within the right of every Senator to want to make a judgment on his own. The assessment of the Intelligence Committee is based on information which may not now be in the possession of all Members of the Senate.

The committee has all of this information. The report has been made in detail to the Foreign Relations Committee. It is now available under the terms of Senate Resolution 400 for any Senator who wants to see it. There has been no effort to try to hide this. In fact, the Senator from Kansas knows that the Senator from Indiana and the Senator from Arizona has made an effort to complete the investigation of one of these two issues and it has not yet been completed. We think we have enough information to answer the key question, but we are still pursuing some leads. When we heard that the Senator from Kansas had information available to him in this regard, we asked him to give it to us. I am sure he will. We do not now have it. We have not received this information from him as yet, and we are certainly prepared to evaluate that information and to make that a part of the report.

First, let me point out that any Senator who wants to get this information can get it now. Under Senate Resolution 400 they cannot divulge these secrets which could damage our country, but the information is fully available to any Senator.

In addition, I have no hesitancy in having a secret session, an executive session, in which we have a full discussion. The Senator from Arizona is prepared and I am prepared to deal with these facts and explain how we reached the conclusions we reached. I think the Senate as a whole has a right to examine our judgment on this and then make its own conclusion.

But I think I heard the Senator from West Virginia and the Senator from New York, say as I recall hearing them in my office on the radio, that they concluded that we are talking about two different things here. The Senate now is involved in considering the merits of a treaty. Is it a good treaty or is it a bad treaty? I think it is important, as we listen to this debate on intelligence information, that we keep our eye on whether this treaty is good or bad for the United States. I assume that most Senators will do that, and not judge whether the treaty is good or bad because there may be a few unscrupulous characters involved.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. BAYH. The Senator from Kansas has been very considerate to let me use his time.

Mr. DOLE. I say at this point that I think the American people would be somewhat troubled by our ratifying any document if in

fact some of the allegations are true and if someone profited, particularly someone who is in a position of leadership, from international drug traffic.

I do not suppose that should be the determining factor, but I think we should crank it into whatever we have going, the computer, to try to make a decision.

I applaud the Senator from Indiana (Mr. Bayh) and the Senator from Arizona (Mr. Goldwater) for their efforts to try to focus on it and to sort of strain the information and make that determination.

Come next Tuesday, I hope we can get information on these 45 specific files that at least allegedly bear on General Torrijos and profits from drug operations. If this information is available and we have a full discussion on the floor and, as the Senator from Kansas has said, if we are satisfied that did not impact on the treaties, that will settle that portion of it.

Mr. BAYH. Mr. President, will the Senator yield?

Mr. DOLE. I yield.

Mr. BAYH. The Senator from Kansas was not in the Foreign Relations Committee. With great sensitivity, he removed himself, despite our assurances that he was welcome. I think the reasons for his leaving the committee room already have been discussed, and I salute him for those reasons. However, the whole purpose of the Intelligence Committee's investigation was to deal with all those allegations. Some of the allegations are well-founded.

We read some of this stuff in the newspapers, and some of it is true and some of it is false. We tried to ferret out the facts. We tried to find out whether the allegations came from people who had an ax to grind with the people they were criticizing, or whether it was an objective source. We did our best to do this.

Can the Senator from Kansas inform the Senator from Indiana when it will be possible for us to have this information that he has? I would hate us to have made the conclusions we have made and then find information that the Senator has available that we have not had a chance to look at yet.

Mr. DOLE. I have it with me, and someone has suggested that I rush over and hand it to you. But I think it would be better if I delivered it to the appropriate committee this afternoon.

Mr. BAYH. There is no rush. I hope the Senator from Kansas understands that we are doing this in a good faith effort. If anybody has any facts, we will look at them. If anybody has any allegations, we will look at them. I think we all have been involved in the political process long enough to know that, whether it is in the United States or Panama or Timbuktu, allegations are not necessarily true.

What we have tried to do and what I would like to do with the Senator from Kansas is to look at those allegations and see whether there is anything new that has not been considered, and try to find out where it came from and how credible it is.

Mr. DOLE. We will have that information to the Senator this afternoon.

Mr. BAYH. I thank the Senator.

CLOSED SESSION ON TUESDAY, FEBRUARY 21, 1978

Mr. ROBERT C. BYRD. Mr. President, if the Senator will yield, I now renew my unanimous-consent request that on Tuesday, February 21, at 10 a.m., the Senate go into closed session to consider the issues that have been discussed here today and which may have a peripheral significance with respect to the treaties but, in any event, which should be discussed and put behind us once and for all.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. ROBERT C. BYRD. Mr. President, if the distinguished Senator will yield further, I ask the distinguished chairman of the committee, Mr. Bayh, and the distinguished minority leader, Mr. Baker, who is an ex-officio member of the Intelligence Committee, as am I, if it is agreeable that on Monday, February 20, beginning at 9 a.m. and extending throughout the day until 5 p.m., the staff of the committee be made available in room S-407 of the Capitol—which is a secure room, with secure telephones—for the purpose of informing any Senators who wish to make themselves available during that day of any information that may be pertinent and which might be helpful to them in the closed session discussion which will occur the following day.

Mr. BAYH. Any Member who wants to correct me may do so, but I think the restrictions of Senate Resolution 400 prohibit us from doing exactly what the Senator from West Virginia has requested. He said "staff," and we do not know what staff is going to be there.

Mr. BAKER. Mr. President, if the Senator will yield to me, I think that what the majority leader and I discussed—and as I understood the majority leader's request—was that the staff of the Intelligence Committee—

Mr. ROBERT C. BYRD. Yes.

Mr. BAKER. (continuing). Be in a position to brief Members. Members have the right, under Senate Resolution 400, to be briefed.

Mr. BAYH. Any Member can go over there now, today. He does not have to wait until the 21st. He can read everything. He does not just have to be briefed.

If the Senator's request was that the Intelligence Committee staff be prepared to brief any Senator who wants to be briefed, I salute him for that. That is a good idea.

In addition, when we have the executive session the following day, all of us will be here to participate and try to answer any questions that may not have been answered.

As I recall hearing on the radio a moment ago, it has already been mentioned that the Senator from Arizona and I have requested of the top people in the CIA and the NSA and the Attorney General that they embark immediately, as of the day before yesterday, upon trying to sanitize this, so that we can get all these facts out that do not jeopardize the country, so that we can look at this and the public generally can look at this.

I hate this business of saying that there is something that should not be disclosed. I think we have a burden to everybody, those listening and those not listening, to give the information we have to the country, and we have already attempted to do that.

Mr. ROBERT C. BYRD. Is it to be understood by all Senators that the distinguished chairman of the Intelligence Committee of the Senate will be willing to make available, in room S-407, on Monday, February 20, the staff of the Intelligence Committee, for the purpose of briefing Senators from the hour of 9 a.m. to the hour of 5 p.m.?

Mr. BAYH. Yes.

Mr. ROBERT C. BYRD. I thank all Senators, and I thank especially the Senator from Kansas (Mr. Dole) and the chairman of the Intelligence Committee (Mr. Bayh).

Mr. GOLDWATER. Mr. President, if the Senator will yield, I do not think the Chair ruled.

Mr. ROBERT C. BYRD. Did the Chair rule?

The PRESIDING OFFICER. Yes; the Chair has ordered that to be printed in the Record and made available to all Senators.

Mr. ROBERT C. BYRD. I thank the Senator.

The PRESIDING OFFICER. The Senator from Kansas (Mr. Dole) has the floor.

Mr. BAYH. Mr. President, will the Senator from Kansas permit me to add one other factor or reiterate one other factor?

Mr. DOLE. Yes.

Mr. BAYH. I just want to make certain that everyone knows what is available. The decision has been made that as of Monday morning, the 20th, the Intelligence Committee staff will be there on hand to brief any Senator who wants to be briefed. We then will have the executive session. I have just discussed this with Mr. Miller, the chief of staff of our committee. If any Senator between now—you do not need to wait a week and a half—wants to look at it next Monday instead of a week from next Monday, and wishes to go through all this information, if he will just let us know, and I am sure the Senator from Arizona has no reservations about that. We want to make everything available. I am sure we can do this without hurting the country or violating the responsibility we have as members of the Intelligence Committee through the provisions of Senate Resolution 400.

Mr. DOLE. I thank the distinguished chairman of that committee.

I would hope that by, say, Monday, the 20th, we might have the sanitized report that the Intelligence Committee is making available. That will be very helpful, too, if we had that information. Maybe it is not possible, but it would be helpful.

Mr. BAYH. I would say, if the Senator will yield again—I hate to keep interrupting here—we hope by the middle of next week to have that sanitized version which I assume will give a pretty good feel for what the problem is. There are some elements not central to the main arguments that cannot be disclosed because that is sources and methods information which could damage our country and might lead to the loss of the lives of some people who were involved in the collection process.

Mr. DOLE. I thank the distinguished majority and minority leaders for their total cooperation.

I say again I think the American people—after all, we are, in effect, talking to the American people, the American people are listening; they want to be informed about the Panama Canal treaties. If I am any judge, they also want to be informed about

anything else, whether it relates directly or indirectly to negotiations.

We have had a great deal of mail on this issue, and I would hope that it can now be laid to rest, if laid to rest, or made public, or somehow explored so we can find out just what the true facts are.

Mr. BAKER. Mr. President, if the Senator will yield to me a moment, I would like to take this opportunity to express my appreciation to the Senator from Kansas. I think he has identified a very, very important issue. I think beyond that it is even more important that the Senate and, indeed, the country, have access to all material and pertinent facts that are available to us from whatever source. I think his suggestion here, and the action that has been taken on the request of the majority leader in which I was happy to concur, has moved us further toward the point where we can make sure that we are all singing off the same sheet of music.

I thank the Senator from Kansas for his effort in that respect.

Mr. DOLE. I totally agree with my distinguished leader, and it seems to me that this could resolve many of the questions some of us have, maybe not completely, but I think we are talking about support of the American people. I am not certain—I assume the secret session will not be on the radio; is that correct?

Mr. BAKER. I would assume so.

Mr. DOLE. That would be a good day for commercials.

Mr. BAKER. We have to make other provisions. It may be no one is listening anyway.

Mr. DOLE. This may be secret enough.

But in any event, I thank the leaders, and I would hope that we can address these questions because they are real. If you look at the mail and read the mail coming from the people, they are asking the questions and we put these questions to General Torrijos, I might add, and he said, "Your agencies are not telling you the truth; I will send you the information."

We waited for a couple of weeks and then we wrote General Torrijos a letter and knowing the system does not work too rapidly, it has been now 3 weeks and we still have not had a response from General Torrijos. But he seemed totally forthcoming as far as our having information.

So I think now we will have the information. Maybe we will not be able to tell anybody about it. But we can say it in our own minds when we are asked to vote.

Mr. President, I am prepared to yield the floor. I yield to the distinguished Senator from Utah for an unanimous-consent request.

(At this point there was a colloquy concerning certain correspondence from a Representative, which by unanimous consent is printed in the Record following Mr. Dole's remarks.)

The PRESIDING OFFICER. The Senator from Kansas (Mr. Dole).

Mr. DOLE. The Senator from Kansas will soon conclude. I want to express my appreciation to the majority leader and the minority leader for scheduling the closed session of the Senate on February 21, commencing at 10 a.m., at which time we will discuss some of the allegations with reference to General Torrijos and the Torrijos family, and, hopefully, go through some of the 45 files, or at least

have questions with reference to 45 files, which have been indicated to me previously might somehow impact on drug traffic.

Mr. President, finally, it seems to me that if we dispose of the drug matters and start on amendments, we should also consider, before getting into any specific amendment, what happened to the process in the past 12 or 13 months with reference to treaty provisions which were under negotiation prior to 1977.

The Senator from Kansas has just indicated that I have information, I think accurate information, from a reliable source which would indicate that a number of changes were made in the treaties in July and August and May and June of 1977 which I think were not in the best interests of our country. We will be discussing these at greater length line by line, amendment by amendment, article by article, because they bear upon one or two of the amendments the Senator from Kansas will be offering at some later date, in February, March, or April, as we get into a discussion of the treaties. I yield the floor.

(The following proceedings occurred during Mr. Dole's remarks and are printed at this point in the Record by unanimous consent.)

Mr. HATCH. Mr. President, I also would like to thank the Senator from Kansas for the great service he has done. I have followed much of this investigation and much of the matters that he has brought up to the extent that I have been able to do so. I think they are of great moment and of great purpose. But at this particular time I would just like to call the attention of the Senate to the fact that one of our distinguished colleagues from the House has just brought some, I think, important papers to me.

I would like to just say that this colleague's name is Congressman George Hansen from the Second District of Idaho. Congressman Hansen has been very active of late doing everything he possibly can to justify and to bring about a means whereby the House of Representatives will not be ignored with regard to the Panama Canal treaties, and that the article IV, section 3, clause 2 sections of the Constitution likewise will not be ignored.

Congressman Hansen has put a great deal of time and effort into talking with his colleagues in the House, and he has brought over a list of 219 Members of the House who are basically subscribers or cosponsors of his resolution which states:

That is is the sense of the Congress of the United States that any right to, title to, or interest in the property of the United States Government agencies in the Panama Canal Zone or any real property and improvements thereon located in the Zone should not be conveyed, relinquished, or otherwise disposed of to any foreign government without specific authorization of such conveyance, relinquishment, or other disposition by an Act of Congress.

Two hundred and nineteen of his House Members have cosponsored this resolution in a series of resolutions in the House, which is more than half of the Members of the House who would like to have the opportunity and privilege of representing their constituencies in voting by majority vote whether or not to have these treaties.

Incidentally, I think Congressman Hansen has done the Senate and the complete Congress, one of the three co-equal branches of Government, a great service in pointing out that the House really should have this opportunity and that our colleagues in the Senate

should certainly support the House in its demand for this opportunity.

Congressman Hansen has indicated to me that some of these cosponsors of this resolution are not in favor of the treaties and some of them are, but all of them are in favor of having the House vote on this matter because it is the prerogative of the House to vote.

He has also brought to me two letters, one written to our own distinguished colleague and friend Senator Robert C. Byrd, the majority leader, and a letter to the Honorable Thomas P. O'Neill, Jr., Speaker of the House of Representatives.

I would just quote from one aspect of the letter to Speaker O'Neill.

Congressman Hansen states in his letter to Speaker O'Neill.

You will note that the concept of the Resolution is to protect the integrity of the legislative process against default or Executive usurpation, a matter of serious concern for many years. It properly conditions treaty approval where property transfer or appropriations are involved to appropriate and timely acts of Congress rather than hit and miss implementation by the Executive occasionally augmented by post-mortem patchwork authorization and appropriation measures.

The Senate is, of course, jealous of its prerogatives, but so should the House be in order to preserve the balance intended by the Constitution. I am hopeful that you were misquoted by the February 4, 1978, Idaho Statesman newspaper in an article which stated:

"But House Speaker Tip O'Neill said he would keep the resolution from reaching the House floor until after the Senate votes on ratification of the treaties, at which time President Carter would probably ignore House claims to jurisdiction."

I am sure that the Idaho Statesman must have had some misinformation there myself because I cannot imagine the Speaker of the House of Representatives in any way even attempting to prohibit the Members of the House during this particularly important debate from voting on this particularly important resolution which really includes 219 cosponsors.

Furthermore, toward the end of the letter to Speaker O'Neill, Congressman Hansen states:

Mr. Speaker, the co-sponsors of the Resolution took their position in the face of controversy and pressure for a principle. They represent both sides of the Treaty issue but feel strongly about timely House involvement according to the Constitution, according to established precedent, and according to responsible and practical application of government procedures through reasonable legislative partnership.

Little can be added or subtracted. The House in a sense has already voted, through the device of co-sponsorship, that no implementation of the Panama treaties should take place without proper House involvement through an Act of Congress. The Resolution is now to be introduced into the Senate and that body could cooperate by its passage or by approving proper reservations or Amendments to any Treaty approvals.

I ask unanimous consent that the two letters, the one to Senator Robert C. Byrd and the one to Speaker O'Neill, and the list of cosponsors of the various concurrent resolutions or resolutions in the House of Representatives, and particularly the list by States, which shows that 124 members of the Republican Party and 95 members of the Democratic Party, representing 46 States, are cosponsors of this resolution, be printed in the Record.

In addition, I think it is fair to note that in the letters Congressman Hansen of Idaho has made it clear that his letter is a bipartisan action. Among the hundreds of sponsors—actually 219 House Members—are the chairmen or chairmen-to-be of the House Appro-

priations Committee, the Armed Services Committee, the International Relations Committee, the Interstate and Foreign Commerce Committee, the Merchant Marine and Fisheries Committee, the Science and Technology Committee, and the Veterans' Affairs Committee of the House of Representatives.

He has also pointed out that the resolution is cosponsored by all the House Members from West Virginia, Alabama, and Idaho, which are States representing the Senate majority leadership position in the Panama issue—I think something that is very notable, and something that we should take cognizance of.

I ask unanimous consent that all of this be printed in the Record at this point.

The PRESIDING OFFICER. Is there objection?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, what is it the Senator wishes to put in the Record?

Mr. HATCH. I want the two letters to the distinguished majority leader of the Senate and to the Speaker of the House of Representatives, the list of the cosponsors to the various concurrent resolutions, and the last page of this, which is a State tally of the Republicans and the Democrats and the total, put into the Record at this point, and I respectfully ask unanimous consent that that be done.

Mr. ROBERT C. BYRD. Mr. President, I will certainly not object to the inclusion in the Record of these matters. I cannot remember a time when there was such an objection. But I reserve the right to object simply because this matter being inserted in the Record appears to be a letter addressed to me, in part. Am I correct?

Mr. HATCH. That is true. It is a letter, I think, of such import that it is not private. I think basically this is a letter which expresses Congressman Hansen's extensive and laborious efforts to try to convince not only his colleagues in the House, but every Member of the Senate, including the distinguished majority leader.

Mr. ROBERT C. BYRD. Of what?

Mr. HATCH. That the House should have the privilege of voting on this matter in accordance with the Constitution.

Mr. ROBERT C. BYRD. On what matter?

Mr. HATCH. On the matter of the Panama Canal Treaty, in accordance with the constitutional provisions of article IV, section 3, clause 2.

Mr. ROBERT C. BYRD. Mr. President, I have no objection to the material going into the Record, but may I say I gave Mr. Hansen my reaction when he delivered the letter to me a few minutes ago.

Mr. HATCH. I would be interested in that.

Mr. ROBERT C. BYRD. For the Record, my answer was that under the Constitution the Senate has the sole prerogative and responsibility to give its approval to the ratification of a treaty, No. 1; and, No. 2, property transfers can be self-executing by treaties that are approved by the Senate. Such property transfers have heretofore, in the past, been made by treaties, which in themselves were self-executing as to the transfer of such property. This will not be setting a precedent. Any transfer of properties that may be involved in the Panama Canal treaties will be self-executed by the treaty ratification. That provision will be self-executing at such time as the Senate gives its approval and the President ratifies the

treaties, and the exchange of ratification documents takes place between the two countries.

So that was and is my answer to Mr. Hansen. I have no objection to the letters going into the Record.

The PRESIDING OFFICER. Is there objection?

Mr. DOLE. Mr. President—

Mr. HATCH. Mr. President, reserving my right to the floor, I yield to the Senator.

Mr. DOLE. The Senator from Kansas has the right to the floor, but I just want to make one further request: That this colloquy follow the discussion of the Senator from Kansas and other Senators concerning allegations concerning drug traffic, and the agreement on the secret session.

Mr. HATCH. I certainly agree.

Mr. DOLE. Then, if the Senator would like, I can finish my remarks and yield the floor, because I only have about 1 more minute.

Mr. HATCH. Well, I certainly apologize. I thought the Senator had finished. If I may just add one more sentence—

Mr. DOLE. Fine.

Mr. HATCH. It is this: Let the Record show that as much as I admire the distinguished majority leader, I respectfully disagree on his interpretation of the Constitution, on his interpretation of the law, and on his interpretation that this is a self-executing set of treaties. I think the law would bear out that that is not correct, and I think many of my colleagues in both the House and the Senate would argue very strongly that that is incorrect, along with many legal authorities in this country.

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object, I will be glad to discuss this matter at any length the able Senator from Utah wishes to discuss it. His saying that he rejects my argument does not make the argument invalid. My argument stands. Mr. Hansen, who is now in the Chamber, received my answer orally when he submitted his letter to me, and he has just heard me restate my position for the record in response to the request made by the Senator from Utah to put the letter addressed to me in the Record. I am very happy to have the letter go into the Record; I will be very happy to answer the letter to Mr. Hansen now, as I did a few minutes ago, and I am very happy to say that I think my answer, most respectfully, is a proper one.

I respect Mr. Hansen, a Member of the House for his interest and for his writing the letter to me. I find no fault with that at all. What I have said is not meant in any way to be any criticism of him or the Members of the House who cosigned the request or the resolution, or whatever it may have been.

But I must state without any equivocation exactly where I stand on this issue. I have done that, and I am content to let the matter rest at that.

The PRESIDING OFFICER. There is a request before this body for a unanimous consent to have printed in the Record certain documents which, together with the remarks pertinent thereto, will follow the remarks of the Senator from Kansas (Mr. Dole). Is there objection?

Mr. HUDDLESTON. Mr. President, reserving the right to object, and I will not, although I am probably inclined to, because I think we are seeing demonstrated here the power of the broadcast media: this is probably one of several grandstand efforts that we will see, not only, maybe, from our own 100 Members that we have here, but maybe from the other side of the Capitol also. We are being asked to consider something extraneous to the principal issue before us, and that is whether or not to ratify these treaties.

I know there is a legal question as to whether or not the House of Representatives should be involved in voting on the disposition of American property. But it is just that; it is a legal question. The proper place to have it resolved, of course, is in the courts. An effort has been made, as I understand, to do that.

The majority leader has expressed what many legal scholars believe to be the correct interpretation of the constitutional requirement. The interpretations which I have read have ranged all the way from saying yes, the House must participate, to they should not, or they do not necessarily have to.

The constitutional requirement does not say, according to some legal scholars, that the House has that exclusive jurisdiction and authority; that the President may, or he may through treaties, dispose of property.

So it is a legal question. We can argue it here all year and never come to a solution. It ought to be resolved in the proper place. Whatever the courts decide is whatever the Congress will have to do.

We should not get this debate, in my judgment, bogged down in these kinds of extraneous issues which have virtually no bearing upon the merits of the treaties upon which we are called upon to make a decision.

Mr. ROBERT C. BYRD. Before the Senator yields the floor, will the Senator agree with me that the other body does have a responsibility equal to the responsibility of the Senate in the enactment of implementing legislation which may be made necessary by the ratification of the treaty? We do not deny that.

Mr. HUDDLESTON. There is no question about that.

The PRESIDING OFFICER. Is there objection?

There being no objection, the material was ordered to be printed in the Record, as follows:

HOUSE OF REPRESENTATIVES,
Washington, D.C., February 8, 1978.

HON. ROBERT C. BYRD,
Russell Senate Office Building,
Washington, D.C.

DEAR SENATOR BYRD: I am writing to officially advise you of a concurrent resolution concerning the Panama Canal issue which I introduced into the House of Representatives shortly after the Treaty signing in September 1977.

This Resolution, H. Con. Res. 347, has a huge number of co-sponsors, a majority of House Members, which indicates overwhelming support for upholding the constitutional prerogatives of both Houses of Congress under Article IV.

The Resolution in no way interferes with the Article II powers of Treaty approval held by the Senate but insists that such authority be properly teamed with Article IV to prevent the House being held hostage to Senate action.

This is entirely consistent in terms of good legislative relations between two co-equal bodies representing the same constituency with somewhat differing responsibilities, neither of which should be considered of lesser importance, particularly on an issue so critical to the nation's interests.

The teaming of Articles II and IV is also consistent with all precedent involving Panama and the many past Treaty revisions.

My Resolution states "... that it is the sense of the Congress of the United States that any right to, title to, or interest in the property of the United States Government agencies in the Panama Canal Zone or any real property and improvements thereon located in the Zone should not be conveyed, relinquished, or otherwise disposed of to any foreign government without specific authorization of such conveyance, relinquishment, or other disposition by an Act of Congress."

You will note that the concept of the Resolution is to protect the integrity of the legislative process against default or Executive usurpation, a matter of serious concern for many years. It properly conditions treaty approval where property transfer or appropriations are involved to appropriate and timely acts of Congress rather than hit and miss implementation by the Executive occasionally augmented by post-mortem patchwork authorization and appropriation measures.

Just as the Senate is jealous of its authority and prerogatives, so is the House, and rightly so, to preserve the balance intended by the Constitution. Therefore, we are saying to you, we in the U.S. House of Representatives in the name of the citizens of this nation insist on fair play and responsible procedure. We cannot abide by the following process as outlined in the Federal 4, 1978 Idaho Statesman, "But House Speaker Tip O'Neill said he would keep the resolution from reaching the House floor until after the Senate votes on ratification of the treaties, at which time President Carter would probably ignore House claims to jurisdiction."

Hopefully a Speaker of the House, party politics aside, would not really be so cavalier regarding the prerogatives of that great body and its responsibilities to the people. Hopefully the Majority Leader of the Senate and others in positions of power will have proper respect for legislative partnership and processes.

I can assure you that my Resolution indicates little support for forfeiture of House responsibilities. In fact, you will note of the hundreds of co-sponsors that there is strong representation among Chairman and ranking minority Members of all major committees and sub-committees concerned with the Panama issue. This includes the Chairman (or Chairman-designate for the next Congress) of Appropriations, Armed Services, International Relations, Interstate and Foreign Commerce, Merchant Marine and Fisheries Science and Technology, and Veterans Affairs.

Also, it is probably well to inform you that my Resolution is cosponsored by all House Members from West Virginia, Alabama, and Idaho which are the States representing the Senate Majority Leadership in the Panama issue (Majority Leader and Foreign Relations Chairman and Chairman-apparent).

Hopefully you will understand the seriousness of the Panama matter to Members of the House so that legislation is properly framed to prevent constitutional and legislative confrontation which could impair relations and even preclude the will of Congress as agents for the people by unnecessarily causing the decisions to be made in the Courts.

Sincerely,

GEORGE HANSEN.

HOUSE OF REPRESENTATIVES,
Washington, D.C., February 10, 1978.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker, U.S. House of Representatives,
Rayburn House Office Building, Washington, D.C.,

DEAR MR. SPEAKER: This letter is to respectfully and officially inform you of my Concurrent Resolution concerning the Panama Canal issue which was first introduced as final Treaty negotiations were in process.

This Resolution, H. Con. Res. 347, has by survey overwhelming support in the House and this is further attested by the fact that a majority of House Members are now cosponsors and this list is growing.

The Resolution appears to be most necessary to establish order and prevent misunderstanding. To allow Senate Treaty action without timely conditional House action as our authority applies is to leave a major international decision to twist in the wind of hit and miss enabling action that could cause more pain than any treaty approval could hope to relieve.

The House would be acting with a gun to its head operating in a climate of fait accompli and have little opportunity to freely work its will. I can't believe any responsible House Member would want to face such a situation.

I realize some Members feel this matter is solely a Senate prerogative and others would like to avoid the issue. I also understand the Administration's position of

wishing to involve the House only on occasion and after the fact for certain implementation programs.

However, the transfer of U.S. assets is so major and so unprecedented that to preclude the House in the finalizing considerations appears to be a gross neglect of both Congressional rights and responsibilities. The Senate debates and hearings in both bodies have clearly identified a total transfer impact on taxpayers of hundreds of millions of dollars in addition to the billions invested in the land and improvements. Surely, the House cannot sidestep its tax and appropriation responsibilities as a condition of final action on the Treaty proposals.

The assured heavy increase in tolls and tariffs (estimated by U.S. State Department Environmental Impact Statement to be 40-60%) promises to raise the price of food, heating oil and most major commodities for every consumer in the United States. This increase of transit fees at the crucial Panama junction can also have significant adverse impact on our already disastrous balance of payments situation by further impairing our ability to compete in the world market.

Midwest farmers depending heavily for customers in the Far East would have the Panama middle-man to pay which could seriously damage their ability to sell in competition with Canada, Argentina, Australia and New Zealand when a cent per bushel or per pound can mean the difference in the grain and cattle markets.

Millions of metric tons of sugar from the West Coast including my State of Idaho comes through the Canal to the East Coast in competition with Latin American producers who already have so undercut the U.S. farmers' market that an agriculture depression exists in rural America. Those farmers we have with us today aren't in Washington to enjoy the scenery, I can assure you.

And, after the vicious rise in heating oil and gasoline prices during recent years because of the Arab boycott and other factors, how can we subject the citizens of the whole Eastern part of the U.S., including your own State of Massachusetts, to higher costs by paying a surcharge to Panama for the new domestic oil available from Alaska's north slopes without House scrutiny?

By land, by sea, by air this Nation has been commercially and militarily united in recent years so that no traffic need cross foreign soil to traverse from coast to coast conveniently and economically. Will we place a foreign nation's toll booth astraddle of our sea lane without timely House scrutiny?

The point I make, Mr. Speaker, is that the proposed Panama Canal Treaties have major economic impact upon the farmers, consumers and taxpayers of the Nation and as their elected representatives we can not ignore their well-being as is our responsibility under the Constitution.

The Library of Congress Research Service, American Law Division report of August 4, 1977, by legislative attorney Kenneth Merin notes:

"The United States has transferred territory and property in and around the Canal Zone to the Republic of Panama on four previous occasions.

"The 1932 and 1937 transfers were effected by Act of Congress. In 1943, a Joint Resolution approved an executive agreement calling for the transfer of property to Panama. Three provisions in a 1955 treaty with Panama provided for the disposition of territory and property. One of those provisions required implementing legislation. Although the other two provisions did not call for implementing legislation, a State Department official acknowledged that implementing legislation would be required for all three provisions."

The Study concludes that,

"It is clear that Congress has often asserted an exclusive right to dispose of federal territory and property. It is also apparent that both the Executive and the Senate have recognized that claim in past dispositions of property in the Canal Zone to Panama."

The Study continues regarding Article IV, Section 3, Clause 2 that,

"... it appears that those powers have been recognized as exclusive for purposes of disposal of property in and around the Canal Zone to Panama."

Also noted by the Study was the following:

"Finally, regardless of the nature of the Article IV power, the co-operation of all three branches of government is necessary for the effective implementation of American foreign policy. Although the President is the sole organ of communications with other nations, conclusion of a treaty without prior regard for congressional attitudes might adversely affect the continuing executive/congressional relationship."

The Resolution in no way interferes with the Article II powers of Treaty approval held by the Senate but insists that such authority be properly teamed with Article IV to prevent the House being held hostage to Senate action.

I believe this is entirely consistent in terms of good legislative relations between two co-equal bodies representing the same constituency with somewhat differing responsibilities, neither of which should be considered of lesser importance, particularly on an issue so critical to the Nation's interests.

The teaming of Article II and IV is consistent with all precedent involving Panama and the many past Treaty revisions.

My Resolution states "... That it is the sense of the Congress of the United States that any right to, title to, or interest in the property of the United States Government agencies in the Panama Canal Zone or any real property and improvements thereon located in the Zone should not be conveyed, relinquished, or otherwise disposed of to any foreign government without specific authorization of such conveyance, relinquishment, or other disposition by an Act of Congress."

You will note that the concept of the Resolution is to protect the integrity of the legislative process against default or Executive usurpation, a matter of serious concern for many years. It properly conditions treaty approval where property transfer or appropriations are involved to appropriate and timely acts of Congress rather than hit and miss implementation by the Executive occasionally augmented by post-mortem patchwork authorization and appropriation measures.

The Senate is, of course, jealous of its prerogatives, but so should the House be in order to preserve the balance intended by the Constitution. I am hopeful that you were misquoted by the February 4, 1978, Idaho Statesman newspaper in an article which stated,

"But House Speaker Tip O'Neill said he would keep the resolution from reaching the House floor until after the Senate votes on ratification of the treaties, at which time President Carter would probably ignore House claims to jurisdiction."

My Resolution indicates little support for forfeiture of House responsibilities. In fact, of the hundreds of co-sponsors there is strong representation among Chairmen and Ranking Minority Members of all major committees and subcommittees concerned with the Panama issue. This includes the Chairman (or Chairman-designate for the next Congress) of Appropriations, Armed Services, International Relations, Interstate and Foreign Commerce, Merchant Marine and Fisheries, Science and Technology, and Veterans Affairs.

Also, my Resolution is co-sponsored by all House Members from a number of states including West Virginia, Alabama and Idaho which are the homes of the Senate Majority leadership in the Panama issue (Majority Leader and Foreign Relations Chairman and Chairman-apparent).

Mr. Speaker, the co-sponsors of the Resolution took their position in the face of controversy and pressure for a principle. They represent both sides of the Treaty issues but feel strongly about timely House involvement according to the Constitution, according to established precedent, and according to responsible and practical application of government procedures through reasonable legislative partnership.

Little can be added or subtracted. The House in a sense has already voted, through the device of co-sponsorship, that no implementation of the Panama treaties should take place without proper House involvement through an Act of Congress. The Resolution is now to be introduced into the Senate and that body could cooperate by its passage or by approving proper reservations or Amendments to any Treaty approvals.

I would hope that my efforts have given you the foundation to call for timely and appropriate House involvement in advance of any final determination regarding the issue of possession of the Panama Canal Zone and American installations there.

Sincerely,

GEORGE HANSEN

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H. Con. Res. 465:

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*Ertel (PA)

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*Price (IL)
*Le Fante (NJ)

H. Con. Res. 467:

Michel (IL)
*Gammage (TX)
*Jenkins (GA)
*Duncan (OR)

*Murphy (IL)
Derwinski (IL)
*Yatron (PA)
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H. Con. Res. 468:

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*Hefner (NC)
Broomfield (MI)
*Okar (OH)
Cederberg (MI)

H. Con. Res. :

*Wilson (TX)

*Evans (IN)

*Gudger (NC)

	GOP	Democrat	Total
Alabama*	3	4	7
Alaska*	1		1
Arizona	2	1	3
Arkansas	1	2	3
California	13	4	17
Colorado	1		1
Connecticut			
Delaware*	1		1
Florida	5	5	10
Georgia		7	7
Hawaii		1	1
Idaho*		2	2
Illinois	7	5	12
Indiana	3	2	5
Iowa	2		2
Kansas	3		3
Kentucky	2	1	3
Louisiana	3	3	6
Maine*	2		2
Maryland	2	2	4
Massachusetts	1		1
Michigan	6		6
Minnesota	4		4
Mississippi*	2	3	5
Missouri	1	4	5
Montana	1		1
Nebraska	2		2
Nevada			
New Hampshire	1		1
New Jersey	3	5	8
New Mexico*	1	1	2
New York	11	4	15
North Carolina	2	6	8
North Dakota*	1		1
Ohio	12	4	16
Oklahoma	1	3	4
Oregon		1	1
Pennsylvania	4	6	10
Rhode Island			
South Carolina	1	3	4
South Dakota*	2		2
Tennessee	3	2	5
Texas	2	9	11
Utah	1		1
Vermont*	1		1
Virginia	6	2	8
Washington	2		2
West Virginia*		4	4
Wisconsin	1	1	2
Wyoming			
Total 46 States	124	95	219

Note: A majority of House committee chairmen and ranking minority Members have cosponsored this resolution.

(This concludes proceeding which occurred earlier.)

The PRESIDING OFFICER. The Senator from New Mexico (Mr. Schmitt) is recognized.

Mr. SCHMITT. Mr. President, for the information of the Senator from Idaho, with whom I had a personal agreement, I will yield the floor to him at the conclusion of my brief remarks.

Mr. President, the Senator from New Mexico has been working off to the side of the main debate on the Panama Canal Treaties. It is a little bit like being exposed to the loneliness of a long distance runner. However, I believe there is a better answer for us and our friends in this hemisphere, a better answer than the treaties which are being offered to the U.S. Senate. That answer is a system of international management and defense of the canal.

Mr. President, the Panama Treaties have provoked more concern, interest, and discussion among the American people than any other foreign policy issue in recent times. If taken together with all other debates about the "path between the seas," there is probably no more greatly contested issue in American history. We find a personal and emotional involvement of the American people in the Panama Canal issue that seems to defy any quantitative explanation. This is truly a domestic issue as well as a foreign policy issue.

In addition to hearing about its role in the lives of our fathers or grandfathers, most Americans have some direct or indirect attachment to "the canal." The feat of building the canal still stands as one of America's great achievements, much like landing on the Moon 60 years later. By the technology which was produced by that feat we have had one of our greatest rejuvenations of the American economy, both domestically and internationally.

Americans are deeply concerned about the foreign policy of this country. The clear perception for many people, and particularly many of our young people with whom I talked, is that recently we have too often backed down to the demands of less than free governments. There is a concern of how other nations view us: A concern of what the future of the world will be if this, the greatest free nation in history, has neither the will nor strength to stand for what we believe is best for all peoples.

Our people are concerned that the long-term interests of the United States are being compromised. While recent polls have indicated that the treaties have picked up some popular support, the majority of Americans and certainly the majority of New Mexicans are still not satisfied with these treaties.

At the same time, my discussions with Latin American ambassadors and experts show that rejection of the treaties is clearly unacceptable nationally to most hemispheric governments. The recent publicity indicates that a majority of the Panamanians approve the treaties although all their motivations are not clear. Outright rejection also would ignore the political realities of radical opposition faced by most Latin American leaders. Most critically, the times are moving against the propriety of the unilateral control of territory or technology of international usefulness, such as an international waterway between oceans.

Although I plan to continue to oppose the treaties before the Senate, I find, Mr. President, that neither a vote for nor a vote against these treaties will satisfy the true situation we face in Panama, in Latin America, or in the world. These treaties fail to address themselves to the future of those countries and of the modern world. Whatever the final vote on the treaties the Panama Canal issue will not go away.

We have seen over and over again that bilateral treaties have not been successful.

That is what we have before us—a set of bilateral treaties, treaties between two nations.

In only takes one party to break such a treaty. In such a situation, the other nations, who are also dependent on the canal, much more so than ourselves, can have no real guarantee of nondiscriminatory rates and unlimited use of the canal.

Nor is there any real guarantee that our Nation can defend the canal with the sanction and without the opposition of Panama or the rest of the hemisphere. Amendments to these bilateral treaties will not basically change the future realities of world opinion should we intervene unilaterally without general approval of such an act. The President's commitment to intervene militarily if trouble arises should the treaties be rejected, was not only premature but ill advised in the absence of the real facts of a real situation.

The only answer to this dilemma before us is the involvement of all nations of this hemisphere in the operation and defense of the canal. This internationally important waterway has become a truly hemispheric resource, beyond the prevue of any one nation. We have a model of this type of international management which has been successful in recent years. I am referring to the Intelsat system of international communications. I suggest that only this type of system, which depends on the direct vested interests of many nations, will be successful in guaranteeing the long-term defense and openness of the canal. It will also guarantee a permanent step toward better hemisphere relations, and better cooperation between the various nations.

There are many analogies between the international utility of the Panama Canal and the international utility of global communication satellites. Foremost among these analogies is a clearly definable international need for continuous and equitable operation in the interest of all nations and all people.

The political and technical management of a global communication satellite system, as manifested by the Intelsat organization, is a unique new entry into the international scene. It is an organization that developed because of a coincidence of new technology and obvious international need. To the everlasting credit of the United States, we perceived this coincidence and guided the gradual trial-and-error development of Intelsat. To the everlasting credit of the Intelsat organization, it has become an example of international cooperation that is not only remarkably successful, but is both utilitarian and profitable.

Since late last summer, I have worked with several individuals who are experts in international institutional arrangements in the development of "Intersea," a proposal for hemispheric management and defense of the Panama Canal. "Intersea" is based on the Intelsat management system but also incorporates modern trends toward regionalism by matching Western Hemisphere control of the canal with international users' participation in decisions affecting use of the canal.

It is my belief that hemispheric management would satisfy the most significant national and economic interests of the United States, the Republic of Panama, all of Latin America, and the user nations of the world. Most importantly, it would bring into the management and defense of the canal those nations with the great-

est interest in insuring the successful implementation of that management and defense.

(Mr. Hollings assumed the chair.)

Mr. SCHMITT. While the Senate has not been asked to consider possible alternatives to the proposed treaties, nor do I suspect that it will be by the administration, the situation presents a unique opportunity for this body to step into the future; to guide the hand of the executive branch toward something of higher purpose and utility. My discussions of "Intersea" with Americans and Latin Americans over the last several months have convinced me that the concept of international management is also politically acceptable and in fact would be preferred by a majority of people here and abroad.

The "Intersea" concept is a concept of the space age and of an age of growing awareness of certain common international resources on this spaceship Earth.

We have only to think of the growing interest in the deep sea resources, of the Antarctic resources, of the problem of the disposal of nuclear waste, of the potential of tapping the resources of outer space, to realize that the concept of international management is not only here, but may well be mandatory if we are to move safely into the future.

"Intersea" would provide management of the canal by a regional organization for the benefit of all hemispheric nations. It recognizes the canal as an international resource with the common heritage of all nations. It provides for all users of the canal to have representation in decisions affecting its use, defense and expansion. "Intersea" would be an organization tailored to manage the canal through a sharing of sovereignty rather than unilateral control by any nation.

International management, such as "Intersea," would serve as a viable answer to one of the most complex technical, international, and political questions of our time, the question of the future of the Panama Canal.

As I pointed out earlier, there is a deep concern on the part of the American people about the future of the United States and, in fact, the future of the world. The actions we take here with regard to the Panama Canal are important components of the future makeup of the world. Will the United States remain the strong bastion of freedom that we always have been? The decision we make on these treaties, in part, are related to finding an answer to that question.

Mr. President, a more detailed description of this concept was placed in the Record on January 19, 1978. I hope my colleagues who have not yet studied this material will do so.

Later in the debate on these treaties, I shall propose reservations to the treaties to require that future discussions on major new facilities such as railroads or pipelines or, in fact, a sea-level canal, be conducted with the hemisphere in mind, and that, in fact, those negotiations include representatives of the rest of the hemisphere that are interested.

If, by some chance, a stalemate develops, then we shall consider offering amendments to provide for hemispheric negotiations that

may be the necessary compromise to break any such stalemate in the Senate over the treaties related to the Panama Canal.

I yield the floor to the Senator from Idaho.

Mr. CHURCH. Mr. President, in the long and heated debate that has occurred thus far over the Panama Canal treaties, both sides have focused almost exclusively on their disagreements. Few participants have noted the extent to which both sides agree—that the present treaty with Panama is outmoded, that a new one is needed, and that its central feature must be to keep the canal open and running smoothly. There are, I think, several reasons underlying this consensus.

First, the present arrangement is 75 years old. When we took over the digging of the canal from the French in 1903, the United States had only recently commenced reaching out any distance from its shores. Traveling to Panama to inspect the excavation, Theodore Roosevelt became the first American President ever to leave the United States while in office. The most effective means of achieving national goals in the year of the Kitty Hawk flight are simply not the same in the era of the space shuttle.

Second, the people of Panama want a new treaty. They have been our staunch friends, as loyal as any of our allies. Their desires are important, and to ignore them on this issue, about which they feel so passionately, would be to destroy that friendship.

Third, we have learned a lot about the nationalist impulse of other people. We have found, through a painful, mistaken war in Southeast Asia, that citizens of small countries feel pride and patriotism just as much as we do. The Canal Zone is virtually the only remaining area in the world in which any country retains the vestiges of extraterritorial rights. What this arrangement means, by way of example, is that a Panamanian arrested in the Canal Zone—perhaps only blocks from his house—will be tried by a foreign court, under a foreign law, in a foreign language. No patriot anywhere has ever willingly accepted such humiliation. Those who fought at Lexington and Concord repudiated the authority of a distant throne, exercised in a form far less severe.

Fourth, in the event force were ever required to uphold the present antiquated arrangement, the United States would stand alone in the community of nations. The evidence is plain. For example, the United Nations Security Council in 1973 considered a resolution condemning the perpetuation of American jurisdiction over the Canal Zone. Not one nation—not even our closest allies—voted for our position, and we were forced to veto the resolution to prevent its passage.

This is not to say that we should permit our national prerogatives to be determined by international bodies. We must define our own interests, and defend them—through multilateral action where possible, through unilateral action where necessary. But it seems generally agreed that, in the case of the Panama Canal, a new, fairer arrangement would strengthen the legal and moral basis for using military power to defend our interests should that ever become necessary.

It is for reasons such as these, I think, that even opponents of the treaties have concluded that some new arrangement is called for. The question at issue, then, is this: Do the treaties, as negotiat-

ed and submitted to the Senate, represent a new arrangement that will indeed serve our national interest? What is meant by national interest, of course, is not easily quantified or measured. But I think the commonsense objectives which I have heard expressed, in one form or another, in dozens of conversations in my own State, and in hundreds of letters from my constituents, are as good as any. They come down, I think, to four in number:

First, the United States must continue to enjoy the full use of the canal as an open and neutral passageway.

Second, the canal must be kept militarily secure.

Third, the achievement of these goals must neither weaken the worldwide position of the United States nor strengthen the hand of our adversaries in Latin America.

Fourth, to endure, the new arrangements should be fair and perceived to be fair.

These are sensible standards by which to judge the treaties now before the Senate. They are addressed to the legitimate concerns of our citizens. However, before applying these tests, a short synopsis of the treaties is in order.

Under the provisions of the Panama Canal Treaty, the United States will continue to operate the canal until the year 2000 through a U.S. Government agency, to be known as the Panama Canal Commission. The Commission in its operations will be governed by U.S. law, which will extend to such matters as the setting of tolls and employee regulations. Five members of the Commission's nine-member board will be Americans, and even the Panamanian members will have to be approved by our President. During this period, American troops will remain in Panama and the United States will have the primary responsibility for defending the canal.

Beginning in the year 2000, operation of the canal will be transferred to the Panamanians. At present, nearly 75 percent of the canal work force consists of Panamanians; by the year 2000, they will have moved into all levels of management and will be in charge of running the canal. Even then, however, the United States will retain the right to counter any threat directed against the canal or against the peaceful transit of ships through the canal. The Neutrality Treaty also assures that American ships will be able to go through the canal as quickly as possible, without any impediment, and that in an emergency they will be able to go to the head of the line—ahead of other ships waiting to go through the canal. Finally, a protocol to the Neutrality Treaty will be open to accession by all nations, which means, Mr. President, that countries of the world will be given an opportunity to endorse and support the concept of a neutral passageway, open to peaceful commerce of the world, the *modus operandi* of the canal.

The treaties are, then, addressed to the practical issue of use of the canal. As the Chairman of the Joint Chiefs of Staff, General George Brown, testified, the treaties "are the best way of preserving our access to and passage through the canal as a matter of national security." Secretary of Defense Brown put it this way:

Use of the canal is more important than ownership. Efficient operation of the canal in the years ahead is more important than nostalgia for a simpler past. Ability to defend and control access to the canal is essential, but the issue is how

that ability can best be assured—by cooperative effort with a friendly Panama or by a garrison amid hostile surroundings.

Mr. LAXALT. Will the Senator yield for a question?

Mr. CHURCH. I am happy to yield.

Mr. LAXALT. The Senator's argument presupposes we are going to be dealing for the 23-year period and after 2000 with a friendly Panama.

What is the situation, as far as the interest of this country is concerned, if the situation with Panama should deteriorate and they become unfriendly?

Mr. CHURCH. In that event, I say to the Senator that the United States retains the right, if it ever becomes necessary, not only for the balance of this century, but forever after, to take unilateral military action to preserve the canal, to keep it safe and to keep it open.

Mr. LAXALT. All right.

Mr. CHURCH. Now, I expect that ratification of these treaties will be a major step toward guaranteeing that our future relations with the Panamanians would be friendly. But no mortal can positively insure that some unexpected event might not tip them the other way.

Mr. LAXALT. I understand.

Mr. CHURCH. And if that were ever to happen, these treaties would give us the legal right to take unilateral military action to keep the canal safe and open against any threat, whether internal or external.

Mr. LAXALT. But at the present time and continuing up to 2000, it is true, is it not, that we have forces in place, we have complete physical control of the facility. That is true; is it not?

Mr. CHURCH. That is true.

Mr. LAXALT. In the year 2000, it is true also, is it not, we will have absolutely no military presence within the Canal Zone or with the Republic of Panama.

Mr. CHURCH. From the year 2000, American bases will be closed and Panama then undertakes by these treaties not to permit any foreign forces on her soil.

Mr. LAXALT. All right.

Mr. CHURCH. The present arrangements we have with Panama do not contain that prohibition.

Mr. LAXALT. I understand that.

But in the year 2000, if there is a difficulty, and as the Senator said we do not know, we hope not, but if there is a difficulty, either with Panama or with the Soviet Union, at that point we will have absolutely no physical military forces within the zone. I think the Senator concedes that.

Mr. CHURCH. Yes.

Mr. LAXALT. All right.

Mr. CHURCH. The Senator is correct. But I may point out to him that as far as other large powers are concerned, we have always relied upon the primacy of the American fleet to protect the canal. We have kept enemy ships far enough away in two World Wars so there could not be any interference with the transit of ships through the canal.

Secretary of Defense Brown told us, in the course of our hearings, that we would not defend the canal by sinking an enemy ship in it. What we would do is use our naval power to keep enemy ships away.

Of course, under these treaties, we retain our capacity to control both the Pacific access and the Atlantic access to the canal, to prevent any threat of that kind from developing in the future.

Mr. LAXALT. I understand.

But let me carry the scenario just a bit further.

It is true we would, I hope, maintain a strong naval presence in the area on either side.

Let us assume that we have difficulty with Panama or with the Soviets, and let us assume that the difficulty does not come from the outlying sea lanes but from within Panama itself, and we need access for security purposes. At that point, we will have no physical forces there. Is it not true that that is going to call literally for an invasion of the Republic of Panama by this country to enforce its rights?

Mr. CHURCH. The term "invasion," I suggest to the Senator, is inappropriate, because these treaties will be amended in such a way as to make it explicit that we reserve a legal right to use unilateral military force if there is any future threat to the canal.

"Invasion" connotes an illegal entry upon the territory of another nation, but in these treaties, if amended, we reserve the legal authority to move in, if necessary, to keep the canal open in the future. Should that ever become necessary, we are far better off to be clothed with the legal right to defend the canal than to have to act without color of right.

Mr. LAXALT. I understand that. But what we are doing here, basically, is trading a right which is very tangible, in place, and we are trading it for a paper legal right.

Let us go back to my problem, which concerns me very seriously, and I suspect it concerns other millions of Americans also.

Mr. CHURCH. The Senator's problem is that he wants to keep American forces in Panama forever.

Mr. LAXALT. As long as the security of this country is to be maintained; the Senator is absolutely right.

Mr. CHURCH. Then I suggest to him that he is living 50 years behind his time. There was a time, back when the 1903 treaty was executed, when this world was controlled by half a dozen great powers, when most of the people of the world, living in South America and Africa and Asia, were subjugated to foreign control, enforced by foreign troops. But those days are over. I suggest to the Senator from Nevada that all those colonies have disappeared. They are part of a dead past, and in their place are a hundred new independent governments.

Mr. LAXALT. Is the Senator suggesting that Panama is a colony?

Mr. CHURCH. I am suggesting to the Senator from Nevada that the Panama Canal Zone, subjected as it is to American law, American control, and the occupation of American forces, represents in fact, an exercise in extraterritorial rights that has all the characteristics of a colony.

Mr. LAXALT. I do not want to get too much into the point of a colony, because we are going to discuss that thoroughly when we

get into article I. However, is it not the essence of a colonial situation that the major power exploit the smaller power in terms of its natural resources? Where has the exploitation been in the situation here, where no country has been more greatly benefited by another than Panama has been benefited by the United States, since 1903?

Mr. CHURCH. I would like very much to answer that question, because, among all the arguments that have been made by the treaties opponents, the one just advanced by the Senator from Nevada annoys me the most. So if the Senator will indulge me, I should like to take a few minutes to answer that argument.

Mr. LAXALT. May I sit down? [Laughter.]

Mr. CHURCH. Yes, you may sit down. Are you ready? [Laughter.]

A number of Senators have made this point, that we have done the Panamanians so much good they should be appreciative. Why, we have invested billions of dollars in military installations. We maintain a large payroll in the Canal Zone. Even though the better paid may not be Panamanians, still, 75 percent of the employees are Panamanian citizens. And we pay them good money.

Moreover, Americans in the Canal Zone go outside the zone, into Panama, and they buy merchandise in Panamanian stores, and this has had a beneficial impact on the economy. The Panamanians must be a very ungrateful people, we are told, if they do not appreciate how much good we have done them.

As the Senator from Nevada, himself, has pointed out, they are not the poorest people in the hemisphere. They are relatively better off than many other Latin Americans, at least in part by virtue of our investment and our payroll. So why should they not like us? Why should they not want us to remain indefinitely, with our laws, with our police, with our military forces, in this Canal Zone which bisects that little country, even though any Panamanian who might be caught speeding in the Canal Zone, or with a broken taillight, or for some other infraction of our regulations would be subject to our arrest, to our jurisdiction, and would be tied in our courts, in our language——

Mr. LAXALT. The Senator is not apologizing for that?

Mr. CHURCH. I am saying to the Senator, imagine, if you will, such an arrangement in our country. Suppose there was a strip of land 10 miles wide and 40 miles long in Nevada, occupied by a foreign power, controlled by foreign military forces, and any Nevadan who went in there was subject to the jurisdiction of that foreign power, could be arrested, could be tried, could be jailed. What would happen in Nevada? Why, the people of Nevada would not wait overnight to take charge and force an end to that humiliation.

Mr. LAXALT. I suggest that the people of my State feel that that is their condition now, since 87 percent of the land is in the Federal Government, which we consider to be a foreign power. [Laughter.]

Mr. CHURCH. Very well. But I believe that the Senator's point only underscores the force of the question I put to him. The Senator knows that the people of Nevada would not permit the imposition of a foreign jurisdiction within their State, and neither would the people of Idaho.

Mr. LAXALT. Mr. President, will the Senator yield?

Mr. CHURCH. And neither would the people of any State in the whole of our country.

Why must we live by a double standard? If we would not accept such a condition, why should we expect the Panamanians to accept it, and love us in the bargain?

I say to the Senator that you cannot pay the Panamanians enough to buy their pride. You cannot pay them enough to purchase their patriotism.

When I hear Senators say on this floor, "Yes, we realize that new, better, fairer arrangements should be made, as long as we keep the zone, and the canal; all we have to do is pay them more money," I think to myself, how can they miss the point so completely? How can anyone be so blinded by the double standard as to make an argument such as this?

Mr. LAXALT. Mr. President, will the Senator yield?

Mr. CHURCH. I yield.

Mr. LAXALT. As long as we are dealing in rampant speculation, where would Panama be today if the United States had not gone in there in 1903 and built that canal?

Mr. CHURCH. If the Senator wants me to speculate, I do not think this question is susceptible to a single answer. A French company was still there, digging.

Mr. LAXALT. Bankrupt.

Mr. CHURCH. It was the trustee of a bankrupt operation.

Mr. LAXALT. That is right.

Mr. CHURCH. There were other countries of the world that might well have picked up where the French left off, if the United States had not intervened in Panama.

I am not at all sure, given the fact that the Suez Canal was constructed by a foreign company, that it necessarily follows that no Panama Canal would ever have been built, but for the United States.

The Senator certainly cannot prove such a proposition, nor do those events that preceded our intervention in Panama suggest that a canal might not have been built by some other country.

Mr. LAXALT. But the point that I make, I say to the Senator, is this: I have sat on this floor far too many hours the last 3 days and heard the proponents of this treaty literally apologize to the world for our being in Panama to begin with and literally apologize for what I considered to be a magnificent project and a tremendous contribution to the people of that country.

I, for one, am not going to indulge in any breast-beating here because I have nothing to apologize for. I do not think the vast majority of the American people have anything to apologize for. I think what is past is past and we deal with the situation as we now find it and look to the future.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. CHURCH. Mr. President, I could not agree more with Senator Laxalt. He said he will not engage in any breast-beating. But I suggest he is beating a strawman. I have not heard any proponent of the treaty suggest an apology—certainly I have not.

Mr. LAXALT. I heard Senator Gravel yesterday, which almost caused me to cry, about how badly we treated those poor Panamanians.

Mr. CHURCH. I am sure that the Senator was able to keep his composure.

Mr. LAXALT. Barely, for a different reason.

Mr. CHURCH. In any case, I have said nothing. My colleague, Senator Sarbanes from Maryland, who shares the floor with me as a proponent of these treaties, has said nothing to suggest we should feel guilty. The construction of the canal was a wonderful achievement. All Americans took pride in it and rightfully so. At the time, it was the greatest engineering accomplishment in history. And it has been a blessing to the world, an enormous benefit to the world's commerce.

Mr. LAXALT. Does the Senator feel guilty——

Mr. CHURCH. Nobody is apologizing for the Panama Canal or American construction of it.

Mr. LAXALT. Does the Senator feel——

Mr. CHURCH. If I may reply to the Senator, he made a statement and I would like to make my own position clear.

It has been 75 years since 1903. The issues before the Senate now do not relate to the great engineering accomplishment represented by the construction of the canal. We must deal with the question of whether, in 1978, when the colonies of this world have become independent nations when values and practices have changed, it is advisable for the United States to maintain in perpetuity what is, in effect, a colony, an American colony stretching across this little country. That is the issue, and I say we will better protect our interests for the future if we do the right thing by Panama today.

This has nothing to do with besmirching the past because in 1903 the world operated on entirely different standards.

Mr. LAXALT. I might suggest——

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. LAXALT. May I make one observation, I say to Senator Sarbanes. I agree, the situation has changed dramatically and 1978 is not 1903. This is one of the real concerns I have because the fact is and I am told by reputable people like Admiral Moorer that that canal is a strategic waterway, absolutely essential to the security of the United States and essential to the security of this hemisphere. When I am told by people like this that it is essential that we maintain our position I become concerned. I become concerned, too, because General Torrijos told me personally that he was closely tied with Fidel Castro and, when I find that the President today held meetings in the White House where there is great concern about additional Cuban involvement in Africa, then I say to myself if we surrender this strategic facility, which has enormous security consequences for this country, where in the world are we if we find Fidel Castro operating that facility in league with the Soviets? Is that not a genuine concern, so long as we are dealing with speculation here?

Mr. CHURCH. Mr. President, I do not know whether we are dealing with speculation or with some chapter out of Alice in Wonderland.

Mr. LAXALT. There is no chapter in Alice in Wonderful in Africa, to be sure.

Mr. CHURCH. If I follow the Senator's argument, he suggests these treaties will somehow open the door to increased Communist influence in the isthmus.

Just the opposite is the case. If the Senator is interested in the canal and in its security, let me just quote the Secretary of Defense who, when he appeared before the committee, had this to say:

The canal was built for shipping, not slogans. We seek to guarantee transit of vessels, not theoretical claims of title. These goals we have sought, as I said at the beginning, are practical. The issues before you are practical ones. Our negotiations have obtained instruments which, more recently than thousands of forces and their armaments on the spot, will assure those practical objectives for generations to come.

I agree with Secretary Brown, and I will have some more to say on that subject in a moment.

Mr. MATSUNAGA. Mr. President, will the Senator yield?

Mr. CHURCH. I will yield to the distinguished Senator from Hawaii.

Mr. MATSUNAGA. This is on one point on which the Senator from Nevada made relative to his conversation with General Torrijos.

Mr. CHURCH. Yes, I yield for that purpose.

Mr. MATSUNAGA. I was one of those seven Senators who went to Panama last November, headed by Senator Byrd, our majority leader, and when the question was put to General Torrijos, "Is it true, General, that after the treaties are ratified, you will invite either Cuba or Russia to come in to help you operate the canal," the response of General Torrijos was, "I don't want Panamanian waters infested by Communist sharks." That is quoting General Torrijos.

Mr. CHURCH. I thank the Senator.

Mr. LAXALT. For the purpose of the Record so it does not become confused, I say to Senator Matsunaga, I was not a member of that party, was I? I was not a member of the party.

Mr. MATSUNAGA. No, he was not.

Mr. LAXALT. The Senator was in a separate group. He was there when?

Mr. MATSUNAGA. In November of last year.

Mr. LAXALT. All right.

Mr. MATSUNAGA. I was with that group which was headed by the distinguished majority leader.

Mr. LAXALT. I would not want anybody to have a misunderstanding that we had differing interpretations of the same meeting. The fact is that I was in the latter part of December and asked the general specifically of his relationship with Fidel Castro and to his credit—he did not back away one bit—he told me that Fidel Castro was a friend and trusted adviser.

Mr. MATSUNAGA. Right.

Mr. LAXALT. And for us to think that he thinks that Fidel Castro is a Communist shark is dealing in utter fantasy. They are friends, they are buddies, and we better smarten up and recognize that fact.

Mr. MATSUNAGA. Aha. We are friends I take it now with—as a matter of fact we have diplomatic relations with Russia. The Gov-

ernment of Panama, now headed by General Torrijos, has no diplomatic relations with Russia or with Red China for that matter. We are now courting friendship with both those countries. And this was pointed out to us: "You talk about fearing the Communists running Panama, but you have diplomatic relations with Russia; we do not."

And the implication of the statement made by the Senator from Nevada is that because Castro happens to be a good friend of General Torrijos, General Torrijos is going to invite Castro to run Panama. Far from it. He even said to us that communism is not suitable for Panama as it is for Cuba.

Mr. LAXALT. Does the Senator think for a moment that General Torrijos would have admitted, if we ratified these treaties, he is going to invite Castro in?

Mr. CHURCH. Mr. President, I would like to take back the floor.

Mr. MATSUNAGA. No, I did not intend that. I wanted to quote the general relative to the matter of communism.

The PRESIDING OFFICER. The Senator from Idaho (Mr. Church) has the floor.

Mr. CHURCH. I thank the able Senator from Hawaii (Mr. Matsunaga). I fully agree with him.

It was not so long ago that I was in Panama with other members of the Foreign Relations Committee. We had a morning visit with Torrijos.

Now, I am not one who could be counted among the boosters of General Torrijos. I do not happen to care for dictators or for dictatorships. But I must say, in all fairness, that it will come as a great surprise to General Torrijos to hear himself described on the floor of the Senate as being a pro-Communist. I think that is just an astonishing argument, which, in the judgment of the Senator from Idaho, goes beyond the line of responsible indictment.

Mr. LAXALT. I do not recall that I made that type of allegation.

Mr. CHURCH. Well, you said he was a booster of Castro, a buddy, and that soon the two would be working together in Panama.

Mr. LAXALT. My impression of General Torrijos is that he is not an ideologue; he is a hard, tough, dictator, and that is who we have to deal with here.

Mr. CHURCH. Yes, that is my impression, too, and he is not going to share power in Panama with Castro or anyone else.

Mr. LAXALT. Is the Senator saying—

Mr. CHURCH. What I am saying is this—and I would like to say it without interruption, because I do have the floor—there is nothing about Torrijos that would suggest he is inclined toward communism. If there ever was a burgeoning free enterprise economy, you will find it in Panama today.

Mr. LAXALT. I would be—

Mr. CHURCH. In fact there are, by latest count, 63 major multinational banks located in Panama, the biggest concentration of banks outside the United States in this hemisphere. When we talked to the bankers and businessmen in Panama City, they did not tell us, "Look out for this man Torrijos; he is about to turn Panama over to the Communists."

Do you know what they told us? They said, "We believe the ratification of these treaties would represent good business."

Mr. LAXALT. That is the reason why we are here. If it were not for trying to protect the flanks of those eastern banks, we would not be here.

Mr. CHURCH. The Senator keeps shifting ground. One minute he says we are promoting the interests of Communists, and the next minute he says we are promoting the interests of the banks.

Mr. LAXALT. I believe it is both.

Mr. CHURCH. How can it be both? The two interests conflict.

Mr. HUDDLESTON. Will the Senator yield for one question?

Mr. CHURCH. I am happy to yield to the Senator.

Mr. HUDDLESTON. On the question of Torrijos and his inclination toward communism, like the Senator from Idaho, I do not intend and do not want to be an apologist for Gen. Omar Torrijos. I do not think that is even proper to this particular matter that we are discussing. But I was in the delegation that Senator Matsunaga discussed, that went to Panama, and I had this very question in mind while I was there.

So I inquired of every person that I could about the Communist inclinations of Gen. Omar Torrijos. We, of course, inquired of him personally, and got the response that the Senator from Hawaii has already mentioned. But that was not enough. We talked to everybody, including his greatest enemies, the people in the Government and out of the Government who dislike Torrijos, who dislike his government, who are of political parties that are rivals, who would like to be functioning and be running for President.

Not a single one of them, his greatest enemies, the man on the street, the American citizens who had lived there 20 or 25 years and conducted business—not a single individual said they thought Torrijos was influenced by the Communists, or thought that he would try in any way to bring in a Communist-influenced government at any time while he was there in charge of Panama.

His response directly to me was that if he tried to bring in a Communist regime, he would be run out of the country by the people of Panama, and that if anybody else tried to establish one, he would leave of his own accord. President Lakas told us directly that that would be the only situation under which he again would take up arms, if General Torrijos or any other person tried to establish in Panama a Communist regime.

Now, nobody knows what the future is going to bring, but I think in these arguments we ought to try to focus on the situation as it is, and on what the best evidence available at this time would indicate.

Now, everybody knows that one way to stir strong concern in the people of America about any question is to raise the red flag of Communism, and that has really confused the issue that is before us now.

Mr. LAXALT. Do you not think the issue is relevant, Senator Huddleston?

Mr. HUDDLESTON. The issue is valid, but we ought to look at facts and see just where we might be headed.

We found nobody, nobody in Panama, the people on the street, the people in government, the people out of government who wanted to be in government, enemies, friends, whatever, who had any concern about that government going toward the Communists.

Now, one student group did make this point: The only way, they told us, that there was any chance that the Communists would exert any influence within Panama would be the rejection of these treaties to allow this bone of contention—and it is the only bone of contention between Panama and the United States, and that is the operation, control, and ownership of the canal—if we allow that festering sore to remain and be exploited by people who know how to exploit that kind of situation, then we may run the risk of opening the door to additional Communist influence, but only in that way.

Mr. CHURCH. I thank the Senator very much for his intervention, and I agree wholeheartedly with his observation.

I think it might be well at this point to place in the Record the assessment of our own Ambassador to Panama on the subject at hand. Let me read from page 286 of the hearings of the Senate Foreign Relations Committee. This is the American Ambassador to Panama, Ambassador Jorden, speaking:

In the first place, I have come to know General Torrijos very well over the last 3½ years. I have spent a lot of time with him traveling around the country and in the capital. I guess at this point I know him about as well as any American. I can assure you that he is not a Communist. He is a man deeply dedicated to his country and to the improvement of his people's conditions. He has insisted on great improvements in education, health care and particularly for those people in the countryside who in the past have never had much opportunity for an education or for much help.

Just as a footnote, let me point out that as captain in the national guard he was rounding up a group of left-wing guerrillas and was shot by the Communists. It is very hard for me to believe that a man who was shot by the Communists can become a convinced member of the organization. In any case, all one needs to do is to talk to the man at great length, see what he has done, see what the impulse is in his government to quickly recognize that he is not a Communist and does not approve of the Communist system.

One of the things that is closest to his heart, for example, is the establishment in Panama of the largest banking center in the Western Hemisphere. Would bankers who are very astute observers be likely to establish banks there if they thought they were going to go Communist?

That is the testimony of Ambassador Jorden on this issue. I have wondered what the basis is for the argument that General Torrijos is pro-Communist, because it seems so utterly preposterous. Yet, when I listen to Senators, I hear them say, "Torrijos is pro-Communist because he visited with Castro."

Well, Mr. President, I visited with Castro. Does that make me pro-Communist? Other Members of the Senate Foreign Relations Committee interested in a more rational policy that would better serve our interests in the Caribbean, have visited with Castro. Does that make them pro-Communists? The Secretary of State, just a few weeks ago, went to Peking and visited with the leaders of Red China. Does that make Mr. Vance pro-Communist? The President of the United States will soon have dealings, as he has had before, with Mr. Brezhnev, and they will be extensive dealings. Does that make him pro-Communist?

I do believe we have to get this debate down on the ground, and discard these flimsy, preposterous charges. We must clear away this debris and consider the real question: Whether the treaties, serve the vital interests of the United States.

Let me return to the tests I suggest for evaluating the treaties.

Let us test the treaties against the four criteria mentioned earlier.

First, the United States must continue to enjoy the full use of the canal as an open and neutral passageway.

This criterion has two components, both of which, I think, are critically important: First, in time of a specific security need on the part of the United States, our vessels must have the right to go to the head of the line; and second, use of the canal must, to the extent possible, be immune from sporadic harassment.

As it was originally submitted to the Senate, the neutrality treaty was ambiguous regarding the U.S. right to go to the head of the line during emergencies. I therefore proposed that the Committee on Foreign Relations recommend to the Senate that the treaty be amended to make explicit the U.S. right of priority passage in time of emergency.

I note that sitting in the chair at this moment is the distinguished Senator from South Carolina. He was one of the first to suggest that the treaty be amended. It was Senator Hollings who, weeks ago, called the attention of the Senate to the need to amend these treaties so that there never could be any doubt about our right to priority passage any time in the future in case of need or emergency. I commend him for it.

There were other Senators as well. Earlier today the majority leader mentioned Senator Dole, of Kansas, who deserves credit in this regard. There were a half dozen Senators, including the majority and the minority leaders, myself, and others, who felt that the treaties needed to be amended in this respect.

So I proposed to the Committee on Foreign Relations that it recommend to the Senate an amendment to the treaties making explicit the right of the United States to priority passage in time of emergency. The committee adopted that recommendation with only one dissenting vote. Now I understand 77 Senators are cosponsors of the amendment.

U.S. rights pursuant to it, the committee report notes, "could hardly be more explicit." "What constitutes an emergency," the committee report states, "and when one exists, is for the United States and the United States alone to determine." This amendment is so central to the protection of our national security interests that, unless it is adopted, I would find it impossible to support these treaties.

The second component of a safe and open canal is that ships going through it not be subject to intermittent violence. If necessary, through the application of massive military might, I have no doubt that we could hold the canal in a hostile environment. It would be almost ludicrous to suppose that tiny Panama, through sheer force of arms, could somehow wrest the canal away from the United States. The real threat, however, is one that we cannot forestall through military means. I would again call attention to the testimony I referred to on Wednesday, that of the Commander in Chief of the Southern Command, Lt. Gen. D. P. McAuliffe. He told the Armed Services Committee that "one can easily visualize the use of standoff weapons only 5 miles away, off in the jungle."

They "wouldn't have to hit very much in the canal," he said, "but they would terrorize the employees and probably stop com-

mercial shipping whether they sink a ship or not." So even if the canal remains technically "open," and even if most ships are able to get through without incident," it will not be used if vessels in it—and their crews—are even occasionally the targets of periodic rifle fire or mortar shells. The expert military witnesses who testified before the Foreign Relations Committee were emphatic in predicting that the resentment and recriminations bred by rejection of the treaties could soon spill over into acts of terrorism directed at the canal and the ships within it. General Brown indicated that threats to the canal are far more likely to be internal than external. In addition to the threat of intermittent violence described by General McAuliffe, General Brown testified that the canal is now vulnerable to acts of sabotage which could close it for extended periods of time. He also testified that in a "worst case" guerrilla war it could take up to 100,000 troops to protect the canal. The message is clear: that the Canal Zone, if this issue is not handled properly, has the potential of becoming a military nightmare, another Vietnam.

Let me just pause here to recount the exchange which took place earlier today between the majority leader and me emphasizing that this Senate is not acting under coercion. A person who goes out into a winter night and takes the precaution of putting on a coat before he opens the door and wades out into the snow is not acting under coercion. He is trying to sensibly accommodate himself to the situation he foresees when he opens the door.

Of all the silly arguments, none conjures up a more ridiculous scene than saying that the United States is being coerced by one of the smallest and weakest countries in the world to yield the Panama Canal.

Nor are we particularly concerned about terrorists. Every country has them. Whether this Senate rejects or ratifies the treaties, no one can assure us that there will be no trouble with terrorists in the Canal Zone in the future.

What our generals are talking about is a climate. If there is a hostile climate, created by the smoldering resentment of the Panamanian people who feel we are denying them their right to exercise jurisdiction over their land, then we could face severe problems defending the canal and keeping it safe as a peaceful passage-way.

There is not any question about how the people of Panama feel. They have already expressed their feeling in free elections, where more than two-thirds voted to ratify these treaties, and those voting against the treaties did so because they thought they did not concede enough to Panama. There was a 95 percent turnout. So, if we are to be prudent, we should take into account the strong feelings of the Panamanian people as a whole.

Not the terrorists, not the nuts, not the extremists, but the legitimate aspirations of the Panamanian people as a whole.

Either we are going to nurse their smoldering resentment along until it breaks out in hot flame; either we are going to wait until violence erupts again in the streets and Panamanians and Americans die, as they have before; either we are going to wait until the time death and bloodshed become the hallmark of our relations with this small country, or we are going to recognize that the time

has come to make adjustments that all the Panamanian people feel they are entitled to, and all the world recognizes as legitimate. Let us make those adjustments under these treaties which protect the vital interests of this country in the years ahead; which insure an orderly transition; which reserve to the United States the right to defend the canal and have priority passage in the event of emergencies in the future; which are fair, and thus will bring us the respect of the world, because the world will know that the United States was not coerced into acting, but acted out of magnanimity.

The alternative, Mr. President, is to wait: wait for the bloodshed, wait for the violence, wait for the recriminations; wait for the kind of battle that history and experience suggest is in the offering if we deny these people their legitimate aspiration to reclaim their jurisdiction over their own land; wait until the taste of blood turns bitter on our tongues. Then, at last, we shall have to make the adjustment anyway—when we can no longer derive honor from it; when we cannot even salvage our dignity. Then we shall look back on this day and say, "Why didn't we have the foresight, the commonsense, to make the adjustments with honor and dignity by consenting to treaties which incorporated the traditional principles of our own land?"

The solution—and the only solution, it seems to me—is to retain Panama's friendship and cooperation. For only by avoiding a hostile environment surrounding the canal can we invite world commerce to use it. These treaties will constitute such an invitation.

The second requirement is that the canal be kept militarily secure. This means that it must be defensible against both external and internal threats.

Our capability to protect the canal against external threats will remain essentially as it is today: We will continue to rely upon our ability to sink enemy ships before they reach the canal. This is how the canal was protected during two world wars, and there is no reason to assume that that same method will be any less effective in the future.

Under the new treaty, the canal will be equally secure against internal threats. We will retain our bases in Panama through the end of this century. During this period we will have "primary responsibility" for the protection of the canal. Afterwards, Panama will be prohibited from allowing any foreign military forces, defense sites, or military installations within its boundaries. The most important protection against internal threats after Panama assumes full control, however, will be the United States' right to take unilateral military action against any such threat. Article IV of the Neutrality Treaty provides that the United States and Panama will "maintain the regime of neutrality established in this treaty, which shall be maintained in order that the canal shall remain permanently neutral * * *." As we all know, President Carter and General Torrijos, in their October 14 joint statement, interpreted this provision as allowing the United States to "defend the canal against any threat to the regime of neutrality, and consequently (to) have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal."

I was pleased to see the language of article IV so clarified; I think it is essential that the right of the United States to take unilateral action to protect the canal be made clear. While I am happy that both sides regard the clarification as legally binding, I believe that greater assurance is needed that this communique has the same force and effect as other provisions in these treaties. For this reason I sponsored, in the committee, the amendment which would include at the end of article IV of the Neutrality Treaty, an amendment incorporating this language into the text of the treaty itself.

Mr. SARBANES. Will the Senator yield?

Mr. CHURCH. Yes, I am happy to yield to my able friend from Maryland (Mr. Sarbanes).

Mr. SARBANES. I simply want, at this point in the debate, to recognize the extraordinary contribution which the Senator from Idaho (Mr. Church) made in the consideration of these treaties. The Senator was instrumental in the recommendation for the incorporating into the treaties of the statement of understanding dealing with the right of the United States to act to protect the neutrality of the canal and the right of head-of-the-line passage for our naval ships. It was his sharp questioning in the course of committee considerations of the treaties which developed the case for such action.

It was his proposal in the committee, adopted as a committee recommendation to the Senate, which calls for amendments to the permanent neutrality which leave absolutely no question, no doubt, no ambiguity whatever, with respect to the American right to protect American interests in these two vital respects.

Mr. CHURCH. I thank the Senator very much for his remarks. He will remember that it was in the early stages of the hearings that we began to get reports of differing interpretations. I thought that was intolerable. I said then, and I had the full support of Senator Sarbanes at the time, that the Senate could not be expected to ratify these treaties if crucial provisions were being interpreted in one fashion in the United States and in another in Panama. It was after this development that President Carter asked General Torrijos to return to Washington and the interpretation of these crucial provisions was clarified.

As I have said before, welcome as the development was, in my judgment, it is insufficient to rest the interpretation of such vital provisions upon an unsigned communique by two heads of state. It is for this reason that I said we must put this language directly into the treaties themselves. If we do, I can support them. If we do not, I shall have to vote against them.

Mr. President, in the committee's report, the interpretation of the second amendment that we recommend to the Senate is made clear:

It allows the United States to introduce its Armed Forces into Panama whenever and however the canal is threatened. Whether such a threat exists is for the United States to determine on its own in accordance with its constitutional processes. What steps are necessary to defend the canal is for the United States to determine on its own in accordance with its constitutional processes. When such steps shall be taken is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act as it deems proper against any threat to the canal, internal or external, domestic or foreign, military or non-

military. Those rights enter into force on the effective date of the treaty. They do not terminate.

With this modification, will the treaties help promote military security for the canal? The best place to look for an answer, it seems to me, is to those who have the responsibility for defending it—the U.S. Armed Forces. According to the Chairman of the Joint Chiefs of Staff, the United States would “without question” have the right to act unilaterally to protect the canal against any internal threat, including radical Panamanian rioters, for example. But again, the heart of it, the committee was told by General McAuliffe—who is directly responsible for the canal’s defense—is that the treaties will create a “friendly environment around the canal in which to operate.” We can conduct “our defense tasks better in a friendly rather than hostile environment,” he said. And while sabotage can never be ruled out, the incentive can be taken away by giving the Panamanians a stake in the canal. As Secretary of Defense Brown testified:

The most important factor in inhibiting such actions by frustrated groups in Panama is a situation in which the Panamanian Government and the bulk of the Panamanian people see the continued operation of the canal as in their interest.

It just makes sense. Commonsense.

Adm. Elmo Zumwalt, former Chief of Naval Operations, concurred.

The Panama Canal can never be made completely secure militarily. We know that. Neither can the Capitol. Nor can the Pentagon. Nor the country. But with the two modifications I have outlined, I am satisfied that General Brown is correct in saying that the security of the canal is actually enhanced by the new treaties. They will encourage Panamanian cooperation; they will prohibit—for the first time—the stationing of foreign troops in Panama; they will give the United States the unilateral right to act militarily in the canal’s defense; and they will give our ships the right to go to the head of the line in an emergency. Former Secretary of State Dean Rusk summarized the net effect of these guarantees:

If, God forbid, it should ever become necessary for a President and a Congress to take strong measures to keep the canal functioning and safe.

He told our committee:

They would be in a far stronger position to do so under the treaties of 1977 than under the anachronistic Treaty of 1903.

The third requirement is that the worldwide position of the United States not be weakened, and that the hand of our adversaries not be strengthened in Latin America. A natural tendency exists, after the Vietnam tragedy, to want an end to what some see as yielding and retreat by the United States. I see no point in debating here whether that perception is correct; my own judgment is that our foreign policy has been generally more realistic—and more humane—since our involvement in the Vietnam war ended. But whether that is true or not, the point must be made, and made emphatically, that the treaties now before us do not represent a retreat. The willingness to enter * * * sign of strength, not of weakness—just as it was a sign of strength, not weakness, to give the Philippines back to the Filipinos, and just as it was a sign of strength, not weakness, to give Okinawa and Iwo Jima back to the

Japanese. We fought and bled for Okinawa and Iwo Jima during World War II, but the citizens of those islands were Japanese, and they wanted to live under the Government of Japan, and we concluded that it was right and just that they be allowed to do that, they were entitled to be restored to the jurisdiction of their homeland.

No one perceived our country as weak when we granted independence to the Philippines or when we returned Okinawa and Iwo Jima to Japan. Quite the contrary—these were seen as the acts of a self-confident nation, as acts of justice, as adherence to our principles—acts which benefitted our relations significantly in the Pacific. These treaties with Panama also will represent an act of self-confidence and of justice and of principle. One of the principles that Americans have always held highest is that of self-determination, and it would be ironic, indeed, if we were to renounce it in the case of tiny Panama today.

These treaties, in short, will weaken our adversaries and strengthen our friends throughout the Western Hemisphere. As Admiral Zumwalt testified, rejection of the treaties would “serve to separate us from our friends in Latin America,” and make our adversaries’ objectives easier to achieve in Panama and in neighboring countries.

A new arrangement governing the use of the canal, one which is mutually acceptable to Panama and the United States, would likely increase U.S. influence in Panama and in Central America. It would give leftists less to exploit, in Panama and around the world, and it would make other governments in Latin America less vulnerable to pressures from the left. It could, in sum, be the keystone to improved relations with all of the Hemisphere.

It thus appears to me that, on this count as well, the treaties pass muster.

Fourth and finally the treaties should be fair and should be seen to be fair. Fairness is of course relative: It is best measured perhaps by contrasting the new relationships with the old and by superimposing those old relationships on the United States.

There is an old Indian saying in the West you must never measure a man until you have walked a mile in his moccasins.

It is a pretty good test for eliminating the double standard.

In our hearings the American Ambassador to Panama William Jordan applied that test rather vividly. Let me quote what he said:

Suppose * * * that history had dictated that the Mississippi River and the territory on each side were controlled by a foreign power. Suppose that in going from Illinois to Missouri, or from Louisiana to Texas, you had to cross that strip.

And imagine, if you will, that you broke the law in some fashion—by speeding or having a tail light out, or whatever, and you were arrested by a French gendarme or a Mexican policeman. It does not take great imagination to know what our reactions would be. Yet that is the situation that our Panamanian friends have found themselves in for the past 70 years.

Americans are a fair-minded people, and I doubt that most Americans would view that sort of arrangement as fair.

Admiral Zumwalt summarized well the views of many witnesses. He said:

The present relationship is a colonial anachronism which is no longer feasible for a democratically-constituted nation to maintain.

The admiral said it well. The treaties, I believe, rectify this unfairness by giving Panamanians a stake in the operation of the canal pursuant to an arrangement that has been approved by two-thirds of the Panamanian people.

Therefore, it appears to me that the treaties, as modified, will pass each of the tests that concerned Americans have applied. They allow the United States to continue to enjoy the canal as an open and neutral passageway. They maximize the security of the canal. They strengthen our worldwide position. They weaken that of our adversaries. And because they are fair, they are likely to endure.

These are the treaties' advantages, but they obviously are not in our national interest unless the advantages outweigh the disadvantages.

What are the disadvantages?

There are, I think, seven principal arguments that have been made against the treaties. They—and what I believe are the answers to them—are as follows:

First, the familiar argument: We built it and paid for it. It is ours, and we should keep it. The answer is, I think, that we are keeping it, in the way that matters—the only way that matters. We are keeping it open and running, and that is what is important.

To argue about technical legal questions, such as who has "titular sovereignty," misses the point. It is use that counts. It is our right to protect the canal that counts. It is our right to go through first during emergencies that counts. And these rights are the ones guaranteed by the treaties.

We do not now possess "titular sovereignty" over the canal or the zone it occupies, under the current treaty, as the committee report makes clear. But even if we did, what good would it be if, in order to retain it, we had to jeopardize the canal's use?

So the answer, in short, is that the treaties do not give away our vital interests in the canal. They insure our ability to protect those interests.

As General Brown testified before our committee, they "provide the best way of assuring that we will be able to continue to use this canal." To refuse to approve the treaties would be the surest way to expose the canal to obstruction by terrorists, saboteurs, and rioters, who would have the sympathy of much of the world if the treaties are rejected.

The second argument is that we should not pay them to take the canal off our hands.

Mr. President, the answer to that argument is that we are not. These treaties do not commit the U.S. Treasury to pay one dime to Panama. Any money Panama receives will be paid out of operating revenues of the Panama Canal Commission, revenues generated by toll fees or by subsidiary services performed in Panama by the commission.

The statement of President Carter in this regard has been distorted. Several times today, in the course of the debate, I have heard his statement distorted. Let me read what the President had to say on this subject in his recent address to the Nation. President Carter said:

Under the new treaty, any payments to Panama will come from tolls paid by ships which use the canal.

That is an accurate, factual, truthful statement.

As I have said, these treaties do not commit the U.S. Treasury to pay one dime to Panama. Any money Panama receives will be paid out of operations of the canal itself, and the tolls will be adjusted to generate those revenues.

It is true that Panama is in line for certain economic assistance, but this aid is apart from the treaties. We have given aid to Panama before, as we have to every other country in Latin America, and as we will again. But this aid has nothing to do with the treaties nor with the revenues to be derived from the treaties.

Most of the proposed new aid will consist of loans which must be repaid to our Treasury and which, in addition, will be granted under terms aimed at stimulating U.S. exports, and thus helping our own employment situation.

Panama never yet has defaulted on a loan from us. Its credit rating is good. There is no reason to expect Panama to default in the future, given the importance to its economy and its prosperity of maintaining that credit rating. So the American taxpayer will not be affected or set back by such transactions.

The third argument is that General Torrijos is a dictator and head of an unstable government. Much has been said about this already. Let me simply add that it is true that General Torrijos is a dictator, far from the worst in Latin America but not the most benevolent, either.

It is also true that most governments in the world today are authoritarian. They are dictatorships of one form or another. Of the 145 nations in the United Nations, probably not more than 30 would qualify as being elected under a free political system of the kind we enjoy in the United States.

It never has been our practice to deal only with fully developed democracies, for to do so would be to declare some 120 nations in this world off limits.

So the problem is not that the Government of Panama is a dictatorship and therefore unstable. As a dictatorship, it happens to be very stable. General Torrijos has been chief of state for 9 years. He has held the reins of government in Panama longer than any other Panamanian, since independence. There is no effective political opposition and no sign that he may be deposed. He has managed to retain his popularity among the people of Panama. We deal with him because he heads up the Panamanian Government, and there is no one else with whom to deal. So much for that argument.

The fourth argument made against the treaties is that General Torrijos is pro-Communist and the treaties, therefore, will lead to a Cuban or Soviet takeover of the canal.

The answer is that the Torrijos government is strongly nationalistic but not pro-Communist. It is true that General Torrijos has visited with Fidel Castro. So have I. So have a number of other Members of this body. But the Torrijos government does not even recognize the Soviet Union or China, and the economy of Panama, far from being socialistic, consists of a strong free enterprise system. Over 70 major multinational banks operate in Panama, including eight of America's largest. Banks are not wont to do business in unstable societies. There is moreover, no Soviet pres-

ence to speak of in Panama at the present time. Out of a population of some 1.7 million people, there are only a few hundred Communists.

The specific answer to concerns about a future Soviet or Cuban military presence, however, is that Panama will be expressly prohibited under the new treaties from inviting foreign troops into her territory. I mentioned this earlier but it bears repeating: Article V of the Neutrality Treaty provides that after the year 2000—the last year the U.S. Armed Forces will be present—“only the Republic of Panama shall operate the canal and maintain military forces, defense sites, and military installations within its national territory.” This assurance against foreign military intervention is not contained in the existing treaty arrangement and represents a safeguard of considerable value to the American interests in the canal and the region.

The fifth argument is that the treaties will be yet another retreat by the United States, a “withdrawal” in response to threats and coercion. There is the feeling that somehow things are not as they used to be, and that is so. The world has changed. It used to be that gunboat diplomacy would serve to enforce our will in the Caribbean and in Central America.

But now it takes some respect for the rights of others, and that is a change for the better. I am glad it has happened.

I opposed the war in Vietnam for many reasons, from the very start. One of those reasons was my belief that our intervention in that civil war, among a foreign people in distant Asia, was not only unnecessary in terms of our own interests, but would weaken our international position and strengthen that of our adversaries.

To have become involved in a guerrilla war in the jungles of Southeast Asia was a grave mistake. I think most of us know and acknowledge that today.

Mr. President, I say the same reason militates with equal force against exposing ourselves unnecessarily to the risk of fighting a guerrilla war in the jungles of Panama. From the standpoint of our own domestic tranquility, from the standpoint of effective foreign policy, and indeed from the standpoint of simple justice, we would be seriously misguided to rely upon a military solution to achieve our objectives in Panama when the probability is that those same ends, an open, functioning canal which is militarily secure, can be achieved through the peaceful procedures outlined in these treaties.

Whether we again choose military power over the power of peace to effect our national goals will, it seems to me, say much about us as a society and the lessons we have learned from Vietnam.

The sixth argument that is made against the treaties is that there is no guarantee that Panama will not nationalize the canal and demand that we leave immediately.

This is true. There is nothing to prevent them from doing that right now. Under the new treaties—which commit both the United States and Panama to protect and defend the canal's neutrality—the moral and legal case of the United States would be far stronger were such an eventuality to occur. If the treaties are ratified, General Taylor testified, the “conflicts over the canal should cease to be a confrontation between an overbearing Uncle Sam, the

Goliath of the affluent industrial world, and the tiny Panama, the David representing Latin America and the world's have-not community."

The final major argument is one that I also touched on a moment ago; namely, that the neutral status of the canal means that hostile warships could go through, in effect, under the benefit of U.S. protection. Secretary of Defense Harold Brown answered this objection directly at our hearings. "The last place we want to sink a ship," he said "is in the canal, and we will therefore depend upon our military power outside of the canal to serve our interests. The new treaties do guarantee passage through the canal. They don't guarantee passage to the canal . . ." I might add that the canal has always been administered as a neutral passageway; it has never—even during two world wars—been closed; and we have always been able to protect it by keeping enemy ships a safe distance away. If we cannot prevent enemy ships from reaching the canal, Henry Kissinger testified, "the provisions of a legal document will be precious little help."

So those are the major arguments against the treaties and the answers. Over the past 5 months I have carefully examined all the arguments, pro and con. During that period, the Committee on Foreign Relations has held 16 days of hearings on the treaties. Over 90 witnesses have testified. We have heard representatives of the administration, Members of Congress, and private citizens. We have heard fervid supporters of the treaties and vigorous foes. We have compiled a hearing record of over 2,000 pages.

I approached those hearings with no preconceptions about the issues they raise. Based upon the best evidence available, I have concluded that, on balance, with the two amendments I have discussed, the treaties are in our national interest.

In closing, Mr. President, let me say a word about the effect of these treaties on our perception of the past and our direction in the future.

The Treaty of 1903 has been characterized in many ways—as a vestige of colonialism, as a diplomatic dinosaur, as the product of a plot rivaling that of "The Sting." It is true that the history behind that treaty is not flattering. But however the treaty may appear today, I believe that there is no need for apology. The events surrounding the conclusion of the Treaty of 1903 must be viewed in the context of the times, when large powers acted much differently toward small powers than they do today. The world of 1903 was a world of empires—and of colonies. Most of the world's population in that year—in China, in Indochina, in Egypt, in India, in Persia, in Morocco, in Algeria, and throughout Africa—lived under foreign rule. They were governed by foreign laws that were administered by foreign governments—whether British, French, Dutch, Belgian, or German. The desires of the colonial people were largely ignored; they endured for the benefit of the empires that ruled them.

Those times, I am glad to say, are gone. The empires that governed the world in 1903 have faded into history. People in former colonies throughout the world have won the right to determine their own destinies. A hundred new independent nations have emerged since the 1903 treaty was signed.

So the issue before us, really, is whether we will accept change or whether we will resist it—whether we recognize that rigid efforts to preserve the past lead inevitably to tragedy—whether we are flexible enough to pursue our national interest by new means when old means fail. To adapt to change while preserving our vital interests is a work of statesmanship; to resist change by attempting to preserve the past is a work of folly.

This is not to denigrate the magnificence of our forefather's achievement—the building of the canal, it has rightly been said, was the moon landing of the age, a sublime translation of dreams into reality, a soaring triumph of engineering and medicine, of courage, and imagination. We honor those who built it, but we honor them not by grieving or glossing over past wrongs, but by rectifying present inequities and by insuring future harmony. We recognize the nobility of their achievement by preserving the canal, not as a crippled testimonial to mankind's irrationality, but as a working monument to international cooperation and good will.

This goal can be achieved, but it will not be easy. Indeed, it may require surmounting obstacles as great as any confronted by the builders of the canal themselves—perhaps even greater. For instead of yellow fever or malaria, we face the fever of nationalism. Instead of the darkness of the jungle, we face the darkness of slogans and half-truths. And instead of mountains we can see, we face a future that is obscure.

I repeat, this challenge can be met, but it calls for the most precious resources that we as a people can muster—not force of arms, but force of principle, force of character, and force of intellect. Not every nation could do so; a special strength is required, a strength deriving from our sense of self-security as a society, to accept change, to move ahead, and thereby to preserve rather than destroy the best that we have wrought from the past. Theodore Roosevelt—and it was Roosevelt, I think, who deserves most of the credit for building the canal—put it well when he said:

The important thing is the next step. It often happens that the good conditions of the past can be regained not by going back, but by going forward. We cannot recreate what is dead; we cannot stop the march of events; but we can direct this march and out of the conditions develop something better than the past knew.

Mr. President, I believe that these treaties will direct the march of events toward developing something better than the past knew. I urge the Senate to advise and consent to their ratification with the changes recommended by the Committee on Foreign Relations.

Mr. President, I received this afternoon from Harold Brown, the Secretary of Defense, Cyrus Vance, the Secretary of State, Clifford Alexander, the Secretary of the Army, the following letter with enclosures. The letter reads:

DEAR SENATOR. As debate begins on the Canal Treaties, questions have arisen about the financial viability of the Canal under the new arrangements and also about financial obligations the United States will incur as a result of the new Treaties. Enclosed are answers to some of the principal questions which have been raised.

In the last analysis, the U.S. security and commercial interests these new Treaties are designed to serve cannot be measured in dollars. Under the past arrangements, the benefits that we have received from the Canal have far outweighed the costs of construction, security and the nominal annuity paid to Panama. We feel the costs associated with U.S. operation of the Canal between now and the year 2000 will be more than offset by the benefits derived from our continued use of the Canal during

an orderly and efficient transition to Panamanian management, and from the continued maintenance of U.S. troops and facilities in Panama for the next 22 years.

Mr. President, I ask unanimous consent that the text of the letter together with the enclosures in the form of responses to these questions relating to the financial viability of the canal be printed in the Record at this point.

There being no objection, the letter and enclosures were ordered to be printed in the Record, as follows:

DEPARTMENT OF STATE,
Washington, D.C., February 10, 1978.

DEAR SENATOR: As debate begins on the Canal Treaties, questions have arisen about the financial viability of the Canal under the new arrangements and also about financial obligations the United States will incur as a result of the new Treaties. Enclosed are answers to some of the principal questions which have been raised.

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With best wishes.

Sincerely,

HAROLD BROWN,
Secretary of Defense.

CYRUS VANCE,
Secretary of State.

CLIFFORD L. ALEXANDER, Jr.,
Secretary of the Army.

ATTACHMENT

1. Q: *Can the Canal really meet its costs on the basis of tolls alone?*

A: All the studies relating to the costs of operating the Panama Canal, and to the possibility of increasing Canal tolls, indicate that revenues will meet expenditures, including the payments to be made to Panama under the new Treaties.

Since 1915 toll revenues have risen from \$4 million to \$165 million in FY 1977. Traffic is projected to increase at an average annual rate of 2.2 percent until the end of the century. The best available studies project revenues as follows:

CANAL REVENUE

[In millions of dollars]

Toll increase	1980	1983
0 percent	197	205
25 percent	243	248
30 percent	250	254

Various estimates have been made of the Panama Canal Commission's operating costs. An exhaustive study on Panama Canal Commission cost projections has just been prepared by Arthur Anderson and Company for the 1979-1983 period. These projections conclude that Canal costs, including payments to Panama and taking into account inflation, will range between \$238 million to \$247 million in 1980 and between \$237 million and \$262 million in 1983.

Our negotiators made their calculations on the basis of a toll increase of 30 percent. Our studies indicate that even larger toll increases could be applied if necessary, to produce additional revenues. While the range of uncertainty increases

for the later years of the Treaty period, we believe it is reasonable to expect that the Canal enterprise can meet all its operating costs, including payments to Panama required by the Treaty.

2. *Q: Won't toll increases mean less traffic and less income?*

A: A study of Canal traffic and revenue forecasts recently completed by International Research Associates concludes that substantial increases in tolls will produce a substantial increase in total income despite some drop-off in traffic. A 30 percent toll increase would generate 27 percent additional revenue in the first year, dropping to a stable 22 percent increase after seven years. A toll increase of 75 percent would increase revenues 58 percent in the first, dropping to a maximum attainable stable increase of 40 percent after 7 years.

3. *Q: What about the hidden costs of higher tolls to the American consumers?*

A: A toll increase of 20 to 30 percent over existing levels will have a minimum, if not negligible, impact on our trade and economy. A toll increase of about 30 percent will involve a total transportation cost increase for Canal shipments of less than 1 percent. Users of the Canal would pay only about \$50 million more in tolls per year on cargoes that have a value of roughly \$50 billion, or one-tenth of 1 percent. Of the \$50 million, U.S. business and consumers will be the ultimate payers of only about \$15 million. The overall impact will therefore be negligible both in terms of American businesses and the purchasing power of the consumer.

4. *Q: How can we be sure the Panamanians will maintain the Canal so it can, in fact, stay open?*

A: Under the new Treaties, Panama's self-interest will give that country every incentive to maintain the Canal and operate it as efficiently as possible. Furthermore, over the next 22 years, the United States will be working with Panama toward this end. Pursuant to Treaty provisions, we will establish training programs and provide on-the-job experience at all levels. Under our guidance, Panamanians will increasingly participate in management. Approximately 80 percent of the current work force is Panamanian, and there is every reason to believe that by the year 2000 Panama will be fully capable of operating the Panama Canal.

5. *Q: Will the Treaties require any appropriated funds?*

A: Payments to Panama under the Panama Canal Treaties will be made from Canal revenues, *not tax dollars*. Moreover, all operating expenses of the new entity will be paid from Canal revenues.

Administration spokesmen have testified on several occasions before Congressional Committees that the transition from our present role to our proposed role under the new Treaties would entail some costs in the U.S. budget. One major cost would be relocation of Defense installations, estimated at \$43 million for the first three years. Another would be an early retirement program for Canal enterprise and certain other employees. The Canal Treaty provides for an optional early retirement program as an employee security assurance for these employees. The design of the program, however, will be at U.S. discretion. The programs which have been discussed within the Administration range in cost up to \$150 million. There will be additional DoD costs resulting from a merger of the Canal Company and DoD activities, and assumption of any non-reimbursable costs for health, education and other support functions. The total appropriations impact over 21 years based on present information is unlikely to be much more than \$350 million. None of the appropriated funds for these costs would go to Panama.

6. *Q: Are there other budgetary implications?*

A: Although not required by the Treaty, the Administration will recommend that the Treaty cease collecting annual interests payments from the Canal Company which have been paid since 1951 and which are currently averaging \$18-\$20 million. It will be up to Congress to decide whether to accept the Administration's recommendation. The Administration's recommendation is based on the fact that we have always treated the Canal as a public utility, the use of which benefits the country as a whole in peace and war.

A separate economic and military cooperation package of \$345 million over five years—all in repayable loans, credits or guarantees—is planned. This package depends on development of programs to meet existing Congressional established criteria. Only about \$5 million in appropriated funds would be required to support the repayment guarantees for the military credit program as a reserve fund; none would be paid to Panama.

7. *Q: What about the contingent \$10 million payment? Will we be obligated to pay off on that in the year 2000? Will it be part of the toll base?*

A: The contingent \$10 million annuity is payable only if operating revenues produce a surplus over expenditures, which include among others the variable

annuity due Panama of \$.30 per Canal ton and the fixed annuity of \$10 million. The contingent annuity will not be figured in the calculation of the toll base.

If the surplus is insufficient to cover the entire payment of the contingent annuity, the shortfall is carried over to succeeding years. Since payment is contingent on available surpluses, the United States is not obligated to pay off on any accumulated unpaid balance in the year 2000. Panama's negotiators have acknowledged this fact.

8. Q: *What is the value of property to be transferred to Panama under the terms of the Panama Canal Treaties?*

A: Canal Company and Canal Zone Government property which will be transferred to Panama during the life of the Treaty had a net book value in 1977 of \$96 million. The Canal, its related installations and other facilities which will be transferred upon termination of the basic Treaty are expected to have a net book value in the year 2000 of \$98 million. Thus the monetary grand total of existing Canal Company and Canal Zone Government property to be transferred to Panama by the terms of the Canal Treaty is \$194 million. Panama would also receive capital improvements to the Canal and its facilities made during the Treaty's lifetime which the Canal Company, based on planned capital improvements, currently estimates at \$454 million. The true value of the Canal and its related assets, however, cannot be measured in terms of cash investments. The true value to the United States is measured in terms of our ability to continue to use the waterway.

The approximate acquisition and improvement costs as of fiscal year 1978 of military facilities to be turned over to Panama:

	Million
Treaty starting day	\$27.5
Other facilities to be turned over sometime during the Treaty term	33.5
On termination of the Treaty	291.9
Total cost of military facilities	352.9

9. Q: *What will be the military relocation costs to meet the requirements of the Treaties? Why should we bear any costs?*

A: Lieutenant General McAuliffe, Commander-in-Chief, United States Southern Command, has made an initial estimate of the costs required for the first three years:

	Million
Relocation of Albrook (east of the runway) AFB facilities	\$19.9
Relocations from Ft. Amador	17.4
Relocation of Curundu Antenna Field	5.3
Rehabilitation of postal facilities .....	.3
	42.9

These are preliminary figures which have not yet been subjected to any budget review process. Some costs are still under study and not available; e.g., those involving the exchange service warehousing complex, costs associated with surveying boundaries, installation of fencing, lights, etc.

The Treaty provides that we will maintain a military force in Panama until the end of the century. With or without the Treaty some relocation would be recommended in the interest of efficiency.

Mr. LAXALT. Mr. President——

The PRESIDING OFFICER. The Senator from Nevada (Mr. Laxalt).

Mr. LAXALT. Just a comment or two in response.

Senator Church has indicated, as have the proponents throughout the course of this debate, that all we are giving up is titular sovereignty, that we are actually improving our position by giving up this canal.

I submit that the fact is that we are giving up a multibillion dollar facility which American taxpayers have paid for, perhaps for not 1 cent of compensation in return, and in addition, that we are going to pay, the American taxpayers will pay, millions and millions of dollars during the life of this treaty.

The issue is not one of fulfilling Panamanian aspirations per se. I, for one, and I speak for many of my colleagues in opposition to these treaties, certainly am sympathetic with the Panamanians. They have been good allies. They are good people.

But the essential tradeoff in this situation is that we are being asked to fulfill those aspirations and perhaps risking our national security.

That is not my opinion; that is the opinion of realistic military experts of this country, and I would like, for the purpose of this record, so that it is back to back with the letter submitted by Senator Church, to read a portion of a letter written on June 6, 1977 to President Carter. This letter was written by former U.S. Navy Admirals Arleigh Burke, Robert B. Carney, George Anderson, and Thomas H. Moorer—and recognize that Thomas H. Moorer was Chairman of the Joint Chiefs of Staff.

In this letter, they explain the strategic importance of the Panama Canal. And remember that these people are independent. They are independent of this administration, they are responsible to nobody but to their own consciences and to the American public, and this is what they say concerning the strategic value of this canal that the American people are being asked to give up:

Our experience has been that as each crisis developed during our active service—World War II, Korea, Vietnam and the Cuban missile crisis—the value of the Canal was forcefully emphasized by emergency transits of our naval units and massive logistic support for the Armed Forces. The Canal provided operational flexibility and rapid mobility. In addition, there are the psychological advantages of this power potential. As Commander-in-Chief, you will find the ownership and sovereign control of the Canal indispensable during periods of tension and conflict.

And that is what this debate is all about. Because when you strip it all away, we are being asked, without justification historically, morally, or otherwise, to give up a facility which is important to our national security, of great strategic importance, for no proper justification.

Mr. President, I yield the floor to our colleague from the State of Utah.

The PRESIDING OFFICER. Senator Garn.

Mr. GARN. I thank my distinguished colleague from Nevada.

Yesterday I sat on this floor at some length listening to our distinguished colleague from Alaska (Mr. Gravel), and we ran out of time; I was unable to respond. I wished that I could have then, and had my remarks immediately follow his. I am sorry that that did not take place, and I am sorry that the Senator is not here now; but I do feel compelled to respond.

With all due respect to the Senator from Alaska, I found it a little bit difficult to believe what I heard, and I listened for over an hour.

I did not hear much in the way of debate on the treaty. I did not hear a discussion of issues. All I heard was the putting down of this country, and the horrible, unbelievable things that we had done in 1903, our shady, shoddy, dealings—here on the floor of the U.S. Senate, for over an hour, he downgraded us point by point, telling how we had treated the Panamanians so badly, with little or no mention of the great benefit of this canal to the Panamanian people.

Oh, there were a couple of references to those of us who oppose the treaties. He said "Oh, well, the opponents will say the country would never have existed without the canal."

That is true. Why throw that away as an argument? It is simply true. Without the hundreds of millions of dollars of benefit derived indirectly because the canal is there, Panama would not exist as it does today. So there are intangible benefits that cannot be counted. I do not know what they measure, but they are tremendous.

From my experience in being in Panama and talking with Panamanians, I do not sense all of this animosity and all of this hatred I hear about, and all this condemnation of the United States. Most of what I heard down there was that they wanted the canal back, that they believed in national sovereignty; but there certainly was not all this criticism from Panamanian citizens that I am hearing from Senator Gravel of Alaska and others about how terrible we were. I heard none of that, absolutely none.

I do not think there is the animosity in Panama that we are being told. I did not talk to a large percentage of the population, but I certainly have talked to a representative proportion of that population. And, as I mentioned very briefly yesterday, if we want to go back and moralize, there are a lot of areas that we could look at, and one of them is Alaska.

Mr. CHURCH. Will the Senator yield at that point?

Mr. GARN. I will be happy to.

Mr. CHURCH. Not on Alaska, but on the Senator's assessment. I agree with the Senator from Utah on the feeling of Panama toward the United States. That was my impression as well. I believe it is good, for many reasons.

Chief among them is the expectation that the United States, having concluded these new treaties, will proceed to ratify them and develop a new relationship.

The Senator himself has acknowledged, I think honestly, that the people of Panama feel the Canal Zone should be restored to their jurisdiction, and that they should manage and operate the canal. The treaties will eventually accomplish those objectives, and I think this is one of the reasons that their feeling today is very good toward the United States.

But should these treaties be rejected, should we make it plain to them that we are not prepared either to restore their jurisdiction over the zone or to ultimately transfer to them the management of the canal, I really believe that their attitudes toward us will change very drastically.

Mr. GARN. Well, I think it goes beyond what the Senator has said. I talked with Panamanians who not only were not anti-American at all, but who were very appreciative, who recognized more than some of my Senate colleagues do what the canal and the United States had done for them, and expressed their appreciation.

It was interesting the number of people whom I talked to who said they had voted against the treaties, and the reason that they had, although they wanted the jurisdiction under their country, even though they had voted "no"—the reason that they voted no was because they understood that they lived in a dictatorship; that if they had had a democracy that they could trust they would have wanted the canal under their jurisdiction, but they did not want it under Torrijos.

I did not talk to one Panamanian employee of the Panama Canal Company, not one, who did not say that he was opposed to the

treaty, and again they expressed their patriotism toward their country, but that they trusted our Government more than their own. They felt they had more job security, more justice and decency in toil than they had with their own government running it, again because of Torrijos.

We cannot overlook the fact that we have not dealt with a democratic form of government; we have dealt with an absolute and total dictator. And interestingly enough, many of those who expressed this nationalist interest have said to me, "We wish in the treaties, even though we were for them, that it could have been worked out for the United States to continue to operate the canal through some sort of management arrangement, because we do not trust our own government to be able to run it, but we do trust yours."

These are Panamanians speaking, not Americans, not Senators. So I got an entirely different viewpoint down there.

But if I may now get back to Alaska: we pulled off one heck of a deal up there. We talked about the economics all afternoon yesterday.

Alaska is the biggest State in the Union. It is more than twice the size of Texas. It has unbelievable natural resources. I do not know what the value of Alaska would be, but certainly in the hundreds and hundreds of billions of dollars. We bought it from Russia for \$7 million.

If we are moralizing, I think we better look at that. Interestingly enough, in the testimony before the Foreign Relations Committee Dozer testified that the Russians did question the validity of the Russian sale. The question was answered by the admission of Alaska into the Union as a new State. I am sure they did not expect to get it back. They wanted to make some rustle about it and possibly get more compensation. As the junior Senator from Alaska mentioned in real estate parlance, what a steal.

My good friend from Maryland mentioned yesterday that we got Manhattan Island for a strand of beads. There is an exchange we could discuss, too, except that, because of the economic condition of New York, I am sure the Indians would not want Manhattan back.

When I visited the President of Mexico and talked about undocumented, illegal aliens, he immediately picked up a map for Senator Baker and me. It showed the North American Continent, Central America, and Mexico's original boundaries. He said,

I would like both of you Senators to know that the first undocumented workers were Americans in Mexican territory and you ripped off more than 50 percent of Mexico. So we start our discussions from that point.

The first undocumented workers really were Americans intruding into Mexico, including the Mormon pioneers in Utah, who went from Utah into Mexico.

Mr. GOLDWATER. It sounds more like the Senator would moralize on the Mexican war. There was no need for us to go to war with Mexico, no provocation at all. We did and, in fact, ripped off where the Senator lives and where I live. In fact, for \$10 million we bought a piece of territory from Mexico which paid over \$405 million in taxes last year. So moralizing is a great mistake.

Mr. GARN. I thank the Senator from Arizona. That is the point I was trying to make after listening yesterday. There are a lot of

issues to debate, on legality, on jurisdiction, on ownership, all of those things, whether we did it legally or illegally, and the dramatic story told about what happened down here in a hotel, and about how bad we were. There are a lot of things in our history we could go back and redo if we wanted to moralize in that way.

The major point I wanted to make on this issue, is, No. 1, that I do not view this country in that way. Certainly, we have made some mistakes, and there are some times in our history that we have not done the right thing. We would be foolish not to admit that.

But I look at a country which entered World War II—and I hear all this about a colonial, socialist empire in the Canal Zone—with more than 2 million troops, which had the atom bomb when no one else had it. If any country wanted to rule the world we could have at that time. We could have easily taken over and would have become the ruler of the whole world.

Did we choose to do that? Did we choose to keep any territory whatsoever? None. We not only backed off and signed all kinds of agreements with our former enemies and our so-called ally, the Soviet Union, but we disarmed to the point where 5 years later, in 1950, we were caught with our pants down in Korea, or almost as bad a situation as we were in 1937 and 1939.

We had no colonies. We were not imposing our will in an imperial way on anyone. And not only that, but we rebuilt Europe and we rebuilt Japan. We rebuilt our friends and our enemies. In this period of time we as a nation spent more than \$200 billion of our tax revenue on others, while providing more material abundance and a higher standard of living for our own people than any of God's children who have ever lived on the face of this Earth. We have shared our wealth and our taxes from our work like no other country in the history of this world has done.

That is the kind of country that in which I am privileged to be a U.S. Senator, one which has been generous, which has not taken advantage of other people, which has always tried to be the home of the oppressed, the leader of human rights, the leader of freedom and democracy in this world. That is a record of hindsight that speaks for itself.

But I heard nothing but degradation yesterday about how immoral we were in Panama. I want that rejected. I think the American people reject the argument that we should ratify these treaties and that we should give up the value of this canal and everything we have done as Americans in helping Panama.

Let us debate it on the facts in the treaty, item by item, and whether it is a good or a bad treaty. But let us quit downgrading our country.

We have given help voluntarily and we continue to do it. That is why we are a great and a good Nation.

I reject this idea of moralizing. I am sick and tired of those who use this as an argument, those who seem to want to rip apart—whether it is the CIA or whatever—the various institutions of our country, and not recognize the overwhelming good of the United States of America.

I am up here waving a flag. You better believe I am. I am wrapping myself in it because I think most American people would agree with what I say.

I just could not let that pass yesterday. I am sorry that Senator Gravel is not here because I wanted to rebut him directly.

For a few minutes now, I would like to present some remarks directly on the treaty.

Let this not be misunderstood as a partisan issue. It may have been mentioned—I have not been to all of the debate—that a couple of years ago, when Gerald Ford was still President of the United States, there was a resolution passed around this body which 38 U.S. Senators signed, and I was one of them. It said:

We will not vote for any treaty which gives up operational control and sovereignty of that canal. President Ford, so do not send us one.

That was enough to defeat it. For 38 was more than one-third. I happen to be a Republican Senator and he was a Republican President. So when I criticize the Carter administration for this treaty it should not be interpreted as partisan, because if the same treaty were here from Gerald Ford I would stand up and say the same things, and I did. It is in the record. It proved that 38 U.S. Senators were opposed to it when Gerald Ford was President.

I think it is important to note that this opposition has not sprung up from some partisan feeling.

When President Carter first announced the signing of these treaties my initial reaction was opposition. That opinion had been formulated a long time before he became President, that I would not vote for any treaty which gave up operational control of that canal.

I would have been willing, and still would be willing, to negotiate a new treaty, which I think is needed, which could greatly diminish the size of the Canal Zone, giving back surplus land to the Panamanians.

There certainly is not need for all of the land that we own. There is certainly room for renegotiation of the terms of the treaty as far as compensation is concerned. There are so many areas we could renegotiate. But we must maintain the minimum amount of land necessary to operate and defend the canal itself.

I think that would be in the best interests of the United States and the best interests of the Panamanian people.

If the Panamanian people had a say in this rather than their dictator, I think they would be willing to accept that kind of a settlement as well, feeling they could have their cake and eat it, too. They could have much of this land back, much more control over it, but a government that has run it since 1914 could continue guaranteeing that the canal be operated successfully, be operated out of revenues, and be defensible for all ships to go through.

Well, although I had announced my opposition initially, I still wanted to go down and see firsthand. So I, as about half of our colleagues have done, went to Panama. I spent 5 days there with Senator Baker and Senator Chafee. I had very extensive briefings with members from the Canal Zone Company, including Governor Parfitt and General McAuliffe. I suppose we got the same treatment that everyone got, and a very extensive briefing.

I spent an entire day with General Torrijos, touring parts of the Canal Zone and visiting with him at great length.

People said, "Well, what is your opinion, after having been there?"

My opinion? I came back with the absolute knowledge, with no doubt in my mind, that we were dealing with an absolute dictatorship. General Torrijos runs that country singlehandedly and does have absolute control. There have been, in the past, tremendous violations of human rights in that country.

In talking to the members of the Panamanista Party, hearing them outline some of the things that happened to them in the past, we asked them how they dared speak to us. They said it was because they were enjoying a holiday. Since the treaties had been signed, General Torrijos was trying to be very good, was trying to present a favorable image of what a wonderful and kind man he was. They hoped it would take a long time for these treaties to be resolved one way or another because they did have some human rights in the meantime, while Torrijos wants to build his image.

I said, "What happens afterwards, after you talk to us?"

They said, "We hope that after having appeared before you, that would guarantee our safety, that you would intercede for us. We want you to write down our names and check up on us after this treaty thing is resolved one way or another."

So after looking at the military, economic, and political situation in Panama, I came home feeling even more strongly that my decision was correct.

My experience in Panama is not just a 5-day visit. I used to haul cargo to Howard Air Force Base when I was just a mere Air Force captain, and not a Senator getting VIP treatment. I was not interested in a treaty at that time. I was not involved in politics. But it did give me an opportunity, over a period of years, of going through there, to talk to a lot of people.

I also gained the assessment at that time that there was not this overwhelming anti-American opinion that I hear so much about. I experienced none of it, going in and out of there as just a common, ordinary American wandering through the streets of Panama City, talking to people. I emphasize that point from a number of years of experience and not one 5-day period.

Then, within a week after arriving back, the Committee on Armed Services, of which I am a member, held hearings on the military and economic aspects of this treaty. Once again, after listening to these very detailed briefings, I became even more convinced that these treaties are wrong. I have heard they should be passed because they are right. I submit they should be defeated because they are wrong.

We can begin again. There is no reason to say that, because they are defeated, this is the end and we are going to have violence. We sit down again and say, "Yes, a treaty is needed, let us sit down and negotiate something that is fair and equitable to both countries," not something that is overwhelmingly unfair to the United States and to the benefit of the Panamanian dictatorship, run by Omar Torrijos.

The reason that I continue to become more opposed to the treaty is because I learn more about it. We constantly hear from the

President and others that the more the American people learn about this issue, the more they will be in favor of it. That has not been my experience. It has not been my experience at all. Mine has been just the opposite.

As I have given speeches and read directly from the treaty, some people who were in favor have said, "I did not know that was in the treaty; we are not doing that, are we?"

Yes, we are, sir; we are.

Some of those who say, "I still want to give up sovereignty and give it back to the Republic of Panama," are not in favor of the terms under which we are giving it back.

Let me address myself to the economic issues and to quote some of the misunderstanding the American people have. Most people that I have talked to have the impression that nothing changes until the year 2000, that we are all right for 22 years, so we hope everything works out. Governor Parfitt testified before the Committee on Armed Services that the dominant and all-encompassing change of the treaty is immediate recognition of Panamanian sovereignty and general territorial jurisdiction over the present Canal Zone.

That is immediate. More specifically, he said the treaty would eliminate the Canal Zone government and the Panama Canal Company and substitute therefor the Panama Canal Commission.

Other quotes from Governor Parfitt:

As of June 30, 1977, the net book value of property, plant and equipment in the canal enterprise was \$567 million.

I might make a remark that net book value is what bookkeepers talk about in terms of depreciated value. It has nothing to do with market value or replacement value, which would be in the billions of dollars.

(Mr. Ford assumed the chair).

Mr. GOLDWATER. Will the Senator yield?

Mr. GARN. I am happy to yield.

Mr. GOLDWATER. It is \$9.8 billion.

Mr. GARN. \$9.8 billion. So just looking at the net book value, it is rather substantial.

He goes on to say:

On the effective date of the treaty, an estimate \$92 million of these assets will be transferred to Panama and \$30 million to other U.S. Government agencies. An additional \$4 million in assets will be transferred to Panama during early phases of the treaty. Property initially retained by the Commission and additional acquisitions during the life of the treaty would also go to Panama at the conclusion of the treaty. Our current estimate is that the net book value of such property at termination date would amount to \$522 million, making the total value of transfers to Panama \$618 million.

That is \$618 million in bookkeeper's terms and the Senator from Arizona has pointed out it is over \$9 billion in replacement value.

We are going to pay them 30 cents per Panama Canal net ton for going through the canal, a fixed annuity of \$10 million a year—again, these are quotes from the Governor's testimony, not the opinions of Senator Jake Garn—and \$10 million for certain specified public services to be provided in the canal.

Yet the Comptroller General of the United States, Elmer Staats, says that it is the estimate of the Canal Zone Company that it will

only cost the Panamanians \$4.4 million to provide these services and the treaties make no mention of quality of service.

Staats goes on to say that, at the very least, we ought to have the services relate to the cost of providing them and we ought to have an accounting method for determining what that cost is. And he talks about how it ought to be reasonable that before we transfer property, we have an inventory. The last time one was conducted, in 1950-51, before the present Canal Zone Company was incorporated, it cost \$750,000 to do it. He has no idea what it would cost now.

The reason I am pointing these things out is that it is constantly said that these treaties will cost the American people nothing. That is true if everything goes according to Hoyle and the canal toll revenue increases do not reach a point of diminishing returns and the Alaskan oil continues to flow through the canal. If all of these projections work out, and it stays self-sustaining, these things will come out of toll revenues. But there are some other costs that directly impact on the American taxpayer immediately and have nothing to do with the revenues of the Canal Zone Company.

For instance, we loaned money out of the U.S. Treasury on which the present Canal Zone Company pays \$20 million a year in interest, but that is going to be forgiven.

We are going to write off the debt. We are going to say, "Don't pay it back; you don't have to pay us \$20 million a year."

Well, \$20 million is not much out of a half-trillion-dollar budget. But, nevertheless, it is a fact that there will be a cost to the American taxpayers, something that they will no longer receive.

We have also heard that there is not much difference, treaty or no treaty. Again quoting Governor Parfitt:

Summary results for fiscal 1979. . . . Using the most recent estimate of tolls (\$195 million), it is projected that there would be \$9.3 million earnings without a treaty and a \$36.7 million loss with a treaty—

Or a difference of \$46 million the first year of operation—

Our analysis has also covered the period fiscal year 1979 through fiscal year 1984 in order to include the transition impact as well as the first year effect—in fiscal year 1984—of indexing the payment to Panama for each Panama Canal ton of shipping transiting the Canal. The predicted shortfalls in revenues range from \$36.2 million to \$58.9 million and are shown on this chart.

So he goes on to say that, obviously, tolls are going to have to go up. And they will go up if we do not have a treaty.

Mr. LAXALT. Will the Senator yield for a question?

Mr. GARN. I am happy to yield.

Mr. LAXALT. Do those figures reflect the assumption by DOD that service costs are going to have to be taken over after the transition period?

Mr. GARN. No, they do not.

Mr. LAXALT. Does the Senator have the DOD figures on assumption of those costs?

Mr. GARN. Yes, I do.

Referring to Governor Parfitt, he says:

If revenues and costs develop as projected, it appears that periodic toll increases will be required, treaty or not. With a treaty, the need is sooner and greater.

Switching over to Comptroller General Elmer Staats' testimony—he runs the General Accounting Office which is considered to be the watchdog of the Treasury—he talks about some of these transitional costs.

He mentions that it is very difficult for him to estimate them and the reason that he cannot is that we have been promised since September, or October it was, the implementing legislation from the Department of State. We still do not have it. So we have been asked to consider these treaties without being able to know what the real economic impact is directly on taxpayers now, besides the forgiving of the debt, the guarantee that we turn over a debt-free canal in the year 2000, and the forgiving of the interest.

He said the treaty provides that the commission will continue to provide certain utility services and would be reimbursed for its costs. Yet no mention in the treaty of Panama's debt for past services which totaled over \$3.4 million as of September 30, 1977.

They owe us \$8.4 million which they have refused to pay for selling them electricity and other utilities. Omar just does not want to pay and we have not pushed him to pay.

This is a good accounting statement that I agree with, again quoting Elmer Staats:

We believe this debt should be settled by either a lump sum payment or as a credit against payments to Panama.

We are not pushing for that.

Talking about the \$10 million lump sum for services that were provided the Canal Zone, Staats talks about how no quality of services is mentioned. If you want to go down and look at the Canal Zone quality of services compared to the Republic of Panama, you can see this.

The Panama Canal Company estimates it would cost about \$4.4 million to provide specified public services.

So we are padding in \$5.6 million.

Here is another statement I totally agree with from a good old-fashioned accountant:

We believe that payments to Panama for public services should be based on the costs incurred and that procedures should be developed to verify these costs, both during the treaty's first 3 years and thereafter.

How can you disagree with that?

I say again, this is the wrong treaty, whether you are for a treaty or not. This one should be defeated because it is wrong.

Other treaty related costs? Staats said there had been no discussion about that:

We have focused on the treaty related costs for the Panama Canal Commission which would be charged against toll revenues.

We would like to point out the possibility for additional related costs to be borne by other U.S. Government agencies. Unfortunately, only sketchy details are available at this time.

Again I repeat, we are operating on a treaty with only sketchy details of what it is going to cost.

Is that what the American people want us to do? Do they want us to pass this kind of legislation based on sketchy details that are not yet available to us?

Mr. GOLDWATER. Will the Senator yield for a question?

Mr. GARN. I am happy to.

Mr. GOLDWATER. I am not certain of what I am about to say, so I will ask it in the form of a question.

Did Governor Parfitt say that he was talked to by the negotiators or did he say he had never been talked to by the negotiators on these cost points?

Mr. GARN. I cannot answer the Senator's question because I did not hear it, I was not in the committee at the time he made the response to those questions.

Mr. GOLDWATER. It seems to me he made that comment. I will check on it and see.

Mr. GARN. When I was in Panama, he made one statement, that on the testimony that he would give before the committee, a lot of the information was not available to him as yet when the treaty was being negotiated.

Mr. GOLDWATER. Well, I will find out. I thank the Senator.

Mr. SARBANES. If the Senator will yield on that point, it is my understanding that Governor Parfitt did have discussions with Ambassador Bunker and that there had therefore been consultation with the negotiating team.

It is correct, as the Senator from Utah has just said, that a number of the studies on which some of the most recent testimony has been based were not available until very recently; that involves the Brandeis study which was commissioned, jointly, by the Panama Canal Company and the State Department; it also involves, I gather, the study of the consultant employed by the Armed Services Committee which commissioned a report in this area, and also an internal study that was undertaken by the Panama Canal Company.

Mr. GARN. I thank the Senator because I think he is correct.

This indicates to me another very great fault in the treaty negotiating process. It would seem to me it would have been better for the negotiating team to wait for these studies to be completed before launching into a final treaty so that they would have the benefit of this information while writing the treaty.

Now, we do not have the benefit of the implementing legislation while we are debating. I hope it is available before we are through.

Mr. SARBANES. If the Senator will yield just on that point, the negotiators did have available to them earlier studies which had been made on the basis of which they made certain projections on a very conservative basis.

The fact is that the subsequent studies have been more optimistic about what can be done financially and economically than the earlier ones that were used by the negotiators.

For instance, earlier a figure of 40 percent was being talked about as the increase in tolls to meet projected costs. Governor Parfitt, in front of the Armed Services Committee, and I think it is fair to consider it a reasonable figure, talked of a 20-percent figure for the increase in tolls to carry us from now until 1984, that is through the first period, compared to the earlier figure of 40 percent.

The other thing Governor Parfitt put forth in his testimony was that he projected that without a treaty, with no treaty, there would be by the end of the century an increase in tolls of 95 percent. That

is with no treaty. With a treaty he projected an increase of 115 percent, or a difference of 20 percent in terms of a projected increase in tolls with the treaty and without a treaty by the year 2000.

Mr. GARN. I thank the Senator for that comment.

I would quote once again from Governor Parfitt on the sensitivity of canal revenues to increasing tolls. He said:

Essentially, the study indicates that canal traffic is sensitive to toll increases beginning at 15 percent up through the maximum increase possible of between 75 and 100 percent, the point where diminishing returns set in.

Also, he talks about—

the net toll yield to be derived from two representative toll increases, 25 and 50 percent. The ultimate gain, from a 25-percent toll increase, is 19.6 percent. For the 50-percent calculation, the net amount is 33 percent. Increase of more than 50 percent would result in little additional revenue. In fact, it is estimated that the very maximum amount of additional revenue obtainable is about 40 percent, and this would require a toll increase of between 75 and 100 percent.

Although he did say during that brief 5 or 6 years they could get by with what you said is about a 20-percent increase, to 1984, he is talking about maybe upward of a 75-percent increase by the year 2000. His final statement is—

Nevertheless, I believe you should be alert to the possibility that the canal operation may not be self-sustaining in the out years.

Mr. SARBANES. I am sure the Senator does not disagree with the statement, because it comes straight from Parfitt's testimony and then his appendices.

He projects that without the treaties there will be a 95-percent increase in tolls by the year 2000—without the treaties—and then in another table projects that with the treaties there will be an increase by the year 2000 of 115 percent—namely, a difference of 20 percent in terms of the increase in tolls with the treaty and without the treaty. That, of course, is taking into account inflation and the fact that you are going to have rising costs, and so forth.

He made it very clear that the tolls are going to go up in any event, with or without the treaty.

In the annexes to his testimony, he indicated that without the treaty, they would go up 95 percent—that was his estimate—and with the treaty, they would go up 115 percent, or a difference of 20 percent.

Mr. GARN. I quote again from the appendices:

Over the longer term, if revenues and costs develop as projected, it appears that periodic toll rate increases will be required, treaty or no. With a treaty, the need is sooner and greater.

His estimates are based on some projections specifically having to do with North Slope oil continuing to go through the canal. It is tremendously doubtful whether it can be self-operating without that North Slope oil. There are certain plans for pipelines within the United States to stop that.

Mr. GOLDWATER. Mr. President, will the Senator yield for a comment on that?

Mr. GARN. I yield.

Mr. GOLDWATER. I do not think what the toll increase is or is not has much to do with the goodness or badness of this treaty, because

we have inflation now that we are not going to stop, and inflation bothers the canal.

Another matter I was going to address myself to is the North Slope oil. He was very quick to forecast the end of this great tonnage that has built up but which even now is leveling off; and as we complete the pipelines across the United States to relieve the west coast of, you might say, the overdose of North Slope oil, the tolls are going to go down.

The interesting thing to me about Governor Parfitt's testimony is that it revolves around the year 1984. He made some pretty sound and understandable estimates up to that year, but then he was quick to admit that he did not know what was going to happen after 1984, but it was going to cost the U.S. Government—meaning the U.S. people—money. What that money is going to be varies in the opinions of different persons.

According to my arithmetic and the material I have talked about this morning and put in the Record, it could cost the American taxpayers more than a billion dollars, probably more than that. But, again, it is a pretty hard thing to judge, because we do not know yet how this new commission is going to operate as compared to the Panama Canal Company, which I think is probably the finest run business we have.

When we start putting Panamanians on the board and making political appointments to the board, I do not know what we are going to see. So it is after the year 1984 that bothers me.

This also bothered me the other night, when the President of my country told the American people it was not going to cost them any money. This is just an outright falsehood, and I hope he corrects himself before he lights that fire the next time.

Mr. GARN. I agree with the Senator.

Mr. SARBANES. Mr. President, will the Senator yield to me on that point? It is an extremely important point.

Mr. GARN. I will yield briefly, but I am taking the time of the Senator from Maryland.

Mr. SARBANES. What the President said in his statement to the people was that under the new treaty any payments to Panama will come from tolls paid by ships which use the canal.

Mr. GOLDWATER. That is wrong.

Mr. SARBANES. I think that is an accurate statement, and in the course of the debate, we can show that it is an accurate statement.

Mr. GOLDWATER. It is not accurate.

Mr. SARBANES. Any payments to Panama will come from tolls paid by ships that use the canal.

Mr. GARN. I might just quote from the Comptroller General of the United States, and we will use him on this point of whether it will cost the American people any money, whether that is an accurate statement of the President.

He is speaking of this IRA study that has been utilized in this debate a great deal. He said:

Unfortunately, the IRA study does not analyze the sensitivity of traffic to a two-stage or multistage tollrate increase. Who would bear the cost? Who would bear the ultimate burden of fulfilling the treaty obligations to Panama? Since the treaty calls for Panama to receive benefits from the canal's existence that it is not receiving presently, someone or some group would be paying more. U.S. citizens

could potentially be affected in two roles, as taxpayers of the country that operates the canal and guarantees payments to Panama.

On that point, it should be made very clear that the President might luck out just on that one point. If you interpret his statement rather narrowly, he might luck out. If the North Slope oil continues to go through, if the toll rate increases do not meet the point of diminishing returns, if all this guesswork into the year 2000 is correct, he may luck out. He will not still be President, because he can serve two terms at most. Some of us hope he will not have a second term. Nevertheless, he will not be around when this happens.

But we do guarantee, we simply guarantee these payments, whether the toll revenue is there or not.

So I repeat:

U.S. citizens could potentially be affected in two roles, as taxpayers of the country that operates the canal and guarantees payments to Panama.

The \$10 million subsidy each year, the \$10 million for utilities—everything but the 30 cents per net Panama Canal ton.

He continues:

* * * as producers or consumers of products shipped through the canal

The United States is the destination for approximately 30 percent of the traffic, and therefore, U.S. consumers would pay about 30 percent of the higher tolls.

So let us be honest about it. Whether the total amount of these revenues we are giving away, which we are not going to receive, are small in terms of our total budget and our gross national product, which they are—let us not insult anyone's intelligence—we cannot get away from the fact, either proponents or opponents, that this treaty will cost money. We can debate whether it should or not. I am just saying that the American people should know what this treaty does, and that is what we are trying to point out—that it is a bad treaty, poorly negotiated, and very disadvantageous to the United States.

I want to quote once more on this point from the Comptroller General, his concluding statement:

If canal transits fall short of what is currently estimated, it is possible that toll revenues will be insufficient to cover the cost of the commission, including the scheduled payments to Panama.

He said, "scheduled payments to Panama." I would not be so upset about the economics if all this came out of toll revenues. Then, if Panama does not run it very well, that is tough luck. They are not going to get the revenues, strictly speaking, from an economic standpoint.

I quote again from the statement by Mr. Staats:

In this eventuality, the U.S. Government is likely to be required to provide financial assistance either through congressional appropriations or by allowing the Commission to borrow from the Treasury.

I should like to ask the question as to who put the Panama Canal back in operation? The U.S. Navy did. If this canal does not operate, who is going to put it back into operation and who is going to pay for it? Let us not kid ourselves. It is going to be the U.S. Government, the American taxpayer, the consumer. If there is any

trouble down there economically, we are going to be called in to bail them out.

I was asked about other treaty-related costs and was interrupted at one point, but I should like to finish the testimony of Mr. Staats before I make other comments. Mr. Staats said:

In our discussion today, we have focused on the treaty-related costs for the Panama Canal Commission which would be charged against toll revenues. We would like to point out the possibilities for additional treaty-related costs which might be borne by other U.S. Government agencies.

Those are direct costs to the taxpayers.

He continued:

Unfortunately, only sketchy details are available at this time.

These costs include early optional retirement payments for canal employees, estimated to be about \$8.4 million a year; subsidy for hospital and education services for estimated 2100 to 2400 employees transferred to the Department of Defense.

Relocation and other costs to the Department of Defense, estimated at \$43 million.

Discharging the existing accrued leave liability for employees transferred to Panama and other U.S. agencies.

Under questioning, he said he had no idea what the other treaty-related costs would be. There was no way to estimate. There is over \$50 million now that he could tell, but he could not tell until the implementing legislation was drafted, so that he was able to come back with estimates. When that is going to be I do not know.

Let me get back to another financial aspect.

Governor Parfitt told us when we were there that it cost \$65 million a year to maintain the canal. That is due to geological faults, slides, keeping the canal open and dredging operations, that is keeping the locks, the doors, the wheels, the motors, the engines, all of those things going. That is a lot of money. It is an old canal, and it works amazingly well, but it costs a lot of money to keep it going, \$65 million a year. And I said this directly to General Torrijos. I said: "With the unbelievable economic and social problems you have in your country, who in the year 2000 can keep from the temptation of dipping into that \$65 million?" Certainly it is in the interests of Panama to keep the canal open. So it would not be robbing the whole thing. It would just be a little robbing Peter to pay Paul. Maybe we will take \$5 or \$10 million this year. Defer this particular maintenance until a year or two because we need this for housing. That may be a very worthwhile purpose.

But in a dictatorship, the Panamanian people have no control, and a man on the streets of Colon, as General Torrijos did, can cut the educational fee in half just by snapping his finger, with no consultation with anybody. He does not have to sign a paper. He did it in 10 minutes on national TV. "The great general has cut the educational fee in half." He may have been trying to impress us with his goodness. What he impressed me with was his absolute power even though it may have been a good act. As I told the general, the temptation of politicians to dip into that fund is tremendous, and I will give a specific example.

I was mayor of Salt Lake City. We had a general fund as most cities do. Property tax revenues provided the general funds for police, fire protection, all the usual services provided by a city.

And then we had a separate airport utility and a water utility, and they were guaranteed to operate out of their own revenues from landing fees from airplanes and from water revenues, water sales for the water utility.

I think it is interesting to note that for the 7 years I was in local government every single year I was there there was an attempt made by one or another member of the commission, to avoid facing the wrath of the public by having to find sources of revenue, like raising the mill levy or property taxes. "Hey, don't you think we can take a million or two out of the water utility fund this year?" They would say.

No; I do not, because we had 1,000 miles of water lines that needed repair. Maybe we could get by and one would not break this next winter. Maybe we could and maybe we could not. Maybe we could defer building the new water treatment plant but then we could not meet the water pollution control standards.

The temptation is there in every American government. We have a State constitution that requires use to balance the budget every day or the mayor goes to jail.

So in a very well run city that balances the budget for whatever reason, in this case the law, with a democratically elected mayor and city commissioners, the temptation was there. I am not criticizing. I am just saying it is a fact of life that exists in politics.

So no one can convince me that a Panamanian Government, run by someone like Torrijos, or whoever follows him, could resist the temptation of robbing Peter to pay Paul, and I doubt very seriously that as to a maintenance fund, whatever it might be in the year 2000, they could keep their hands off of it or at least a part of it because it does happen in every American city across this country.

As a member of the Armed Services Committee I am going to have a great deal to say during this debate about the military aspects and the defense of the canal, but because of the desire of other Senators to speak, in particular Senator Sarbanes, today I will leave that part of my presentation out and today address only the economic issues.

As long as I am talking about a water utility, let me give an analogy of the Salt Lake City Water Department, a public utility run out of its own funds. I wonder how long I would have been mayor if when I was mayor of that city I had told the people that I had found some reason for saying that I had treated some previous owners of the water department land, the watershed and the resources of that utility, badly, even though maybe legally. Possibly I had been a little bit shady, despite the fact that we had provided all kinds of revenues and benefits, serving 400,000 people water every day. It did not make any difference, I had come to the conclusion that the only way that I could solve this problem was to give away the utility. I decided to give away all the assets, the water treatment plants, the storage reservoirs, the distribution reservoirs, a thousand miles of water lines, 4,000 fire hydrants, the shop facilities, the maintenance facilities, the administrative office, millions of dollar worth of assets. These assets were initially paid for by funds out of the general fund of the taxpayers of Salt Lake City and later turned into a utility—very similar to the situation in Panama when we turned it over in 1952 to the Panama Canal

Zone Company, with indebtedness to the general fund of the United States. What would have happened if I had said not only am I going to give it away lock, stock, and barrel without asking anything in return, I am going to guarantee these people a percentage of the revenue from the water sales every year. I am going to give them a subsidy of \$10 million a year. I am going to pay them more than twice as much for them to provide services as it cost back in the old water department era. I am going to guarantee them additional revenue if there is any surplus, and this is going to be of great benefit to us because they will not agitate any more, they will not criticize, and we are just going to give it away. We are going to go from about \$2.3 million a year we are paying for these previous rights, and we are going to increase it to \$60 million to \$70 million a year. We are going to withdraw our people in 22 years. We are going to turn it over to them to run, and you might experience a doubling of your water rates, but that is to your benefit and it really is not going to cost you any money because it is not going to come out of the general fund; it is going to come out of water rate increases. I wonder how long I would have been mayor of that city?

I think it is a very close analogy to what we are doing financially. I am not even arguing the matter of sovereignty at this point, or ownership. I am talking about the economics of this package. I not only would not have been mayor very long, I would have to run very rapidly to get out of town before I was tarred and feathered.

And I could make the same analogy about the airport. Give it away and pay somebody to take it.

On the economic aspects of this treaty alone, I would have loved to have followed the President for about 15 minutes and not given one opinion of Jake Garn, simply quoted the testimony of the Comptroller General of the United States and Governor Parfitt, and let the American people decide, because I submit the more they learn about the terms of this treaty, even those who may think that we ought to return it to Panama will say let us do it on better terms and let us guarantee that we can defend it. Let us clear up this nebulosity, the ambiguities.

Gen. Maxwell Taylor testified before the Armed Services Committee that this is one of the beauties of this treaty, that it is so flexible and ambiguous that we could interpret it most any way we wanted to after the year 2000. I think we better tie it down just as tight as we can if we are going to have a treaty and let us not deceive the American people. Let us not deceive them. Let them know the facts of what has been drafted and what we are considering.

And if they do they will resoundingly say to this body: "Defeat this treaty; go back to the drawing boards and negotiate something that is fair to both sides."

I yield back to the Senator from Nevada at this time and will reserve my remarks on the military aspects for a future date.

Mr. LAXALT. I thank the Senator from Utah. At this time I yield the remainder of the time to the Senator from Maryland, Senator Sarbanes.

The PRESIDING OFFICER (Mr. Sasser). The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, one cannot really think seriously about the Panama Canal, about these treaties, and about the whole complex of issues involved without gaining an understanding of the tremendous emotional appeal which the canal has for so many people. You cannot read David McCullough's book, "The Path Between the Seas," or any other book, for that matter, that discusses the canal and its construction and operation with any sensitivity, without sensing the symbol which the Panama Canal represents and the emotion which it carries for so many. I respect and appreciate the achievement which the Panama Canal represents.

It was an extraordinary achievement by the United States in two significant respects. First, as an engineering accomplishment; it functions today as it functioned 64 years ago when it was first opened; and second, as a triumph in the health field: American physicians, American nurses, and American medical personnel solved that critical problem and made it possible to build the canal.

I have enormous respect for those pioneers, and for the people who followed in their footsteps in carrying out this great enterprise. They showed skilled professionalism in building and operating the canal and making it an international waterway which commanded world praise.

I do not approach this issue—and I frankly think it is important not to approach it—with any sense of guilt in terms of the American contribution. I agree with what Senator Church said earlier in the day, that he and other proponents of this treaty do not approach this issue with any such attitude.

Now, to say that is not to say that it is unimportant to understand the history of how the 1903 treaty came about. It is very, very important indeed, because it explains the Panamanian perception of the current legal arrangements between our two countries governing the canal and the use of the canal. A knowledge of that history enables one to understand why Panamanians have such deep feelings that the 1903 treaty is not a satisfactory basis upon which to rest the relationship between the United States of America and the Republic of Panama.

So, without minimizing what was accomplished by Americans in the building and running of the canal, it nevertheless is important to know the history of the 1903 treaty; to know that it was negotiated and signed not by a Panamanian but by a Frenchman who had a very vital personal interest in such a treaty, because it brought \$40 million to a French Canal Company of which he was a significant stockholder; to know that there has been resentment in Panama from the very beginning because the treaty is seen as overreaching by a great power; to know that when the treaty was subsequently brought to Panama for ratification, the threat of withdrawal of American protection for Panama and hence the loss of its independence and the likely death of all revolutionary leaders was used, as a very effective coercion, to compel signatures to the ratification of a treaty the Panamanians, even then at the very outset, regarded as totally unacceptable.

It is important to go back and know the history at the outset, because it has darkly clouded the relationship ever since. It is one of the basic reasons why the existing arrangement has never been

accepted in Panama as a proper basis for the relationship between our two countries regarding the canal.

Now, having said that by way of background, the critical question is: Are these treaties in the best interests of the United States?

When we make that judgment, we must be very careful to understand that the choice before us is not the status quo, not the existing situation, the change embodied in the two treaties, the permanent neutrality treaty—note that it is permanent—and the Panama Canal Treaty which governs the relationship for the next 22 years. The choice before us is between the change embodied in those treaties and the change that will occur if there are no treaties. Change will come—there will be consequences and developments—whether the treaties are approved or rejected. If the treaties are approved, we will have a framework that will determine the course of developments. If the treaties are rejected, it is incumbent, especially upon those who want them rejected, to speculate on what the course of events will be, what will take place, what will transpire, and how effectively we will be able to continue to use the canal and how beneficial to us will be our presence in Panama and throughout Latin America.

There are some who say, "Go back and negotiate"; if that suggestion is made in earnest, then it must rest on the realistic expectation that a new agreement can be negotiated which will be acceptable to both parties. I am very frank to say I think it is totally unrealistic to suppose that new negotiations will lead to an agreement that will as fully accede to American interests as the agreements before us do. There is no reason to suppose, and in fact every reason to believe otherwise that all Panamanians will be more accommodating of U.S. interests if these treaties are rejected. Even now significant elements in Panama feel these treaties are too favorable to the United States but the treaty having been approved by the people in a referendum they are prepared to live by them and carry them out fully. My prediction of what would happen is that in a few years time, negotiators would come back and say, "This is the best agreement that we are able to get." Then there will be lamentations and everyone will say: "Oh, how we wish we had accepted the agreements that were before the Senate in 1978. Oh, how much better those would have been in safeguarding and protecting the American interests." If an acceptable treaty arrangement is not reached then the United States will have to improve its view, with all that entails, upon a hostile and antagonistic country. How much better to have our agreed arrangement at the basis of our relationship.

It is my own view, after having reviewed the testimony very carefully, that these treaties are very clearly in the best interests of our country. First, they recognize and protect our defense and strategic interests. The American military will have every needed facility over the next 22 years in Panama. That is not a situation we could hope to guarantee without these treaties. That American presence is being accepted and agreed to by the Republic of Panama.

With the amendment that has been recommended by the Foreign Relations Committee and that has been introduced under the leadership of the majority leader (Mr. Robert C. Byrd) and the minority

leader (Mr. Baker), the United States is given the right, clearly, without any doubt, to take any action that it deems necessary in order to protect the permanent neutrality of the canal after the end of the century. There is no time limitation on that right.

The Joint Chiefs of Staff have come before the Foreign Relations Committee and testified unequivocally in favor of these treaties. General Brown in particular has indicated his very strong personal feelings in support of these treaties.

Some have raised the charge that "these active duty officers are not telling you their real opinion but simply obeying the Commander-in-Chief." We went into that very carefully with General Brown. In fact, at one point General Brown indicated that he welcomed the question, because he wanted to answer that charge.

He made it very clear that in appearing before congressional committees, he and the other military people recognized that their responsibility was to answer questions placed to them truthfully, in accordance with their best views.

While military officials did not go out on their own initiative and take positions in conflict with the decisions of the President, they did upon appearance before the Congress, a coequal branch of government, in response to questions give their personal view even if it was contrary to the President's position. He cited instances in which the Joint Chiefs had done exactly that and expressed publicly before Congress their opposition to a Presidential decision.

Defense Secretary Harold Brown, who was sitting next to General Brown, then said:

I would like to say something about this because I think perhaps my uniformed colleagues cannot say it. It is this: The kind of charge to which you are referring is an insult to our senior military officials. I believe it is not helpful to the debate any more than it would be helpful to the debate if the proponents of the treaty were to question the motives, the integrity, or the honesty of those who oppose it.

I know there are retired military people who are opposed to these treaties; there are retired military people who support them. The present Joint Chiefs are very much for them. I do not question the motives, the honesty, or the integrity of any of those people, proponents or opponents. I may disagree with their wisdom or I may disagree with their judgment, but I do not question their integrity. I hope all engaged in this debate would share that attitude and we can banish from this Chamber any notion that the present Joint Chiefs in discharging their grave responsibilities are not giving us their honest opinions.

Second, I think these treaties protect important American economic interests which are involved with the Panama Canal. All the members of the Panama Canal Commission Board, which will run the canal over the next 22 years, will be appointed by the United States, and a majority, 5 of the 9, will be Americans. The four Panamanians will be put forth by Panama, but appointed by the United States. This Board will set the tolls; will determine the budget; will make allocations for maintenance, and is therefore, in a position, in the course of exercising those responsibilities over the next 22 years, to protect the operations and the maintenance of the canal and to develop an orderly transition to Panamanian operation of the canal.

In my view, the President's statement to the Nation, his fireside address, in which he said that all payments to Panama will come from tolls paid by ships which use the canal, is correct. The testimony thus far on that point has indicated that it is clearly possible, with a reasonable projection of shipping traffic and reasonable toll increase, estimated at 20 percent for the next interim period, to produce the revenues called for by the Panama Canal treaty for payments to Panama.

The arrangements it should be stressed, give Panama a vested interest in the successful operation of the canal; and it also gives them a vested interest in maximizing the amount of traffic which moves through the canal. Much of what they will receive from the fee tolls is based upon the amount of tonnage—the more tonnage which moves through the canal the more their payment will be. Therefore, there is a tremendous incentive for Panama to seek to operate the canal in such a way as to maximize its use as an international waterway.

Opponents have put forth varying large sums as to what the canal is worth, book value, replacement value, original cost, and so forth, but the basic point they must recognize is that the true worth of the canal depends upon the use of the canal. Owning the canal is of no significant value if you cannot use it. The canal's worth is in its use and that is what these treaties safeguard.

Third, these treaties clearly serve important foreign policy interests of the United States. The treaties have significance not only for the United States and the Republic of Panama, but significance throughout all of Latin America and, indeed, throughout much of the rest of the world.

Why should we give our enemies around the world an issue to use against us when we have the opportunity to settle this matter in such a way that our own interests—strategic and economic—are fully protected. We can deny our opponents an issue which they have used and continue to use throughout many corners of the world?

Finally, I think these treaties are fundamentally important in determining the perception the American people have of themselves, in our perception of what we stand for as a nation, and how we intend to achieve our national objectives.

These treaties are preeminently important because they provide the United States with a justified moral and legal basis for the use of American power to protect American interests let us repeat that: with a justified moral and legal basis for the use of American power to protect American interests. I regard that as extraordinarily important.

We are the world's most powerful country. We can use our power to protect our interests. We can invoke that power as we choose to assert our interests. But I regard it as extremely important, in terms of the willingness of our own people to support such actions, and in terms of the support such actions will receive from people abroad, that the use of our power be done on a firm and justified moral and legal basis. These treaties give us the opportunity to do that in a way that the existing arrangements do not.

There is no guarantee as to what the developments will be; no one can guarantee what the developments will be. Everyone must

face the fact that the choice is between the developments which will come with these treaties and the developments which will come without these treaties. There are risks in either course.

In making that choice, I have come to regard these treaties as an opportunity, as a positive opportunity, for this great country.

These treaties give the United States, give to free American people the opportunity to protect our interests and to do it in a way that will command the support and the respect of our own people and the support and respect of people throughout the world.

We ought not to view these treaties, and I reject the attitude which views these treaties, as salvaging the best of a bad situation, which regards the treaties in a negative perspective.

The present situation offers the United States a positive opportunity. It offers us the chance to move forward. Historians, McCulloch most recently, have talked about the vision and the foresight of the people who built the canal 70 years ago and what that meant. He went on to say in endorsing the treaties that the same opportunity is before us today.

I agree with that. I think there is an opportunity here to look ahead with vision, to see clearly the interests of this Nation and, therefore, to take action approving these treaties, with the modifications recommended by the Foreign Relations Committee. Such approval will make these treaties a historic achievement for the American people, and for the protection of American interests. It will show a great power bringing might and right into harmony.

These treaties offer the chance to bring forth the best—the very best that is in the American people; to call upon the finest traditions for which this Nation stands, and to do it in such a way that our defense, our economic, all our interests are protected, are safeguarded in a way they could not otherwise be done. It can be done consonant with the very best of what America stands for.

These treaties are an opportunity which this Senate and this Nation ought not to lose. I strongly urge their approval.

THE PRESIDING OFFICER. Under the previous order, debate on the Panama Canal Treaty is to close at the hour of 5 p.m. today. The hour of 5 p.m. having arrived, debate is closed.

MR. CLARK. Mr. President, I ask unanimous consent that debate on the treaty be extended for 5 minutes.

THE PRESIDING OFFICER. Without objection, it is so ordered.

MR. CLARK. Mr. President, I want to take just 5 minutes further to discuss some of the essential issues that are before the Senate.

Mr. President, from the time that President Carter and General Torrijos signed the new Panama Canal treaties last September, I have stressed several ideas which I feel are fundamental to developing my position with respect to their ratification:

First, it seemed to me most important that my judgment would be based on what is best for the United States. As the distinguished majority leader told the Foreign Relations Committee:

I have tried to focus my own analysis of the treaties on one basic question: Are the treaties in the best interests of the United States?

President Carter approached the treaty question in exactly this way. "Throughout the negotiations," the President said in his television presentation, "we were determined that our national securi-

ty interests would be protected." Second, I recognized the need for updating the 1903 treaty—a conclusion reached earlier by five Presidents—three Democrats and two Republicans, and just as many Secretaries of State. As former Secretary of State Dean Rusk put it before the committee:

• • • the treaty of 1903, as amended, offers a very fragile platform on which to try to stand in these closing decades of the 20th century • • •

Secretary Rusk called the 1903 treaty a "legal anachronism." I believe that to insist on this concept of perpetuity in the world of today is not only unrealistic, it can be extremely dangerous and counter to our national objectives. I particularly liked the way the Philadelphia Inquirer described the situation:

The central issue is not the "surrender" of U.S. rights. It is the advancement of U.S. interests.

Third, I accept the position, made so eloquently before our committee by many witnesses—including, may I emphasize, all the members of the Joint Chiefs of Staff—that the U.S. strategic interest is in the guaranteed use of the canal, not in ownership of real estate.

Secretary of Defense Harold Brown:

I see three elements which together make up our national security concerns relating to the canal. These are, first, unimpeded use; second, effective operation; and finally, physical security of the canal. These are our paramount objectives.

Gen. George S. Brown, Chairman of the Joint Chiefs of Staff:

U.S. military interests in the Panama Canal are in its use, not its ownership.

Gen. Bernard Rogers, Chief of Staff of the Army:

I can certainly defend the Canal much better under the new treaties than under the present one.

Adm. James L. Holloway, Chief of Naval Operations:

These treaties in my judgment enhance the probability of our maintaining use of the Canal.

Gen. Louis H. Wilson, Commandant of the Marine Corps:

I support the President in his seeking a new treaty with Panama.

Lt. Gen. Dennis P. McAuliffe, the present U.S. Commander in Panama, and the soldier immediately responsible for maintaining our security there:

Our capability to keep the Canal open • • • will be enhanced, considerably enhanced, by the provisions of the treaty.

David McCullough, author of that extraordinary book on the canal "The Path between the Seas," and a man who knows and loves the canal as much as any American, put this so well. "I support the treaties," McCullough said, "because I support the canal; I know its importance, I know our interest is vital." But McCullough goes on to emphasize that what matters is "continued use of the canal • • • not ownership."

I think Ambassador Ellsworth Bunker stated our interests as well as anybody:

We want a Canal that is open to all the world's shipping—a Canal that remains neutral and unaffected by international disputes.

We want a Canal that operates efficiently, profitably and at rates fair to the world's shippers.

We want a Canal that is as secure as possible from sabotage or military threat. And we want full and fair treatment for our citizens who have so ably served in the Canal Zone.

To achieve these goals, the United States does not have to own the canal, as indeed it does not know.

Fourth, I was very much aware of the consequences of inaction, or rejection of the treaties. The canal is a narrow channel, 50 miles long, operating by an intricate and integrated system of locks, dams, and related facilities. It is an extremely fragile and vulnerable facility. As conservative columnist George F. Will put it:

Given the vulnerability of the canal's locks, and today's technology (and ideology) of free-lance violence, it is harder for the U.S. to protect the canal than to protect Europe.

Now to recognize this fact is not to yield to political blackmail. President Carter said explicitly that he "would not hesitate to deploy whatever armed forces are necessary to defend the Canal." But we have already been told by General McAuliffe, commander of our forces there, that in the event of a rejection of these treaties by the Senate he would need immediately another 40,000 to 50,000 troops. Critics of some of the economic provisions of the treaties might note this, and imagine what that would cost. But even then our military can not guarantee that the canal can be kept functioning. In my judgment, a satisfactory arrangement with Panama in which that country and its people have a deep and abiding interest in the continued operation of the canal makes a lot more sense.

Fifth, as to the treaties themselves. I believe that the basic U.S. interests are protected adequately in the new Panama Canal Treaty, which governs our relations until the year 2000. Under the terms of that treaty, I think it is clear that during this period the United States will control operation of the canal, and that U.S. military forces will be in Panama to provide for defense of the canal. We will retain the right to manage, operate and control the canal, its maintenance policies, its employment practices, and its toll rates from the signing of the treaty to the year 2000. And we have the land and water rights necessary to run the canal; and we will have military bases there with which to defend it. As one witness, William Rogers, put it in his testimony:

The formalism of the Canal Zone will disappear, but otherwise the new treaties will cause virtually no alteration to the present mode of operation, management and control of the canal.

We will also have during that period, it is worth emphasizing, an opportunity to train Panamanians for those more complex administrative and technical tasks from which they were systematically excluded in the past—though I think it is worth noting that already 70 percent of the labor force is Panamanian. But we should have no doubt as to their ability to take over the canal operation. Patrick Hughson, president of the American Association of American Chambers of Commerce in Latin America, whose membership includes 17,000 U.S. and host company businessmen in the hemisphere, told our committee:

As U.S. businessmen in Latin America, we are well aware of the competence of Latin Americans, including Panamanians, as many currently serve in high-level corporate positions, successfully managing large complex, multi-million dollar enterprises.

Have no doubt, he said, that the Panamanians will "master the technical and managerial requirements for administering and operating the canal." That from people who know.

I was, however, not quite as confident about the Neutrality Treaty, which governs our relations after the year 2000. I was concerned—particularly after hearing some contradictory interpretations from the Panamanian side—that two basic rights that I consider essential could be challenged: to take such measures as are necessary to keep the canal neutral and open to ships of all nations, and to receive expeditious treatment—go to the head of the line—when we felt it was necessary.

Finally, I resolved to withhold my judgment on ratifying the treaties until the Senate Foreign Relations Committee, on which I sit, had held hearings, listened to testimony, and had fully debated the details and possible amendments to these extraordinarily intricate and involved documents.

The Foreign Relations Committee has done just that. We heard administration witnesses—all the key persons, from Secretary of State Cyrus Vance and Defense Secretary Hal Brown to the Joint Chiefs of Staff, the Attorney General, the Secretary of Transportation, the negotiators themselves, the Governor of the canal, and the military commander for the canal.

We heard congressional witnesses, from determined opponents such as Senator Thurmond, who strongly criticized the treaties, to Senator Hollings, who was so eloquent in their defense. We heard a parade of outside witnesses from organizations of all political persuasions, including the Panamanian Committee on Human Rights and the Liberty Lobby. We listened to panels of experts—leading international lawyers, historians, economists, persons with special expertise on Panama. And we heard testimony—in support of the treaties—from two distinguished former Secretaries of State, Dean Rusk and Henry Kissinger.

In all, in 15 days of hearings, our committee heard more than 92 witnesses, took more than 2,000 pages of testimony. In addition, as the hearing record shows, not much bearing on the canal either in the public press or in private correspondence between Senators and the administration experts escaped insertion into the record.

I think it can be justifiably argued that the committee fulfilled its responsibilities to learn what is in these treaties, and to know what they mean. There was an incredible attention to detail. Let me give you just one example: On the issue of how to incorporate the Statement of Understanding between President Carter and General Torrijos—about which I will say more later—into the Neutrality treaty. The committee debated almost a full day on whether it was better to put it in as a single, verbatim text, or to separate it into different sections of the treaty. A small point, it may be argued, particularly as the lawyers told us that in terms of international law it did not make any difference. But we, as politically sensitive individuals, were determined to incorporate this understanding in the clearest, most unambiguous fashion possible, and that is why it took rather long.

One development during the process of our committee's handling of the treaties must be described in detail. As I mentioned earlier, I and many of my colleagues had some measure of uncertainty about

the language of the Neutrality Treaty dealing with the dual U.S. rights—of taking whatever action is necessary to deal with any threat to the neutrality of the canal, and of receiving preferential treatment for our warships in case of an emergency. Our concern persisted even when we learned that this language had been drafted by our military planners and was acceptable to them.

I might add that the American people apparently also shared this concern that the U.S. rights be preserved. A poll conducted by the New York Times and the Columbia Broadcasting System last fall found that 49 percent of those polled opposed the treaties, and 29 percent approved. But when asked, "Suppose you felt that the treaties provided that the United States could always send in troops to keep the canal open to ships of all nations. Would you then approve of the treaties?" Sixty-three percent approved and only 24 percent disapproved. The "no opinion" category had dropped from 22 percent to only 13 percent. I submit that the inclusion of this Presidential statement meets precisely the concern that the United States will always be able to take any action necessary to meet any threat to an open and functioning canal.

For most of us, these concerns were partially met on October 14 when President Carter met General Torrijos in the White House, and issued a joint statement of understanding directed at just these two issues. These are of such significance that it is worth quoting them verbatim.

As relates to the right of the United States in the period after the year 2000—and let me note in passing again that prior to that time, we have troops on scene and the problem does not exist.

Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal—the Neutrality Treaty—Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the canal or against the peaceful transit of vessels through the canal.

This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal affairs of Panama. Any U.S. action will be directed at insuring that the canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama.

And with respect to the right to "go to the head of the line," the language of the statement is:

The neutrality treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the canal expeditiously. This is intended and it shall so be interpreted to assure the transit of such vessels through the canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the canal rapidly.

I submit that this language—"first grader language," as President Carter calls it—clears up any doubts which may have existed

about the U.S. right to take any action unilaterally to meet any threat to the neutrality of the canal, and that we are assured of expeditious passage.

But there was still a problem. What is the legal significance of a "statement of understanding" between two heads of government? Would international courts or arbitration panels give full credence to this statement? Did it equate fully with the text of the treaties? On balance, the answer is probably "yes." But I, for one, did not want to leave the slightest doubt. And that is why I cosponsored in committee the recommendation that the language of the statement be incorporated into the treaty as an amendment. That was approved 14 to 1 in the committee, and I trust that this will be the action of the Senate in dealing with this amendment here on the floor.

The addition of the statement language as an amendment, and the further addition of a couple of technical understandings which we approved in committee, strengthen, in my judgment, an already excellent pair of treaties.

The additions make the ratification of these treaties, I have concluded, to be in the best national interest of the United States. Providing the basic features of the treaties remain fundamentally unchanged by Senate action, I intend to vote for their ratification.

Let me attempt today to discuss some of the key issues relating to the treaties, and explain in somewhat more detail why I feel them to be in our national interest.

THE ISSUE OF SOVEREIGNTY

I am not sure that this any longer plays such an important role as it did during the early weeks of the debate. The probable explanation is that there was virtually no disagreement among the legal and diplomatic experts that Panama has always retained titular sovereignty over that territory, and that the United States bought neither sovereignty nor property for that \$10 million, but certain rights for which we then paid an annual fee. I can quote no better authority on this than Phillipe Bunau-Varilla, the Frenchman chiefly responsible for drafting the treaty:

The United States, without becoming the *sovereign*, received the *exclusive use* of the rights of sovereignty, while respecting the sovereignty itself of the Panama Republic. (*Italics in original.*) U.S. officials from as early as 1905 on have repeatedly acknowledged that Panama retains at least titular sovereignty over the Zone. President Eisenhower's decision to let the Panamanian flag fly in the Canal Zone was specifically to give "visual evidence that Panama does have titular sovereignty."

The contention that the Canal Zone is as much a part of this Nation as Alaska or Louisiana is simply historically inaccurate. The language of the transfer of Louisiana to the United States in 1803 provided that France cede "forever and in full sovereignty the * * * territory with all its rights and appurtenances." The United States received all the public lands, and the citizens were given U.S. citizenship. With respect to Alaska, the Russian Emperor ceded all the territory and dominions he possessed on the continent of America and adjacent islands, giving to the United States all rights, franchises, and privileges previously held by him. In neither case was any provision made for a continuing annuity or any sort of responsibilities or relationship after the sale.

But I see little point in a prolonged battle of words over sovereignty, for in my judgment it is almost irrelevant to the contemporary treaty issue. Even if we were sovereign in the zone, the political, military, and diplomatic arguments in favor of these treaties before us would remain the same. Sovereignty would add little to our position except possibly to give us a somewhat letter legal right to send 100,000 troops into the area, and still not be able to keep the canal functioning. It is simply not germane to our central purpose of keeping the canal open and available to all of us. Bill (William F.) Buckley (Jr.) fully supports the treaties, though he believes that "our title to the Panama Canal is morally and historically secure." But, Buckley goes on, even if we could prove that every Panamanian signed the treaty in 1903, the arguments for moving on to a new arrangement remain valid. I agree. The U.S. military and the commercial users of the canal—are interested in using it, and having that use guaranteed. Sovereignty is simply no longer a germane issue.

THE QUESTION OF WHETHER A TREATY WRITTEN TO BE SELF-EXECUTING CAN TRANSFER PROPERTY OF THE UNITED STATES UNDER DOMESTIC LAW WITHOUT IMPLEMENTING LEGISLATION

What this means in English is whether the House of Representatives must give its approval before these treaties—which do dispose of property—can be ratified. Article IV, section 3, clause 2, of the Constitution provides that Congress "shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States." The argument has thus been made that this provision grants to both Houses of the Congress the power to dispose of Government property, that this power can be exercised only by statute, and that any treaty transferring property requires House concurrence. This is an enormously complex and disputed legal issue. Supreme court cases have been cited on both sides. I am sure that before this debate is concluded—I understand there are some amendments to be offered—we will all be quoting court citations. Still, I think there's a certain wisdom to the language of our committee's report:

While additional cases are cited on each side of the question, the Committee sees little merit in attempting to weigh dicta against dicta. The short of it is that the Court has never struck down a treaty for disposing of governmental property; that it has, over the years, had before it a number of treaties which did so; and that there is no reason to assume that *Holden v. Joy* supra, and *Jones v. Meehan*, supra do not represent the Courts thinking.

The committee then concludes:

The Committee finds that the Constitutional text, the intent of the Framers, opinions of the Supreme Court, and historical precedent all suggest that the Panama Canal Treaty can validly transfer to Panama property belonging to the United States without a need for implementing legislation.

In a word, the committee concluded that the Senate does have the right to dispose of the Panama Canal without reference to the House of Representatives.

Having said that, however, let me emphasize that the House will be very much involved in the implementing of the treaties. Among other things, both Houses will concur in the manner of setting up the Panama Canal Commission, how to set tolls, employment

practices, adjustment of the jurisdiction of U.S. courts. Thus although I concur in the committee's judgment that the constitutional power to dispose of property by self-executing treaty is unassailable I look forward to the participation of the House of Representatives in the implementing stage.

COMPATIBILITY WITH OTHER TREATY COMMITMENTS

It has been argued, and I must confess that at first the idea bothered me, that the United States would not be able to invoke the provisions of article IV of the neutrality treaty because of a conflict with commitments made in other treaties. Specifically, I was concerned about what appeared to be specific injunctions against such action in the U.N. charter, and the OAS charter. Article 2, clause 4, of the U.N. charter, for example, provides that—

All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any manner inconsistent with the purposes of the United Nations.

Similarly, the OAS charter, article 18, provides that—

No state or group of states has the right to intervene, directly or indirectly, for any reason whatever in the internal or external affairs of any other state. The foregoing principle prohibits not only armed forces but also any other form of interference or attempted threat against the personality of the state or against its political, economic, and cultural elements.

The answer, it seems to me, lies in article IV itself, and in particular the Presidential statement, where it is specifically spelled out that any action the United States might take to maintain the regime of neutrality:

This does not mean, nor shall it be interpreted as a right of intervention of the United States in the internal, affairs of Panama.

In a word, we would only assure that the canal will remain open, secure, and accessible, and are not acting against the territorial integrity of political independence of Panama. The State Department specifically declared before the committee that there is no inconsistency:

A legitimate exercise of rights under the neutrality treaty, either in intent or in fact, be directed against the territorial integrity or political independence of Panama.

In short, so long as the United States would be doing nothing except keeping the canal open, we would not be in violation of the terms of these other treaties. I would add that the committee concurred in this judgment.

Let me make one other point regarding the validity of the treaties, particularly with reference to whether Panama must hold a second plebiscite because of the incorporation of the statement into the text. The Vienna Convention on the Law of Treaties—article 46—provides, in regard to the provisions of internal law and their relationship to the treaties, that—

1. A state may not invoke the fact that its consent to be bound by a treaty has been expressed in violation of a provision of its internal law regarding competence to conclude treaties as invalidating its consent unless that violation was manifest and concerned a rule of its internal law of fundamental importance.

2. A violation is manifest if it would be objectively evident to any State conducting itself in the matter in accordance with normal practice and in good faith.

I am assured by legal opinion that given the publicity accorded the statement in Panama prior to the plebiscite, that there can be no question of the nonapplicability of the treaties.

THE NEXT AREA OF CONTROVERSY USUALLY COMES IN THREE PARTS: WHY SHOULD WE SIGN A TREATY WITH A (A) COMMUNIST (B) DICTATOR WHO (C) VIOLATES HUMAN RIGHTS

I would like to take each part separately.

To begin with, these treaties will not be between President Carter and General Torrijos, but between the Governments of the United States and Panama. General Torrijos most certainly will not be around when the treaty of neutrality goes into effect.

But there is an even more basic point than that: Panamanians of all political colorations are dissatisfied with the current canal arrangement. It is sometimes so easy to forget that there are "Panamanians," persons with minds and bodies and a national sensitivity. This is perhaps true of the American view of all of Latin America. I was struck most recently by the thoughts of Alastair Reid, writing in the *New Yorker*:

I have been perplexed for years by the vague view that most of the rest of the world has of Latin America, as though it were not a real place at all but, instead, a gigantic movie lot, with millions of available extras, of all shades and customs, ready to stage epics at the drop of a banana.

But there are real-life Panamanians, and they have been dissatisfied with the treaty from the start, when a French citizen exceeded his mandate and signed a treaty with the United States before any native Panamanian had a chance to read it, and while a Panamanian diplomatic team was on its way to Washington. The American Secretary of State Hay later wrote in a letter to Senator Spooner that the treaty was:

Vastly advantageous to the U.S., and we must confess, with what face we can muster, not so advantageous to Panama * * * You and I know too well how many points there are in this treaty to which a Panamanian patriot could object.

Well, Panamanian patriots have been protesting ever since—sometimes, as in 1964, violently. Demands for renegotiating the provisions which virtually created an American colony in the middle of their country predate Torrijos. For that matter, one of the more vociferous voices demanding change was that of the fascist President Arnulfo Arias back in the 1940's. Ambassador Bunker has pointed out that a truly democratic government in Panama would demand even better terms than we are giving Torrijos. In a word, whatever Panamanians may think of Torrijos, they are of one voice in demanding a change in the 1903 treaties. Indeed, the only real opposition to him on this issue comes from circles which believe that the treaties are too favorable to the United States.

Now, as for Torrijos' "Communism". This is just a spurious allegation. As Secretary Vance testified.

General Torrijos is not a Communist. There are no leading members of his government who are Communists.

The general did go to Cuba; but when he got back he said he was sure of one thing—that the Cuban system was not right for Panama. He has periodically exiled the leaders of a small Communist party, Partido del Pueblo. It plays no formal or informal role

in the government. Panama maintains diplomatic relations with neither the Soviet Union or the Peoples Republic of China. A Soviet trade delegation did visit Panama last year, and there may be some modest expansion of commercial relations. But many Latin countries maintain trade ties with the Soviet Union, and it just is not any evidence at all that Torrijos is a Communist. For that matter, his cabinet is composed of generally very conservative individuals—his Minister of Planning is a Ph.D. under Milton Friedman of Chicago. As for Communist influence in Panama, virtually all of the experts questioned on this before our committee said that the quickest way to enhance Communist influence in Panama is to reject the treaties. The Communists in Panama, I might note, oppose the treaties. First of all, let me quote the Senator from South Carolina to the effect that—

Many of those now opposing a new treaty have more than once winked a knowing eye of regimes which are anything but Simonpure in their human rights practices.

Now as for his being a "dictator". I concede, Panama does not have, by the standards of the Senators in this body, a fully democratic government, and General Torrijos is not a properly elected president. But I submit that in Panamanian history there have been few democratically elected governments. The only difference is that during those decades when the sons of the Panama City social club were alternating in the Presidency they maintained a somewhat better facade on the system than Torrijos chooses to do. Furthermore, anybody who has seen Torrijos go out into the countryside and mingle with the people cannot help but acknowledge that he has a wide support. The man is a populist leader, with a grand social vision. Torrijos has by all accounts created a much fairer balance between the cities and the countryside in delivery of social services.

Certainly he exhibits none of the characteristics of dictators, say, in Uganda or Uruguay. The press, though not free by U.S. standards, is not as rigidly controlled as the press in Communist or totalitarian regimes. There is a limited amount of genuine press criticism. If you go down to Panama City and listen to the heated and open conversations in the restaurants, it is clear that the Torrijos regime is not what you might imagine.

Closely linked to the nature of the Panamanian Government is the issue of human rights. As might be expected, given my publicly expressed concern for human rights throughout the world, I have given considerable thought to the extent to which these treaties, by providing the Government of Panama with additional revenues, do in fact help perpetuate a regime charged in some quarters with violating human rights.

But here, again, I think this must be put into perspective. Without in any way attempting to condone the holding of political prisoners, or the forced exile of citizens. I think it is worth noting that Amnesty International did not find the situation in Panama serious enough to include in its 1975-76 report. In its earlier reports, Amnesty had concluded that the instances of gross violation of human rights ended about 1970. And Freedom House, frequently cited earlier for its critique of the situation in Panama, found

substantial improvement—by the way Freedom House also found the paternalistic regime in the Canal Zone—only part free.

While we are discussing Freedom House, by the way, let me comment that despite its reservations about the human rights situation in Panama, the organization in its January-February 1978 publication *Freedom at Issue*, has strongly endorsed the treaties:

Without question, if these present Canal treaties are not ratified by the U.S. Senate, the immediate winners will be the communist parties of Latin America and the Caribbean. * * *

As an MCPL (Members of Congress for Peace Through Law) study noted:

The Panamanian Bishops' Conference has spoken out on human rights issues in Panama and in other parts of the world. It has also spoken on the Canal issue, strongly supporting the new Treaties. The Protestant and Jewish clergy also support the Treaties unequivocally. Neither Amnesty International, the International Commission of Jurists, the U.N. nor the O.A.S. has singled Panama out for condemnation. The situation in Panama is, in short, nowhere near constituting what Congress has defined as "a consistent pattern of gross violations of internationally recognized human rights." This is not to say that the record is good. But it can be said that Panamanian citizens enjoy better living standards and lives freer from repression and official government terror than in many Latin American states.

Finally, in talks with Members of this body who visited Panama, General Torrijos according to the statement by our distinguished majority leader, pledged that steps would be taken to abrogate certain repressive laws, including those which had limited the right of assembly and had provided for summary trial and detention.

Nevertheless, there is still ground for concern; there are still measures we would like him to take. But in my judgment withholding ratification of these treaties is not the way to go about expressing our concerns. In our dealing with Panamá, as with South Africa or the Soviet Union, we must make judgments on how best to influence internal change. And in the case of Panama I think the steps General Torrijos has taken give every promise that as the economy improves and political tensions subside, further measures will be taken to end whatever remaining restrictions on human rights exist.

I personally feel, however, that there is a quite different aspect of human rights involved. Why should we lecture Panama on human rights violations, when in fact in the eyes of most Panamanians we are violating their basic human rights by holding on to the canal on terms which they feel are unbearable? I suspect that most Panamanians are more affected by the latter sort of infringement on human rights than on pressures from their government.

Just a word on whether we can trust Torrijos, or the Panamanians, or whether we must expect that they will try to abrogate the treaties as soon as they are in control. To begin with, he would have no right to take over by force during the period prior to 2000. The internationally recognized power of nationalization has never applied to property of another foreign government, and the Canal Commission which will run the canal during this period will be an entity of the United States. Could he take it by force? Certainly not during that period, for the United States will retain sufficient forces to defend the canal, and can reinforce these in case of greater threats. But I really doubt Panama would even try. Despite

the profoundest dissatisfactions with the old treaty, Panama has never tried to abrogate it. Instead, Panama has patiently negotiated for 13 years.

As for the situation after the end of the century, Panama will take over the canal, but as a trustee, restrained in its actions by obligations agreed to, aware that in case these obligations are denied, the United States can take such measures as are necessary. I do not believe in threats. I do not even think threats will be necessary. After all, a normal and profitable operation of the canal will be in Panama's highest interest. But from the standpoint of U.S. national security it is clear that the United States retains a unilateral right to defend the regime of neutrality—in perpetuity.

As a matter of fact, this right in perpetuity—precisely the aspect of the 1903 treaty which was such an irritant to Panamanians—demonstrates for me what a really balanced and fair treaty we have achieved here. The neutrality treaty provides that Panama can permit no foreign military presence there after we leave in the year 2000. That goes beyond even the 1903 treaty, which has no such clause; Panama right now has every right to have Soviet and Cuban troops lined up along the boundaries of the Canal Zone.

One final word about the stability of the Panamanian regime. Much has been made by critics of the statistical fact that Panama has had 60 governments in about 70 years and that only four Presidents ever completed their 4-year term in office. How, they ask, can we deal with a country like that? Well, the fact is this figure includes the number of times in which Vice-Presidents have been sworn in as acting Presidents while the Presidents were traveling overseas—something required by the Panamanian Constitution. In fact, Panama, particularly in recent years, has been as stable as most Western countries. Since 1946, for instance, Panama has had 13 governments; but in the same time Italy has had 39 governments, France had 34 premiers, the United Kingdom had 9 Prime Ministers and the United States had 6 Presidents. Torrijos has been in office while we have had three Presidents. And a final point: To the degree that there is political instability in Panama, it is often the result of our occupying the Canal Zone.

THE SEA LEVEL CANAL CONTROVERSY

It must confess that of all the disputed issues in these treaties, the debate over article XII of the neutrality treaty relating to a sea-level canal is the most curious. The article provides that the United States will not conclude an agreement with any other country in Central America to build a sea-level canal in the period before the year 2000. But it also provides that Panama will not build a canal in Panama without us. Now, the fact of the matter is that any sea-level canal if built—and I think most economists say it will never be built—would certainly be built in Panama. A U.S. commission spent 5 years and \$22 million before concluding in 1970 that of 34 possible routes, only 8 were worth looking at, and of these the two best by a huge margin were in Panama. The route in Nicaragua is 140 miles long; the one in Columbia is 100 miles long; the path through Panama is 40 miles long. Construction costs would reflect the distance. Even the cheapest route at the time was

projected at \$2.8 billion; and that has climbed to \$6 or \$7 billion today. The other routes in neighboring countries would cost at least four times as much. These conclusions were reconfirmed by the Department of Transportation which reviewed the Eisenhower study in 1977. The judgment that Nicaragua was simply unacceptable as an alternative route was so persuasive that when that country requested the abrogation of a treaty (Bryan-Chamorro) which gave us this exclusive right, the Senate approved—66 to 5—of the change. Many of the Senators now opposed to the sea-level canal provisions with Panama renounced the Nicaragua route rights 6 years ago.

So what this clause does is commit the United States not to build a sea-level canal where it would not in any case, in exchange for a Panamanian guarantee not to build a sea-level canal with any other nation—the Saudis, the Japanese, Brazil. The clause went into the treaty at our insistence General Torrijos would be delighted to take it out. I say that is very much in the U.S. interest to keep it in.

WITH RESPECT TO THE MILITARY VALUE OF THE CANAL

I am satisfied that the committee has, through testimony of the Joint Chiefs of Staff, defined the contemporary value of the canal to U.S. defense needs. The members—Gen. George Brown, the chairman; Gen. Bernard Rogers, Chief of Staff of the Army; Adm. James Holloway, Chief of Naval operations; Gen. David Jones, Chief of Staff of the Air Force, and Gen. Lewis Wilson, Commandant of the Marine Corps—were unanimous in describing the canal as an important element in our defense operations. General Brown, told us:

The Joint Chiefs of Staff recognize the Panama Canal as a major defense asset, the use of which enhances United States capability for timely reinforcement of the United States forces. The strategic military value of the canal is reflected in our ability to accelerate the shift of military forces and logistic support by sea between the Atlantic and the Pacific Oceans.

The strategic value of the canal is not expected to change substantially throughout the life of the new Panama Canal treaty.

However, while recognizing the canal as an important factor in our defense system, many qualifications were attached which diminish substantially its overall importance. Planes and missiles have obviously changed fundamentally the canal's vulnerability in wartime. In time of war, as Admiral Holloway's statement explained, the canal would certainly be put out of the importance of the canal in relative terms is therefore substantially diminished. In a word, it would be destroyed in the first minutes. The 13 aircraft carriers on active duty cannot transit the canal; it is argued that the Navy will be returning to smaller carriers, but at the moment any carrier big enough to handle modern jet planes would be too large for the canal. In practice, the primary role of the canal would be to permit logistical support between oceans. Even during the Vietnam war, when canal usage went up dramatically, there was never any crisis. For that matter, only 20 percent of U.S. ships to Vietnam transited the canal.

In my judgment, the bottom line was given by Adm. Robert Long, Vice Chief of Naval Operations, declared that the loss of the

canal "would not be a fatal flaw in the ability to execute our war plans." That is exactly how I view the canal.

In a word, important; but not vital. And, as the Chiefs themselves argued, the best way to keep the canal available to the United States is by a cooperative agreement with the Panamanians. In general, the internal threat to the canal, that is, from Panamanian patriots dissatisfied with our current arrangements, is far greater than that from the outside. And it will take these treaties to persuade the Panamanians that they should have any real interest in protection of the canal.

WITH RESPECT TO THE ECONOMIC PROVISION OF THE TREATIES

As a Senator from Iowa, I have two primary economic interests in these treaties:

That they not burden further the taxpayers of my State;

And that they assure the farmers of my State a reliable, dependable means of shipping grain to the Far East, at an economical cost.

The first of my considerations relates directly to the allegations that we are paying the Panamanians to take the canal, and actually involves two considerations: Are we giving away U.S. property, and will taxpayers have to foot the bill to pay Panama in the future.

It is true, Mr. President, that we are "giving" away some U.S. property; but what we are giving in no way correlates to the figures charged by the critics. Over the course of the next 22 years the United States will turn over to Panama the lands and waters, the building and facilities, now in the zone. There are three ways of reckoning how much this is worth. The initial investment was about \$1.6 billion, on which the United States recovered all but \$58 million. The replacement value—a figure of no particular pertinence as far as I can see—because who would build another lock canal—is perhaps \$8 billion. The book value, because of depreciation, is now only about \$620 million. Measured against the fact we left \$5 billion worth of material in Vietnam we climbed aboard our helicopters for the pullout, this does not seem all that much.

But there is an even more important way of measuring this value. The canal has always been run by the United States with the intent of subsidizing shippers, not Panama. Tolls began at \$1.20 in 1914 and are still only \$1.29. Based on 1914 dollars, the payments today are only a fraction of what they should be. Nobody can in good faith argue that Panama has benefited to the degree that it should have.

Let me turn to the "payments" to Panama under the new treaty. Here, too, there has been considerable misunderstanding and misreading of the treaty provisions. The Senator from South Carolina said in his testimony before the committee that—

We oblige ourselves to pay the Panama government huge sums in various ways, totalling up to nearly \$1.5 billion over the next 22 years.

Let us be clear in our minds: All payments to Panama throughout the life of the treaty derive from revenues of the canal. There is no obligation for the taxpayers to pay anything. The \$10 million for services; the \$10 million annuity; and the \$0.30 a canal ton for

transit, all derive from revenues accruing to the Canal Commission.

Having said that, let me grant that this whole turnover will in fact cost the U.S. taxpayer something. I suspect that the annual \$20 million in interest paid by the old Canal Zone Company—but only since 1950—will cease—by congressional action. Pentagon officials say that the consolidation of the military bases will cost about \$50 million—but General McAuliffe told us this would have taken place in any case, with or without the treaties. I think it is important to concede that these are indeed costs arising from the transfer; but they are really minimal compared to what we pay worldwide. We pay Greece and Turkey and Spain far more annually for base rights.

Furthermore, even in the economic package we are discussing with Panama—which though not technically a part of the treaties is certainly linked—there would be virtually no demand on the U.S. Treasury. The single exception is 10 percent of the \$50 million credits for arms sales which has to be deposited, but which historically has never been taken up. With that minor exception it can be stated flatly that neither the treaties nor the economic package which accompanies it calls for any additional appropriation from the U.S. Treasury. There is no additional burden on the U.S. taxpayer. What the treaty actually does is give Panama a far greater economic incentive to keep the canal open and operating, and that is in the interest of all of us.

With respect to the economic considerations of the canal treaty allow me to cite some testimony before our committee that I found particularly revealing. United Brands Co. is the largest single user of the Panama Canal. In 1977 alone their vessels transited the canal nearly 400 times, and they paid some \$3 million in canal tolls and charges. It also acted as agents for vessels that made an additional 513 transits. United Brands knows Panama. Its ships supplied material and labor for the canal's construction. It has an enormous economic interest in the future of the canal.

And yet its president and chief executive officer, Seymour Milstein, told our committee:

We are convinced that ratification of the Panama Canal treaties is the only fair conclusion to the good faith negotiations conducted by our two countries over the last several years.

And this from the largest single user with the greatest interest in efficient and safe operation of the canal of any U.S. concern.

Mr. Milstein made a couple of other pertinent observations:

Without more direct long term experience in Panama than any other U.S. corporation, we have dealt extensively and for many years with the leaders of the government of Panama. We can tell you that when the government of Panama took over the schools and hospitals which United Brands had previously operated, there was no deterioration in the quality of education and health care services provided to the Panamanian people. We have always been treated fairly by the administration and courts and, as an example, during a recent labor dispute involving our company, the Panamanian judicial system ruled fairly and equitably in the matter. We have been given the kind of treatment in Panama that accords with our expectations as free Americans.

Let me turn to my second point on the economic considerations. Iowa farmers ship a lot of grain to the Far East, and it is vital that the transport costs not increase significantly. According to calcula-

tions of all the best economists we could muster, the projected 30-percent increase in tolls would have a minor impact on overall shipping costs. As Ambassador Bunker said in a speech in Des Moines:

The transportation cost of a bushel of grain shipped to Japan from Des Moines which now averages 66 cents, would increase by less than half a cent.

This is an additional 20 to 30 cents per long ton, and a very small fraction of the overall transportation costs from New Orleans to Japan. Col. Lawrence Jackley, a native of Des Moines and for some time a member of the Pentagon team that worked on the treaties, said in Des Moines—

The impact of that on the total costs of transportation is very minor. The impact on the consumer is even less, even if the consumer picked up all of the raise.

Transportation costs for a Toyota or Datsun would go up by only about \$3.

As Jackley pointed out, the impact of shipping costs of political turmoil would be far greater, and insurance rates as well.

In a word, the economic impact on the Iowa farmer will be minimal, and in any case less than it will be if political dislocations threaten safe and secure transport through the canal. For that matter let us not overstate the economic value of the canal to the United States as a whole. It is true that the canal reduces the nautical distance between east and west coast ports by 8,000 miles. But most of our internal commerce does not flow that way. The oft-cited figure of 70 percent of canal cargoes originating in, or destined for, U.S. ports, represents a mere 16 percent of our total ocean traffic. The fact is that the canal, in economic terms, is of far greater importance to 10 other countries.

Foreign trade accounts for less than 10 percent of the U.S. gross national product, and therefore the canal affects less than 1 percent of the U.S. GNP. As Robert G. Cox, a canal authority, wrote:

By volume, less than 5 percent of the total world trade transits the Panama Canal. By value, the proportion would be little more than one percent.

The U.S. ships more goods by airplane than go through the canal.

Cox adds:

As for the \$700 million in actual unrecovered investments the U.S. government would have had that back by now had it not elected to subsidize the shipping operations of user nations through reductions in real toll charges while demand for transit service was increasing.

I think the committee report emphasized the proper issue:

The Panama Canal Treaty will protect the major U.S. economic interest by insuring that the Canal will remain open and will be run efficiently.

Providing, as I discussed, this does not come at too great a cost, and I do not think it will, this is an enormous benefit for the Iowa farmer.

WHAT THE TREATIES DO NOT DO

Before summarizing my thoughts on the treaties, I would like to make clear that I have very clearly in my mind the complexities of what we are involved in, and the limitations thereon. These treaties are the product of an extremely lengthy and complex political negotiation, derived into a large extent on the political situation in

both of our countries. They are not, and I would not pretend to argue the case, the final delineation of our relationship. They are not totally satisfying to me; nor are they to General Torrijos. They do not answer every question about our future relations. There are legitimate questions about the future economic viability of the canal. They do not anticipate every military threat or situation affecting the canal. They do not, as the committee report emphasized, remake the Government of Panama in our own image; they do not guarantee an acceptable human rights situation in Panama; they do not prevent drug smuggling from Panama; they do not guarantee the exclusion of Communists or Cubans from Panama.

But, then, in fact we could never have expected that they would. The conclusion of these treaties was in fact a negotiation, a two-way tug of war about our national interests. I could image a treaty more acceptable to us, and more favorable to our interests. But to be successful, to be enduring, a treaty must reflect the basic interests of both parties involved. And that is what I think these treaties before us have achieved.

CONCLUSION

I am afraid that a point I should like to make in beginning my conclusion might be a bit of a surprise. Let me state it, and then explain it. In my judgment, the furor over the Panama Canal is far out of relationship to its importance to this Nation.

The Panama Canal is both economically and militarily of significance for the United States. But the fact is that in both respects, it is important, but not vital.

Economically, there are a variety of alternate means of shipment. That is why the toll structure is so sensitive—a marginal increase in tolls makes all sorts of optional methods competitive. Actually, as you know, there have been fewer transits each year, and for 3 years the canal ran a deficit. There are 2,000 commercial supertankers and cargo ships too large to transit the canal. While U.S. traffic is important to Panama—two-thirds of their revenue—these are only 10 percent of the U.S. oceangoing traffic. For the Iowa farmer, it would not make a great deal of difference whether his grain goes to Japan through the canal or by rail to the west coast. A former member of the Board of Directors of the Panama Canal Company, Dr. John C. Elac, has described the impact of the closing of the canal on total United States and world trade as “inconsequential.”

Similarly, the military importance of the canal is diminishing. I repeat the conclusion of Admiral Long, who declared that loss of the canal “would not be a fatal flaw in the ability to exercise our war plans.”

But the reason I say, I feel the Panama issue had been exaggerated beyond its importance is based only partially on the conviction that the canal is of less than vital economic and military significance. My basic reason was that I can find so many other international issues which ultimately are going to affect the lives of each person here in a way far more profound than the Panama Canal. Among these are: The threat of nuclear holocaust; the necessity of coming to grips with global poverty; the challenge of world con-

sumption of energy; the dangers to our environment; and the difficulties of achieving democratic regimes throughout the world, and struggling for a recognition of human rights.

Measured against these issues, frankly, the Panama Canal looms pretty small. It was a great achievement, the "moonwalk" of the decade. The U.S. record of operation of the canal is incredible. But the times have changed. We have before us a pair of documents which describe a new relationship. The Panal Canal treaty spells out a reasonable and intelligent 22-year process for preparing Panama to run the canal. The treaty of neutrality provides us assurances that if Panama ignores this sacred trust, or any other nation threatens its neutrality, we can take such action necessary—in perpetuity. If the concern is guaranteed use of the canal, then these treaties as amended will be in my judgment the most effective way of action on this job.

Let me say in closing, guaranteed use of the canal is not all these treaties accomplish. They, in the broader perspective, also as former Secretary of State Henry Kissinger put it, provide "an opportunity to advance fundamental American foreign policy interests." Secretary of State Cyrus Vance put it another way:

Any nation's foreign policy is based, in the end, not just upon its interests, and in Panama our interests are clear and apparent. It is also based on the nature and will of its people. I believe the American people want to live in peace with their neighbors, want to be strong, but to use their strength with restraint, want all peoples everywhere to have their own chance to better themselves and to live in self respect. That is all a part of our American tradition.

It was in the Monroe Doctrine tradition of the time that Theodore Roosevelt as he put in his own words "took Panama." It is in the American tradition of today that we look forward to a new, and ultimately stronger relationship with Panama which guarantees our mutual interest in a prosperous canal.

As Roosevelt himself once said:

The important thing is the next step. It often happens that the good conditions of the past can be regained not by going back, but by going forward. We cannot recreate what is dead; we cannot stop the march of events; but we can direct this march and out of the conditions develop something better than the past knew.

That, I submit, is the solemn trust and responsibility we now share in the Senate: To go forward, not backward, and to develop something better than the past that Roosevelt knew. I think that is what these treaties achieve.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the debate on the canal may continue for an additional 3 minutes.

The PRESIDING OFFICER (Mr. Clark). Without objection, it is so ordered.

Mr. GLENN. Mr. President, I rise to express some concern over a situation that came to my attention just today. It is, I think, with regard to the Panama Canal Treaty, a situation that could be worked on some over this legislative break of 1 week. It involves at least two companies, I have been advised, that have expropriation proceedings underway for which they are seeking recompense from the Panamanian Government at the present time.

Their properties were expropriated, and adequate settlement has not been made up until this time. The procedure, as I understand

it, is that in cases like this the State Department convenes an interagency committee which determines the validity of the expropriation claim and then decides what to do about it with the Panamanian Government. This interagency committee, I have been told today, meets next week.

I wish to express my concern that these expropriation matters be made a matter of high priority in the State Department and with the Panamanian Government so that they can be fully and adequately resolved before the treaty is signed.

I share the concerns of the companies involved that if such disposition of these cases is not made prior to signing of the treaty their chances might obviously be diminished as far as getting just compensation for expropriated property.

So, Mr. President, I hope that, with this being published in the Record of today's proceedings, the State Department will move as expeditiously as possible to get these matters resolved. I hope, also, that the Panamanian Government will cooperate to the fullest extent in seeing that this does get resolved so that this does not become a matter which we have to bring up closer to the date on which we might be voting on the treaty.

ADDITIONAL STATEMENTS SUBMITTED

Mr. McCLURE. Mr. President, two questions are before the Senate as we consider these treaties. The first is whether or not the just national interest of the United States is best served by our giving up sovereign control of the canal. The second question is whether or not these treaties adequately protect vital American rights if we decide to give the canal to Panama.

Those who favor giving up the canal claim that American control of the canal is the cause of great resentment throughout Latin America. They say that it is an affront to the Panamanian dignity for them to pass through a foreign zone to get from one part of their country to another. I might point out that for an American to get to Alaska, he must drive through Canada. Yet few of us lie awake nights scheming to take British Columbia.

Few Americans view the world with the crippling sense of guilt that so hampers our foreign policy establishment. Let us examine the history of our involvement in Panama.

With justifiable pride and great sense of accomplishment the United States opened the Panama Canal in 1914. The dream of Columbus had been realized. The canal was universally acclaimed as an engineering marvel. It was the moonshot of its day. Where all others had failed, Yankee ingenuity and perseverance succeeded. Under American jurisdiction the canal has operated efficiently and fairly for the benefit of all nations. It is today an international waterway freely available to all world shipping. Nearly 15,000 vessels of all nations go through the canal annually. The tolls are kept low and all income is used for maintenance and improvements in the canal. Panama, a country which owes its very existence to America's willingness to build the canal, has benefited enormously from this project. American taxpayers have an investment of \$6 billion in the canal and its military installations. The fact that

Panama has one of the highest per capita incomes in Latin America is almost solely the result of our canal.

Emotional tirades about yankee imperialism cannot be allowed to obscure the fact the U.S. control of the Panama Canal is at once a service to world trade and vital to our own national security. Recently four former Chiefs of Naval Operations wrote the following to President Carter:

Our experience has been that as each crisis developed during our active service—World War II, Korea, Vietnam and the Cuban missile crises—the value of the Canal was forcefully emphasized by emergency transits of our naval units and massive logistic support for the Armed Forces. The Canal provided operational flexibility and rapid mobility. In addition, there are the psychological advantages of this power potential. As Commander-in-Chief, you will find the ownership and sovereign control of the Canal indispensable during periods of tension and conflict.

The record of political instability in Panama can hardly engender confidence in their ability to defend the canal. During the last 70 years their government changed hands 50 times—mostly by force. At the moment, Panama is governed by a left-wing dictator whose trademark is anti-U.S. sloganeering. Under his rule, Panama's indebtedness has grown from \$167 million to \$1.5 billion. Freedom House, a respected organization which works for human rights, has listed Panama under the Torrijos regime as one of the "least free" nations on Earth. Far from stabilizing the situation in the area, a transfer of sovereignty over the canal to Panama would set up this tiny country with a combat force of only 1,600 as an irresistibly tempting target for Communist subversion.

Rather than give away the Panama Canal we should be seeking a positive approach toward helping the Panamanian people solve the problems of the area. Modernizing and improving the present lock system and the possibility of a new sea level canal are exciting projects which would do far more for the people of Panama than the Yankee-go-home demagoguery of the present regime. While I favor retaining sovereignty, I would be willing to make major changes in the present operation to increase the benefits the Panamanians derive from the canal. But if we decide to give up sovereign control of the canal, if we turn over to a tiny country a secure, multibillion dollar facility over which we now exercise all the attributes of sovereignty we have, it seems to me, a perfect right to insist on, in exchange, a clear cut and unambiguous legal right to protect our just interest in this canal. The two treaties do not provide these rights. From the day the treaties were signed, Americans and Panamanians have put a markedly different interpretation on key provisions of the treaty. For example, the Torrijos-Carter understanding of last October is claimed by our spokesman to give us the right to take action against any threat to the canal—even a threat from Panama. Maximum Leader Torrijos, however, told his people that it merely says that if Panama summons us, we will come to the defense of the Canal. He said:

We ring the bell * * * and the U.S. comes.

Clearly, these treaties do not represent any agreement. They represent an attempt to paper over serious differences. There are numerous vague and ambiguous provisions in the treaties which, far from ushering in an era of good feeling between the United States and Panama, will insure periods of friction, of probing and

testing, of conflicts in which one side or the other must back down or resort to force. I believe the most reasonable course for us to follow is to reject these treaties and go back to the negotiating table. It is far better to resolve these issues through peaceful negotiations than to hide from the difficult questions in the hope that they will disappear. Wishful thinking is the easy course, but it is the most dangerous course. I do not accept the argument that the Panamanians will not allow our rights to be spelled out clearly and unmistakably in the treaties but that they will not object to our actual exercise of those rights. For these reasons I intend to oppose the treaties before the Senate.

Mr. GOLDWATER. Mr. President, earlier today during the course of my remarks on the Panama Canal Treaty, I mentioned the Trilateral Commission. On January 19, 1977, I placed a discussion of this Commission in the Record together with a list of its members. As I said on the floor this morning, I am not arguing about the patriotism or loyalty of these members. My concern is, and I think you will find this concern substantiated, what is the true purpose of the Commission and its continuing efforts to change the monetary system of the world? In fact, they suggest changes regardless of whether they are good or not for the United States. I believe that this whole subject should be aired and should be discussed thoroughly so that the American people will know exactly the purposes of this Commission. This becomes, to me, vitally important, because an updated list of the membership will carry many members of the Carter administration and Members of the Congress. I ask unanimous consent that this excerpt from the Record be again printed at this point in my remarks.

There being no objection, the excerpt was ordered to be printed in the Record, as follows:

THE TRILATERAL COMMISSION

Mr. GOLDWATER. Mr. President, of late, we have been hearing more and more of the Trilateral Commission. It seems that nearly every member of the Carter administration is a member of this body and also many of our colleagues in the Senate and the House. It was inaugurated in 1973 and it is an organization of private citizens from Japan, Western Europe, and North America who come together to discuss matters of common concern. Papers are published on their findings and we find their areas of interest diversified, but I would say mainly in the fields of economics. Because there has been the attention drawn to this commission by the members of the Carter administration, including the President-elect himself, I thought that my colleagues in the Congress would like to know more about this group, so I have assembled some information about it. The Washington Post of last Sunday evidenced a bit of interest in this organization and published a rather lengthy article on it, and I ask unanimous consent that all of these matters be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

THE TRILATERAL COMMISSION

At its meeting in Ottawa on May 10 and 11, 1976, the Trilateral Commission discussed reports by two of its task forces concerned with international institutional problems. Following its discussion, the commission urged the trilateral governments to take steps to promote reform of international economic institutions and to improve international consultative processes. The task force report, "The Reform of International Institutions," was, in particular, another indication of the recognition by the commission that the renovation of the international system is a task of global as well as trilateral dimensions.

Perhaps no statement more aptly captures the spirit of the Trilateral Commission's work than the speech of its director. Zbigniew Brzezinski, to commission members in Kyoto in mid-1975. Looking back, Mr. Brzezinski noted that when the commission was being assembled, "We were very much aware of the difficulties we were then confronting in our own trilateral relations. We were concerned at that time over the prospect our relations might fragment, that our three regions might be moved by the dynamic of events into more hostile relationships * * *". As this decade has proceeded, however, it has become clear that the strains and shifts in the international system are global as well as trilateral in scope. "I see, in the emerging world, our three regions still representing the more cooperative, the more vital center * * *". But I would argue that the focus of much of this [trilateral effort] must be on the fashioning of a more just and equitable world order. In other words, the focus must not be on the preservation of the status quo, but arrangements which increasingly co-opt and embrace the Third and Fourth Worlds in a cooperative endeavor."

BACKGROUND

Inaugurated in 1973, the Trilateral Commission is an organization of well-known private citizens from Japan, Western Europe, and North America who come together to discuss matters of common concern. Its approximately 200 members are drawn from a broad range of occupations—from academics and politicians to businessmen, labor leaders, and ex-government officials. The initiative to set up the commission flowed from the conviction that private citizens with international interests could contribute to building a new consensus among the "trilateral" regions on more cooperative ways of tackling international problems. Underlying this conviction was a belief that in the world of the 1970's and 1980's the advanced industrial democracies could make a major contribution in all spheres, perhaps particularly to the world's economic development, but that their full potential could only be realized if they evolved stronger habits of working together through both governmental and nongovernmental channels. The commission aimed, by developing a process of intensive trilateral discussion and study to make a practical contribution to this end.

Each regional group of the commission is led by a chairman. Gerald S. Smith, formerly Director of the U.S. Arms Control and Disarmament Agency, is North American Chairman; George Berthoin, formerly Chief Representative of the Commission of the European Communities in London, recently succeeded Max Kohnstamm, Director of the European University Institute, as Chairman of the European Group; and Takeshi Watanabe, former President of the Asian Development Bank, is Japanese Chairman. The commission's director during its first 3 years has been Zbigniew Brzezinski, director of the Research Institute on International Change at Columbia University. In addition to the regional chairmen, there is an executive committee composed of some 30 members representative of the larger commission. Particular policy areas are generally tackled through task forces composed of commission members as well as of experts outside the commission.

Of the original members of the commission, several have been called to government service since its inception. Among these are, in the United States, Secretary of Commerce Elliot Richardson and Secretary of Transportation William Coleman; in Japan, Foreign Minister Kichi Miyazawa; and in Europe, French Prime Minister Raymond Barre, British Minister of State for Foreign and Commonwealth Affairs Evan Luard, and Danish Minister of Foreign Economic Affairs Ivor Norgaard.

In furtherance of its aim of nurturing habits of working together among the trilateral regions, the commission has held six main trilateral meetings in its first 3-year lifespan, completed on June 30, 1976. The next meeting of the commission will be held in Japan in January 1977.

TASK FORCES AND REPORTS

From the outset, the commission has been a policy-oriented organization. The reports of its task forces, all the products of an extensive process of discussion with experts in the three regions, have emphasized shared perspectives and agreed recommendations. As the "Economist" put it: "The men organising the commission * * * want to bring about action, and hence they want the new body to be a marriage of the intellectual and the influential."¹ In this spirit, the commission has consistently urged practical measures to reform the international economic system and to avert possible confrontations, particularly in relations between the developed and the developing worlds.

Twelve reports from trilateral task forces established by the commission have been published, and a number of others are in various stages of preparation.

¹ "Economist," May 5, 1973.

Most of the completed task force reports, written by academics, ex-government officials, or others, represent policy-oriented efforts to come to grips with key current problems of what might be called the "global political economy." The first commission report, completed in October 1973, dealt with the disarray of the international monetary system. Two reports from the task force on relations with developing countries, in 1974 and 1975; focused on major aspects of a "turning point in North-South economic relations." Other subjects covered have ranged from trade, energy, and commodities issues to the reform of international institutions, the oceans, and the prospects for democracy in the advanced industrial societies of the trilateral regions.

In addition, the commission has taken up issues of topical importance without commissioning special reports on them. The question of international business ethics was discussed at the May 1976 meeting in Ottawa, and earlier meetings dealt with such issues as the Middle East and the political implications of inflation.

In the most recent phase of its work, the commission has studied the institutional problems faced by the trilateral countries and the wider world community in their efforts to tackle current international problems. Two trilateral task forces were commissioned to study these problems—one on the need for the reform of international economic institutions, and one on the problem of intergovernmental consultations. As mentioned earlier, the two reports were discussed at the commission's meeting in Ottawa in May 1976 and published thereafter.

Following its discussion, the commission adopted a statement embodying a program of institutional reform which it urged governments to adopt. The salient elements of this program are:

1. The strengthening of existing institutions. This would include negotiating a new set of rules and rights on export controls within the General Agreement on Tariffs and Trade; greater use of the Organization for Economic Cooperation and Development for the coordination of macroeconomic policies; new rules in the International Monetary Fund to achieve effective multilateral surveillance of the international monetary system; and a greater coordinating role for the International Bank for Reconstruction and Development in economic development affairs, to the extent of introducing a new annual "world development budget" exercise.

2. The creation of new institutions to meet new needs, particularly on the issue of international investment and for the management of certain ocean problems.

3. The improvement of mechanisms for informal consultation between governments, including the possibility of creating a new trilateral consultative mechanism modeled on the European political cooperation machinery (formerly called the Davignon Committee).

The statement recognized that institutional reform cannot in itself solve the world's problems. But the commission believes that strong institutions, with a structure and membership flexible enough to reflect changing priorities and new patterns of influence, can help minimize international friction and disagreements, while also contributing to an international system which is more stable and fair. Such institutions are certainly an essential element of any attempt to find more cooperative approaches for dealing with common problems.

THE NEXT 3 YEARS

The commission recently decided to extend its work for a period of 3 years starting in July 1976. During that period, it will pursue many of the themes of its initial phase. In particular, North-South issues will remain high on its agenda, with a new study being commissioned on food problems in the developing world. It will also pursue the general line of inquiry begun in the controversial study, "The Crisis of Democracy," by Michel Crozier, Samuel Huntington, and Joji Watanuki, by means of a new report on the changing relationships between labor, management, and governments in advanced industrial democracies. The commission has two projects in hand on relations with Communist countries—one on how these countries can be more constructively involved in tackling such global problems as food, energy, and economic development; the other, an overview of current problems in East-West relations. No less important, however, the commission will continue to take up issues of topical importance without commissioning special report on them.

The lifespan of the commission thus far has been considerable change in the state of relations between the countries represented on it. The commission believes that the process of closer cooperation begun shortly after the Arab/Israeli war of 1973 and the sudden rise in oil prices which followed has resulted in an increasingly widespread acceptance of what might be called the "trilateral idea"—the idea that the advanced industrial countries have common responsibilities and common problems in the current international situation.

These problems and responsibilities dictate an unprecedented effort of cooperation between governments and in the private sector both within the trilateral regions and between the trilateral countries and the rest of the world. The commission further believes that by developing specific, policy-oriented proposals for the consideration of governments and private citizens concerned about international problems, it can continue to make a significant contribution to this effort.

For further information about the commission and its reports, write or call: Ms. Trudy Werner, The Trilateral Commission, 345 East 46th Street, New York, N.Y. 10017, Tel. (212) 661-1180.

THE TRILATERAL COMMISSION

[A Private North American-European-Japanese Initiative on Matters of Common Concern]

ORGANIZATION AND POLICY PROGRAM

The Commission is composed of about two hundred individuals from the three regions. From this larger group is drawn the Executive Committee, including the Regional Chairmen and twenty-nine other individuals—nine from Japan, eight from the United States, one from Canada, and eleven from the various countries of the European Community and Norway. Twice each year the full Commission or its Executive Committee gathers in one of the regions. The Executive Committee last met in Paris in December 1975. Plenary meetings of the Commission were held in Kyoto in May 1975 and are scheduled for Ottawa in May 1976.

A major portion of each semi-annual meeting is devoted to consideration of reports from Commission task forces. Task force work is at the center of the Policy Program of the Commission. At the core of each task force are rapporteurs from each of the three regions. In the course of their work the rapporteurs are likely to draw on a wide range of consultants, including Commission members and others. The final stage for each task force, before publication of its report, is discussion of the report by the full Commission or its Executive Committee. The Commission or Executive Committee may then use the reports in issuing recommendations of its own, as has been done on a number of occasions. Nine task force reports have been published so far, and five others are in various stages of preparation.

In addition to its task force reports, the Commission has also followed other subjects on a more topical basis, by means of presentations and briefings at its meetings. Subjects covered have included the social and political implications of inflation, financial aspects of the oil crisis, and prospects for peace in the Middle East.

*("The Commission) will hope to demonstrate through the more flexible actions of private citizens that more progress can be made on * * * emerging common problems by working on them together than by trying to deal separately with the consequences of nationalistic mistakes." James Reston, The New York Times.)*

LEADERSHIP

Japanese Chairman: Takeshi Watanabe.

North American Chairman: Gerard C. Smith.

European Chairman: Georges Bethoin.

European Deputy Chairman: Francois Duchene, Egidio Ortona.

North American Secretary: George S. Franklin.

Japanese Secretary: Tadashi Yamamoto.

Director: Zbigniew Brzezinski.

Deputy Director: Christopher J. Makins.

Executive Committee: I. W. Abel, P. Nyboe Andersen, Giovanni Agnelli, Kurt Birrenbach, Robert W. Bonner, Harold Brown, Paul Delouvrier, Herbert Ehrenberg, Marc Eyskens, Chujiro Fujino, Patrick E. Haggerty, Yukitaka Haraguchi, Yoshio Hayashi, Kazushige Hirasawa, Yusuke Kashiwagi, John H. Loudon, Kinhide Mushakoji, Saburo Okita, Henry D. Owen, Mary T. W. Robinson, David Rockefeller, William M. Roth, William W. Scranton, Ryuji Takeuchi, Otto Grieg Tidemand, Nobuhiko Ushiba, Paul C. Warnke, Sir Kenneth Younger, and Sir Philip de Zulueta.

*("The Kyoto meeting) was a remarkable cross section of the interlocking establishments of the world's leading industrialized nations. * * * Because it is primarily concerned with the affairs of the world's most prosperous nations, critics have sometimes dismissed the Trilateral Commission as simply "a rich man's club." * * ** (That made all the more extraordinary the theme which loomed largest in the

discussions at Kyoto. Time and again, speakers from a dozen nations came back to the same point: somehow the present international system must be changed so as to accommodate the increasingly insistent demands of the poor nations for a greater share of the world's wealth. * * * (The movers and shakers gathered in Kyoto had found themselves largely in agreement in their diagnosis of the world's central political problem. As a group, they were in a rare position to press this diagnosis on the world's policymakers. And diagnosis, after all, is a necessary preliminary to any cure." Robert Christopher, *Newsweek* (June 16,).

TRILATERAL COMMISSION TASK FORCES

Nine Commission task force reports have been published so far. Five other reports are in various stages of preparation.

1. Towards a renovated world monetary system (1973)

The rapporteurs of the Trilateral Monetary Task Force were Richard N. Cooper, Professor of Economics at Yale University, Motoo Kaji, Professor of Economics at the University of Tokyo, and Claudio Segre, formerly with the Commission of the European Communities and the Lazard Bank in Paris. The task force recommended a number of long-term reforms and interim government measures to restore order and stability to the international monetary system. The postwar monetary system had broken down in the monetary crisis of 1971 and the outlines of a new system were not clear. One of the task force recommendations, the coordinated sale of official gold into private markets and use of the resulting "capital gains" for development assistance, is being partially realized in plans underway for sale of a portion of the gold holdings of the IMF.

2. The crisis of international cooperation (1973)

In broad strokes, the Trilateral Political Task Force sketched the main political, economic and social trends effecting a transformation of the postwar international system. The report sought to clarify the present historical situation, and supplies an underlying rationale for trilateral cooperation. "If collective action were to fail in this crucial area of interdependence, what confidence could there be that it would succeed in others where links are more tenuous?" Francois Duchene, now Director of the Centre for Contemporary European Studies at the University of Sussex, was the European rapporteur of this task force. The Japanese rapporteur was Kinshide Mushakoji. Director of the Institute of International Relations at Sophia University in Tokyo. The North American was Henry D. Owen, Director of Foreign Policy Studies at the Brookings Institution.

3. A turning point in north-south economic relations (1974)

7. OPEC, the triallateral world, and the developing countries: new arrangements for cooperation, 1976-1980 (1975)

Both of these reports were produced by the Trilateral Task Force on Relations with Developing Countries, the rapporteurs of which were Richard N. Gardner, Professor of Law and International Organization at Columbia University, Saburo Okita, President of the Overseas Economic Cooperation Fund, and B. J. Udink, Former Dutch Minister for Aid to the Developing Countries. The first report was written in the wake of the sharp rise in the price of oil and climbing costs of food and other vital imports of developing countries. According, the task force addressed the critical question of how the trilateral nations, along with the oil-exporting countries, could best help those poorer developing countries most severely affected by these developments in the world economy. In particular, the task force recommended that trilateral and OPEC countries make available \$3 billion in extra concessional aid in 1974-75 for these countries of the "Fourth World," with each group providing half and hopefully with participation of the Soviet Union as well. At a broader level, the task force set forth principles for a general restructuring of North-South economic relations. In its second report, the task force looked somewhat farther ahead, to the end of this decade. The rapporteurs recommended that a "Third Window" be opened in World Bank which would annually provide \$3 billion in concessional loans in 1976-80. Funds would be borrowed by the Bank and lent at concessional rates made possible by interest subsidy funds provided mostly by governments. A scaled-down version of the Third Window proposal has now been adopted by the World Bank. To encourage the participation of the OPEC countries in the regular activities of the Bank and IMF, the rapporteurs recommended that the quotas and voting rights of these states in both institutions be raised from the existing 5% of the total to between 15 and 20%. Negotiations in the IMF over quotas and voting rights have resulted in a doubling of OPEC country shares in that organization, to about 10% of the total.

4. *Directions for world trade in the nineteen-seventies (1974)*

The Trilateral Task Force on Trade set forth cooperative approaches to main issues before the current GATT round of multilateral trade negotiations, which were seen as quite relevant to present economic difficulties and as a valuable opportunity to strengthen an important structure of multilateral cooperation. Successful negotiation of the wide range of issues which should be involved in the current round, it was noted, would require substantial additions to the General Agreement on Tariffs and Trade. The task force recommended these be incorporated in a supplementary code open to all but operated only by those parties subscribing to it. Rapporteurs of this task force were Guido Colonna di Paliano, a former member of the Commission of the European Communities, Philip H. Trezise, former Assistant Secretary of State for Economic Affairs, and Nobuhiko Ushiba, former Ambassador of Japan to the United States.

5. *Energy: The Imperative for a Trilateral Approach (1974)*

6. *Energy: A Strategy for International Action (1974)*

Both of these reports were prepared by the Trilateral Task Force on the Political and International Implications of the Energy Crisis. The first sets out general aspects of the problem and general directions for policy. The second is more specific in outlining action on the problem so far and recommending policy lines which should be pursued by the trilateral countries. The task force recommends a broad, positive approach to the oil-exporters, without isolating the issue of price. Meanwhile, the trilateral countries must cooperate to maintain their financial health in the face of existing oil prices and to establish arrangements for sharing energy in any future emergency resulting from cutoffs of Arab oil supplies. For the medium term, through 1985, the trilateral countries must start now to work toward reductions of their dependence on uncertain external energy sources. For the much longer term, to the end of this century, the trilateral countries should move now to outline cooperative research and development efforts, anticipating the end of the hydrocarbon age. While not pessimistic about the long-term future, the task force sees a transitional period of extraordinary difficulty and adjustment ahead as trilateral societies adapt to insecure, expensive, perhaps reduced energy supplies, and to slower economic growth. It is a real question whether the necessary sacrifices will in fact be accepted by powerful elements in the body politic. Countries must remain sensitive to each other's problems and agree on sharing burdens and shortages. The rapporteurs of this task force were John C. Campbell, Senior Research Fellow at the Council on Foreign Relations, Guy de Carmoy, Professor at the European Institute of Business Administration in Fontainebleau, and Shinichi Kondo, former Ambassador of Japan to Canada.

8. *The crisis of democracy (1975)*

This book-length study, published by New York University Press, is the report of the Trilateral Task Force on the Governability of Democracies. The authors are Michel Crozier, Director of the Centre de Sociologie des Organisations in Paris, Samuel P. Huntington, Professor of Government at Harvard University, and Joji Watanuki, Professor of Sociology at Sophia University in Tokyo. After a long period of rather steady progress, the democratic political systems of the trilateral regions have entered a more difficult and uncertain phase, particularly in Europe and the United States. The demands on democratic government have grown, while the capacity of democratic government seems to have shrunk. The authors seek to analyze the historical situation in each of the regions, and offer some general conclusions. Chapters on Western Europe, the United States, and Japan by individual authors are surrounded by a common introduction and conclusion, and appendices presenting discussion of the report in the Commission.

9. *A new regime for the oceans (1975)*

Against the background of continuing negotiations in the UN Law of the Sea Conference and a global perspective on critical oceans issues, this task force advances a number of recommendations aimed primarily at improving international ocean management and balancing the distributional consequences of the emerging oceans regime of 200-mile economic zones for coastal states. The rapporteurs of this task force are Michael Hardy, Ann L. Hollick, Johan Jorgen Holst, Douglas M. Johnston, and Shigeru Oda. Hardy is a Legal Adviser to the Commission of the European Communities; Hollick is Executive Director of the Ocean Policy Project at the School of Advanced International Studies of Johns Hopkins University; Holst is Director of Research at the Norwegian Institute of International Affairs; Johnston is Professor of Law at Dalhousie University; Oda is Professor of International Law at Tohoku University.

10. Commodities issues (final report due in early 1976)

The task force will define the complex issues involved in the problems of commodity supplies and outline the political and economic framework within which these issues should be tackled. The rapporteurs of this task force are Carl E. Beigie, Executive Director of the C. D. Howe Research Institute, Wolfgang Hager of the Research Institute of the German Society for Foreign Policy, and Sueo Sekiguchi, Senior Staff Economist at the Japan Economic Research Center.

11. International institutions (final report due in mid-1976)

Against the background of the post-World War II experience of international institution-building and the lessons to be learned from that experience, the task force will offer recommendations for new or reformed institutional arrangements and rules to cope with current problems, and for ways all such institutions can be most effectively mobilized. The rapporteurs of this task force are C. Fred Bergsten, Senior Fellow at the Brookings Institution, George Berthoin, former Chief Representative of the Commission of the European Community in the United Kingdom, and Kinhide Mushakoji, Professor of International Relations at Sophia University in Tokyo.

12. Trilateral consultative procedure (final report due in mid-1976)

The task force will consider ways of improving trilateral consultation against the background of an increasingly interdependent world in which the domestic and international dimensions of economic problems are more and more interrelated. The rapporteurs are Egidio Ortona, J. Robert Schaetzel, and Nobuhiko Ushiba. Ortona was Ambassador of Italy to the United States; Schaetzel was Ambassador of the United States to the European Community; Ushiba was Ambassador of Japan to the United States.

13. Constructive global involvement of the Communist countries (final report due in early 1977)

The involvement of the U.S.S.R., the Communist countries of Eastern Europe, and China could contribute to tackling certain global problems and, at the same time, assist in the improvement of East-West relations. The task force will study a number of key issues in this light. Chihiro Hosoya, Henry Owen and Andrew Shonfield are the rapporteurs of this task force. Hosoya is Professor of International Relations at Hitotsubashi University; Owen is Director of Foreign Policy Studies at the Brookings Institution; Shonfield is Director of the Royal Institute of International Affairs.

14. The renovated international system (final report due in early 1977)

Drawing on the work of earlier trilateral task forces, this report will provide a framework for interpreting the challenges faced by the existing international order and offer guidelines for policies which will encourage the emergence of a renovated system. Rapporteurs for the project are Richard N. Cooper, Karl Kaiser and Masataka Kohsaka. Cooper is Professor of Economics at Yale University; Kaiser is Director of the Research Institute of the German Society for Foreign Policy; and Kohsaka is Professor of Law at Kyoto University.

THE TRILATERAL COMMISSION

(As of January 1, 1976)

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FOOTNOTES

¹ Executive Committee² Currently in Public Service

REPORTS OF TASK FORCES OF THE TRILATERAL COMMISSION

1. Towards a Renovated World Monetary Force. Rapporteurs: Richard N. Cooper, Motoo Kaji, Claudio Segre.

2. *The Crisis of International Cooperation* (1973). Trilateral Political Task Force. Rapporteurs: Francois Duchene, Kinhide Mushakoji, Henry D. Owen.

3. *A Turning Point in North-South Economic Relations* (1974). Trilateral Task Force on Relations with Developing Countries. Rapporteurs: Richard N. Gardner, Saburo Okita, B.J. Udink.

4. *Directions for World Trade in the Nineteen-Seventies* (1974). Trilateral Task Force on Trade. Rapporteurs: Guido Colonna di Paliano, Phillip H. Trezise, Nobuhiko Ushiba.

5. *Energy: The Imperative for a Trilateral Approach* (1974). Trilateral Task Force on the Political and International Implications of the Energy Crisis. Rapporteurs: John C. Campbell, Guy de Carmoy, Shinichi Kondo.

6. *Energy: A Strategy for International Action* (1974). Trilateral Task Force on the Political and International Implication of the Energy Crisis. Rapporteurs: John C. Campbell, Guy de Carmoy, Shinichi Kondo.

7. *OPEC, the Trilateral World, and the Developing Countries: New Arrangements for Cooperation, 1976-1980* (1975). Trilateral Task Force on Relations with Developing Countries. Rapporteurs: Richard N. Gardner, Saburo Okita, B. J. Udink.

8. *The Crisis of Democracy* (1975). Trilateral Task Force on the Governability of Democracies. Rapporteurs: Michel Crozier, Samuel P. Huntington, Joji Watanuki.

9. *A New regime for the Oceans* (1975). Trilateral Task Force on the Oceans. Rapporteurs: Michael Hardy, Ann L. Hollick, Jorgen Hoist, Douglas M. Johnston Shigeru Oda.

TREATY CONCERNING THE PER-
MANENT NEUTRALITY AND
OPERATION OF THE PANAMA
CANAL

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume the consideration of Executive N, 95th Congress, 1st session, which the clerk will report.

The assistant legislative clerk read as follows:

Executive N, 95th Congress, 1st Session, treaty concerning the permanent neutrality and operation of the Panama Canal.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Alabama (Mr. Allen) is recognized.

Mr. ALLEN. Mr. President, I thank the Chair for recognizing me at this time, and I thank the distinguished majority leader (Mr. Robert C. Byrd) for arranging last week that I might be recognized first when the treaties were to be laid before the Senate today. I appreciate, too, the attitude of the joint leadership (Mr. Robert C. Byrd and Mr. Baker) in recognizing that this is one of the most important issues to come before the U.S. Senate in recent years, and that it is entitled to full debate and the opportunity to offer constructive substantive amendments to the treaties.

My opposition to approval by the Senate—that is, that the Senate give its advice and consent to the ratification of the treaties—is not a position as I have come to only recently, in recent weeks or in recent months. Each month since I have come to the U.S. Senate I have sent back to the people of Alabama a report of my position on the issues, my vote, my stand, and my activities in the U.S. Senate. I find, looking back, that in my newsletter of October 1971 I stated my position on the Panama Canal Treaty, thinking at that time it would be one treaty embodying all of the provisions agreed upon by the negotiators. The position that I arrived at in October 1971, some 5 years before Governor Reagan discovered this issue, was a position in opposition to the Panama Canal Treaty, that is, a treaty which would give the Panama Canal to Panama, I worded my statement at that time as follows:

"No" ON GIVING UP PANAMA CANAL

The Nixon Administration is currently negotiating with the Republic of Panama for a new treaty respecting the operation, management and defense of the Panama Canal. The proposed new treaty would replace the present treaty which has been in effect since 1903. Under consideration are proposals to surrender sovereignty over the Canal to Panama, raise transit tolls, subject the Canal facility to joint defense, management and control, and eventually give up Panama both the existing Canal and any new one constructed in Panama at the expense of our taxpayers. Panama is holding out for a provision that would remove U.S. defensive forces. It has long been a Soviet aim to wrest control of the Panama Canal from us. With Cuba, Bolivia, Peru, and now Chile, already dominated by Communist power, the rest of Latin America could then soon be under Soviet control. Surrender of United States sovereignty over the Panama Canal will be vigorously opposed by me.

Mr. President, I could write the very same statement of my position today as I had back in October 1971 by merely striking out "Chile" and the words "Nixon administration" and substituting in lieu thereof the words "Carter administration." Just as I opposed the treaties which were being negotiated under President Nixon, so do I now oppose the treaties which have been negotiated under President Carter.

Mr. President, the President of the United States sent the two treaties to the Senate last year during the 1st session of the 95th Congress. He sent up, quite naturally and quite logically, the Panama Canal Treaty first in executive N. so-called, followed second by the neutrality treaty, also part of executive N. That, of course, would be a logical and sensible order in which to submit the treaties, because the Panama Canal Treaty provides for a transfer of the canal to Panama, and the circumstances under which the canal will be so transferred. The other treaty, the Neutrality Treaty, in practical effect provides for the defense of the canal starting with the year 2000.

So why, Mr. President, should the Senate be considering the matter of the neutrality of the canal starting with the next century without first deciding whether we are going to give the canal away?

Mr. ROBERT C. BYRD. Mr. President, will the Senator permit me to answer that question?

Mr. ALLEN. The distinguished Senator has been so gracious in yielding to other Senators that, whereas I would like to be able to complete my remarks, I will certainly not refuse to yield to the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, the Senator is very kind to yield, and I apologize for interrupting him at this point. May I just state that it was the viewpoint of the leadership and the viewpoint of the committee in reporting the Neutrality Treaty first to the Senate that logically Senators should vote on that treaty before voting on the Panama Canal Treaty. The Panama Canal Treaty would relinquish U.S. control over the canal by the year 2000, and the leadership recognizes that most Senators would not want to vote on the treaty relinquishing control of the canal in the year 2000 without first establishing, beyond any doubt whatsoever, the right of the United States to guarantee access to and use of that canal after the year 2000 in perpetuity, and also to establish the fact beyond any semblance of doubt that U.S. war vessels, in times of need or emergency, would go to the head of the line.

As I look at this question as an individual Senator, I personally would want to know what is going to happen after the year 2000 before I vote on a treaty relinquishing U.S. control by the year 2000. That was the logic of the committee and the leadership's position, may I say to my good friend from Alabama.

Mr. ALLEN. I thank the distinguished majority leader for his attempt to justify the consideration, first, of the Neutrality Treaty rather than the Panama Canal Treaty. The distinguished Senator knows, of course, that if we were considering the Panama Canal Treaty, it would be quite easy to add an amendment that the treaty, even though approved, would not go into effect until the Neutrality Treaty had been agreed to.

At the latest count, this amendment has some 78 cosponsors, the Senator now speaking being one of them. Even if we did not put in a saving clause, this Canal Treaty, in practice, would not go into effect until the Neutrality Treaty is approved. We would be perfectly safe, even without a saving clause, in doing this because the 78 votes would be sufficient to approve the treaty. So if that is what he is worried about, it will protect him.

Also, I would like to call attention to the fact that article IV of the Panama Canal Treaty is just about as strong a provision for the defense of the canal as the so-called leadership amendment. A little bit later on, and I will not say just how soon, during the course of my remarks I will discuss the leadership amendment. It adds practically nothing to the concept of the United States having the right to defend the canal. I feel, in explanation to our distinguished majority leader, the distinguished Senator from West Virginia, that the Panama Canal Treaty should be considered first. I stated in the early days of the debate that at the appropriate time I would make a motion here in the Senate to proceed to the consideration of the Panama Canal Treaty. I feel this is a function, a proper function, of the leadership, to schedule the legislation or the executive business coming before the Senate in its proper order. There has been no objection to the leadership calling up the Panama Canal treaties at this time, but I do believe that the Senate itself should decide the order in which these treaties are to be considered. First things should be first. We should not put the cart before the horse. We should decide first whether it is going to be our national policy to surrender the Panama Canal to the Republic of Panama, and whether we shall give them hundreds of millions of dollars, if not in fact billions of dollars, for taking the canal off our hands.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. ALLEN. I yield to the distinguished Senator.

Mr. ROBERT C. BYRD. Mr. President, the Senator in referring to that treaty implies it does not go into effect until the year 2000. As a matter of fact, the instrument of ratification of the Neutrality Treaty would be exchanged at the same time as the instrument ratification of the treaty concerning the Panama Canal. Both treaties would go into effect at the same time.

I would further say to the Senator that the Senate leadership has put before the Senate the Neutrality Treaty, and the Senate leadership has scheduled debate on that treaty which, under that proposal, would go into effect at the same time as the Panama Canal Treaty.

[Mr. Melcher assumed the chair.]

Mr. ALLEN. Mr. President, I thank the distinguished majority leader. Of course, the treaty does go into effect at the same time as the Panama Canal Treaty, but the chief function that it would have, inasmuch as the United States until the year 2000 is charged with the primary defense of the canal, is found in the fact that the Neutrality Treaty applies mainly to the time when all U.S. troops would be removed from the Canal Zone. That is the main thrust of the treaty, because under the Panama Canal Treaty the United States does have the primary responsibility of defending the canal.

Under the Panama Canal Treaty and the signed agreements which have been entered into, our number of bases there in the Canal Zone, designed to protect and defend the canal, immediately on the approval of the Panama Canal Treaty are cut from 14 down to 4. But then starting with the year 2000, unless an amendment I have prepared is agreed to, prior to the start of the next century, the United States is required to withdraw all of its troops from Panama. We will not have a single soldier there defending the canal starting with the year 2000.

If we are going to give the canal away and pull all of our soldiers out, we certainly need some sort of treaty which will give us some sort of rights after year 2000.

Later on I am going to point out how the so-called leadership amendment does not protect the vital interests of the United States in seeing that the canal is defended.

Mr. President, all of us have an interest in the Panama Canal, this great engineering feat, possibly the greatest of all times. There was, as I understand it, more cubic feet of dirt removed than the cubic footage in the pyramids. It was a great engineering accomplishment made by the genius of America after the French had failed in their attempt to build a canal.

People of some States possibly have a great interest in the canal because of special contributions made by the people of their particular State. I noted with great interest when the distinguished majority leader quoting from Mr. David McCullough's book, "The Path Between the Seas." He read of the very fine contribution made by the State of West Virginia in the construction of the canal. This is found in the Record of February 9, 1978.

Among the more fascinating facts about the Panama Canal, for example, is that all hardware for the lock gates—the lifting mechanisms for the stem valves, the special bearings, gears and struts in the gate machines, all 92 bull wheels—was made by a single manufacturer in Wheeling, West Virginia.

That was certainly a very fine contribution made by the people of West Virginia in the construction of the canal.

I wish I were able to point out some contribution made by the people of Alabama and the State of Alabama in the actual, physical construction of the canal. I am not able to do that, but I am able to point with pride to the contribution made by three great Alabamians in connection with the concept of the canal and the execution of the plans and the dreams from the Panama Canal.

Senator John T. Morgan, of Alabama, one of Alabama's great U.S. Senators, who served in the U.S. Senate from 1877 to 1907, was called, and properly, the father of the Isthmian Canal. General—or doctor, if you will—William Crawford Gorgas was the doctor in charge of the medical facilities, the health programs, in Panama and in the Canal Zone. He is credited, and properly, with having wiped out yellow fever there, in the Canal Zone, which was one of the real causes of de Lesseps' inability and failure to complete the Panama Canal that he tried heroically to build.

The people thought that the fever came from the swamps, and that was the best medical opinion at the time. But Dr. William Crawford Gorgas of Alabama had the idea—it was not original with him, but it had been advanced, and he put into effect a plan to wipe out the mosquitoes in Panama——

Mr. PERCY. Mr. President, will the Senator yield?

Mr. ALLEN (continuing). A plan that did make a great contribution to the building of the canal.

In just one moment, I shall yield to the distinguished Senator.

Then Gen. William L. Sibert—he was later general and then, colonel—was Colonel Geothals' righthand man in the building of the Gatun locks. These great Alabamians made a great contribution to the building of the canal. I am certainly proud of the fact that Alabama, by the contribution of these three great leaders, possibly contributed more to the building of the canal than people of any other State, with the possible exception of New York State, which was the home of President Teddy Roosevelt.

Yes, I am now glad to yield to the distinguished Senator from Illinois.

Mr. PERCY. Mr. President, I appreciate that very much.

My distinguished colleague from Alabama, a few moments ago, mentioned the figure that I have had referred to me previously in Illinois in the last 8 days on a number of occasions, as I have discussed the Panama Canal Treaty from one end of my State to the other. I should like to accurately report that there are many people who are applauding the efforts of the distinguished Senator from Alabama to bring out many of these facts. Some of the concerns he has expressed are genuine concerns, that are shared by many of us, including citizens in Illinois.

One point that was raised with me, however, is, Why is it necessary for us to reduce our bases there up until the year 2000? The amendment that I cosponsored with the majority and minority leaders and other of our colleagues would still continue, after the year 2000, the right for this country unilaterally to intervene militarily, so long as we do not interfere with the internal affairs of Panama, any time the canal is endangered—that is clear. But why do we have to cut our number of bases down in the meantime so much?

The distinguished Senator from Alabama did mention the figure that we were cutting our bases, from 14 to 4. Will he permit me just 2 minutes to read a section here in the testimony of General McAuliffe, whom many of us met, as the U.S. commander in chief for the U.S. Sovereign Command? We happened to fly back with him to Washington. We spent a great deal of time talking about this. He confirmed these facts.

He said in his testimony:

First, I wish to clarify the land areas available for defense purposes, since there has been considerable confusion about the number of military bases we now have in the Canal Zone, and those that will be available to the U.S. forces in the new treaty period. On several occasions, as an example, I have seen and heard statements to the effect that there are now 14 U.S. bases in the Zone, but that there will be only four left under the 1977 treaties. I know of no good foundation for either one of those figures—neither is correct. By actual count, there are 22 identifiable U.S. military reservations in the Canal Zone, most of them in active use, some inactive. However, they are administratively grouped in the Code of Federal Regulations into four; one per military service and one for my joint headquarters.

In my judgment, the number of bases is far less important than their adequacy to support of our forces and missions.

One can see from the two maps—

That he was demonstrating in committee at the time—

that the size of the base areas in red would be somewhat reduced under the new treaties. As the military commander, I can assure you that the reduction is not significant in terms of supporting U.S. forces and our mission accomplishment.

I talked to no one in our military establishments—Joint Chiefs of Staff or those in the Southern Command—who did not feel that, up until the year 2000, we have perfectly adequate facilities in Panama to protect, at any time, the Panama Canal against the kind of threat that we might possibly envision.

They always raised the question whether any degree of protection is available against a sabotage or terrorist activity, which can strike at almost any time, day or night, and which cannot always be guarded against. But so far as the major military threat against the base, I was assured when I came back, I want to tell my distinguished colleague from Alabama, that we are providing adequately in the bases. The four bases really do not constitute a cutdown from 22 or 14 to 4. It is simply a regrouping of them and is perfectly adequate for the defense of the canal.

Does my distinguished colleague have any different information that would lead him to believe that what we were told by the Joint Chiefs of Staff and the Southern Command was inaccurate?

Mr. ALLEN. I thank the distinguished Senator for his comments. One of the arguments, as I understand it, that is made by the proponents of the treaties is that the canal is indefensible. That being true, one would think that 14 bases—U.S. soldiers and marines in 14 bases could come nearer defending the canal than could American forces in four bases. But four is not the bottom line, because, under the side agreements that are made, that we do not have an opportunity even to vote on here in the Senate, according to the response of the distinguished Vice President (Mr. Mondale) to my parliamentary inquiry—under the side agreements, every 2 years they consider whether they are going to cut down from four with no right to come back in except with Panamanian approval. So it is possible that, long before 2000, we shall not have any bases there at all. If we do not need 22 bases there and just need 4, why have we kept them there all this while? This is something I cannot understand.

Obviously, it would be easier to defend now from 22 bases than from 4 bases.

The distinguished Senator has put his finger on the Achilles heel of the leadership amendment, the amendment that seeks to provide a defense of the canal after all of our forces have been withdrawn.

Is the amendment overlooks the fact—and the Senate or, as well, overlooked the fact—that all of our troops will have been withdrawn from Panama by the year 2000. So, when this Neutrality Treaty comes into full play, into full operation, we will not have any military presence there at all. It will all be gone.

If we think it is necessary to come in and defend the canal, we are going to have to come in as invaders. We are going to have to drop paratroopers.

The amendment that I am going to offer at the proper time—and right now, as I understand it, we are discussing the whole concept of the Panama Canal treaties and not necessarily discussing any particular article—will be an amendment to article I of the Neutrality Treaty, or the Panama Canal Treaty, depending on which

one is before the Senate at that time, to add, in addition to what is already provided in article I, this proviso, that the military presence of the United States shall continue beyond December 31, 1999, if the President of the United States deems that it is necessary for the defense of the canal or for the maintenance of its neutrality, and so certifies to the Government of Panama prior to December 31, 1999.

Now, with that amendment we would have the military presence of the United States continue beyond the year 2000 if the President of the United States deems that it is necessary to do so prior to December 31, 1999, and so certifies to the Government of Panama, because without that amendment either as an amendment to article I or to the leadership amendment, so-called, without that amendment we are not going to have any soldiers in Panama come the year 2000. But with the amendment, our country has the option and the President of the United States has the option, acting on behalf of the people of the United States, to say that our military presence is needed in the Canal Zone to defend the canal or to maintain its neutrality.

The statement has been made that the last three or four Presidents have favored the Panama Canal treaties, and possibly they have. So I assume that the President of the United States, whoever he might be along about the year 1999, if he did not sincerely feel that it was necessary for us to maintain our military presence there in Panama, he would not deem it necessary and would not so certify to the Government of Panama.

But it does retain an option on behalf of the people of the United States, if our military presence is required there after the year 2000. Thus, prior to the lapse of the Panama Canal Treaty which will, in effect, lapse by the year 2000, it retains in the United States the option of the President to say that our troops are needed here to defend the canal.

We do not know what the situation is going to be in the year 2000. Is there any prophet here who is able to say what the governmental status of Panama will be in the year 2000?

We do not know what it will be tomorrow, much less the year 2000.

[Mr. Church addressed the Chair.]

Mr. ALLEN. Will the Senate wait until I complete my thought?

Panama might be a Cuban satellite, it might be a Soviet satellite. I think we can certainly expect Castro, just as soon as the ink is dry on the Presidential ratification of these treaties, if they are ratified, to tell us to get out of Guantanamo. I dare say he would have just about as good a right to ask us to get out of our naval base in Cuba as Panama has to tell us to get out of the Canal Zone.

So are we taking on ourselves the role of prophets under the leadership amendment, under the treaties, that we are going to have a stable government down there in Panama and that they are going to be our friends? That is what the treaties and the leadership amendment presuppose.

Mr. CHURCH. Will the Senator yield?

Mr. ALLEN. Yes, I am delighted to yield to the distinguished Senator from Idaho (Mr. Church).

Mr. CHURCH. I thank the Senator from Alabama very much.

The point that he makes, that none of us can prophesy the future, of course, is self-evident.

I would point out to him, however, that the committee's recommended amendment go to the question of the security of the canal in the future, reserving to the United States the right to use its military forces to protect the canal against any threat that might be posed to it, whether external or internal.

If the Senate sees fit to adopt the recommended amendment, it seems to me that the vital interest the United States has in maintaining an open, neutral, safe waterway across the isthmus will be fully protected.

If, for example, at the end of the century a situation should exist in Panama as described by the able Senator from Alabama and the President perceived a threat to the canal, internal in character, then under the terms of the amendment it would be fully within the President's authority to use American military might to keep the canal safe and open.

Mr. ALLEN. Well, I am glad to hear the Senator say that, and I quote "it would be fully within the President's authority to retain troops for the purpose of keeping the canal safe and open" and, that being true, I am sure he will not object to agreeing to my amendment, if his amendment means that.

Mr. CHURCH. That being true, the Senator's amendment is superfluous and, therefore, unnecessary.

Mr. ALLEN. I thank the Senator for his admission that this is needed, this interpretation is needed; and why rely on an interpretation that might not be the interpretation of Dictator Torrijos when we can put it in plain English language?

I do not know what the final result will be in the Spanish language.

Now, the distinguished Senator from New Mexico asked that I yield to him a moment ago. If he still wishes me to do so, I will, and then I will yield to the distinguished Senator from Nebraska (Mr. Curtis).

Mr. SCHMITT. The Senator from New Mexico appreciates the Senator's courtesy.

I just wanted to add my general concurrence and sympathy with the remarks of the Senator with respect to the so-called leadership amendment, having to do with the right of this country to intervene to protect the neutrality of the canal.

As a cosponsor of that leadership amendment, I should make clear that I am a cosponsor only because it slightly improves two treaties that are inherently bad, primarily because they are bilateral and it only requires one party to break such a treaty. I am not sponsoring those amendments with any great confidence that they would allow us, in fact, in a real situation, faced with the real fact, which the Senator from Alabama is pointing out to us this morning, to intervene militarily.

I greet with some interest the suggestion by the Senator from Alabama for a more specific amendment that would deal with the question of the ability to intervene, which is what I believe the Senator is getting to.

Mr. ALLEN. That is correct.

Mr. SCHMITT. I thank the Senator.

Mr. ALLEN. I might state, parenthetically, in response to the distinguished Senator from New Mexico (Mr. Schmitt), that I, too, am a cosponsor of the so-called leadership amendment. I am a cosponsor on the same theory as the distinguished Senator from New Mexico—that it might just possibly improve the treaties. The improvement is very slight, indeed, but since such a furor has been made about the leadership amendment, that it solves all the ills of the treaty and from then on we will be fully protected—since that idea seems to be prevalent in some minds, I did not want to seem to be in opposition to that amendment.

Also, for the further reason, I say to the distinguished Senator from New Mexico, that being a cosponsor of the amendment allows me to point out its weaknesses, its defects, its failure to go far enough. I feel that, being a cosponsor of this amendment, I would have a perfect right to point out its shortcomings, which are many, and I am going to comment as soon as I yield to the distinguished Senator from Nebraska (Mr. Curtis) for another short comment or two.

I now yield for a question to the Senator from Nebraska.

Mr. CURTIS. I thank my distinguished friend.

Is it true that there has not been an election in Panama since 1968?

Mr. ALLEN. I believe that is correct. There has not been one since Torrijos engineered what we might call a coup d'etat.

Mr. CURTIS. Can the Senator from Alabama say why they do not have an election?

Mr. ALLEN. Because they have a dictator there who does not like free elections, I say to the distinguished Senator from Nebraska.

Mr. CURTIS. Is there anything in the leadership amendment that would hold this treaty in abeyance until such time as the Panamanians are in charge of their own government?

Mr. ALLEN. No; I looked with great interest for such provision but was unable to find it.

I might say, further, that I talked to one of the Senators who went to Panama. I did not go this current round to Panama. But I will have to confess, however, that I did on one occasion visit Panama, at Government expense, back in 1943, in the U.S. Navy. Our ship moved from the Atlantic to the Pacific on the way to fight Japan, and I did travel the canal at that time. But that was prior to Mr. Torrijos' coup d'etat in Panama.

Mr. CURTIS. Is it the Senator's opinion that the adoption of the leadership amendment would cure the major objections to the treaty?

Mr. ALLEN. No. I am quite certain it would not. It is just a little tempest in a teapot. It amounts to practically nothing. But it has been built up as being a cure-all for the many defects of the treaty. It does not even touch the real defects, and certainly in the area that it addresses, it falls far short.

In line with the remarks of the distinguished Senator from Idaho (Mr. Church) a moment ago, since that is the intent of the leadership amendment, that we should be able to keep forces there beyond the year 2000, I would like to get that fact written into the amendment they offer, so there can be no misunderstanding.

Mr. CURTIS. Is there a difference between an amendment that improves the treaty and an amendment that just makes it more palatable to Senators and the public generally?

Mr. ALLEN. Well, of course, the strategy, as I understand it, of the proponents, is that the original treaties, as entered into, signed by the President and Dictator Torrijos, created such an uproar and were so deficient in not providing for the rights of the United States to defend the canal, that the President and Torrijos entered into an unsigned memorandum to calm troubled waters.

Torrijos straight away placed a different interpretation on it from that which the distinguished Senator from Idaho seems to place on the leadership amendment, which is, of course, an amendment based on the memorandum.

The Senator knows that when Torrijos went back to Panama, after having agreed to this unsigned memorandum, he made the statement that he did not sign anything in Washington, that he did not even sign an autograph. He said that he would construe that memorandum, which is now the leadership amendment, in effect, to mean that it did not give the United States the right to come down and defend the canal. It gave us the duty to do so when—to use his words originally in Spanish, I assume—when he pressed the button. That is the way Torrijos interprets the memorandum which, in effect, is now the leadership amendment.

So if Torrijos has one interpretation placed upon the language of the memorandum, which is now the leadership amendment, then I think we should spell it out, we should spell out that we can keep your military presence there if the President at that time—at the time of the complete pullout—feels that complete withdrawal would not permit us properly to defend the canal.

I feel this added amendment, this added power, should be spelled out, so that there will not be any doubt in Mr. Torrijos' mind about what the language means.

Mr. CURTIS. In reference to the Torrijos interpretation of what he signed here and what was agreed to, has that been made a matter of record before the Senate?

Mr. ALLEN. Made a matter of record where?

Mr. CURTIS. Made a matter of record so that it is now before the Senate in any of our documents.

Mr. ALLEN. Yes. Last year, I made 24 speeches on the floor of the Senate pointing out some of the defects in the treaty. In one of those speeches, I pointed it out. It is in the Congressional Record.

Mr. CURTIS. I thank the Senator.

Mr. GRIFFIN. Mr. President, will the Senator yield at that point?

Mr. ALLEN. The distinguished Senator from Idaho was on his feet first, and I will yield to the distinguished Senator from Michigan in just a moment.

Mr. CHURCH. I wonder whether the able Senator from Alabama will yield to me for the purpose of inserting in the Record the relevant language of the amendment, together with the committee's interpretation of the amendment.

Mr. ALLEN. I have no objection, provided I do not lose my right to the floor.

Mr. CHURCH. I thank the Senator from Alabama.

The PRESIDING OFFICER. Without objection, it is so ordered.

[The material ordered to be printed in the Record is as follows:]

A. AMENDMENT INCORPORATING IN ARTICLE IV OF THE NEUTRALITY TREATY THE RIGHTS OF DEFENSE SET FORTH IN CARTER-TORRIJOS JOINT STATEMENT

The Committee recommends that article IV of the Neutrality Treaty be amended by adding at the end thereof the following:

A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against peaceful transit of vessels through the Canal.

"This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

STATEMENT OF INTENT

The Committee's intent in recommending the adoption of these two amendments to the Neutrality Treaty is that the Carter-Torrijos Joint Statement of October 14, 1977, be made an integral part of the treaty with the same force and effect as those treaty provisions submitted to the Senate initially for its advice and consent.

The Committee had originally voted to include the Joint Statement in a single amendment which would have added as a new article IX to the treaty. Upon being advised by the State Department—contrary to previous advice—that this placement could require a new Panamanian plebiscite, the Committee voted to reconsider the proposed article IX and voted instead to recommend the addition of that same material, in two parts, to articles IV and VI. This did not represent a "flip-flop"; in each instance the substantive wording was identical to that of the Joint Statement, and each provision—whether placed in one article or in two—would have had precisely the same legal effect, being equally binding internationally. The difference is purely one of cosmetics. If a negligible change in form, with no change whatsoever in substance, could obviate the need for a new plebiscite—an eventuality which could complicate vastly the ratification process—then the Committee concluded that it would happily oblige.

The meaning of these amendments, which together constitute the entire Joint Statement, is plain. The first amendment relates to the right of the United States to defend the Canal. (It creates no automatic obligation to do so. See p. 74 of this report.) It allows the United States to introduce its armed forces into Panama whenever and however the Canal is threatened. Whether such a threat exists is for the United States to determine on its own in accordance with its constitutional processes. What steps are necessary to defend the Canal is for the United States to determine on its own in accordance with its constitutional processes. When such steps shall be taken is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act if it deems proper against any threat to the Canal, internal or external, domestic or foreign, military or non-military. Those rights enter into force on the effective date of the treaty. They do not terminate.

The above-described rights are not affected by the second paragraph of the amendment, which provides that the United States has no "right of intervention . . . in the internal affairs of Panama", and which prohibits the United States from acting "against the territorial integrity or political independence of Panama." The Committee notes, first, that these provisions prohibit the United States from doing nothing that it is not already prohibited from doing under the United Nations Charter, which proscribes "the threat or use of force against the territorial integrity or political independence of any state" (article 2(4)). The Committee never supposed that the United States, in entering into the Neutrality Treaty, intended to obtain powers that it had previously renounced. The Committee thus does not believe that

the provision in question substantively alters existing United States commitments to Panama.

Second, the prohibitions set forth in the second paragraph do not derogate from the rights conferred in the first. The Joint Statement recognizes that the use of Panamanian territory might be required to defend the Canal. But that use would be for the sole purpose of defending the Canal—it would be purely incidental to the Canal's defense; it would be strictly a means to that end, rather than an end in itself; and it would not be carried out for the purpose of taking Panamanian territory. The concepts of the territorial integrity and political independence of Panama are, in short, an integral part of the treaty, so that action directed at preserving the regime of neutrality set forth in the treaty would never be directed against Panama's territorial integrity or political independence.

For these reasons, use of Panamanian territory to defend the Canal would clearly be permissible under the portion of the Joint Statement incorporated in Article IV. This is made clear in an opinion presented to the Committee by the Department of Justice (hearings, part 1, p. 332):

"A legitimate exercise of rights under the Neutrality Treaty by the United States would not, either in intent or in fact, be directed against the territorial integrity or political independence of Panama. No question of detaching territory from the sovereignty or jurisdiction of Panama would arise. Nor would the political independence of Panama be violated by measures calculated to uphold a commitment to the maintenance of the Canal's neutrality which Panama has freely assumed. A use of force in these circumstances would not be directed against the form or character or composition of the Government of Panama or any other aspect of its political independence; it would be solely directed and proportionately crafted to maintain the neutrality of the Canal."

Finally, even if a conflict were somehow to arise between the two paragraphs, because the United States has the right to act against "any * * * threat directed against the Canal", there is no question that the first would prevail. The rights conferred therein are stated in absolute terms and must therefore be construed as controlling.

Mr. ALLEN. Does the Senator wish to ask a question predicated upon that insertion?

Mr. CHURCH. First, I would like to refer to the insertion, and then I may or may not have a question.

Mr. ALLEN. All right.

Mr. CHURCH. Mr. President, the language of this amendment speaks for itself.

Mr. ALLEN. I am yielding only for a question, because otherwise I would lose my right to the floor.

Mr. CHURCH. Mr. President, I ask unanimous consent that the Senator from Alabama not lose his right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. I yield for 3 minutes under those conditions.

Mr. CHURCH. I thank the Senator very much.

Mr. President, the actual language of the amendment which would be written directly into the text of the treaties is based upon the language of the communicate agreed upon by the two Presidents. The language speaks for itself, and it is as follows:

The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality and consequently shall have the right to act against aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

If the Senate adopts this amendment that language will be written directly into the text of the treaty.

Furthermore, the Panamanian Government will have to sign off on the amended treaty at the time the instrument of ratification is filed. As a result, there will be no question that the United States

has the right to intervene militarily in the event the canal is ever threatened.

This is what the Committee on Foreign Relations has to say about that language:

It allows the United States to introduce its Armed Forces into Panama whenever and however the canal is threatened. Whether such a threat exists is for the United States to determine on its own in accordance with its constitutional processes. What steps are necessary to defend the canal is for the United States to determine on its own in accordance with its constitutional processes. When such steps shall be taken is for the United States to determine on its own in accordance with its constitutional processes. The United States has the right to act as it deems proper against any threat to the canal, internal or external, domestic or foreign, military or nonmilitary. Those rights enter into force on the effective date of the treaty and they do not terminate.

With all respect for the amendment to be offered by the Senator from Alabama, I do not see how language different from the amendment recommended to the Senate in the committee report could make more explicit or more definite the rights reserved to the United States. And the committee language, of course, is the same language that has been incorporated into the amendment introduced by Senators Byrd and Baker, the majority and minority leaders, respectively. It conforms to the language of the communique agreed upon by both Presidents, and it would be riveted into the treaty.

I just think that unless the Senator can show me some way to improve upon that language his amendment is totally unnecessary and superfluous.

Mr. ALLEN. Mr. President, I thank the distinguished Senator. I will point out to him that what the Foreign Relations Committee says this means is not binding upon Dictator Torrijos who says it means something entirely different, and I will point out again to the distinguished Senator from Idaho—I sought to do so a moment ago—that his amendment overlooks the fact that these rights given to the United States subsequent to the year 2000 are rights given after all of our troops have been withdrawn. It is a right to invade Panama. They would give us that right but rob us of the means because by that time all of our troops will have been withdrawn from the canal and any of our intervention will be in the nature of an invasion of Panama.

Further, the leadership amendment has been offered herein for the Record by the distinguished Senator from Idaho, but he did not read out loud the last paragraph of the amendment which says that in no event will these rights under the leadership amendment be construed to authorize the United States to interfere with the internal affairs of Panama. Panama might be the very entity that is seeking to keep us from using the canal. Panama might be under the control of Castro or some like dictator, and they will be the ones who are preventing us from using the canal. But yet we could not interfere with the internal affairs of the canal under the treaty.

So certainly if we invaded the country that would be interfering with the internal affairs of Panama.

Mr. GRIFFIN. Mr. President, will the Senator yield?

Mr. ALLEN. Yes. I yield at this time to the distinguished Senator from Michigan (Mr. Griffin).

Mr. GRIFFIN. Mr. President, I thank the Senator from Alabama.

Mr. President, I ask unanimous consent that I may be recognized for 3 minutes without the Senator from Alabama losing his right to the floor.

The PRESIDING OFFICER. Is there objection?

The Chair hears none.

The Senator from Michigan (Mr. Griffin) is recognized for 3 minutes.

Mr. GRIFFIN. Mr. President, I commend the Senator from Alabama. Although he is a cosponsor of the so-called leadership amendment, he is pointing out some of its serious shortcomings. He is absolutely right, and I am not going to support the so-called leadership amendment for some reasons that I would like to talk about.

First of all, I will not support it because the representatives of the two countries, the United States and Panama, do not agree on what it means.

Mr. ALLEN. That is correct.

Mr. GRIFFIN. Second, because our interpretation would constitute a substantive change in the treaty, I feel very strongly that such a substantive change should be submitted to approval by the people of Panama. I have no confidence that, even if Mr. Torrijos personally agrees to something that we do, we can have any assurance that in the years down the road we are going to have a meaningful agreement with Panama.

And does the Senator from Alabama know—as a member of the Foreign Relations Committee, I, of course, am familiar with the exercise that went on, and I think it is important at this particular point in the debate to call attention to it—but is he aware of the fact that the so-called leadership amendment at one stage in the deliberations of the Committee on Foreign Relations was to be adopted as a new article of the Neutrality Treaty? Indeed, it had been approved by a vote of the committee. Then, however, we received word from the State Department overnight that Mr. Torrijos would consider that, if we were to leave it as a separate amendment to the treaty, it would have to be submitted to the people of Panama in a plebiscite for approval; but if we divided the amendment in two, and tacked one part of it on one article and tacked another part of it on another article, then he was not going to submit it to the people of Panama for their approval—despite the fact that the words were exactly the same. How ridiculous can we get?

As a result of that, the Committee on Foreign Relations did a flip-flop and reconsidered their adoption of the leadership amendment which is, in effect, almost word-for-word the so-called Torrijos-Carter understanding, of October 14. They did a flip-flop. They struck out the amendment as it was adopted and divided the language up, putting one part of it on one article and one part of it on another, in order that it would not be submitted to the people of Panama for a plebiscite.

As far as I am concerned that is a major reason why I would not vote for the amendment—because we have notice in advance that it will not be submitted to the people of Panama for approval.

Now, then, I would like to say a word in response to the inquiry of the Senator from Nebraska about whether or not these differences of interpretation are in the record. I would like, if I might, to direct him and others who are interested to that portion of my statement of minority views which begins on page 183 of the committee's report. You will find there a rather lengthy documentation of the conflicting interpretation by spokesmen for the two governments.

Let me just focus, for example, upon a statement made by the chief Panamanian negotiator, Dr. Romulo Escobar. He said that—

The neutrality pact does not provide that the United States will say when neutrality is violated. That is not provided there. There is an article which reads that Panama and the United States will maintain the neutrality pact with the purpose that the canal remain open peacefully for all ships of all flags of the world.

That is all it says. It does not say it falls to the United States to decide when neutrality is violated or not.

[Mr. McGovern assumed the chair.]

Mr. GRIFFIN. Then, later, General Torrijos, after the Carter-Torrijos statement was released, went back to Panama and in a television address, just 3 days before the vote, said this:

* * * [I]f we are attacked by superior forces, the United States is obligated to come to our defense. * * * [I]t is necessary for the United States to be committed to that when we ring the bell here, when we push the button, a bell rings over there, and the United States comes in defense of the Panama Canal. * * * I repeat, we push the button, the bell rings, and the United States is obligated to come to our defense.

There are other statements which document the point, and I urge my colleagues to review them.

Let me, for example, point to what the Library of Congress says.

Following the Carter-Torrijos statement, a memorandum provided by the American Law Division of the Library of Congress reaches this conclusion:

* * * [T]he Carter-Torrijos statement, while guaranteeing each party the right to act against threats directed at the Canal, also specifies that the United States may not interfere with the internal affairs of Panama.

It is not altogether clear that the statement would permit the United States to intervene in the event that the aggression or threat should result from Panamanian action.

The Senator from Alabama is absolutely correct. There is little likelihood that the Panama Canal is going to be attacked by a foreign power, by the Soviet Union, for example—but there is much more likelihood and much more ground for concern that an operation within Panama, perhaps even by a future Panamanian Government, could pose a threat to the canal.

I have summarized these concerns in my minority views by saying this—and I underscore them now, and urge the advocates to respond to these two points in the debate:

On this record, it is painfully obvious that the United States and Panama have been in disagreement—and still disagree, despite the October 14 Carter-Torrijos “understanding”—on at least two major points:

“Our Administration tells the American people that the United States will have the right to defend the Canal after the year 2000 against any threat to its neutrality, including an internal threat from within Panama. But spokesmen for Panama

assert that the United States will have such a right only if the Canal is threatened by a foreign power.

"Our Administration tells the American people that the U.S. can determine unilaterally when sun is right to defend the Canal can be exercised. But Panamanian spokesmen insist that U.S. forces can come in only when requested or when the action is agreed to by Panama."

Now, despite the Carter-Torrijos understanding—the basic text of which is now likely to be written, in two parts, into the treaties on the recommendation of the Foreign Relations Committee—it is very obvious that we do not have true agreement on two essential points. It does not matter how many times the Committee on Foreign Relations repeats its own interpretation, or—with all due respect to him, because I do respect him—how many times the Senator from Idaho says what he thinks it means. Unilateral U.S. interpretations do not mean we have an agreement if the Panamanians do not agree with us that that is what it means.

I thank the Senator from Alabama for yielding.

Mr. ALLEN. I thank the distinguished Senator from Michigan (Mr. Griffin) for his very pertinent comments, and I am delighted that he has pointed out the action that took place in the Committee on Foreign Relations with regard to these two so-called leadership amendments, that the Senators had already, in the committee, added these amendments as either one additional article or two additional articles, as the case might be, when they got word from Panama, through the State Department, that "We don't want to handle it that way."

I am not too pleased, Mr. President, with the fact that Dictator Torrijos seems to be having more influence here in the U.S. Senate and in the Committee on Foreign Relations in drafting Committee on Foreign Relations in these amendments than the Senators themselves. It looks, Mr. President—

Mr. CHURCH. Will the Senator yield?

Mr. ALLEN. No; let me proceed a little further. I have been yielding to Senators all over the floor. I will yield in a moment, but I want to complete this thought: It seems to me that we have a situation here almost like the situation that existed back, I believe, in 1940, when President Franklin Roosevelt was seeking a third term, and at the convention, the Democratic Convention, as various matters came up that President Roosevelt did not want to be concerned with, that he did not want to pass judgment on, he would say, "Clear it with Sidney," Sidney being Sidney Hillman, who was one of the great labor leaders of that day. He wanted everything cleared with Sidney. It looks like the U.S. Senate wants everything cleared with Omar, Omar being Mr. Torrijos.

If that is the attitude of the Senate, if we are going to allow Mr. Torrijos to tell us how to amend these treaties and by what method to amend them, I think then we are abdicating our role of giving advice and consent to the President in the process that we have of ratifying these treaties, if Mr. Torrijos tells the great and august Committee on Foreign Relations, "We do not like the way you are handling this amendment; we do not want you making separate articles out of these leadership amendments, because that might be something different that we might have to submit to another plebescite," and we react to it, then we are abdicating our responsibility to give advice and consent.

Are we going to let Mr. Torrijos determine whether or how we are going to amend these treaties? "I do not want to have you attach an article; just amend something."

In this connection, I have something I want to refer to a little later on. The Spanish word for amendment—"enmienda," I believe it is—is supposed to refer to a minor change, a connection, but the Spanish word "reforma" means a basic change. So he does not want the treaty reform; he wants an amendment added, which is considered, under the Spanish language, as being something minor which would justify not submitting it to another plebescite.

Mr. CHURCH. Mr. President, will the Senator yield at this point?

Mr. ALLEN. Yes; I yield for a question.

Mr. CHURCH. I would like to set the Senator's mind at ease on this particular issue. I do not want him to lose any sleep over it.

Mr. ALLEN. Well, I do not plan to.

Mr. CHURCH. These amendments were the result of an initiative by the Senate that commenced in the Senate Foreign Relations Committee.

When it became apparent, early in our hearings, that these two crucial provisions, section IV and section VI, were being interpreted differently in Panama and the United States, I was the one who first said that the Senate cannot be expected to ratify treaties if there is any serious question concerning such crucial provisions and their interpretation.

So, point No. 1 is that the initiative for these amendments did not start with Omar Torrijos; the initiative started in the Senate Foreign Relations Committee. It led to the President's invitation to General Torrijos to return to Washington, at which time the two Chiefs of State entered into a statement of interpretation which has now been proposed in the form of two amendments to be written into the text of the treaty itself.

Mr. ALLEN. You originally added two separate articles, though, did you not?

Mr. CHURCH. Yes. The first proposal—

Mr. ALLEN. And reconsidered that?

Mr. CHURCH. The first proposal that I made divided the text of the understanding between President Carter and General Torrijos into two parts, adding one part to section IV and the other part to section VI. I thought that the most logical way to amend was to attach each section of the understanding to the subject matter it related to in the treaties.

It was the State Department, not General Torrijos, that urged us to take a different course, which the committee then agreed to do, by adding article IX.

What the committee finally did, when the State Department reconsidered the matter, was to return to the original amendments I proposed and adopt them in the same form as I first proposed them. I certainly would not want the record left to suggest that the amendments the committee has recommended to the Senate in any way emanate from General Torrijos. They do not. They are the direct result of the initiative of the Senate itself, and they take the form I originally proposed to the committee.

Mr. ALLEN. I understand that, but did not the State Department say, after we had acted one way, "You should not have acted that

way, because that is not going to please General Torrijos"; is that not correct?

Mr. CHURCH. The State Department——

Mr. ALLEN. Is that not correct?

Mr. CHURCH. The State Department was mistaken in its first recommendation to the committee, and came back after the week-end, after consultation with our Ambassador, and suggested the way I had originally proposed the amendment was the preferable way.

Mr. ALLEN. But did they not ask you to "lick the calf over," so to speak, from the action you had already taken, and do it in a different fashion? Is that not correct?

In other words, with the action you in the committee had taken, you reversed yourselves and did it in a different fashion. Is that correct?

Mr. CHURCH. The Senator is correct. The committee reversed the action they initially recommended, and reinstated the amendments originally proposed.

Mr. GRIFFIN. Will the Senator yield?

Mr. ALLEN. The amendments you proposed were never adopted by the committee and the two articles were adopted. Is that correct?

Mr. GRIFFIN. Will the Senator yield?

Mr. CHURCH. The final action of the committee was to adopt the amendments in the form I originally proposed.

Mr. ALLEN. That is another way of answering that they redid it.

Mr. CHURCH. That is correct.

Mr. GRIFFIN. Will the Senator yield?

Mr. ALLEN. I want to comment further on Senator Church's comment about the initiatives taken by the Senate.

Mr. GRIFFIN. Can I underscore what I think is an important point?

Mr. ALLEN. Very well. I yield.

Mr. GRIFFIN. I made the point and the Senator from Idaho ignored it. While we are not repeating dark secrets, I will say this has been in the papers, the question comes down to whether or not this language was rearranged in two different places of the treaty in order to avoid a plebiscite of the Panamanian people. Is that not a factor? Was that a major factor for the reason of this quick stepping done by the Foreign Relations Committee?

Mr. ALLEN. I would not be able to answer that question.

But let me proceed. I have the floor, I will say to my distinguished colleagues.

The distinguished Senator from Idaho was saying that the initiative on the amendments was started in the Foreign Relations Committee, and that thereafter Torrijos and President Carter entered into a memorandum. The memorandum was embodied in the two amendments. Overlooked was the fact that Mr. Torrijos commented on the memorandum, which is now in the leadership's two amendments, and adopted a different interpretation of the memorandum than what we adopted here in the United States, even than the interpretation that the Foreign Relations Committee adopted. So still, even though these amendments are adopted, we do not clarify the misunderstanding. There is still a misunderstanding. That is

the point I am making. It is now necessary to amend the leadership amendments in order to put in new words which have unmistakable meaning. The words the distinguished Senator is relying upon in the leadership amendments do not have an undisputed meaning. They mean one thing to Torrijos, and he has so stated. The distinguished Senator from Michigan (Mr. Griffin) read from the record, and I mentioned it from memory, that Torrijos puts one interpretation on the meaning and the Foreign Relations Committee and the U.S. Government apparently put another interpretation on the meaning.

Mr. SARBANES. Will the Senator yield?

Mr. ALLEN. I yield for a question. I want to call attention to the fact that my remarks might extend somewhat longer than I had planned because about half of my time is being used by questioners to whom I have been yielding. I will feel free to go beyond the time I had originally estimated I might consume. I do not have prepared remarks, and I might have to go somewhat longer. I will yield for a question.

Mr. SARBANES. I appreciate the distinguished Senator yielding.

I believe the Senator from Idaho has made a most important contribution in bringing forth the two amendments now being proposed as the leadership amendments which clarify our rights under the treaty. It was at his initiative that the Senate Foreign Relations Committee moved to strengthen these treaties. I think it is generally perceived by all observers that the amendments do in fact strengthen the treaties and, therefore, constitute important additions to the documents.

As these amendments are now being proposed, they are in the form in which the distinguished Senator from Idaho proposed them in the committee. I would think that lawyers would agree that it is better to take a statement which relates to two articles in a treaty and incorporate the provisions of the statement with respect to each of the pertinent articles at the appropriate points. That is what is being done with these amendments.

I hope the distinguished Senator from Alabama does not question the initiative or the role which the distinguished Senator from Idaho (Mr. Church) has played in the course of the consideration of these treaties by initiating the effort to come forward with these strengthening amendments.

Mr. ALLEN. I have not questioned his statements. As the ranking Democrat on the committee he has played an important part.

The point I am making is that after the certain language, I do not know whether the memorandum of Torrijos and President Carter was word-for-word what the distinguished Senator from Idaho was proposing or not. But whatever it was, whoever was entitled to the credit for this initiative, came up with a wrong wording, an indefinite wording, a wording susceptible, apparently, to more than one construction. Mr. Torrijos interprets it one way and the Foreign Relations Committee and our Government interpret it another way.

So far as I know, there has been no departure from the memorandum agreed to but not signed by the President and the Dictator. There has been no change in that from the original Church initiative. Whoever is responsible for the wording has wording then that

is susceptible, apparently, to two constructions. Mr. Torrijos has one and the Foreign Relations Committee has another.

The point I was further making is that aside from whose initiative it was, even though the two-amendment route was proposed by the distinguished Senator from Idaho (Mr. Church), apparently the Committee on Foreign Relations did not agree with him, his own committee did not agree with him, and the committee came up with a different method.

Then this different route, having come to the attention of the State Department, the State Department said, "No, no, do not do that. The Panamanians will not like it. Go ahead and reverse yourselves. Kill the action you have taken, and do it the way Senator Church wants."

Mr. SARBANES. Will the Senator yield on that point?

Mr. ALLEN. Yes.

Mr. SARBANES. I do not think that is really fair to the initiative of the Senator from Idaho and the action of the Foreign Relations Committee.

The recommendations from the Foreign Relations Committee for amendments, which were included in its report, and the amendments which have now been proposed by the joint leadership and cosponsored by an overwhelming majority of the Members of the Senate, embodies the approach first put forward by the distinguished Senator from Idaho (Mr. Church). That was the approach he took in the Foreign Relations Committee and that was the approach which was finally settled upon. I think it is the most sensible way to go about amending these treaties.

The provisions contained in those amendments, as the Senator from Idaho has underscored, are designed to clarify, beyond any doubt, the rights of the United States to take certain actions to protect the neutrality of the canal and also to place our warships at the head of the line in order to gain immediate passage of the canal in case of need.

Mr. ALLEN. Then may I ask the distinguished Senator, why is it that Dictator Torrijos gives it one construction and the Committee on Foreign Relations gives it another?

Mr. SARBANES. Let me reply to that question. First of all, I know the Senator from Michigan has made that argument, but I do not agree that the provisions are being given different interpretations.

Mr. ALLEN. The Senator has apparently not read the Torrijos statements.

Mr. SARBANES. I have indeed, and those statements are extensive and extended, as the distinguished Senator from Alabama knows from his own reading of them. Therefore, it is very important that one read through those statements completely, and his interpretation encompass all of the statements which have been made. On that basis, I do not agree that there is a difference in interpretation.

Second, the Panamanians have agreed to these treaties by their own volition. An agreement which gives us by the terms of the treaties many important rights and authorities. That is enormously important in terms of the American action that we can take.

I heard mentioned earlier, what could we do in the future? I only point out that we are the world's strongest military power, a

nation of 218 million at present. Panama is a republic of 1.7 million people. The United States is in a position to use its power to protect its interests. But we should desire a legal and moral basis on which to use that power. That is what these treaties give to us. They give us the legal and moral basis for taking action.

The Senator from Michigan has argued for further plebiscites. The fact of the matter is that these treaties, with it understood that the joint statement is part of them, have been approved 2 to 1, in Panama.

The rationale of the opposition in Panama in the plebiscite was that the treaties are too accommodating to American interests, that they give us too much in terms of our rights to take action to protect our interests. Simply looking at American interests, I think that these treaties, with the leadership amendments to be incorporated therein, are enormously important in giving the United States the legal and moral basis to use its power to protect its interests. We ought not to lose the opportunity to gain that legal and moral basis; a basis which has been agreed to by the other party.

Mr. ALLEN. I thank the distinguished Senator for his nongermane comment.

Mr. GRIFFIN. Will the Senator give me 30 seconds to respond?

Mr. ALLEN. Provided I do not lose my right to the floor.

Mr. GRIFFIN. I want to say briefly in response to the Senator from Maryland that I am not arguing for additional plebiscites. I am arguing, however, for a new treaty relationship with the people of Panama, rather than a treaty with a temporary, self-appointed dictator. It is just as simple as that. If we end up here with a treaty that has the approval of Mr. Torrijos but does not have the approval of the people of Panama, then we are only fooling ourselves.

Who knows how quickly Mr. Torrijos' successor will seize upon the fact that these treaties have no validity—a very, very important point—because they have not been approved by the people of Panama?

If we do not change the treaties, that is a different thing. Then we in the Senate can vote them up or down, because the people of Panama have voted on them. But if we are going to change the treaties in a substantive way, then we are going to end up with a different treaty. Mr. Torrijos himself said if we put these two amendments together and called it an article, that would be a substantive change—but then he says, if you spread them out a little bit and hide them in other sections, you would not need to go back to the people of Panama for approval, even though the words are exactly the same. That, to me is a very dangerous kind of situation.

Mr. ALLEN. I thank the distinguished Senator from Michigan.

The point is being made that we are only now going back to the original thrust of the Church initiative, which was not accepted originally by the Committee on Foreign Relations, and that, after the Committee on Foreign Relations had made a separate article or articles of these amendments, the committee was advised by the State Department that that would not play in Panama, as might be said. Therefore, the Committee on Foreign Relations reversed their action, showing the influence of the Panamanian connection and

showing that Mr. Torrijos has great power in shaping these treaties here in the U.S. Senate. Therefore, the committee did reverse itself and did go back to the Church initiative.

But the Church initiative, I say, Mr. President, is based upon the flawed memorandum, or the initiative started first and the flawed memorandum resulted from that. But whatever they came up with, the statement—I hesitate to call it an understanding—embodied in the memorandum between President Carter and Torrijos is flawed in that Torrijos puts one interpretation on it and the Committee on Foreign Relations and the U.S. Government apparently place another interpretation on it. That same flaw is carried forward into the leadership amendments, which are based on the memorandum which is apparently based on the Church original initiative.

Now, Mr. President, I have yielded to numerous Senators during the course of my remarks. As I stated, I have no prepared address, but I do have a number of items that I would like to cover.

In order that the continuity of my remarks be not interrupted, I am going to ask my distinguished colleagues, if they will, to allow me to speak until, say 1 o'clock, at which time I shall be glad to yield to questions by my distinguished colleagues.

I say that those Senators who have remarks to make that are not questions—and, as Senators know, a speaking Senator can yield only for questions without risking losing his right to the floor—if they have comments to make, let them store those comments up and make them when they have the floor, here in the U.S. Senate. At the present time, the junior Senator from Alabama has the floor, and he is going to talk now until 1 o'clock, at which time he will be glad to entertain questions and give such answers as he is capable of giving.

Mr. President, earlier in my remarks, I pointed out the great contributions made by Alabamians to dreaming the concept of the Panama Canal and to putting it into execution. I mentioned Senator John Tyler Morgan of Alabama, who has been called the father of the isthmian canal by no less an authority than Senator Spooner, who was author of the bill providing for a Panama canal.

Gen. William Crawford Gorgas, the conqueror of yellow fever in Panama, was an Alabamian, as was Gen. William Luther Sibert, who was the top assistant to General Goethals. I should like to read a tribute to Senator Morgan—who, I might say, is one of my all-time favorite U.S. Senators, whether they come from Alabama or any other State in the Union. In the authoritative book, "Cadiz to Cathay," by Miles Duvall, starting on page 424, there is a summing up of the great contribution made by Senator Morgan. I am not, at this time, going to go into the contributions of General Gorgas and General Sibert, but I do feel that Senator John T. Morgan of Alabama played such an important role in visualizing the need and importance of an isthmian canal that I shall be remiss in my duty as a U.S. Senator from the State of Alabama if I do not call my colleagues' attention to his great contribution.

I quote, starting on page 424:

It was Senator John T. Morgan of Alabama who did most in those apathetic years of 1880-1903 to keep the issue alive and to campaign against reputed British encroachments. At first bitterly disappointed at the adoption of Panama in preference to Nicaragua, when real work started on the Panama Canal he took a great

interest in it, for the end he was for any canal rather than no canal. He never lost faith in the ultimate accomplishment of his dreams. Some day, perhaps not until the Nicaragua Canal is built, some biographer will write the story of Morgan's life and work and thus give his name the great place it deserves in this important phase of American history.

Although a partisan of Nicaragua and represented as being of a most stubborn nature in his Senate conflicts, Morgan had a greater vision. Underlying his partisan behavior there was the larger view, well expressed by him in a letter to Joaquin Bernardo Calvo, one-time Costa Rican Minister in Washington:

Senator Morgan wrote this. This was written prior to 1907 because that was the date of Senator Morgan's death.

I need not speak of the motives that have so long impelled me to labor for an isthmian canal, against opposition that came from various powerful sources, at home and abroad, and often seemed beyond the power of resistance. You know that our Southern States are still buried under the ashes of the great civil war, and that an isthmian canal is the best, if not the only hope of lifting them above the debris, through the energies of production and through commercial intercourse with the Pacific Ocean.

The selection of the route is a secondary consideration provided the conditions are equally favorable to all concerned.

This passage is particularly interesting:

Later studies have shown that Morgan was essentially right in his views. The Nicaraguan Canal, as he saw in his day, was the preferable route from the standpoint of the welfare of the United States, especially the South:

I hasten to say this was Senator Morgan's view and not necessarily the view of history.

It has been predicted that if this canal were available today two-thirds of the transisthmian traffic would use the Nicaragua route because of its shorter distances for certain trade lanes. That fact, however, makes it fortunate that Panama was built first, as that still leaves a strong reason to build Nicaragua, whereas if Nicaragua had been built first no such impelling incentive could have been created for Panama and the present canal undoubtedly would have been delayed, as Panama leaders realized, even for centuries.

So if the Nicaraguan route had been successful, if it had been the one chosen, then we would not be here today debating this issue of whether or not we would give the canal to Panama.

Then again, Mr. President, on page 166 of that same authoritative work we read of the debate regarding the Panama Canal issue in the Senate:

At times the debate was bitter but not so bitter as to obscure the great part Morgan had played in the history of transisthmian water communication. To him was given one of the greatest tributes in the records of Congress, when on June 18 Senator Spooner declared:

I say again, Senator Spooner was the author of the bill providing for the Panama Canal. This is the great tribute he paid to Senator Morgan:

Upon whatever route an isthmian canal shall be constructed, the Senator from Alabama will forever stand in the memory of the people as the father of the isthmian canal; for, in season and out of season, in sunshine and in storm, unappalled by obstacles and adverse influences, with lofty patriotism and unflinching purpose, he has, with rare skill tireless industry, and splendid advocacy, fought for an isthmian canal. When it comes, and it will come, his name will deservedly be identified with it far above that of any other man.

Mr. President, I felt that it was appropriate that I pay this tribute to Alabama's great U.S. Senator of the past, John Tyler Morgan, for his great contribution toward the building of the Panama Canal.

Mr. President, why should we have a Panama Canal Treaty? Is it because of a good neighbor policy?

I believe that is carrying good neighborliness just a little bit too far.

Is it because the canal is indefensible? I think not, because under the treaty and the side agreements we are withdrawing from 10 of the 14 bases that we have defending the canal and if those in charge of such military matters feel that 4 bases are sufficient and that 14 are not needed, it is quite obvious, it would seem to me, that the canal can be defended.

Is it because of sabotage? Is it because of fear of sabotage?

The treaties wipe out the Panama Canal Zone and, whereas now the United States controls 5 miles on each side of the canal, as soon as the treaties are approved the boundaries of the canal zone will cease to exist and all of the territory will be Panamanian.

So if we are fearing sabotage, we are bringing the Panamanians 5 miles closer on each side of the canal.

Sabotage is no reason, or the fear of sabotage is no reason, to give the Panama Canal away.

Now, can we combat potential sabotage? I think so.

I quote from the February 9, 1978, Congressional Record a statement made by our distinguished majority leader—Mr. Robert C. Byrd. He made it not just once, but twice, and I make this statement, even though he is absent from the floor, because it is a correct statement, it is an honorable statement, it is a fair statement, and it is a correct assessment of the situation.

Senator BYRD said:

There is not any conceivable situation that could arise in Panama if these treaties were rejected, no conceivable situation that could possibly arise in Panama that we could not handle with our military.

So, Mr. President, there is no need to worry about the possible sabotage on the part of the Panamanians.

Why would they kill the goose that lays the golden egg? Seventy-five percent of the employees of the Panama Canal Company are Panamanians, and much of the high standard of living that the Panamanians have is traceable directly to the Panama Canal operations.

I fear, Mr. President, that these treaties are indicative and symptomatic of the growing trend in this country to be willing to give away our very substance. Already, we have contributed overseas more than \$200 billion since 1946. Already, around the world, when resistance is given to us, we are willing to withdraw, to retreat. Here we set another example of our unwillingness to stand up for our rights, to stand up for our interests.

We seem principally concerned with coming up with a treaty that meets with the approval of dictator Torrijos, which will not require him to submit the treaties to a plebiscite.

On the matter of a plebiscite, what is wrong with a plebiscite? Mr. Torrijos jumped the gun on the other plebiscite. He could have called it any time he wanted to. He knew these treaties were going to come up before the U.S. Senate. He knew the U.S. Senate had the power to amend these treaties. Why, then, did he jump the gun and call for a plebiscite in Panama on the treaties?

He called a plebiscite. By a vote of 2 to 1, the people endorsed the treaties. If they would endorse them then, why would they not endorse them now, even if changes are made? But Mr. Torrijos, for some reason, must feel that his control over the Panamanians has slipped, that he could not succeed in another plebiscite.

So what he is saying to the U.S. Senate, in effect—I suppose he is actually saying it, for that matter—is, “Do not amend these treaties in substantive form. Do not have any substantive amendments, because that is going to make me resubmit these treaties to a plebiscite in Panama.”

What should be the proper concern of the U.S. Senate? Obviously, it should be what is in the best interests of the United States and the people of the United States. Should we be concerned with whether or not Torrijos can get these treaties approved again in another plebiscite?

That should certainly not be our primary concern. Our primary concern should be, and must be, how can these treaties be shaped to best protect the interests and the security of the canal, and thereby the security and best interests of the American people?

Are we going to adopt the leadership amendment, which apparently has different interpretations in the United States than in Panama, and having done that, stonewall the remainder of the amendments?

I call attention to this vaunted leadership amendment. It is not greatly different from article 4 of the Panama Canal Treaty. But again I say that it is susceptible, apparently of two constructions and overlooks the fact that by the year 2000 all our troops will have been withdrawn from the Canal Zone, unless we can amend the leadership amendment, and any action on our part to defend the canal would be done by our acting in the role of an invader of that country. We can imagine the international repercussions that would be caused by the United States forcing itself back into Panama after all our troops are gone, and I would not wonder at that.

So what we need to do is to protect our right to defend the canal, if we are going to give it away. But as I say, we are getting the cart before the horse. We should be considering the Panama Canal Treaty first in order to decide whether we are going to give it away, before we decide whether we are going to plan for its defense down the road.

The amendment I intend to offer provides that our military presence could continue after December 31, 1999, if the President deems it is necessary for the defense of the canal or the maintenance of its neutrality and he so certifies to the Panamanian Government prior to December 31, 1999.

Mr. President, the giving of the canal to Panama changes the entire nature of the operation of the canal. The United States has operated the canal on a nonprofit basis, and it has been a benefit to the world, as they are able to use this canal, and the United States does not make a profit from it. Now it is going to change.

I am not going to comment on the full amount it is going to cost the taxpayers. That is going to be commented upon by others. However, after assurances were made time and time again by the proponents of the treaties that it would be at no cost to the taxpayer-

ers of the United States, the administration finally came out with a statement a few days ago saying, "Well, we were wrong about that. It is going to cost the taxpayers \$600 million." That is just a start, as will be pointed out. But I feel that my time today is limited, even though under the rules it is not limited.

We are changing this entire operation of the canal.

Mr. Barletta, the Minister of Economic Planning in Panama, estimated that in the 22-year existence of the Panama Canal Treaty, Panama would receive—and this is largely from tolls, I will concede—\$2.262 billion, this not counting the tremendous properties being turned over at this time, this not counting the loan program that has been made up for them of \$345 million, this not counting the \$319 million that is still owed to the U.S. Treasury on the canal.

They are going to receive, according to Minister Barletta, \$100 million a year from the tolls. The treaties provide, at article XIII in the Panama Canal Treaty, that after the Panama Canal Commission runs a deficit, and it surely will, we will have to clear that before the year 2000, when we are obligated to turn the canal over to Panama free of debt.

Mr. President, let us consider for a moment this Panama Canal Commission that is set up to take the place of the Panama Canal Co. which now operates the canal for the U.S. Government. They are going to set up a commission to take over the canal. That is not talking about the year 2000. That is talking about the fact that as soon as these treaties are approved, they would turn the canal over to the Panama Canal Commission.

What is the makeup of this commission?

It has nine members. Five of them are American nationals, it says, and four of them are Panamanians. How do you choose the Panamanians? They are chosen by a list being furnished to the U.S. Government. That is all it says. It does not say who is going to appoint them. I assume it will be the President. He appoints the members of the Panama Canal Co., as I understand it. And a significant feature, Mr. President, is that whereas the members of the Panama Canal Co. have to be approved by the U.S. Senate the members of the Panama Canal Commission, nine in number, five Americans and four Panamanians, do not have to be approved by the U.S. Senate. So, Mr. Torrijos could send over the names of any four Panamanians he might wish to send over, no matter what their reputation, no matter what their background, no matter what their ties to other foreign governments, and it is incumbent on the United States to appoint those four without any confirmation by the U.S. Senate.

All right. Starting out with four Panamanians and five Americans, not approved by the Senate, suppose one of the five Americans sides completely with the Panamanian position. That would give Panama actual control right from the start.

The treaty provides, further, that whereas they have an American administrator until the year 1990, at that time they appoint a Panamanian administrator of the canal, so actually it would seem instead of waiting until the end of this century for Panama to get full control it looks like, with the administrator coming in, the

Panamanian in 1990, Panama pretty well has control rights from the start.

Mr. President, I want to talk about the head-of-the-line provision that we hear so much talk about to the effect that they have accomplished great wonders for the security of the United States under this head-of-the-line provision. Let us see about that, just what it does say about the head of the line for American warships. We have not heard Mr. Torrijos' construction of this phase of the leadership amendment. But we have heard his construction of the memorandum:

In accordance with the Statement of Understanding mentioned in Article IV above: 'The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly.'

In the first place, this gives Panama an equal right with the United States to be entitled to emergency treatment. In other words, the Panamanians will be in charge completely starting with the year 2000. It does not say which will have priority, the United States or Panama. So obviously the Panamanian ships, under a Panamanian ownership and administration of the canal, it would seem to me, would get priority treatment over the United States. Let us read on:

without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line * * *

Who is going to determine the need or the emergency? Panama will be sitting there controlling the operation. They own the canal. They operate the canal. They maintain the canal. They defend the canal. Who is going to say whether it is an emergency?

Panama could well take the position: Well, I see no emergency. You ought to just wait your own good time. By the way, we have these two or three Panamanian vessels that certainly need to go first and we have equal right with the United States under this so-called leadership amendment.

So I do not believe that this properly defines who determines whether there is an emergency or not. And I feel that the amendment is defective at that point.

Once again I point out I am a cosponsor of this amendment but that fact does not keep me from seeing its shortcomings and its very serious defects.

Once again, Mr. President, we are going to hear from time to time as amendments are offered here on the floor that this amendment or that amendment is not needed. I dare say amendments accepted by the leadership of really substantive nature are going to be few and far between, and for adoption of any amendment to strengthen the interests of the United States under these treaties the process is going to be like pulling eye teeth before the proponents of these leadership amendments will agree to any others. And they, the joint leadership, the Democratic leadership and the Republican leadership, are going to assure Members here that the leadership amendments take care of everything and we do not need any other amendments. Mr. Torrijos does not want any more

amendments. Once again, I say we ought not to be concerned with what Mr. Torrijos will accept or what he wants.

Mr. SCHMITT. Mr. President, will the Senator yield for a question?

Mr. ALLEN. I guess we are near enough to 1 o'clock. I stated I was going to speak until 1 o'clock without allowing interruption. Since this is the first request for my yielding, I will yield for a question.

[Mr. Johnston assumed the chair.]

Mr. SCHMITT. A little bit earlier in a colloquy that the Senator from Alabama had with the Senator from Idaho, this Senator, the Senator from New Mexico had an impression that he heard something that he would just like to have clarified. Was it the Senator's understanding that prior to the introduction of the resolution for ratification there would be communication between parties unnamed, presumably the Senate and the Government of Panama, to see if whatever amendments had appeared by that time would in fact be acceptable?

Mr. ALLEN. As I understand the procedures—

Mr. SCHMITT. I realize that is not Senate procedure, but I thought that is what the Senator from Idaho said.

Mr. ALLEN. As I understand the procedure, once the Senate agrees to the terms of the treaty, then a resolution of ratification is presented which embodies the provisions of the treaties as finally agreed to by the Senate. That resolution of ratification transmits it to the President and then, depending on whether Panama has taken all the steps it needs to take with respect to the approval of the treaty—up until that time you do not have a treaty. The missing ingredient would be whether Torrijos needs to submit the treaties as finally agreed to here in the Senate for the same type of approval that he got originally when he jumped the gun on calling a plebiscite.

Mr. SCHMITT. Well, I had the distinct impression—maybe the Senator from Idaho would be willing to clarify this—that he said that prior to the resolution of ratification being approved in the U.S. Senate, there would be some indication from the Torrijos government as to whether or not the amended treaties were acceptable.

Mr. ALLEN. Well, if so, that would not be official. With the "advice and consent" he is now giving our actions here, he seems to have taken over that role, but it would not be an official action to advise us—he would ratify.

Mr. SCHMITT. I fully recognize that, and maybe the Senator from Idaho will clarify that point.

Mr. CHURCH. Will the Senator yield to me for that purpose?

Mr. ALLEN. I will yield. I do not yield my right to the floor. I yield the Senator 5 minutes, Mr. President.

Mr. CHURCH. The able Senator from Alabama has stated the legal procedures accurately, and I have attempted to explain them earlier. Once the Senate has worked its will on these treaties, however the Senate may choose to amend them, the consent that the Senate gives is based upon the action that the Senate takes.

The treaties thus amended would be accompanied by an instrument of ratification, properly executed by the President or the

Secretary of State, or someone acting in his behalf. By like token, the Panamanian Government must execute an instrument of ratification relating to these amended treaties.

The two instruments of ratification are then deposited in Panama and in the United States, and upon the deposit of the instruments of ratification the treaties, as amended, become of binding force and effect.

Mr. SCHMITT. The Senator from New Mexico understands that sequence. What is of concern to the Senator from New Mexico was the statement that he believed he heard the Senator from Idaho make, that prior to the vote on the instrument of ratification, on the resolution of ratification, there would be some type of interaction with the Government of Panama in order to determine whether the amended treaties would be acceptable.

Mr. CHURCH. The Senator from New Mexico misunderstood my remarks.

Mr. SCHMITT. Good. I am delighted to hear it.

Mr. CHURCH. Whatever the Government of Panama feels it must do under its constitution is up to the Government of Panama. I do not care. Whether they need another plebiscite is for them to determine, not for us to determine. Our responsibility is to amend these treaties as we think best conforms to the interests of the United States. That is our responsibility. Having done that, if the Torrijos government believes it must submit the amended treaties to the people of Panama for another plebiscite, that is up to them to decide, under their laws and their constitution.

Mr. SCHMITT. I appreciate the clarification. I think a number of other Senators misunderstood the earlier statement, and I think the clarification is good for this body and for the public.

I thank the Senator for that, and I again thank the Senator from Alabama for yielding.

Mr. ALLEN. I thank the Senator from New Mexico.

Mr. President, amendments will be offered here on the floor to the Neutrality Treaty and to the Panama Canal Treaty. "Selected Documents," from the Bureau of Public Affairs Office of Media Services contains the treaties and the amended annex and protocols in 22 pages. Accompanying that document—that is accompanying both treaties, their annexes, amendments, and protocols, calling on the other nations of the world to agree to this Panama Canal Neutrality Treaty—connected with these documents and referred to often in the treaties, but, according to a ruling of the Vice President—not a ruling because the question was not up, but in the response of the distinguished Vice President, Mr. Mondale, to a parliamentary inquiry which I made the first day the treaties were before the Senate—these tremendous "Selected Documents" occupying 64 pages of the same size paper as the treaties, these tremendous documents going into nearly every phase of the agreements, overlapping, in some cases, the provisions of the treaties, are incredibly not before the Senate, according to the response of the distinguished Vice President.

That being true, Mr. President, since the Senate is not going to get any opportunity to act on these tremendous documents having to do with implementing the treaties, it is going to be necessary—and the distinguished Vice President did concede that this might

be done—to offer amendments to one or both of the treaties if we are going to change any of the provisions of the “selected documents.”

That being true, since we cannot amend the documents, we are going to be put to the need or to the requirement of amending the treaties; and that being true, there are going to be quite a few amendments.

The first amendment I intend to call up, as I have stated—but I feel that while I am talking about amendments I should mention this—is an amendment that calls attention to the fact that the so-called leadership amendment ignores the fact that all of our troops are to be out of Panama by the year 2000.

This so-called leadership amendment, which I must stress again is construed differently in Panama from the way it is construed here in the United States—would provide for our defense of the canal; but after the year 2000 all of our troops would be gone. So any defense—they make a big to-do about unilateral rights. Well, we can have unilateral rights without a scrap of paper, because if we want to go in and defend the canal, we could do it. What difference does it make whether we say in the document that we have got the right to defend the canal, when we have already got that right?

Mr. SARBANES. Mr. President, will the Senator yield on that point?

Mr. ALLEN. No, not until I get through, let me say to the Senator.

What the proponents overlook is the fact that all of our troops will be gone from Panama, and if we come in at all to defend the canal, we will, in effect, have to invade Panama. We will either have to come in with an amphibious landing or in an air assault with paratroopers.

But under my amendment, Mr. President, this pledge is fulfilled; this oversight, shall we say, of the leadership amendment is taken care of.

My amendment, which I intend to offer at the proper time, says that the military presence of the United States shall continue beyond December 3, 1999, if the President of the United States deems it is necessary for the defense of the canal, or for preserving its neutrality, and so certifies to the Panamanian Government prior to December 31, 1999.

We do not know what the conditions in Panama will be in the year 2000, or what form of government they will have. We know Russia and Cuba may want all of Panama or all of the canal. We do not know whether it will be a satellite of either of those countries.

This amendment does give the President of the United States the option to continue our military presence there beyond the year 1999, if he deems it is necessary, for the defense and maintaining its neutrality.

Now I will be glad to yield to the distinguished Senator from Maryland if he wishes me to.

Mr. SARBANES. Not at this time.

Mr. ALLEN. Mr. President, as much as we cannot change these documents by amendment, I believe it is necessary to put into the

treaties amendments which will refer to the same areas as these documents and make them a part of the treaty.

Mr. President, the Presiding Officer in his responses to my inquiries seemed to indicate that if the negotiators of the treaty would come up with a treaty saying that the parties hereto agree to certain terms, which are set out in more detail in a signed agreement, if the Senate was unwise enough to agree to something like that then the whole thing could be handled by a signed executive agreement.

We have twice as much, we have three times as much, in the signed side agreements as we have in the treaties themselves.

It would seem to me it would be a bad precedent to agree to something not even in the treaties. These very important matters are referred to only in another document that the Senate cannot change.

Mr. SARBANES. Will the Senator yield?

Mr. ALLEN. I will yield for a question.

Mr. SARBANES. I thought at the beginning of the debate when the Senator had his exchange with the Chair and made a number of inquiries, it was clear that provisions in documents that were outside of the treaties themselves were actually not before the Senate for amendment. If the Senator feels such provisions should be in the treaties themselves, he obviously has the opportunity to offer amendments to the treaty which would incorporate or bring into the treaty any provisions the Senator deemed important. I understood that the Senator has that opportunity through the amendment process.

Mr. ALLEN. I believe the Senator did not quite understand what the Senator from Alabama was saying. The Senator from Alabama said that the Chair, in response to my inquiry, made a statement that whereas the selected documents are before the Senate, in a sense they are not before the Senate to allow the Senate to amend them. They are just here. They are in limbo. These side provisions cannot be touched by amendments, per se, to these related documents.

Mr. SARBANES. If the Senator will yield further——

Mr. ALLEN. I believe if the Senator will get a staff man to check the statements, he will find what the Senator from Alabama says in his response is correct.

Mr. SARBANES. I do not think there is any difference. If there are provisions in documents outside of the treaty which the Senator from Alabama thinks should be part and parcel to the treaty, the Senator from Alabama can offer amendments to that effect.

Mr. ALLEN. The Senator is just repeating what I have said. This side agreement tactic is to put us to offering amendments to treaties which would be contrary or at variance with, or sometimes in compliance with, the signed agreements. The point the Senator from Alabama is making is that the agreements themselves are not subject to amendment.

Mr. SARBANES. The treaty is the governing document. If the Senator wishes to offer amendments to the treaty and they are adopted——

Mr. ALLEN. The Senator from Alabama understands all of that.

Mr. SARBANES. Then we have no difference.

Mr. ALLEN. All the Senator from Alabama is saying is that it is going to require numerous amendments in order to counteract the provisions in these signed documents. That is all the Senator from Alabama is saying. I hope that is clear to the distinguished Senator from Maryland.

The Senator from Alabama has explained why numerous amendments must be offered, because the length of the signed document is three times as long as the treaties themselves, and we cannot touch the signed documents except by amendment of the treaties themselves.

Now, Mr. President, on another matter, as I said in my remarks earlier today, I commended the distinguished majority leader and the distinguished minority leader on their decision that due to the importance of this issue a reasonably long period would be set aside for consideration of the treaties. The distinguished majority leader is quoted as saying that he estimates the treaties would require anywhere from 3 to 5 weeks of debate, that the Senate will be allowed to have a full and extensive debate, and would have the opportunity to offer numerous constructive amendments. I feel that no dilatory amendments will be offered and no dilatory tactics will be used.

I think it is important to emphasize that we will have the opportunity to offer amendments and to speak with respect to the amendments and the treaties themselves.

There was an article in the New York Times in the last week by the able and distinguished columnist Mr. Tom Wicker commenting on the remarks I made here on the floor. I will read from that document. He has something to say about a filibuster and I would like to comment on it:

Senator James Allen of Alabama * * * a dedicated treaty opponent, was even heard to say that we would not engage in "debate by cliches," a position that shatters all Senate precedents. He also offered a Washington Post interviewer the dubious theory that a filibuster or stalling tactics would "serve no purpose" in the treaty debate—although on the face of it, a ratification question requiring a two-thirds vote seems a splendid opportunity for an opposition filibuster.

That is a non/sequitur.

We shall see what we shall see.

The distinguished columnist, Mr. Wicker, says:

Although on the face of it a ratification requiring a two-thirds vote seems a splendid opportunity for an opposition filibuster.

Just the contrary, Mr. President, because it takes 67 votes to approve the treaties, to give the Senate's advice and consent to the ratification of the treaties, only 60 votes to cut off a filibuster. So it hardly seems logical to say that, since it takes 67 votes to approve the treaties, therefore, that is a good place for a filibuster. Just the contrary is true. That is one reason we shall not have a filibuster, because of the numbers involved, because 60 votes can cut off a filibuster, 67 votes are required to approve the treaties.

Another reason there will not be a filibuster, Mr. President, is that if the treaties, in effect, are defeated, or a better phrase would be prevented from coming to a vote, by extended debate, that would not be a defeat. They would remain on the calendar and any time the leadership wanted to bring the treaties up, they could do so just by moving to go into executive session, which is nondebata-

ble. So even if we had the votes to maintain a filibuster, we would not have accomplished our goal; we would not have defeated the treaties, because they remain on the calendar, would be printed every day, and could be brought up whenever the leadership thought it had a sufficient number of votes.

More than that, the reason there will be no filibuster, Mr. President, is that, in my judgment, public opinion would not support a filibuster. A filibuster, or extended debate—which term I usually prefer—if it does not have public support, does not have public opinion behind it, is going to fail. The only chance of a filibuster ever succeeding is when public opinion supports it. Public opinion, in my judgment, wants a final determination of this issue. I think public opinion is opposed to the Senate giving its advice and consent to the ratification of these treaties.

Now, I know that it is awfully hard for opponents of the treaties to be in opposition to the leadership of our respective parties. The joint leadership is a tremendous force here in the U.S. Senate. The majority leadership is plenty potent; when you combine that with the minority leadership, you have a force that is very strong, indeed. It is hard to defeat and it is hard to buck.

Then, you add to that the great power of the President and the administration pushing for the approval of these treaties. It does make the role of the opponents of the treaties very difficult, indeed. But I am hopeful that enough Senators will respond to public opinion, which, in my judgment, is strongly opposed to agreeing to these treaties, and that we will, if not able to defeat them in their entirety, add amendments—constructive amendments, substantive amendments—that will protect the best interests of the United States.

Now, Mr. President, going further into the matter of extended debate and the possibility that the leadership might seek to limit debate, I should say that that would not be in the best interests of the approval of the treaties, because, for one thing, we do not know what legislation we are going to be asked to pass in the Senate having to do with the national coal strike. If cloture is ever invoked on this treaty, that blocks everything until the treaty is disposed of, which might take weeks. So I do hope that we will not invoke cloture in this matter, because I do not believe it will hasten the time when we will have a direct vote.

I do not know how long the secret session is going to last tomorrow. If we get out at a reasonable hour, I do plan, on Tuesday, to offer my motion to reverse the order of consideration of these treaties. I shall move to go first to the Panama Canal Treaty, which provides for the transfer of the canal over to Panama and the conditions under which the transfer will be made, rather than consider the neutrality treaty, which in the main, has to do with the defense of the canal starting with the year 2000.

I was asked just the other day by a major proponent of the treaties about how long I might possibly take on these treaties. I stated that it was my assessment that if we do reverse the order of these treaties, we shall probably knock a week off the time necessary to come to vote on the treaties. I do not believe that made any impression on this major proponent of the treaties.

Now, Mr. President, we have heard a lot about human rights and the lack of human rights down in Panama. Well, obviously, if we turn over to Mr. Torrijos' government—and that is pretty nearly the same thing as saying Mr. Torrijos—\$100 million a year for the next 22 years, it is going to allow him to perpetuate himself and his regime in office. Dictator Torrijos has promised to do better down there, to do great wonders and all, but, obviously, I place no confidence whatsoever in what he says. Here we are in the anomalous situation of talking about human rights and preserving human rights, demanding human rights all over the globe, and we are handing \$100 million to a government that knows nothing about human rights in order to allow it to perpetuate itself in office. I hardly feel that that is the right action for the U.S. Senate to take.

Another matter, and I mention this because it did come up—it was the subject of a hearing by the Subcommittee on Separation of Powers of the Judiciary Committee—is the provision of the Constitution having to do with the disposition of property of the United States. Article IV, section 3, paragraph 2 of the Constitution says that Congress shall have the power to dispose of and to make all needful regulations with respect to the territories or other property belonging to the United States. That power having been given to the Congress, embracing both the Senate and the House of Representatives, certainly, according to legal scholars, that vests that power in the Congress alone. Yet we see the administration saying that we do not need approval of the House of Representatives to dispose of property of the United States. This approach is unconstitutional and, if consummated, in a legal sense would be void.

While we are talking about property, we hear a whole lot about sovereignty and whether or not the United States has sovereignty or is entitled to operate as if it were sovereign. The fact of the matter is that the United States owns this property in the Canal Zone in fee simple; whether it has sovereignty or not is really not important.

We are disposing of the physical property of the canal and the public property and lands in the Canal Zone. Yet the administration is unwilling to allow the House of Representatives to pass on this issue, even though I understand that more than 218 Members of the House have introduced a resolution asking that this matter be submitted to the House of Representatives, as well.

Mr. CURTIS. Mr. President, will the Senator yield for a question?

Mr. ALLEN. I yield to the Senator.

Mr. CURTIS. My recollection is that the hearings revealed that the U.S. Government paid a substantial sum, I believe in excess of \$3 million, to individual property owners.

Mr. ALLEN. Yes, that is correct.

Mr. CURTIS. Owners of farms, buildings, lots, and the like, in Panama.

Mr. ALLEN. That is correct. A much larger sum.

Mr. CURTIS. My question is this: If this treaty is adopted, in whom will that previously owned personal property, in whom will the title be vested for this previously owned property?

Mr. ALLEN. It will be my guess. I say to my distinguished colleague from Nebraska, it would belong to the Government of

Panama if the treaties are agreed to. If the treaties are agreed to and the House of Representatives is allowed to act on it and approves it—but I think the contention will be made whether the House acts or not, that the property goes to the Government of Panama. That is my judgment.

Mr. CURTIS. One other question.

Mr. ALLEN. I do not think they want us to own a foot of land down there, or have a single soldier down there.

Mr. CURTIS. Can the Senator tell me who took title to the land back at the time of the original treaty that was adopted when these sums were paid in order to compensate those owners of private property down there?

Mr. ALLEN. I am not absolutely sure. It would be the U.S. Government or an agency of the U.S. Government. I rather believe the Panama Canal Company was set up prior to the transfer of these properties, but I am not absolutely sure.

It is either the Government of the United States or an agency or branch of the U.S. Government.

Mr. CURTIS. Is it not true that the treaty that is before us, the first principal sanction sets aside the old treaty entirely?

Mr. ALLEN. It does, indeed, and that reminds me of another point I want to make, I say to the distinguished Senator.

Mr. CURTIS. In other words, if we approve the treaties before us, we carry over no rights that we had in the existing treaty and are limited only to those rights that this new treaty gives us?

Mr. ALLEN. That is exactly right, exactly right.

Mr. CURTIS. Does that make it more important than ever that Panama, and its chief executives, and this Government, agree on interpretation of what the language in the new treaty provides?

Mr. ALLEN. Very definitely, I say to the distinguished Senator.

Mr. CURTIS. If the new treaty is approved, then so far as any rights of the United States of any kind in that whole area, we start from scratch and only have those rights specifically given us in the new treaty?

Mr. ALLEN. That is correct, unless possibly the implementing legislation might possibly confer some rights on us. But I would say that in all likelihood the Senator is correct.

I give an example, the implementing legislation might require that this \$319 million that is still owed on the canal might have to be paid or the interest might have to be paid on that, but that would be just on the day-to-day operation of the canal and not basic rights in the canal.

Mr. CURTIS. It is often said that the approval of these treaties before us should not be decided by prejudice or personal interest, but should be decided in the national interest.

Does the distinguished Senator agree with the Senator from Nebraska in the assertion that our national interest is the future operation of the canal, assuring without question all of the rights and prerogatives that this country needs from the standpoint of defense, as well as the passage of commerce through the canal, as well as protection from having the canal used by a nation that might have declared war against the United States?

Mr. ALLEN. Yes, I certainly agree with the distinguished Senator.

Mr. CURTIS. Well, what are the facts in reference to the new treaty and the use of the canal by a nation at war with the United States?

Mr. ALLEN. Under the present treaty, there is a method of preventing belligerents from using the canal. A vessel will have to have been in the Panamanian waters there for a certain time and thereafter it would be difficult for an enemy vessel to go through the canal.

But under the new treaties, we are obligated to let enemy subs or enemy warships ply the canal just like our own ships.

We might have some right to prior passage under the leadership amendment, but we do have to maintain neutrality and that means that enemy warships can use it, just like our own ships.

Mr. CURTIS. And if we sought to stop them from it, we would be running in the face of a solemn agreement if we ratify these treaties?

Mr. ALLEN. That is correct.

Mr. CURTIS. The distinguished Senator from Alabama is an excellent student of history. I would like to ask him, throughout the years that the United States has operated this canal, what has its record been so far as being fair with the commerce of the world?

Mr. ALLEN. Extremely fair. The canal, under the Panama Canal Company, which is an arm of the U.S. Government, has been operated on a nonprofit basis and that is going to end with the approval of the treaties in that Panama is going to skim approximately \$100 million a year out of the operation.

Mr. CURTIS. Is it not correct that from the time the canal started operating until just the last couple of years or so we never raised the tolls because we agreed to operate it at cost?

Mr. ALLEN. That is correct. I believe it was 4 or 5 years ago, there was a raise. But, of course, under the treaty we start off with a raise of 30 cents a ton that goes to Panama, and also certain other guarantees made there that are supposed to come out of the tolls, but, whether they are sufficient to come out of the tolls or not, that is another way the taxpayer is going to come into play here. If they have deficits there at the end of the term of the Panama Canal Treaty, we are obligated to turn the canal and the Panama Canal Commission over to Panama free of debt, and that includes the \$319 million they still owe on the original Panama Canal.

Mr. CURTIS. Does the Senator from Alabama know of anyone urging the ratification of these treaties and basing his argument on criticism of the way the United States has operated this canal for the benefit of the consumers of the world?

Mr. ALLEN. I believe that any such argument certainly would be refuted by the facts.

Mr. CURTIS. In other words, there is no accumulation of complaints or substantial complaints of any kind against the way the United States has run the canal in the past, so far as accommodating the commerce of the world is concerned?

Mr. ALLEN. Not that I know of.

Mr. CURTIS. What interests of the United States would be advanced by the ratification of these treaties?

Mr. ALLEN. I know of none, except the dubious thought that it is in furtherance of a good neighbor policy, that by giving this tremendous natural asset to Panama, we would create good will for our country. But I think that is very dubious and contrary to recognized positions, because we have found that we have not been able to make a lot of friends through a liberal foreign aid policy.

I know of no friendships we have created, after having dumped about \$200 billion overseas in foreign aid since 1946. I believe there would be less respect for the United States among the countries of the world, including Central and South America, if we were to allow ourselves to be frightened into these treaties.

Mr. CURTIS. In reference to the policy of the United States in matters of world affairs, can the Senator from Alabama think of any instance in which we have withdrawn from a particular area because of the desire not to confront opposition and it has resulted in peace and quiet and self-government and the protection of human rights for the area involved?

Mr. ALLEN. No. I cannot think of any that had that result. I think it is not likely that we will find any such instance, because I believe that human nature is such that if we give an enemy or a potential enemy a mile, he will take 2 miles.

Mr. CURTIS. Does the Senator regard the basic policy, whether to surrender the treaty and attempt to appease militant minorities, or whatever they represent, as something which will improve the position of the United States?

Mr. ALLEN. No, I do not believe it would. I think it would weaken the position of the United States around the world.

Mr. CURTIS. I thank my distinguished friend for his answers.

I think it is incumbent upon those who advocate the ratification of these treaties, whereby we repeal or set aside the old one, to prove that the United States has not operated the canal in the past for the good of all parties concerned. Does the Senator agree with that statement?

Mr. ALLEN. I certainly do.

Mr. CURTIS. Has the Senator from Alabama, in his very regular attendance here at the debates, heard any speech that establishes proof of the failure of the United States to manage properly the canal for the good of the commerce of the world?

Mr. ALLEN. No. I suggest that it has not been made.

Mr. CURTIS. I thank the Senator.

Mr. ALLEN. I thank the distinguished Senator for his very penetrating questions and the opportunity he has given me to reply to them.

One of the provisions of the treaty that the distinguished Senator is questioning reminded me of is provision that during the life of this treaty, 22 years, the States, that we not have the right to negotiate with any other country for the building of a canal, without Panamanian consent. They make the strange argument that that provision was put in the treaty for the benefit of the United States, that we not have the right to negotiate with another nation for the building of another canal across the isthmus.

I hardly see that that is for the benefit of the United States. But they say, "Well, by getting that agreement, we got the agreement

that they would not allow another nation to build a canal there in Panama."

That sounds pretty good, until you consider that the United States, under the 1903 treaty, has a monopoly in Panama on the building of transisthmus canals through Panama anywhere in Panama.

So, as the distinguished Senator from Nebraska said, we will have to do away, under these treaties, with every agreement entered into in the past. So if we have agreed in the past that only the United States can build a canal in Panama, they first have us give up that right under the 1903 treaty and say, "Now you don't have that right, and we can give the right to some other nation. So, in return for our not giving any other nation the right to build a canal, you had better agree that you won't build anywhere other than Panama."

So they get us to give up our monopoly and then offer to trade us something we already have, in return for giving up the right to negotiate with another nation for another transisthmus canal. Obviously, doing away with the 1903 treaty deprives us of that right we now have; and in order to get it back, we have to agree that we will not negotiate with another country for the building of a canal.

Mr. CURTIS. Mr. President, will the distinguished Senator yield for another question?

Mr. ALLEN. I yield.

Mr. CURTIS. We live at a time when all governments find their costs going up, and figures have to be updated every once in a while. Would it be possible for the United States to retain the existing treaty and still give consideration to whether or not the existing dollar payments to Panama should be increased?

Mr. ALLEN. I appreciate the Senator asking that question, because it is something I would like to see done. But there are no circumstances under which I would vote for treaties with Panama—not these treaties—having to do with the canal.

The one thing I would be willing to concede on, provided our rights under the 1903 treaty were preserved, is that we have the right to operate, maintain, and defend the canal in perpetuity, as we now have, the one thing I would be willing to see changed is this \$2.3 million annuity that the United States pays to Panama, that it could get from the tolls—I believe that would be a more proper way of increasing it—I would be willing to see that increased manifold. Tenfold would not shock me in the slightest, even twentyfold, which would get it up in the neighborhood of \$50 million. I would not object to that concession being made.

However, I do think that the only way we are going to protect our national interests and our economic interests is to maintain our ownership, our control, our right to maintain, and our right to defend the canal.

So it would be only in that instance that I would be willing to agree to any new treaty with Panama.

Mr. CURTIS. If the distinguished Senator will yield further for another question: Is it not true that this upgrading of the numbers could even be done without resorting to the treaty procedure?

Mr. ALLEN. Yes. It has been done. It just started out that Panama at the outset received \$10 million and then \$250,000 a

year annuity and that has been gradually hiked up to \$2.3 million. So it could be done, yes.

Mr. CURTIS. So this new treaty cannot be urged upon America as a necessary vehicle in order to update the payments in the light of world crisis and many costs that all governments must incur?

Mr. ALLEN. No, it cannot be.

Mr. CURTIS. Again I thank the distinguished Senator.

Mr. ALLEN. I thank the distinguished Senator for his question.

Mr. President, if I may conclude my remarks, I shall send to the desk at the conclusion of my remarks an amendment that I plan to offer to article I of the Neutrality Treaty, if we do not move to the other treaties, as I feel we should, that would make this amendment an addition, in effect, to the thought of the leadership amendment. It does not apply to the leadership amendment. At another time it will be offered doubtless to the leadership amendment. But this will just amend article I, since it is only article I that can be amended at this time, having to do with our right to defend the canal and our right to maintain troops in the Canal Zone subsequent to December 31, 1999.

It reads:

Provided that the military presence of the United States in what was the Panama Canal Zone on September 7, 1977 * * *

And that is at the time of the signing of the treaties by Torrijos and President Carter—

the military presence of the United States shall be continued beyond December 31, 1999, if the President of the United States deems it necessary for the defense of the canal or the maintenance of the neutrality thereof and shall prior to December 31, 1999, so certify to the Government of Panama.

The distinguished Senator from Idaho (Mr. Church) says that the meaning of this amendment is implicit in the leadership amendment. If that be true, why not spell it out? Why not spell it out if his amendment means the same thing? But the amendment overlooks the fact that by the time his amendment is put into practice all our troops will be out. We cannot maintain a military presence there, and the only recourse that we would have under the leadership amendment is to invade the country. Under this amendment I propose to introduce, we have a right to maintain our military presence in Panama after the year 2000, if the President deems it necessary for the proper defense of the canal and maintenance of its neutrality.

So it just reserves to the President, and we have seen Presidents, present and past, who have been in favor of this Panama Canal Treaty, and I think even the Panamanians could rely upon his bona fides that he would act to retain our military presence there only if it was necessary.

But we do not know what the condition of Panama is going to be. We do not know what form of government it is going to have. We do not know whether it will be under the control of Castro or Russia. It might be an enemy country by the year 2000. Yet we are obligated, honorbound, under the treaties, to pull all of our troops out of the Canal Zone, abolish the Canal Zone now, and pull all troops out before January 1, in the year 2000.

All this amendment that I plan to offer would do would be to preserve an option, a very necessary option, in the United States, acting through the President of the United States at that time.

Mr. President, I shall ask unanimous consent that I might offer in the Record a letter to the editor from my distinguished constituent Kenneth N. K. Able, of Huntsville, a letter to the Huntsville, Ala., News, in which he comments in a most constructive fashion on the reason for the need to defeat these treaties. I ask unanimous consent that this letter be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

[From the Huntsville (Ala.) News, Jan. 27, 1978]

LETTER TO THE EDITOR

Editor, Huntsville News:

Senator Sparkman's Foreign Relations Committee has before it two proposed treaties which would have the effect of dismembering our country by giving away territory and property in the Isthmus of Panama for which our government (i.e., tax-paying public) paid the French Syndicate of Ferdinand de Lesseps, the Republic of Panama, and the Government of Colombia.

Justification of this give-away, plus the granting of additional tribute to the Torrijos Syndicate of Panama, in the name of rectification of an alleged moral wrong, is a brazen test by President Carter of the credulity of a somewhat trusting American public.

There is obviously a far stronger moral case for returning the entire State of Georgia to the Cherokee Nation. Actually, if Carter's casuistic reasoning were pursued to its logical conclusion, the precedent set by these proposed Panama treaties would dispossess white and black Americans, alike, of every inch of what we have long regarded as American soil.

Other arguments to either justify or extenuate these capitulatory "treaties" seem equally preposterous. Regardless of Presidential "interpretations" and oral "understandings," could any person in full possession of his faculties actually believe that either the neutrality or the defense of the Panama Canal would be better assured by the transfer of sovereignty and ownership to a "banama republic" with an "emperor Jones" style of government?

Also, could any sane and prudent adult person really believe that we "Gringos" would thereby be more highly admired and regarded by Latin American jingoists and racists? The foregoing and other attempted justifications may be persuasive for the feeble-minded but are gross insults to the intelligence of mentally competent members of the American public.

What, then, are the real reasons for Mr. Carter's ardor in seeking to despoil our country of a legitimate and valuable asset?

And, why should our moralistic President propose to shower additional American blessings and resources upon a regime which is something less than virtuous in the recognition of "human rights," which permits political activity only by the Communist Party, which adores and consorts with the Castro-Communist regime in Cuba, which has actively engaged in the supplying of narcotics for street sale in the U.S.A., and which negotiates with the U.S.A. on the basis of threat and machete brandishing?

And, how is it that Mr. Carter has proceeded in this manner with supreme disregard of the responsibility of Congress under Article IV, Sec 3, para 2, of the Constitution he swore to defend—and with supreme contempt for the Senate, by staging a theatrical treaty-signing extravaganza to embarrass "the Hill" in its consideration of the "treaties."

Also, may it be asked, what explains the apparent functional illiteracy of the Supreme Court in connection with the above-mentioned Constitutional provision?

In light of recent revelations regarding substantial financial involvements of certain large American banks with the Torrijos regime, don't you agree that responsible handling by the Foreign Relations Committee would necessarily call for the conduct of a thorough and searching inquiry into all White House instructions to the treaty negotiators and into all circumstances underlying and surrounding the negotiation of these America-despoiling "treaties"?

If we are to have "open government" and "open covenants, openly arrived at," the Committee owes no less to the American people than to investigate all these matters thoroughly and to disclose the findings without whitewash. If impeachable offenses have been committed, the corrective procedural processes should be invoked.

Sincerely,

KENNETH N. K. ABEL.

AMENDMENT NO. 33

Mr. ALLEN. Mr. President, I send to the desk for printing and to lie on the table the amendment to which I referred in my remarks.

The PRESIDING OFFICER. The amendment will be received and printed and, without objection, the amendment will lie on the table.

Mr. ALLEN. Mr. President, if there are no questions by other Members of the Senate—

Mr. SPARKMAN. Mr. President, will the Senator yield?

Mr. ALLEN. I am delighted to yield to my distinguished senior colleague, Mr. Sparkman.

Mr. SPARKMAN. I remember when we were having hearings on these treaties.

Mr. ALLEN. Yes.

Mr. SPARKMAN. My colleague, the Senator from Alabama, appeared and testified, and I thought he made a very fine impression.

Mr. ALLEN. I thank the Senator.

Mr. SPARKMAN. I remember at the time that he said that he felt that the treaties could be cured—he may have not used that word—with some rather simple amendments. Is that not correct?

Mr. ALLEN. Yes. I stated this, and I believe the distinguished Senator will bear me out on this, that I felt that it needed to be amended in at least five major areas and that the treaty, as so amended by the Senate, could well serve as a blueprint for future negotiations. I did not have in mind it would merely be sent to Mr. Torrijos for rubberstamping by him.

Mr. SPARKMAN. No.

Mr. ALLEN. And then that would be the treaty agreed to.

Mr. SPARKMAN. The Senator is right on the procedure that would be necessary.

Mr. ALLEN. Yes.

Mr. SPARKMAN. But, nevertheless, he indicated that he could go along with treaties of that type.

Mr. ALLEN. I could go along with it if these major amendments are adopted, to send it back for further negotiations, yes.

Mr. SPARKMAN. Yes.

Mr. ALLEN. And then if it came back in that form, after renegotiation, that I felt that it could be approved.

Mr. SPARKMAN. Yes. And as I said, I was very much impressed with the suggestions the Senator made at that time. In fact, I think I commented on it here on the floor.

Mr. ALLEN. Yes. The Senator certainly did. I appreciate it.

Mr. SPARKMAN. I commented that the Senator's testimony was helpful, that the Senator did suggest amendments, but that if those amendments could be worked out satisfactorily then the Senator felt further negotiation could be held and it might be possible to get a workable treaty.

Mr. ALLEN. Yes; that is true. But it did presuppose not ratification at this time but further renegotiation. Is that not correct?

Mr. SPARKMAN. My impression was that the Senator felt that it could be successfully negotiated. I think I used the expression "could be worked out."

Mr. ALLEN. Yes; and I will say, too, that if the amendments I plan to offer are accepted then I feel that it would be approved here in the Senate, and I would start off with the amendment to which I have referred, that we maintain our military presence there in the Canal Zone if the President deems it necessary for the defense of the canal.

So I hope the distinguished Senator from Alabama, my able and distinguished colleague, will start off, then, by agreeing to my amendment and voting for it as one of the conditions precedent to our agreeing on the treaty.

Mr. SPARKMAN. Well, we will have to see about that as we proceed.

Mr. ALLEN. That is what I rather thought. I thank my distinguished colleague.

Mr. President, I want to pay tribute to my distinguished senior colleague (Mr. Sparkman) for his diligent and able work on these treaties in the Committee on Foreign Relations, and for keeping an open mind on the subject, and I appreciate the fact that he has studied this matter and has tried to come to what he considered a treaty or treaties that are in the best interests of the people of the United States.

He and I have independently reached differing conclusions with respect to the treaties, but I do pay tribute to him for his hard work, his sincerity of purpose, and his full and complete consideration of the matter before us at this time.

Mr. SPARKMAN. I thank my colleague.

Mr. ALLEN. I would like further to say that I do regret that my distinguished senior colleague, whom I respect and admire so much, and I have reached different conclusions. I would like for Alabama to speak in a loud voice, "No," with respect to these treaties.

Sometimes when the Senators from the same State differ—I see the distinguished Senator from South Carolina (Mr. Hollings) here. I rather feel that possibly he might be at some point of difference with his senior colleague with respect to the treaties. Ordinarily where the Senators differ on a question, they do cancel their votes. In this case, however, Mr. President, that is not true. And even despite my distinguished colleague's seniority, his great experience, and his prestige as chairman of the Committee on Foreign Relations, on the particular vote of final approval of these treaties, the vote of the junior Senator from Alabama is going to count twice as much as the vote of the distinguished senior Senator from Alabama, and the vote "No" of the junior Senator from Alabama will not only cancel out the vote of my distinguished senior colleague (Mr. Sparkman), but it will also cancel out the vote of one other proponent of the treaties.

So we find that Alabama is in fact speaking out on this subject—speaking in a weak voice, I might say, Mr. President, because of

the fact that Mr. Sparkman and I do differ, but still Alabama is able to speak out, even if in a weak voice, against these treaties.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. Harry F. Byrd, Jr.). Under the previous order, the Senator from Connecticut (Mr. Weicker) is recognized.

Mr. CHURCH. Mr. President, I wonder if the distinguished Senator from Connecticut (Mr. Weicker) would yield to me for the purpose of a short statement. I do not propose to undertake a full rebuttal at this time, because the Senator has been waiting patiently for the floor, but there was one remark made in the course of the debate—

Mr. WEICKER. I yield to the distinguished Senator from Idaho. I ask unanimous consent that he be allowed to proceed for 5 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. I thank the Senator very much for his courtesy.

Mr. President many statements have been made in the past hour that must have our audience on public radio thoroughly confused if not literally hanging on the ropes. All of these statements will have to be addressed and rebutted in the course of the debate, and the confusion that exists will have to be clarified. But there was one statement that is so striking that I must reply to it at this time. It was asserted that by virtue of the neutrality provision in the treaties we somehow open the canal to warships of other nations, including enemy ships.

Mr. President, this is not just a distortion of the fact, but it is one of such alarming proportions that a reply at this time is mandatory. Under the existing treaty governing the present operation of the canal, the United States is formally obligated to respect and maintain a regime of neutrality. The provisions are written into the Hay-Pauncefote Treaty, and the governing article reads as follows:

The canal shall be free and open, in time of war as in time of peace, to the vessels of commerce and of war of all nations, on terms of entire equality, so that there shall be no discrimination against any nation or its citizens or subjects in respect of the conditions or charges of traffic, or otherwise. * * * Such conditions and charges of traffic shall be just and equitable.

From the moment the United States opened the Panama Canal for international traffic in 1914 the canal has been administered in strict accordance with the terms of the treaty I have just quoted. It has been a neutral waterway, open to the passage of all ships, including warships, of any nation. Nothing in the pending treaty changes this arrangement in any way detrimental to the United States, and to suggest that it does is contrary to fact.

From the beginning, the United States has protected its national interests by preventing any hostile ships from approaching the canal. Obviously, you do not want to stop one in the middle of the locks. That would be a rather self-defeating way to prevent an enemy vessel from transiting the canal. We stop them out at sea. We prevent them from reaching the canal.

That is what we have done from the beginning, and that is what we would continue to do under these treaties. Let there be no confusion on that score.

I might say, Mr. President——

Mr. ALLEN. Will the Senator yield?

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. CHURCH. May I have 1 additional minute?

Mr. WEICKER. One minute.

Mr. CHURCH. I might say, Mr. President, that the pending treaties actually improve the position of the United States with respect to this subject, since Panama, for the first time, undertakes an obligation to prevent any foreign troops from occupying any part of Panamanian soil. That is not true under today's arrangement. Under the existing treaties, there is no legal basis for the United States to complain if Panama invited Soviet troops and Cuban troops into Panama and stationed them right up against the fences of the Canal Zone. So, if anything, the position of the United States with respect to both the protection of the canal and the neutrality of the canal is improved under the pending treaty, not impeded. The record should be made clear on that point.

Mr. ALLEN. Mr. President, will the Senator yield me 1 minute?

Mr. WEICKER. Yes.

Mr. ALLEN. As to the distinguished Senator's statement. There was a further agreement, as I understand it, between Panama and the United States, entered into in 1914.

This agreement allows certain vessels neutral status, which was as written into the treaties, but it also requires, as I recall, such shipping to remain in Panamanian waters for 3 months, before transiting the canal, and vice versa. I do not have the document with me at this time. It is called the Protocol of 1914, and I will introduce it into the Record later.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. CHURCH. Mr. President, there is nothing in the evidence before the Foreign Relations Committee to suggest that any subsequent agreement altered, obviated or repealed the provisions of the Hay-Pauncefote Treaty, nor is there anything in the record to suggest or imply that the United States ever operated the canal except in accordance with the principles of neutrality as set forth in that treaty.

Mr. ALLEN. How many such enemy submarines transited the canal during World War I?

The PRESIDING OFFICER. Will the Senator from Connecticut yield?

Mr. WEICKER. I yield.

Mr. CHURCH. In the First and Second World War no enemy submarines transited the canal because the U.S. Navy controlled both the Atlantic and Pacific access and prevented them from even approaching the canal. This is precisely what we would do under the new treaty.

Mr. WEICKER. Mr. President, as the Senate begins its debate on the Panama Canal treaties, I am reminded of the words of the gentleman whose birthday we just celebrated, Abraham Lincoln.

Let us have faith that Right makes Might, and in that faith let us to the end dare to do our duty as we understand it.

Really, this is the essence of the argument presented to the U.S. Senate, defining the word "might." Is it defined in terms of a

bodily presence, such as has been suggested by various opponents of the treaty?

Is it defined in terms of military hardware, which has been the essence of our foreign policy during the last several decades?

How does one, in the year 1978, define the word "might?"

I do not see why anyone in this Nation should have great difficulty with the answer to the question. The greatest strength of the United States is not in the head count of its military; is not in the numbers of weapons which we possess. It is today, as it has always been, in the spirit of its people. It is the state of our spirit that determines the state of the Union.

I do not see this as a time to question the value of strength of spirit in foreign policy when it comes to our dealings with the country of Panama. But there are those who still would define might in a more traditional sense. In the sense of years gone by, failing to understand that invariably it is a combination of spirit, of arms, of policy. All these in the sum total determine the strength and weakness of any particular nation.

Our own beginnings as a nation were totally contrary to the foreign policy of those times. The United States of America, or rather the colonies, did not have the armies, did not have the weapons, but certainly had the principles and certainly had the spirit which drove them to achievements way beyond any numbers.

So now it is that not only in this hemisphere, but throughout the world, the strength of any nation is going to be measured in more than just terms of hardware, in more than just terms of armies. Rather, it will be in terms of deeds matching the words of any particular philosophy.

As we view the words of totalitarian philosophies, communism included, there is little cause for trust on the basis of the actions of such nations.

In our own hemisphere, and throughout the world; in Africa, the Middle East, the Far East, nation upon nation is waking up, unwilling merely to follow the voices of a few leaders; rather, each one setting its own course in history, demanding the same quality of life as the more fortunate of its neighbors. Therefore, a great opportunity is available to the United States of America, an opportunity unparalleled in our lifetime: not to impose as a matter of fiat or dictation our philosophy, but, rather, by example to have others reach for it and want to emulate it.

Is there anything to be emulated in the old Panama Canal Treaty, in the terms of spirit, or in the terms of principle, or in the terms of what is right? Is there anything to be emulated?

It was the great technological achievement of its time, but it accommodated the big-stick ideas and philosophies of that time. That is no longer going to work.

I have no fear of our image when the United States is going to be out of Panama bodily. Rather, I anticipate that day when, yes, we are out bodily, but the spirit of this Nation is what remains behind as our strength. That is what is important.

During the past several months since it has become the issue, I have heard every conceivable type of criticism of the treaties except criticism based upon logic and fact.

I do not know what this exercise is that we are all going to go through tomorrow, but I do not think it stands to any great credit of the United States of America to have the Senate of the United States engage in such an exercise.

Is there anyone in this Government, in any branch, who could withstand the type of scrutiny on personal lives which will be applied here during the course of the debate on this treaty? And what does it really have to do with the treaty?

Earlier the Senator from Alabama made reference to his rather simple amendment, whereby our presence is maintained even after the year 1999.

He knows, as well as I, that that entirely destroys the value of the treaty. It is not that we are giving anything away; rather, it is that at the end of 20 years our presence, not only in Panama but in the entire Western Hemisphere, will be stronger than ever because it is an accepted not a forced presence.

Our presence will not be a matter of pieces of paper; belief in the United States of America and what it stands for will not be a matter of a piece of paper, but, rather, will be based upon the deeds of a great nation.

I intend, Mr. President, not only to vote for ratification of these treaties, but I intend to vote for them and speak for them enthusiastically. I intend to be on this floor in the weeks ahead, not merely to have a voice heard, but to respond to those who would take what could be one of our great moments in history and turn it into something shallow, something petty, something offered grudgingly.

There are many Americans who feel we should not ratify the Panama Canal treaties. They are men and women of good sense, good will, and honorable intent. I have no doubt that it would be a very easy matter, indeed, for many of us here to succumb to the polls and, in effect, become pollsters ourselves; in effect, to stand here with a finger to the wind. Well, this is just one of those times when the tough side of the job becomes apparent.

I daresay most of my colleagues would agree that being a U.S. Senator is a wonderful thing. It is a very stimulating enterprise in the sense of colleagues, in the sense of the challenges that confront us every day. It certainly is diverse. Great attention is paid to each of us in terms of the media. Whenever we go to banquets or other affairs the spotlight is on us. That is the nice part of the job.

I remember very well the years I spent serving in the U.S. Army as a second lieutenant, then a first lieutenant, then a captain. Very frankly, I preferred serving in the Army in the capacity of an officer rather than an enlisted man. As to meals, transportation, quarters, privacy, everything, it was a far better way to serve. One day, in the course of one of our firing exercises down at Fort Bragg, the chief of the firing battery came up to me and explained that in the No. 3 gun, a round had not gone off. Would I go ahead and perform my duty? I asked exactly what that was.

He said:

Well, lieutenant, you are supposed to pull the lanyard and wait 5 minutes; then it is your job to open up the breech and clear the round.

All of a sudden, the job of being an officer was not so pleasant. Here was the other side of the coin. I think the time has come in this country, in many respects, for leadership to clear the breech, to understand that that is part of our job also. It is the tough part.

We have come off an unpleasant experience in Vietnam. Nobody is going to deny that. And I am sure some are looking, in an international or diplomatic sense, to regain our manhood.

I do not think we ever lost it. I think, we came to a realization that whatever our quests in this world, logic and facts had better stand behind them if the United States is to prevail.

I feel that, if it is leadership we are looking to regain, we are not going to do it in the traditional sense of beating up on the smallest guy on the block. Rather, we are going to do it in the way of elevating our actions to the idealism and to the high principle to which we have always striven as a nation.

The opposition is based on a bedrock assertion that we should not "give away," as the phrase goes, the Panama Canal. Such arguments, it seems to me, owe far more to demagoguery than to reason. It is a sorry day for America when we can do no better than to say, "It is ours, we built it, we paid for it, and we are going to keep it." That is not an argument, that is a petulant, bullying assertion unworthy of a great power.

National pride in the Panama Canal as our moonshot of the early 20th century runs high whenever and wherever it is discussed, and understandably so. We achieved a technological and engineering marvel during the first decades of this century by drawing on financial and technical resources which were uniquely ours. Now, in the last decades of this century, we are called upon to draw on equally rare and powerful resources of fairness and goodwill to return the canal and the zone which surrounds it to Panama.

Those who oppose the treaties allege that to do so would be an act of national cowardice, allowing our southern neighbors, in effect, to kick sand in our faces.

Mr. President, Panama is about the size of South Carolina, with a population equal to the city of Atlanta. Without casting aspersions on the valor of the Panamanian Guardia Nacional, I submit to my colleagues that they do not pose a threat to the defense forces of the United States. Reasonable people are not apt to suppose that we are letting ourselves be pushed around by Panama.

So much of the argument about why we should keep the canal is based upon perceived historical rights and privileges which belong to the United States as a result of our involvement in this undertaking at the start of the century. The historical record on this point demands closer scrutiny, especially when some Americans believe we are being euchred or pressured out of something to which we have a strong legislative and historical right. So let us consider how we got involved in Panama in the first place.

Since the 16th century, the value of a canal in the Central American Isthmus was recognized. By the turn of the 20th century, when the United States got around to thinking seriously about building one, there was a question about where to put it—in Nicaragua or in Panama, which was a Province of Colombia. A private French group, the French Canal Co., already owned the rights to

construct a canal across Panama. The French company offered to sell its interests in the area to the United States for over \$100 million. Because of the price, we decided to build in Nicaragua.

Since their franchise was to expire in 1903, the French company saw the wisdom of lowering its asking price to \$40 million so they could get their money out of the deal.

These arrangements were negotiated by a French agent, named Phillippe Bunau-Varilla, who had been the chief engineer on the French project.

The combination of a more reasonable price, plus a volcanic eruption in Nicaragua, convinced our Secretary of State to negotiate a treaty with the Colombian Ambassador in Washington which permitted us to build a canal in Panama and to have perpetual control over a strip of land extending for 3 miles on either side of the canal. For that, we agreed to pay Colombia \$10 million, plus an annual fee of \$250,000.

The U.S. Senate ratified this treaty. The Government of Colombia rejected it. It is understandable that they might have wondered why we were willing to buy out the French company for \$40 million, and yet were only willing to pay Colombia \$10 million for the perpetual use of their country.

The Roosevelt administration put pressure on Colombia to accept the treaty, without success. When Colombia offered to negotiate, the President refused. He called Colombians, "inefficient bandits," and made known, in private, and very widely, his view that it would help to uncomplicate things if Panama were an independent state. In short order, the American press was full of stories to the effect that the United States would smile favorably upon a revolution in Panama.

In the draft of his state of the Union address in 1903, the President recommended a takeover of Panama. This was deleted from his address, however, because his private messages had already been received loud and clear. On November 3, a revolution broke out in Panama. There had been other revolutions there. The country had once been independent and, in 1821, opted to become part of Colombia. It then spent the better part of the rest of the century trying to regain its independence through revolutions, rebellions, and other expressions of dissatisfaction. But the 1903 revolution was different. That one was financed and organized out of the Waldorf-Astoria Hotel in New York City, and one of the principals in the effort was none other than Phillippe Bunau-Varilla; still looking for an angle to get back the French Canal Company's investment.

The United States intervened in the revolution in an interesting way. In 1846, we had concluded an agreement with Colombia by which we would mutually act to guarantee the right of transit across Panama and to keep law and order there. Now, acting under that agreement, we prevented Colombia herself from putting down the revolution in her own territory.

Three days after the revolution began, we recognized the new Republic of Panama. The new government, in turn, signed a treaty giving us the canal rights we hold today, for \$10 million plus an annual fee. And who do you think negotiated the treaty for Panama? Our old friend, and the newly appointed representative

from Panama in Washington—Phillippe Bunau-Varilla, the agent for the French Canal Co., which, when all was said and done, finally got its \$40 million out of the deal.

Our dealings with the French Canal Co., the involvement of U.S. political figures like Mark Hanna, the questions of who got paid for what, and how the money moved, are all matters which are still largely shrouded in secrecy. Roosevelt later wrote that what had occurred, had been done "in accordance with the highest, finest, and nicest standards of public and government ethics." That is difficult to substantiate from the record. Some years later, Teddy came closer to the apparent truth when he boasted, "I took the Canal Zone."

If there is any cause for pride in these events, it exists in the fact that many Americans at the time were ashamed of what had been done and protested it.

In 1921, our Government indemnified Colombia to the tune of \$25 million for our role in the so-called revolution which got us the Panama Canal Zone.

I do not think it is unpatriotic to say this episode does not constitute a shining, golden moment in American history. There is only so much that can be undone. Obviously, Panama is not going to go back under Colombian control. However, legitimate or illegitimate her birth or her rebirth, she exists—a sovereign state—the youngest republic in the Americas. And part of her sovereignty was signed away for profit by a French agent for a French corporation, with the connivance of American politicians. From the standpoint of the Panamanians, one does not have to be a raving Communist to object to the U.S. presence there.

This is why I question the constant vaporizing effusions about pride in our involvement in Panama. We can be proud of the technological achievement. We can be proud of the organizational achievement. However, we do not need the Panama Canal as an eternal monument to our technological and organizational abilities. These are fully acknowledged and respected around the world.

I would rather see the Panama Canal established as a testament to our strength, our self-confidence and our essential fairness—and that will be done by restoring to Panama the rights that were signed away by Mr. Bunau-Varilla 75 years ago.

Just in recounting the events of our involvement in that part of South America, it certainly has to bring to mind some of our involvement of recent years, involvement that we now, in many formal ways are rejecting. Yet, for some reason or other, we still want to continue this last vestige of our one colonialist experience.

The "fatal flaw" in these treaties pointed out by many opponents is the potential crippling effect they would have on our national defense and security.

Before we begin conjuring up the ghost of the domino theory in Latin America or fantasizing about Soviet and American ships queuing up to transit the canal enroute to lambast each other's targets, let us recognize the essential fact that the military exigencies of 1978 are a far cry from those of 1903.

Many of us find it hard to convince our colleagues in this Nation that the exigencies of 1978 are far different from those after World

War II. Certainly, no one will deny the change that has taken place since 1903.

One inspiration for our involvement in the canal in the first place was the fact that it took 69 days for one of our battleships to come around Cape Horn from the Phillipines to Cuba during the Spanish American War.

Today—we have large fleets in the Atlantic and the Pacific.

Today—the speed of our vessels is twice or three times what it was at the turn of the century.

Today—we have naval vessels which will not even fit through the canal.

I can think of nothing easier than putting the canal out of commission today, should an enemy choose to do so.

I can think of no more inviting target for a belligerent than a string of U.S. warships threading its way helplessly through the canal.

I can think of no better way to tie up substantial U.S. forces than to draw them into the Canal Zone in a futile and debilitating effort to keep the canal open in the face of a hostile populace.

Let me stop at that argument, because it is used in a threatening way by those who are opponents of the treaty. Allusion to the fact that the populace would be hostile is used to imply unacceptable blackmail. Would we be hostile if there were an enclave owned by some foreign nation in any one of our constituencies? I would imagine so. So why is it not factual to state that such a hostility would exist? And why deem it unusual or a blackmail tactic?

The defense arguments over the canal suffer from one central and internal contradiction. Any war sufficient in magnitude to make the canal a strategic necessity would almost certainly be one which would make it a strategic liability.

I do not want to live with the tactics of 1903 in 1978. I do not want to live in 1978 with the conceptions of a world that existed in 1903.

There are those who would concentrate all their efforts, both in a diplomatic and a military sense, in the Far East, in the Middle East, in Africa, totally in disregard of that area of the world closest to us. This is our first priority: The Western Hemisphere, South America, Central America, the Caribbean.

We are a free people. It is a freedom which we believe in, which we perpetuate, and which, as every day goes by, we try to give greater meaning to. Why, then, a reversal of that attitude on the international scene as it applies to our closest neighbors?

In the military sense it is proper to turn to those who are the experts. Here the Commander in Chief and the Pentagon are satisfied. Our Joint Chiefs of Staff and the Secretary of Defense, who were involved in negotiations on a day-to-day basis, have endorsed the treaties. Those who are opposed are the former Chiefs of Staff, the former admirals, the former generals. It is not the "former" in whose hands I expect to put my life or the lives of my children. It is those who have that responsibility today and into the future. They have spoken clearly on the point that is of greatest concern, and properly so, to all of us—national security.

The only refutation of their testimony has been that they are pressured to support the treaties, and I think that is an insult against men of honor and character and intelligence.

Believe me, we are wise in the ways of Washington. If somebody wants to have their feelings known, they will have them known, if not before Senatorial committees, then through the media. So those who have the expertise, in a military sense, have spoken and are unqualifiedly for the treaties.

They have said they are not interested in ownership but, rather, in the use of the canal and that use has been guaranteed in the national security sense.

Another specter commonly raised is that of a Soviet enclave being established in Panama as a result of a return of the canal. I should like to address that issue, in response to some of the comments made by opponents of the treaty which comments imply a soft on communism result from treaty ratification.

First of all, let us understand that the opponents of the treaty in Panama are those political parties that are to the left of the Communist Party. They are all opposed to the treaty. The Communist Party of Panama is opposed in part to the treaty, specifically that part of the treaty which says that the United States has the right to guarantee the neutrality of the canal. They want the United States out entirely. Why are these leftist elements against the treaty? Because as long as the present situation exists, it is the climate in which they thrive.

So as to this shooting from the hip, such as comments of Torrijos being a Marxist dictator—that he is not—and we are giving something away to radical elements on the left, the exact reverse is the truth. If you were on the far left in Panama and committed to violence, believe me, you would want the present state of facts to continue; 1903 treaties is the climate in which violence occurs.

What is the Soviet experience in the Western Hemisphere to date? Obviously, the most prominent one that comes to mind is their close association with Cuba. What is the result of that association? Cuba is an economic liability to Russia, which we should see as a plus. What she—Cuba—gets out of the deal is the opportunity to send her sons to die in dubious battles on behalf of the Soviet Union in Africa and the Middle East and, yes, in South America.

I do not think the success of either the Soviet Union or Cuba has been outstanding in any respect. The dismal example of Cuba is probably the best insurance we can have against serious flirtation by any nation in the Western Hemisphere with the Soviet Union.

Now, it seems to this Senator that much of the resistance to the Panama Canal Treaties is found not so much in the prospective liabilities of the agreements but in their value as a political and a philosophical rallying point.

From the onset of the Republican primaries in 1976, we have watched the Panama Canal come around and around and around, with the colorless monotony of a carousel carrying only one horse.

With the broad and rich vein of social, economic, and political concerns which American conservatives could and should mine in redressing the political imbalance of America, it is saddening to me that no issue more compelling than Panama is chosen as the banner beneath which to assemble. It argues a lack of imagination,

creativity, intellectual sensibility, and political sensitivity in the section of the ideological spectrum upon which we must rely to keep balance in our national politics.

If any one of us went to any street in America today and inquired as to what the principal issues of concern were, we certainly would get energy, we certainly would get the response of inflation, and we certainly would get the response of employment—of employment opportunity, of education. This is what should be addressed by all philosophies and all parties.

But instead there are those who look upon this as their moment of opportunity. I think it is a moment of opportunity in the national sense—in the sense of making it clear what it is this country stands for.

For too long America's words have had to stand alone, without the activism or the deeds behind them which give meaning to those words.

We have been through an orgy of celebration as to what it is this Nation has stood for over the course of 200 years and now the time has come, it seems to me, to write our own chapters in terms of our own lives and our own experiences. This is what is important, 1976 was never as important as 1977 and beyond.

This is the moment when we decide for ourselves and for our children what the definition of "strength" will be. This is our moment when we bring practical, useful glory to the concepts of America. This is our chance to leave a rather bleak period of history behind and to win that real battle for men's minds which is taking place.

If Cuba and those that follow the Soviet banner take their sons to war and leave them dying in foreign lands, let that be their testimony. If the United States does not compromise its great principles abroad but keeps them as pure and as whole as we insist for ourselves, let that be our testimony. Yes, nations of the world look to us, but in order to retain their gaze we better have a picture worth looking at.

I remember when the world laughed at us through our constitutional processes we put our own house in order. It was a world that had come to accept cynicism, corruption, in some measure or another as a necessary part of governing. It was only the great strength of this Nation that made stick, idealism being important, integrity being important. And the world that laughed at us, nation by nation came to accept the principles which we established. We did that not by force of arms but by virtue of what we stood for and what we stood for being right.

We are a free people in a free land. Why should we wish anything less for anyone else anywhere else? Not some diluted or modified version of democracy but exactly what we expect for ourselves.

Our strength as a Nation is derived from the spiritual commitment which we have made to human freedom and national self-determination.

The United States does not have the population to be the greatest nation in the world. It is not there. Figure it out yourself. It is probably what, 6, 7, 8, 9, 10, down the population totem pole. We do not have the land mass to be the greatest nation in the world. It is

not there. These are not matters of speculation or conjecture. They are matters of fact. We are not No. 1 in natural resources in the world. So we do not have the population, we do not have the land mass, we do not have the natural resources.

Just how is it that we became No. 1? What did we draw upon? What was it that brought us to our present state of affairs? Sometimes I think we forget the origins of our national greatness. It is because we had something inside, some spirit that had us perform way beyond our capacity as measured by traditional yardsticks.

And the minute this Nation is willing to compromise or sell off a little bit of that spirit or a few of those principles our days are numbered as being the greatest nation in the world.

No, not freedom, in its full essence, for every American and not for somebody beyond our boundaries. We have been through that exercise.

We did not defend real estate in the great confrontations of the past by this Nation. We defended principles, and we fought for them. That spiritual commitment to freedom, to self-determination; American lives defended those commitments from Yorktown to Normandy, to Selma, Ala. I tell you that those who would have us deny Panama's legitimate right to be master of its own house give away far more than a canal; they compromise our basic strength.

The difficulty for many on this floor is that when jobs are spoken of and polls taken, ditto inflation, taxes, homeownership, education, these are the tangibles, these are what human beings easily relate to. It is the grist of politics. It is the subject matter of the poll taker. But how do you make anybody realize the importance of the American spirit? It is not an easy job politically. It is not something correctly asked as the right question in a poll. And yet without it, I think we are a very small nation indeed.

But because it is important many on this floor are going to stand up and do something quite contrary to what seems to be in their best political interests.

The real essence of this job, or rather the trust of this job, has nothing to do with politics. It has a great deal to do with a nation and its future.

The relationship we have maintained with Panama, under the terms of the 1903 Hay-Bunau-Varilla Treaty is a bad advertisement for American democracy. It is a horrible advertisement. It perpetuates a memory of our one unfortunate brush with imperialism, and, very frankly, provides a propaganda platform for those who want to degrade us before the world. Most importantly, it blurs what should be for the peoples of the world a crystal-clear distinction between the American and Soviet systems as manifested in foreign policy.

The United States was never meant to be a democratic rerun of the colonialism of the European monarchs or the totalitarianism of Communist central committees.

The treaties before us dispel once and for all the impression that this democracy, idealistically and outspokenly committed human freedom and national self-determination, could perpetuate a state of affairs for the people of Panama which it would not tolerate for its own.

Mr. President, today, in 1978, the emerging nations of Latin America and the world are testing the values of democracy and totalitarianism by how each system lives up to its ideals at home and honors them abroad. With the growth of freedom at stake, our words had better match our deeds.

We must as a people put aside the concept that a nation's strength is measured only in its armaments, its GNP or its natural resources.

What good are any of these things without a committed people, without a motivated people? Like all of you, most of my colleagues on this floor, anyway those of my age or older, whenever we saw versions of the Star-Spangled Banner, they inevitably were illustrated with both flamboyant and gory battle scenes of the American Revolution; meant to exemplify patriotism. I commend to each of you an illustrated version of the Star-Spangled Banner by Peters Speir which differs from the traditional version. Illustrating the first words of our national anthem there are the traditional paintings of the bombardment of Fort McHenry with which we are all familiar; but then when it gets to the second stanza, discussing our strength, there are pictures of combines in a wheatfield, of scientists in a laboratory, men on the moon, bulldozers in an urban area. This is the strength of the United States of America also. Not exactly what I was taught, any more than this experience with Panama is what I was taught; but it is the truth, and it is as much this Nation as our military prowess. Indeed it should be more so if we are to prevail in the future.

I started off with the words, and I will end with them—I cannot think of any better—"right makes might." That is why this treaty is going to pass this Chamber. No one can doubt or will ever doubt the technological superiority of the United States of America. I want this occasion, though, to be a superior first step on the march to our next centennial.

What is it that my generation and the generations of my children and grandchildren will have stood for? And did we have the guts to take our stand when it meant something? Not years and years from now, when obviously the circumstances or the times would make the treaty an easy choice—and it will be so; you know that as well as I do.

Our battle today is against vestiges of the past. We are going to have a treaty. But why not do it when it is a test of character, when it means something to vote "aye"?

Like anything else, you can measure the success in terms of the gamble. There is a great prize at stake here for the United States and for the principles that we stand for in this battle for men's minds across the world and in our own hemisphere.

Ours is a decent nation. Ours is a fair nation, and ours is a nation that has the courage to make both those traits stick. That is the United States I remember. That is the one worth dying for.

Again, not using my words, but in the words of James Russell Lowell:

Then it is the brave man chooses
While the coward stands aside,
Till the multitude makes virtue
Of the faith they have denied.

The name of the song: "Once to Every Man and Nation."

There will not be many more times in our lifetime when we have such an opportunity. The words, the principles of the Constitution of the United States have not changed. And now comes that test of our ability to take those words and act them out. It is not easy at home, or abroad. Recently, one of our colleagues recently died, and no man more thoroughly used a lifetime to try to make America's words come true. To a large degree he stood alone. While observing Hubert Humphrey's funeral the other day, I could only think to myself that if someone really wanted to pay a tribute to Hubert Humphrey, maybe a few of those who made it because of Hubert Humphrey, could pay tribute to the man by standing alone for someone else. That would be a real tribute.

About a year ago—in making a high school commencement address, I told the graduating class:

I could wish nothing better for each of you than that once in your lifetime you would stand alone on behalf of somebody or something.

If the millions of people in this country would do that all at the same time, that would define the United States of America. It would be a strength nobody could lick. We would have recovered from some dim years in our recent past. Once again, we would be the strongest Nation in the world.

I yield the floor.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. WEICKER. I yield to the Senator from Maryland.

Mr. SARBANES. I want to thank the distinguished Senator from Connecticut for a very eloquent statement, and particularly for understanding that these treaties give the United States an opportunity to stand for something.

The Senator referred to Senator Humphrey. I ask unanimous consent, Mr. President, to have printed in the Record at this point the statement which Senator Humphrey submitted to the committee when we were considering the treaties. He felt so strongly that these treaties represented an opportunity for the United States along the lines on which the Senator from Connecticut has spoken so eloquently that he was motivated to submit a special statement to the committee. I have asked unanimous consent that that statement be printed in the Record at this point because it follows along so closely with the eloquent statement which the Senator from Connecticut has made.

There being no objection, the statement was ordered to be printed in the Record, as follows:

STATEMENT BY SENATOR HUMPHREY

I have followed this issue very carefully and discussed the treaties with the President by telephone. I have pledged to the President my full and active support for the treaties. An important goal of these negotiations has been the establishment of a modern and mutually acceptable treaty relationship between the United States and Panama which provides for the efficient operation of the important waterway that will continue to remain open to all the world's shipping.

This has been the bipartisan goal for four Presidents, Johnson, Nixon, Ford, and Carter, who above all others have the responsibility for the national security of our country. The United States has lost nothing through these treaties. We have not given up anything. Clearly, no international relationship negotiated more than 70 years ago can be expected to last forever without adjustment.

In sum, the new treaties, based on partnership, give the United States the rights we need to restore the crucial ingredient of Panamanian consent and strengthens our mutual interest in a well-run and secure canal. The viability of any treaty depends on the underlying consent and shared interests of nations who are party to it.

Panama and our Latin American neighbors long have been dissatisfied with the 1903 treaty. This declining level of consent transcends any one government and now encompasses Panamanians of all strata.

There are some who claim that the proposed treaties will have an adverse effect on our security. However, the Panama Canal issue affects our relationships with other Latin American nations who view it as a test case of whether or not the United States will move into a more mature relationship with our neighbors in the Western Hemisphere.

Senate approval of the treaties will add substance and character to the good neighbor policy first enunciated by President Roosevelt.

The U.S. image and its leadership ability are under careful scrutiny around the world. Some Americans express concern that our national prestige would be diminished by the new treaties.

But in my view the case is just the opposite. The 1903 treaty is viewed abroad as one-sided and anachronistic, a holdover from a colonial era which other nations have discarded.

The ability of the United States to work through this emotion-fraught issue at home through ratification of the treaties in the Senate will be viewed abroad by friend and foe alike as a sign that we can make necessary accommodations to a changing world.

In essence, a new treaty relationship based on the concept of partnership and similar to other agreements with our allies throughout the world offers a tool that will better protect our basic interests.

The PRESIDING OFFICER [Mr. Hodges]. Under the previous order, the Chair recognizes at this time the Senator from West Virginia (Mr. Robert C. Byrd).

Mr. ROBERT C. BYRD. I thank the distinguished Presiding Officer. Mr. President, I ask unanimous consent that the Senator from Hawaii (Mr. Matsunaga) be recognized at this time without prejudice to me under the order.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Hawaii (Mr. Matsunaga) is recognized.

Mr. MATSUNAGA. Mr. President, I rise in support of the Panama Canal treaties now pending for ratification by this august body.

I support the treaties, because in my judgment, it would be disastrous for both Panama and the United States if the Senate did not ratify them. In trying to decide the issue before us, we must bear in mind, first and foremost, that the canal is worthless to us unless it can be kept in operation and we are able to use it.

The question then arises: In the event that the U.S. Senate rejects the treaties, and hostilities between Panama and the United States should ensue, could we adequately defend the canal and keep it in use?

In search of an answer, I went to Panama 3 months ago with the distinguished Senate majority leader, Robert Byrd, and five other Senators. While I was there, I inspected the canal. I took a helicopter tour of the Canal Zone, and I visited a remote island Province of Panama, I talked with Americans who live in the Canal Zone and with those who live in Panama proper, with American military and business leaders, with Panamanian leaders, including Gen. Omar Torrijos and President Demetrio Lakas, and with Panamanians who voted for and others who voted against the treaties in their plebiscite of last October.

My firsthand observation of the situation in Panama convinced me that Gen. George Brown, Chairman of the Joint Chiefs of Staff, was right when he said that in the event of hostilities between the United States and Panama, we could not adequately defend the canal and keep it in use, even with 100,000 troops. General Brown, of course, was speaking in the realistic expectation of guerrilla-type hostilities.

As a former infantry officer, while helicoptering over the canal and viewing the dense tropical jungle extending for miles, right up to the canal on both sides, I came to the conclusion that any determined band of guerrillas could keep the canal completely shut down over extended periods of time and render it useless in the event of an emergency.

I was convinced, as were the other visiting Senators that the operation of the canal would be indefensible in the event of hostilities between the United States and Panama, as distinguished of course, from hostilities between any other nation and the combined defense forces of Panama and the United States. The manmade freshwater lakes that supply the canal's water, its complex lock system, and its electric power supply are just too, too vulnerable.

A single breach in the Lake Gatun Dam, the canal's major water source, would close down the canal for as long as 2 years, the time it would take rainfall to refill the lake. The sinking of a ship in the lock system—which would be technically easy to accomplish—would bring canal operations to a halt for a long period of time.

We are living in a world where terrorism runs rampant. And it will not take much terrorism to close the Panama Canal. Justifiably, ship owners themselves would refuse to sail their ships through the canal so long as a real threat to their safety prevails.

The new treaties are the best guarantee—in fact, the only guarantee—we have to avoid hostilities and to keep the canal open for our unobstructed use.

Every businessman in the United States should be aware of how the closing of the Panama Canal would affect U.S. trade. Every American should know that such closing would adversely affect his or her daily living and the security of this country.

Because the new, bigger ships, including supertankers carrying Alaskan petroleum to gulf or east coast refineries, cannot fit into the canal, the canal is becoming less crucial to our trade with the passage of time. However, 16 percent of American trade still goes through the canal. By comparison the percentage of U.S. intercoastal trade passing through the canal in 1924 was as much as 50 percent. Similarly, 1,265 U.S. military vessels went through the canal in 1949; in 1976 only 85 made the same journey.

America needs to use the canal. And there is every reason to expect that we will be able to continue using it freely—if we ratify the treaties.

There is a further need for ratification of the treaties, ratification would set right what is unquestionably an ugly chapter in American history. An examination of the events leading up to the signing of the 1903 treaty, under which we now operate the canal, supports this judgment.

Up until 1903, Panama was a Province of Colombia. The United States had sought a treaty to construct the canal with Colombia, the country that owned the land. The treaty was negotiated. But the Colombian Senate refused to approve it.

A Frenchman, Philippe Bunau-Varilla was the chief engineer for the French company that had gone bankrupt trying to build the canal.

Bunau-Varilla, who was a great entrepreneur, talked the United States into sponsoring a Panamanian revolution against Colombia—in exchange for the right to build and operate the canal.

Bunau-Varilla, the Frenchman, planned the revolution, literally wrote the original Panama Canal Treaty of 1903, and even signed the treaty for Panama on November 18, 1903, all before the official Panamanian delegation arrived in Washington to begin negotiations. What is even more incredible is that no Panamanian had even seen the treaty before it was signed by the Frenchman and our own Secretary of State.

Theodore Roosevelt, who was then President, took credit for the revolution and extended official American recognition of the new State of Panama within 3 days after the revolution. The hastily drawn treaty was signed by Secretary of State Hay for the United States on November 18, 1903, only 15 days after the revolution.

Here is what Bunau-Varilla told Secretary Hay just before the treaty was signed:

For two years you have had difficulties in negotiating the Canal Treaty with the Colombians. Remember that (at that time) the Panamanians were still Colombians. You have now before you a Frenchman * * * do it now!

Secretary Hay said the treaty was “vastly advantageous to the United States, and we must confess, not so advantageous to Panama.” Bunau-Varilla made one thing certain—that included in the new treaty, just as it was in the proposed treaty rejected by Colombia, was a provision for the payment of \$40,000,000 by the United States to the French for equipment and materials used in the unsuccessful digging of the canal by the French.

You can easily appreciate why many Panamanians did not like the treaty from the very beginning. In 1936 and 1955, the Panamanians persuaded the United States to make minor changes in the treaty for their benefit. In 1958, riots broke out in Panama when nationalists attempted to raise the Panamanian flag over the canal. Several Panamanians were killed in the incident.

In 1963, in an effort to calm the situation, we began flying both our flag and the Panamanian flag over the Canal Zone. But there were more riots. Finally in 1964, after 20 Panamanians and 4 Americans were killed, we consented to renegotiate the treaty. That renegotiation took 13 years, and was supported by the two Democratic and two Republican Presidents who served during that period.

Mr. President, in trying to decide whether to support the new treaties or not, we need also to try to understand the Panamanians' point of view. In our dialog with the Panamanians in November of last year, we visited Americans were told that what they want most is to regain their “national dignity.” They are hurt by the fact that a foreign nation has complete control over their

greatest national resource and primary means of transportation through their country.

The United States operates the canal and controls a strip of land 10 miles wide that runs completely across the middle of Panama. The Panamanians feel that only with the return of the Canal Zone to their control will they be able to express genuine pride in their country and walk with dignity as citizens of the Republic of Panama.

That is why they rioted in 1959 and 1964. That is why they pushed so hard for renegotiation of the treaty of 1903. That is why they support the new treaties overwhelmingly.

In fact, all of Latin America resents the old 1903 treaty. Ratifying the new treaties would be a major step, indeed, in improving our international relationships in our own hemisphere.

Let us now take a brief but close look at the objections which have been raised against the treaties.

The opponents of the treaties have said, "We bought (the canal) and paid for it. It is ours just as much as the Louisiana Purchase and Alaska are ours". They call the canal our sovereign territory.

The truth of the matter is that we do not own the canal. We never did. We are only leaseholders, highly privileged as we may be.

The 1903 treaty, under which we currently operate, says we are given the "use" of the Canal Zone. It does not say we own it. It, in fact, states that "the sovereignty of such territory (is) vested in the Republic of Panama." The United States is only given authority as "if it were the sovereign." The language of the 1903 treaty makes is unmistakably clear that the United States is not the sovereign, Panama is.

For the use of the canal and Canal Zone, we have been paying an annual rental fee to Panama. Until 1935, the fee was \$225,000 a year. For 16 years thereafter, we paid \$1.9 million annually. We now pay \$2.3 million a year.

Evidence in other areas points to our own recognition that we do not own the canal. For one thing, under our Federal Constitution, any person born on American soil is automatically an American citizen, regardless of parentage. However, a person born of non-American parents within the Canal Zone is not a citizen of the United States. Some of my colleagues may be aware of the fact that when the State of Hawaii was a Territory of the United States, a person born of alien parents in Hawaii automatically became a U.S. citizen. That is the basis of my own precious U.S. citizenship. This is not the case in the Canal Zone.

In addition, the Canal Zone's ports are considered foreign ports for postal mail purposes, and goods shipped from the United States to the Canal Zone are considered a part of foreign trade.

Opponents of the treaties are saying the treaties propose a "give-away" of the canal. We certainly cannot give away something that is not ours.

The opponents of the treaties have also argued that they should not be ratified because they were signed by General Torrijos, a tinhorn dictator who cannot be depended upon.

General Torrijos may be a dictator—but he certainly is not a stereotypical dictator. He has the unmistakable support of his

people, and walks among them even without bodyguards or arms. I know because I was with him on a couple of his walks. And he does not use terror and torture to govern. In fact, after signing the pending treaties, he sought and obtained, by a two-thirds majority vote, their ratification by his people through a plebiscite, overseen by United Nations observers.

Panamanians may not enjoy the same civil rights we Americans do, but their government under Torrijos does not systematically deny them their rights.

It is important to look, not only at Torrijos' failings but at his accomplishments—not only what he has not done, but what he has done.

As a tinhorn dictator, Torrijos has done exceedingly well by his people. Since he came to power in 1968, he has doubled the number of schools. He has improved marketing facilities for small farmers, and built hydroelectric plants. And he has instituted a low-cost housing program for the poor in urban and rural areas.

And he plans to do more. As part of the treaty agreements, we have promised \$50 million in foreign sales credits to Panama over the next 10 years. General Torrijos told our delegation of Senators that he does not plan to spend this money for weapons. He will use it to send promising young Panamanians to college and to make them bilingual and trilingual so they can take over the complex operations of the canal in the year 2000. And he plans to buy helicopters and train pilots in each province of Panama to provide emergency medical aid.

Critics of the treaties have floated the rumor that General Torrijos is a Communist and that he plans to lead his country to communism.

I see no reason to believe that there is any truth to the rumor. When I was in Panama, I spoke to a cross section of American residents and Panamanians. None of them believed Torrijos is a Communist.

During one of our conferences, General Torrijos was asked whether he might turn the canal over to Cuba or Russia once the treaties were ratified. His response was that he did not want to see "Panamanian waters infested by Communist sharks."

At another time, he told us he had strong feelings about the issue. He said:

If I tried to lead my people to communism," they would throw me out, and if, despite my position on this issue, the people would take up communism, I would leave this country!"

The President of Panama, Texas-educated Demetrio Lakas, who talks and acts like a Texan, is well known for his anti-Communist position. When asked about Torrijos, he said he was sure Torrijos was not a Communist and he would be willing to stake his life on it.

Consider this fact, too, that under Torrijos' leadership Panama has not even recognized the Soviet Union or the People's Republic of China. No diplomatic relations exist between Panama and the two foremost Communist nations. The truth of the matter is that we are on friendlier official relations with the Communist nations than is the Republic of Panama.

Despite the controversy over the treaties, my trip to Panama convinced me that the people of Panama are fond of Americans. And they tend to follow American leadership.

As a matter of fact, many of the present leaders of Panama are American educated, including General Torrijos.

Having said this about communism and the people's leanings in Panama, I do not want to leave the impression that there is absolutely no danger of a Communist takeover. There is.

I believe that a negative vote by the U.S. Senate on the pending treaties would be the greatest possible boost for communism in Panama. The enormous frustration that the Panamanians would feel would help the Communists convince them that the United States is an imperialist nation, bent on exploiting weaker nations.

Right now the Communists are the only ones in Panama working against the treaties. Their one issue will disappear when the treaties are ratified. Our voting down the treaties would give the Panamanian Communists new life.

Let me turn now to another argument frequently raised against the treaties—the lack of human rights in Panama. Basically, this issue is not relevant to the treaties, except in the use of the treaties to win concessions from Torrijos, which we have.

During our final meeting with Torrijos in Panama last November, we urged him to repeal the law that permits detention, without due process of law, of persons accused of committing a crime, political or otherwise. He said he would discuss the matter with his advisory council, and only a few weeks later he announced its repeal. He also promised to allow more freedom for the Panamanian press. And he assured us he would allow political exiles to return home after the treaties have been ratified. I am confident, after having met the man, that he will keep those promises, too.

These are major concessions. He made them because he wants us to approve the treaties. In fact, he even said that he would be willing to resign from his present leadership position if such action would help in getting the U.S. Senate to ratify the treaties.

It should be noted, too, that Amnesty International, the organization which recently won the Nobel Peace Prize for its human rights work, was not sufficiently concerned about the human rights situation in Panama to mount an effort there. There were more human rights problems in other Latin American countries. And Amnesty International found few prisoner violations in their investigation in Panama.

Amnesty International did find political exile violations. But, as I mentioned earlier, General Torrijos promised Senator Byrd and the other visiting Senators that he would allow those exiles to return to Panama after the treaties have been ratified. He fears that prior return would create open agitation against the treaties led by these returnees.

Another criticism lodged against the treaties is that we would be paying the Panamanians millions of American taxpayers' dollars to take the canal off our hands. It is just not so.

During the period that we continue to operate the canal, toll rates will be increased to make up for the added payments. We should be paying in fact, additional sums for the maintenance of military bases that we now maintain in Panama, and if we contin-

ue to maintain them, just as we do in Greece, Spain, Turkey, and the Philippines. The truth of the matter is that we have not paid Panama a cent for use of our military bases there in 74 years.

We will be setting up a package of loans, loan guarantees, and credits for Panama. But most of these will promote trade and investment by American companies there, and the loans will be paid to the U.S. Government.

The one legitimate question that has come up since the canal treaties were signed is a military one: Does the United States have a right to intervene militarily if the neutrality of the canal is threatened? To clarify the language of article IV of the Neutrality Treaty, President Carter and General Torrijos agreed to a "Statement of Understanding" that the United States will, indeed, have that right. Also, the statement of understanding assures us that our ships will have the right to "go to the head of the line" in an emergency.

I personally believe that these two issues are dealt with adequately in the neutrality treaties as signed. However, I realize that many of my colleagues do not share this view. I have, therefore, joined as a cosponsor of amendments 20 and 21, which would incorporate into articles IV and VI of the Neutrality Treaty the exact language contained in the statement of understanding. Inasmuch as 78 Senators are listed as cosponsors of these amendments, their adoption is assured. The one legitimate objection which then can be raised against the treaties will be removed, and every Senator should be able to vote for ratification of the treaties with a clear conscience.

There is no denying that there is something in us as a nation that wants to stand up and say, "We've had enough. We're not going to be pushed around by anyone any more. Let's have no more Vietnams."

We want to take pride in the greatness and strength of our country—indeed, the greatest and strongest in the world.

But we must remember that above all greatness and strength is the will to do that which is right.

We may not be ecstatic over the proposed Panama Canal treaties. But we need to bear in mind that we can either ratify the treaties, and guarantee our right to use the canal, or we can vote them down and thereby virtually guarantee open warfare in the Canal Zone and the shutting down of the canal.

We may not like the choice between these two alternatives. But they are the only alternatives.

I am not saying that the existing treaty of 1903 is not valid. It is. But we must recognize that it smells of long-dead colonialism, as has been pointed out by many who have preceded me on the floor.

Since we signed and ratified that treaty, many changes have occurred in the world. We must change with the times or pay the consequences.

To summarize:

First and foremost, we need to keep the canal open.

Second, in our own good interest, we need to be concerned about how other nations see us. We need to be on good terms with the people of Panama. And we need to get going on a new good-neighbor policy in Latin America.

Third, and even more important, we need to be concerned about how we see our own selves.

This great country of ours was born of a revolution for the right to self-determination. We have fought for other peoples' right to self-determination. Let us not deny that same right to the Panamanians and try to understand that their yearning for self-determination and national dignity cannot too long be contained.

The understanding which is demanded of us now is the spirit of liberty that was once described by Judge Learned Hand as follows:

The spirit of liberty is the spirit which is not too sure that it is right; the spirit of liberty is the spirit which seeks to understand the mind of other men and women; the spirit of liberty is the spirit which weighs their interests alongside its own . . .

Mr. President, I urge my colleagues to vote to ratify the Panama Canal treaties so we who proudly call ourselves Americans may prove to the world that we are indeed dedicated to the true spirit of liberty.

Mr. SARBANES. Mr. President, will the distinguished Senator from Hawaii yield?

Mr. MATSUNAGA. I am happy to yield to the Senator from Maryland (Mr. Sarbanes).

Mr. SARBANES. Mr. President, I thank and commend the distinguished Senator from Hawaii for his eloquent statement. He has taken a keen interest in this issue and has dealt with it in a reasoned, logical, and perceptive manner which has contributed greatly to the debate.

I particularly want to underscore one of his concluding points; namely, that the treaties involve the basic issue of how we see ourselves as a people; namely, our own self-perceptions. This is enormously important, because it is my view that the willingness of the American people to use our might to protect our interests is closely tied to their perception that that might is being exercised in harmony with right—in other words, that we are proceeding according to principles which command the respect of our own people. These treaties offer us the opportunity to have the legal and moral basis upon which to rest an exercise of our power if we have to take action in order to protect our interests.

Therefore, I think the point that the distinguished Senator from Hawaii has made so well is enormously important. The treaties address in a very fundamental and constructive way how the American people perceive themselves and what we stand for as a nation, and how we are prepared as a nation to use our power to protect our interests.

Mr. MATSUNAGA. I thank the Senator from Maryland (Mr. Sarbanes) for his generous comments. He was one of those of us who went to Panama last November, and I must say that he contributed a great deal to the conferences we held with Panamanians, including General Torrijos and President Lakas.

Mr. PERCY. Mr. President, will the Senator yield for a comment?

Mr. MATSUNAGA. I am happy to yield to the Senator from Illinois (Mr. Percy).

Mr. PERCY. Mr. President, the Senator from Hawaii (Mr. Matsunaga) has rendered a valuable service this afternoon. He not only has spoken eloquently and shown his depth of feeling, but also, he

has put out some very hard facts. It is really facts, rather than emotion, with which we must deal.

During my 8 days back in Illinois, I took a poll, generally at the beginning of a discussion with various groups I was attending, as to how they feel about the canal. We spent about a half hour discussing those involved alternatives, putting the question right back to them: "If it is rejected out of hand, are you willing to pay the consequences? What alternative do we have?"

I was always encouraged by the fact that at the end of the discussion, the sentiment had changed, the mood had changed, the hand vote actually changed. And I think that is borne out by the Gallup Poll that indicates that the more people know about it, the more they tend to realize that we have been working for 14 years in an inevitable direction of finding a way to modify these treaties so that they will endure for another 75 or 100 years, and that is really what we are engaged in. Of all the 96 witnesses we had before the Foreign Relations Committee, I did not find a single witness who said we could cling to the 1903 treaties any longer.

I would like to just comment further on one particular point brought out by my distinguished colleague from Hawaii, in which he said that in 75 years or so we have never paid a penny to Panama for the use of those bases there. Consider the importance of the Panama Canal in World War I and World War II. I had someone in Illinois the other day say he was based in Panama and American soldiers were so deep they almost stood shoulder to shoulder down there protecting the canal because we realized the necessity of having that canal open. It was because of the friendliness of the Panamanians and their cooperation that we had the degree of security that we had. Even today, after several negotiated increases, we still pay less than 1 percent of the total revenue that the Panama Canal Company receives to Panama as rent for the rights that we lease from them, and it is clear that we do not have sovereignty; we lease these rights.

We will be paying an average of \$35 million per year to Spain for base rights. I have not heard a single American challenge that or question my judgment or the judgment of the administration in supporting that.

Why, then, would we question paying out of toll revenue in the future \$40 million for the right, as my distinguished colleague has said so eloquently, to cut a path, a ditch, right straight through the middle of their country, so that not even the Chief of State of Panama can fly over it by helicopter from north to south or south to north without getting permission before he does so?

I think you can get it right down to dollars and cents. I do not think this is going to be solved and we will discuss later some of the economic factors, and I will be very pleased to address myself to those issues in greater length later. I do not think that is going to be the crucial thing but certainly we are not paying Panama to take the canal off our hands. That was so misunderstood back at the beginning of my discussions back in Illinois 8 days ago. I hope by now it is much better understood. There are some costs involved of course, but not payments to Panama. We do not pay Panama for base rights for the next 22 years. Not a penny from the U.S. Treasury is paid to Panama for the use of bases, for huge bases,

that for 22 years we will operate down there, when we without question are paying money from the Treasury to Greece, Turkey, Spain, many other countries for base rights. Why, then, should we resent so much the fact that Panama will be paid an increased rent or revenue as a result of a negotiating process in which some very, very hardheaded negotiators have done the best they can? But obviously if you drive so hard a bargain as to be grossly unfair, you get dissatisfaction. And we have had dissatisfaction for 75 years with an agreement that our own Secretary of State John Hay said any patriot would object to. Our majority leader eloquently made the point, and I quoted him many times this past week, that not a single Panamanian signed the 1903 treaty. A Frenchman signed it and he did a good job for France, but not certainly for Panama.

Mr. MATSUNAGA. I thank the Senator from Illinois (Mr. Percy) for his comments. Relative to the amount that we have been paid it should be pointed out—I do not think that this has been brought out clearly as yet—last year we collected in tolls the sum of \$165 million. The year before it was \$135 million. So we had increased by \$30 million in the course of a year. And it is expected that this toll may remain stable or increase in the future. So as to what the Senator from Illinois pointed out, even if we did pay up to \$40 million or \$60 million the total revenues would still exceed the amount by \$120 million to \$140 million.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the distinguished majority leader.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished Senator from Arkansas (Mr. Hodges) such time as he may require with the understanding that I do not lose my right to the floor.

The PRESIDING OFFICER. Is there objection to the request?

Hearing no objection, the Chair recognizes the distinguished junior Senator from Arkansas (Mr. Hodges).

Mr. HODGES. Mr. President, the greatness of the United States does not lie in our material possessions, whether it be unequalled military might, an unparalleled material standard of living, or a magnificent canal. It lies in our democratic ideals as written in the Declaration of Independence and the Constitution. These ideals are only as meaningful as our national translation of them into acts. Specifically, how as a nation do we treat these less powerful, less blessed, less free? Or, to use my simplistic and perhaps naive query—is it right? Harry Truman has become very popular of late; I suggest if you like to read of Harry Truman, as I do, you will love to read Abraham Lincoln. His speech on September 11, 1858, at Edwardsville, Ill., is particularly appropriate:

What constitutes the bulwark of our own liberty and independence? It is not our frowning battlements, our bristling sea coasts, our army and our navy. These are not our reliance against tyranny. All of those may be turned against us without making us weaker for the struggle. Our reliance is in the love of liberty which God has planted in us. Our defence is in the spirit which prized liberty as the heritage of all men, in all lands everywhere. Destroy this spirit and you have planted the seeds of despotism at your own doors. Familiarize yourselves with the chains of bondage and you prepare your own limbs to wear them. Accustomed to trample on the rights of others, you have lost the genius of your own independence and become the fit subjects of the first cunning tyrant who rises among you.

Our Nation under the existing treaty can keep forever the canal—but is it right? We can militarily defend the canal against Panama or any other nation if the treaties are not ratified—but is it right? We can eventually overcome the adverse reaction in Latin and South America sure to be created if we turn down the treaties—but is it right?

There are those who question our national resolve and spirit if we fail to “stand up” to Panama. It is argued that to ratify the treaties is further evidence of our national impotence and erosion of resolve that began in Vietnam. I think just the opposite is true. Real character and strength are measured more by how the strong treat the weak, the large the small, the rich the poor, than by false notions of character or a distorted sense of pride. Our Nation will be no less powerful or great after the treaties are ratified. Indeed, I am convinced that to ratify the treaties will show clearly the greatness of the United States and reflect clearly the real compassion and charity of our people. The touchstone of democracy is essential fairness to all people. Abraham Lincoln taught this spirit in his address to the Indiana Regiment when he said:

As I would not be a slave, so I would not be a master. This expresses my idea of democracy. What ever differs from this, to the extent of the difference, is no democracy.

I reject out of hand and without further comment in my State, who label treaty proponents traitors. Tactics using unfounded fear and smear have no place in a free and open debate.

We as Americans should understand and be sensitive to the desires of the people of Panama to have control over their own territory. We carved our nation out of the claims of others. The Panama Canal Zone is a 10-mile wide strip sitting squarely in the middle of their country, separating one side from another. The greatest natural resource of Panama, the canal, is leased to us in perpetuity. We control the single most important strip of land in their country. I can see that it is a psychological tourniquet cutting off circulation and damaging their national pride. I just reread the Declaration of Independence.

Although my thoughts are speculative and presumptuous, I am convinced from reading its language and knowing its history that the signers would understand and empathize with the desires of the people of Panama to make whole and independent their country.

Approval of the treaties is not without its risks. We are a nation of laws dealing with Panama with a government basically of one man. Omar Torrijos is a dictator, and from my brief encounter I have no sense of confidence in him. There is the possibility of a change in leadership bringing about a substantial change in Panama.

Also, I have reservations about the economic stability of the canal. It is a brilliantly designed, engineered, and constructed system, but it is old and requires expensive maintenance. I have no doubts as to the ability of the Panamanians to maintain the canal. I do question whether individual leaders will have the resolve and economic discipline to put the required great amounts of money into the operation.

The critical time obviously is the year 2000, when we will not longer have a physical presence in Panama. Under the neutrality treaty as amended we clearly have the right to take military action to insure neutrality generally and in particular our use of the canal. The safeguard is there, but it could require a military commitment and thereby potential loss to guarantee the right. That concerns me.

Thus, there are important and weighty reasons which give rise to legitimate questions about the adequacy of the treaties. But there are also grave risks in defending the treaties. That the Panama Canal has become an emotional symbol to many in the United States is evident. But this is even more intense in Latin America and the "third world." It is viewed there as indicative of the way a powerful and large nation treats a smaller, less powerful neighbor. Our rejection of the treaties will be difficult for them to understand. They will not hear our talk of equality, democracy and hemispheric cooperation because of the noise of our contrary actions. Democratic ideals are far more persuasive as embodied in actions than simply in print or word.

I have been assured by our military intelligence people, in briefings, part of which were classified, that the Communist influence in Panama is negligible. There are accusations to the contrary, but I find no evidence to support those contentions. Indeed, our failure to ratify the treaties will create fertile soil for communism, giving some proof to the accusation of U.S. imperialism.

Our military leaders on active duty are in favor of the treaties. Those whose duty it is to defend the canal state unequivocally that under the treaties, viewed from a military perspective, they can in fact guarantee the use of the canal to all. The most powerful nation in the world can, and I trust will, use that might to insure that which is right—neutral access to the Panama Canal.

I am particularly sensitive to the fact that I was not elected, nor will I be subject to a vote of the people of Arkansas in the future. Thus, the ordinary checks and balances on a political figure by the ballot box do not apply to me. I am acutely aware of the opposition of many Arkansans to these treaties, whose opinion I respect. It has made this an agonizing decision.

I can only assure them that I have carefully and completely weighed all the arguments. I have read and listened extensively. I went to Panama and there was exposed to all viewpoints, pro and con. Thus, I have not arrived at my decision quickly or capriciously. This is an issue that has merit on both sides. Simply stated, the interest of our Nation is served in using the canal, and these treaties with the two principal amendments proposed by the joint leadership guarantee as well as possible its use. I consider this decision to be similar to most hard choices in life in that it involves a balancing of concerns and competing interests, with the final result not a clear black or white, but gray. After sorting out the intellectual and emotional arguments on both sides, a single concept is most persuasive—to ratify the amended treaties is the right thing to do. In the final analysis I have to do what I think is right for the United States, but even more important, the right thing to do as I in my conscience believe it to be.

I would say also that those who strongly oppose these treaties in this Senate in my judgment do so also out of conscience and conviction. I do not detect nor have I heard mentioned any partisan or political motive. These are men I respect greatly. The fact that we reach different conclusions does not foreclose men of good faith, judgment and conscience coming to a different conclusion.

There are broader concerns and questions underlying this discussion of the specific issue of the Panama Canal treaties. I have decided how to cast my vote on the Panama Canal treaties in this broader context, and after weighing the merits on both sides come to the conclusion that I should cast my vote for ratification of the Panama Canal treaties with the two principal amendments as suggested by our leadership.

I thank the Senator for yielding this time.

Mr. ROBERT C. BYRD. Mr. President, I have to congratulate the distinguished Senator from Arkansas in his decision, which has been very thoughtfully and courageously arrived at. I know he has struggled long with his conscience about this matter; I have talked with him on a number of occasions about it, and I know that he has weighed the facts and the evidence carefully, and reached a considered decision based upon what he thought to be the merits and the facts.

I also want to congratulate the distinguished Senator from Alaska (Mr. Matsunaga).

Mr. MATSUNAGA. Hawaii. I come from the sunshiny State.

Mr. ROBERT C. BYRD. What did I say?

Mr. MATSUNAGA. Alaska.

Mr. ROBERT C. BYRD. Well, I am sorry; I should have said Hawaii. I think that it is evident that while it is the distinguished Senator from Hawaii (Mr. Matsunaga) to whom I address these compliments, they apply to both of these Senators. Their statements were cogent, unemotional, clear, persuasive, and concise, and I commend both Senators not only for their decisions but also their fine statements.

Mr. MATSUNAGA. Will the distinguished majority leader, the Senator from Virginia (Mr. Robert C. Byrd) yield?

Mr. ROBERT C. BYRD. West Virginia.

Mr. MATSUNAGA. Oh, West Virginia? Well, now we are even.

Mr. ROBERT C. BYRD. I yield to the distinguished Senator from Hawaii.

Mr. MATSUNAGA. I thank the Senator for his most generous comments, and I would like to take this time to congratulate especially the Senator from Arkansas (Mr. Hodges) for his great maiden speech which he has delivered today on this floor. Luckily for him it was on a major issue—perhaps one of the most important in this century, and, what is most important, I believe he arrived at the right decision and I congratulate the Senator from Arkansas for that great decision, which came to him, as he stated, after great anxiety. Again I congratulate him.

I thank the Senator for yielding.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Arkansas—from Hawaii.

Mr. President, in my previous remarks during this debate, I have discussed some of the reasons why I believe that these treaties are

in the long-term best interests of the United States—our security interests, our economic interests, and our political interests.

I have cited some of the factors that have convinced me that approval of these treaties will enhance our international stature and prestige. These treaties represent the wise and judicious use of power by the most powerful Nation in the world.

I have emphasized that these treaties—with inclusion of the bipartisan amendments on defense rights and priority passage—are, in fact, more protective of our interests than is the existing agreement. The value of the canal is in its use, and that use is best guaranteed by cooperation, not confrontation, with Panama and by good relations with the other nations of this hemisphere.

The new treaties would not only strengthen our security and provide the moral and legal basis for our defense of the canal, but will engender an environment of goodwill and mutual respect.

SOVEREIGNTY

Today, I want to turn to some of the arguments that have been raised against the treaties—arguments that I do not believe will stand up in the face of serious examination.

For example, there is the question of sovereignty in the Canal Zone. This is a matter about which there has been a great deal of misunderstanding.

Stated simply, the United States is not now, and never has been, sovereign in the Canal Zone. It does not own, nor has it ever owned, the Canal Zone.

Article II of the 1903 Hay-Bunau-Varilla Treaty grants to the United States the "use, occupation and control" of a zone of land "for the construction, maintenance, operation, sanitation and protection" of a canal within that zone. The zone was not sold to the United States, it was not ceded, conveyed or granted. If it had been, there would have been no need for article II to spell out the particular rights which were being granted to the United States, for all the rights of ownership would obviously have belonged to the United States. There would have been no need for the treaty to state, as it did, that the "use, occupation and control" of the zone was for purposes of constructing a canal. If the land itself, if all sovereignty over it were being transferred to the United States, Panama would have had nothing to say about what we did with the land, or on it.

Clearly, the United States, by article II of the Hay-Bunau-Varilla Treaty, received certain interests and rights in the Canal Zone. But it did not acquire outright ownership, or sovereignty.

Article III of the 1903 treaty grants to the United States the "rights, power and authority" over the zone which it "would possess . . . if it were the sovereign." That is plain unmistakable English: "rights, power and authority, which it would possess if it were the sovereign." The United States is not sovereign. Panama always retained actual sovereignty. By the 1903 treaty, it granted to the United States the right to exercise sovereignty in furtherance of a particular purpose—the construction and operation of a canal.

To put it briefly, under the 1903 treaty we obtained rights—not land—and we have continued to make annual payments for those rights. Not sovereignty.

Several of my esteemed colleagues, and many who write to me, have compared our status in the Canal Zone to the purchase of the Louisiana Territory, and of Alaska. The contrast could not be more clearcut, and serves to demonstrate that the United States acquired neither territory nor sovereignty in the Canal Zone by virtue of the treaty.

On October 21, 1803, President Thomas Jefferson proclaimed the treaty for the cession of Louisiana. By article I, the First Consul of the French Republic, Napoleon Bonaparte, did "cede to the said United States in the name of the French Republic forever and in full sovereignty the said territory with all its rights of sovereignty which went with it, were transferred, or ceded, to the United States.

The Convention Ceding Alaska, proclaimed on June 20, 1867 by President Andrew Johnson, is similar. By article I, the Emperor of Russia, Alexander II, agreed "to cede to the United States—all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands."

Both the Louisiana and Alaskan Treaties contain a provision concerning the admission to U.S. citizenship of residents of those territories—a provision which is conspicuous by its absence from the Hay-Bunau-Varilla Treaty. The Louisiana Treaty, for example, provides that—

The inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible according to the principles of the Federal Constitution to the enjoyment of all rights, advantages and immunities of citizens of the United States. * * *

The Alaskan Treaty speaks in similar terms.

These provisions establish that the status of these two territories, as contemplated by the signatories to the treaties and the Senators who ratified them, was indeed one of outright possession and dominion—lock, stock and barrel—in contrast to the 1903 Canal Treaty.

The record bears this out. We have, for example, treated the zone as a foreign territory for purposes of customs and mail, and for determining citizenship: children born in the Canal Zone of non-U.S. citizens are not U.S. citizens—as they would be if born in one of the States, the Virgin Islands, Guam.

Numerous statements have been made by U.S. officials which make clear that we have not been sovereign in the zone—beginning with Secretary of State John Hay's declaration in 1904 that Panama retained "titular sovereignty."

The distinguished Senator from Illinois (Mr. Percy) wanted me to yield.

Mr. ALLEN. Will the Senator yield to me for a question?

Mr. ROBERT C. BYRD. I yield to the Senator from Illinois.

Mr. ALLEN. After the Senator from Illinois has completed, I will ask the distinguished majority leader to yield to me.

Mr. ROBERT C. BYRD. All right.

Mr. PERCY. I thank the distinguished majority leader for yielding. I would like to ask the majority leader, if we had sovereignty

over the Panama Canal Zone, would it then be required for the House of Representatives to approve any transfer of such territory or land back to Panama? We have certain rights under the 1903 Treaty, as I understand the situation, which can be changed and altered, but we do not have sovereignty any more than if someone leases a house. His rights are quite different than if he owns title and deed to that house. I think the point is that clearly in the judgment of many of us the House of Representatives is not involved in this.

Mr. ROBERT C. BYRD. I believe properties can be transferred by treaty.

I believe they have been transferred by self-executing treaties.

Mr. PERCY. This particular question of ownership, the question of sovereignty and sovereign rights, is so misunderstood in the country. As the distinguished majority leader has pointed out, we have not possessed such sovereign rights, yet a very large part of the American people have believed that we have. That is why they continually ask the question, "Why are we giving away the canal?"

We are not giving away something. You cannot give away something that you do not really, in a sense, own. I think that point must be made, time and time again, to make clear what our rights are.

We do have certain rights. We are renegotiating those rights. But we certainly do not hold sovereignty over the Canal Zone itself. That, I think, must be fully understood by the American people if they are to understand the processes that four administrations have gone through for 14 years of negotiation.

Mr. ROBERT C. BYRD. The distinguished Senator from Illinois makes the point well and succinctly: One cannot convey that which he does not own.

I yield now to the distinguished Senator from Alabama.

Mr. ALLEN. I thank the distinguished majority leader.

I call the distinguished major leader's attention to page 69 of the digest of information on the proposed Panama Canal treaties prepared for the Subcommittee on Separation of Powers in the hearing held July 22, 1977. If the Senator will not object, I ask unanimous consent that this table be printed in the Record.

I do make that request, Mr. President.

There being no objection, the table was ordered to be printed in the Record, as follows:

[Provided for the record, Subcommittee on Separation of Powers, Senate Committee on the Judiciary, hearing held July 22, 1977.]

Total payments as a result of the 1903 Treaty ¹

1. Reflected on company books as title and treaty rights:

a. Payment to Republic of Panama.....	\$10,000,000
b. Payment to individual property owners (depopulation of Canal Zone).....	3,965,254
c. Payment to French (land rights)	326,016
d. Madden Dam Area land rights, 1924-1932.....	437,619
Total b through d.....	4,728,889

2. Further payments to French:	
a. Inventories, salvage credits, other	1,282,664
b. Panama Railroad Capital Stock	7,000,000
c. Channel costs.....	31,391,320
Total.....	39,673,984
(Combined with 1c., payments to French total \$40,000,000).....	
3. Payment to Colombia (not reflected on company books): Indemnity to Colombia for loss of Panama	25,000,000
4. Payment to Panama for annuity:	
a. 1913 to 1920 (capitalized as construction costs)	2,000,000
b. 1921 to 1951 (dollar value in gold changed, 1933)	10,990,000
c. 1952 to 1976 (dollar value in gold changed, 1973 and 1974; includes payment by State Department, 1956 to 1976)	43,610,992
Total.....	56,600,992
Total payments to Panama, French, and Colombia	136,003,865

¹ The figures reported in are actual dollars paid at the time of payment and have not been adjusted to reflect the value of payments in terms of 1977 dollars.

NOTE. Does not include unrecovered United States' investment in the Canal and Canal facilities except to the extent of \$2 million in annuity payments which were capitalized as construction cost during the period of 1913 through 1920. As of October 1, 1977 unrecovered capital investment of the United States in the Panama Canal Company totals \$319 million on which interest payments accrue in the approximate amount of \$17 million per annum.

Mr. ALLEN. One of the items appearing here is "total payments as a result of the 1903 Treaty." First, "reflected on company books as title and treaty rights:

a. Payment to Republic of Panama, \$10 million."

As the distinguished Senator realizes, in 1924, I believe, the United States paid Colombia an additional \$25 million.

Mr. ROBERT C. BYRD. That was as an indemnity for the loss of Panama.

Mr. ALLEN. That is right, for the loss of the land.

b. Payment to individual property owners (depopulation of Canal Zone)—\$3,965,254.

I think the distinguished Senator, if he would investigate a little further, would find that the United States did pay \$3,965,254 to individual property owners for title to their land in what is now the Canal Zone.

Mr. ROBERT C. BYRD. The Senator is talking about apples; I am talking about oranges. The treaty did not convey title. The treaty did not convey sovereignty. Under the treaty, the United States had certain rights and subsequently had to purchase certain property.

Mr. ALLEN. Oh, I understood the Senator to state categorically, though, that the United States did not own this land in the Canal Zone. Yet the record shows that the U.S. Government paid some \$3,965,254 for the title to the property in the Canal Zone.

The next item, is: "Payment to French (land rights)—\$326,016."

d. Madden Dam Area land rights from 1924-1932.

They paid \$437,619.

Mr. ROBERT C. BYRD. The U.S. Government pays money to land-owners over in West Virginia for their land to add to the Monongahela, George Washington, and Thomas Jefferson forests.

Mr. ALLEN. And does that not become U.S. property?

Mr. ROBERT C. BYRD. The United States has the right, under the treaties, and in accordance with Panamanian law, to purchase

certain properties, but the treaties themselves did not convey sovereignty over that zone.

Mr. ALLEN. I was not talking about sovereignty. I was careful not to. I was disputing the Senator's statement that the United States did not own the land. We are not talking about the statement that they do not have sovereignty. I dispute that, but I do not dispute it at this time.

Mr. ROBERT C. BYRD. They do not own the Canal Zone. The United States does not own West Virginia. It does own several thousand acres in the Monongahela National Forest. The United States does claim title to certain lands in the zone, but it does not own the Canal Zone, nor does it claim title in fee simple to all the land in the zone.

Mr. ALLEN. The United States owns the property constituting the Canal Zone, if you want to split hairs to that extent.

Mr. ROBERT C. BYRD. The Senator likes to split hairs. I do not care to.

Mr. ALLEN. I thank the Senator.

Mr. ROBERT C. BYRD. There are many private landowners in Panama today.

Mr. ALLEN. In Panama, but not the Canal Zone.

Mr. ROBERT C. BYRD. That is generally correct. A few parcels have been transferred to charitable organizations.

Mr. ALLEN. I thank the Senator.

Mr. ROBERT C. BYRD. Numerous statements have been made by U.S. officials that make it clear that we have not been sovereign in the zone, beginning with Secretary of State John Hay's declaration in 1904 that Panama retained titular sovereignty.

The point I am making, I say to my distinguished friend from Alabama, is that there is a difference in what the treaty of 1903 did with respect to the Panama Canal and the lands and waters there, the rights being granted to the United States to use those lands and waters for the purpose of constructing a canal—there is a difference between that treaty and the treaty that ceded the territory of Alaska to the United States or the treaty that ceded the Louisiana territory to the United States. Sovereignty passed, sovereignty vested in the United States of America in the case of Alaska and in the case of the Louisiana territory; but not in the case of the Panama Canal Zone. This is a distinction with a difference. It is a distinction that American people should understand.

In 1905, William Howard Taft, then Secretary of War, studied the issue and concluded in a report to President Theodore Roosevelt that—

... while we have all the *attributes* of sovereignty necessary in the construction, maintenance, and protection of the Canal, the very form in which these attributes are conferred in the Treaty seems to preserve the titular sovereignty over the Canal Zone in the Republic of Panama . . . I can see no reason for creating a resentment on the part of the people of the Isthmus by quarreling over that which is dear to them, but which is to us of no real moment whatever.

Although there are several court cases which lend further weight to this position, there is one case, *Wilson against Shaw*, which is often cited by those who insist that we do have sovereignty. It is worth noting that, of all the cases cited on the issue of sovereignty in the Zone, this is the oldest case, decided in 1907—7 years before

the canal was completed. The issue in *Wilson* was not sovereignty—but whether the Congress could constitutionally expend public funds to construct the canal. The court held that it could. That holding was consistent with a long line of previous decisions interpreting congressional power under the interstate commerce clause. The decision did not rest upon—in fact, barely touched upon—the issue of sovereignty. The word sovereignty does not appear even once in the Court's opinion, excepting the instance where article III of the treaty itself is quoted—and that without comment.

The narrow limits of the Court's decision in *Wilson* were pointed out by the Supreme Court of the Canal Zone against Coulson. Referring to the *Wilson* decision, the Court stated:

The Supreme Court did not hold more in that case (*Wilson*) than that the United States had the use, occupation and control in perpetuity of the Canal Zone. It is apparent from an examination of the treaty that the United States is not the owner in fee of the Canal Zone, but has the use, occupation and control of the same in perpetuity. * * *

Most of my colleagues are aware, by now, of the Lukenbach Steamship Co. and the Vermilya-Brown, Co., Inc.—because both of these companies were involved in cases which went all the way to the U.S. Supreme Court—and both of these cases did involve the issue of sovereignty.

In the Lukenbach case, decided in 1930, the Court held that, for purposes of construing the mail transportation statute, the ports of Cristobal and Balboa could correctly be treated as “foreign” ports. The Justice Department, in that case, unsuccessfully argued what others are still arguing today, and I quote:

Under the provisions of the treaty between the Republic of Panama and the United States, the cities of Cristobal and Balboa in the Canal Zone are ports of the United States and the waters of the Panama Canal are waters of the United States.

As I have already indicated, the courts said “No.”

The Vermilya-Brown Co., case, decided in 1948, involved the issue of the jurisdiction and sovereignty of the United States over a naval base in Bermuda. In reaching its decision about the applicability of the Fair Labor Standards Act to the base, the Court noted that the Administrator of the Wage-Hour Division had properly issued a statement of general policy to apply the act to the Canal Zone, which, in the Court's own words, is “admittedly territory over which we do not have sovereignty.”

CONCLUSION

In conclusion, Mr. President, our thinking about the Panama Canal treaties should not be clouded by misconceptions concerning the locus of sovereignty in the Panama Canal Zone. Opponents of the treaties would have us believe that sovereignty rests with these United States and that under the treaties we are relinquishing our sovereignty. I maintain that we cannot now be accused of giving up what we never had. Opponents of the treaties seek to convince the American people that establishment of what the country never had—sovereignty over the Panama Canal Zone—is to be preferred over the preservation of what the country has had and will continue to have under the treaties—free and unimpeded access to the Panama waterway.

The protection of the national interests of the United States did not require us to demand sovereignty over the Canal Zone when the canal was built, and there is no reason to think that such sovereignty is now necessary.

Let me say clearly: The ratification of these treaties will achieve our basic objectives—first, to keep the canal open and available for use by the United States through this century and into the 21st century, and second, to maintain our defense rights through the 21st century to insure that our security will not be endangered. The treaties achieve these objectives through cooperation with Panama. They will result in increased trust and confidence between the United States and the Republic of Panama and between the United States and its other southern neighbors. Let us not fail to recognize that it is on such trust and confidence—the good neighbor policy—that a good part of America's strength in the Western Hemisphere depends.

Achieving our objectives by cooperation will also place the United States in a strengthened position to achieve our other objectives. After all, the national interests of the United States are many, they are plural, and the ratification of the Panama Canal treaties will allow us to tackle them with renewed strength and vigor.

Now, Mr. President, on tomorrow at 10 o'clock a.m.—and I would hope that the debate would continue today until circa 6 o'clock p.m.—tomorrow at 10 a.m. the Senate will go into closed session for the purpose of examining materials and information allegedly relating to the government of Gen. Omar Torrijos.

These materials have been the subject of intensive and thorough investigation by the Senate Select Committee on Intelligence. The select committee has reported its findings, in some detail, to the Foreign Relations Committee, and tomorrow they will be discussed before the full Senate, behind closed doors.

According to the provisions of Senate Resolution 400, the Select Committee on Intelligence is charged with formulating and applying rules and procedures necessary to prevent the disclosure of information which infringes upon the privacy, or constitutional rights, of individuals. The resolution specifically prohibits any member of the committee, or any employee of the committee, or any Senator or employee who receives information from the committee, from disclosing such information.

The need for such strictures is obvious. We are dealing in the realm of national security interests, and of individual rights protected by the Constitution. Few would argue that protection of our national security interests require some intelligence activities that legitimately necessitate secrecy. Few would argue with the need—indeed, the constitutional mandate—to protect the privacy rights of individual citizens.

Balanced against this interest in preserving secrecy is the interest of the Congress, and of the public, to have the facts. Senate Resolution 400 provides a very carefully structured mechanism for balancing these sometimes competing interests.

Mr. President, there appears to be some public misunderstanding about the closed session on tomorrow. There appears to be an impression that the Intelligence Committee is withholding informa-

tion from the Senate and the public, or that the executive branch is withholding such information. To the contrary: Senate Resolution 400 has provided the mechanism, which is being followed, for every Member of the Senate to have the facts; it will be for the full Senate to determine which facts can and should be disclosed without jeopardizing national interests and individual rights.

Among the provisions of Senate Resolution 400 is a requirement that the Select Committee on Intelligence report to the Senate on the nature and extent of intelligence activities, and on any such matters requiring the attention of the Senate. This provision of the resolution specifically incorporates section 8(c)(2), which is designed to protect the confidentiality of information in the possession of the select committee.

Subsection 8(c)(2) authorizes the select committee to make confidential information available to Members of the Senate, and to prescribe and apply regulations to protect the confidentiality of such information. It also specifically states:

No Member of the Senate who, and no committee which, receives any information under this subsection, shall disclose such information except in a closed session of the Senate.

It is important for the public to understand how the closed session came about, and what will happen there. As I noted previously, the Intelligence Committee is not only authorized, but it is also required to report to the Senate on intelligence matters. When, on Friday, February 10, the distinguished Senator from Kansas (Mr. Dole) exercised his prerogative to question the select committee about certain documents in its possession, the response—on my part, on the part of the minority leader, as ex officio members of the select committee, on the part of Senator Bayh, its chairman, and Senator Goldwater, its ranking Republican member—was to schedule a closed session at the earliest practicable date so that not only the Senator from Kansas, but all Members in the Senate, could have access to pertinent information and freely ask questions concerning such information. In the meanwhile, the staff of the select committee, and the materials in its possession have been available to Members of the Senate.

Mr. President, the purpose of the closed session is to provide Senators the opportunity to inform themselves about, and to debate, the information now in the hands of the select committee without jeopardizing our national security interests. The Senate will have before it on Tuesday a report prepared by the Intelligence Committee, including its recommendations as to what materials, if any, should be publicly disclosed.

The Senate then can determine whether the public interest would be served by disclosing all or part of those materials.

I feel confident that the Senate will pursue these matters within the spirit and the letter of Senate Resolution 400. That resolution is a landmark in the history of Congress. Until its adoption just 2 years ago, there was no legislative procedure adequate to the task of exercising congressional oversight over secret Government activities. The resolution provides an effective and efficient procedure for making legislative decisions concerning necessarily secret activities while respecting and preserving the Constitutional rights of people and serving the national security interests.

Mr. President, I yield the floor.

Mr. GRIFFIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan (Mr. Griffin).

Mr. GRIFFIN. Mr. President, while the distinguished majority leader is on the floor, I, like he, want to refer back to the some of the points and arguments that were made earlier; and with his indulgence, I wish to refer to a comment he made on February 10, during the course of the debate.

In his remarks, the distinguished majority leader called attention to references I had made to former Ambassador Linowitz, and my remarks in that respect were essentially a restatement of the concerns I expressed in my minority views. The distinguished majority leader at that time said this:

Mr. President, the distinguished Senator from Michigan (Mr. Griffin) has referred to the expiration of the term of Ambassador Linowitz in a way that would imply that simply because the 6-month term of Mr. Linowitz as Ambassador was coming to an end, the treaties somehow had to be hurried, and the completion of the negotiations was hastily made. . . . The truth of the matter is that Mr. Linowitz did not have to have the title of Ambassador to continue to assist Mr. Bunker in the negotiations. . . . Let it not be said that Mr. Linowitz had to retain that title of Ambassador in order to continue to assist Ambassador Bunker in the negotiations.

Mr. President, at this point I shall read from the minority views that I filed on this particular point, as they appear beginning on page 198 of the committee report. Under the title "Other Concerns" is a subtitle, "4. Were these treaties negotiated in haste, under the pressure of a time deadline?"

Because the treaties contain so much ambiguous language and so many provisions of doubtful merit, it is appropriate to ask such a question. And, unfortunately, there is reason for some concern.

On February 10, 1977, shortly after he took office President Carter named Sol Linowitz to represent the United States as negotiator for the Panama Canal treaties. But, strangely, Mr. Linowitz was appointed only on a temporary basis—for a six month period. Under the law,⁹⁰ an appointment on this basis does not require confirmation by the Senate. Such an appointment operates to by-pass the usual scrutiny by a Senate committee of a nominee's qualifications and possible conflicts of interest.

If hearings had been held, the Senate would have learned that Mr. Linowitz served as director of a New York bank that had participated in making huge loans, still outstanding, to the Torrijos government of Panama.⁹¹ Furthermore, the committee might have cleared the air with respect to allegations that Mr. Linowitz formerly represented the Marxist Allende government of Chile, and was required in connection therewith to register as an agent of a foreign government.⁹²

Because the Senate is an integral part of the treaty-making process under the Constitution, it was unwise and something of an affront to the Senate for the Administration not to submit a treaty negotiator's name for confirmation. Utilizing such a short circuit procedure did not build Senate confidence in the treaty negotiations, and it also denied Mr. Linowitz the opportunity he should have had to explain away such possible conflicts of interest.

Mr. Linowitz, who was appointed on February 10, had six months—until August 10—to negotiate a new treaty without having his name submitted to the Senate for confirmation.

Interestingly enough, it was on August 10 that negotiators for the two countries finally announced their agreement in principle on new treaties relating to the Panama Canal.

Mr. President, that is the end of that portion of my minority views dealing with that particular subject.

Perhaps I am wrong, but as I read the majority leader's statement—

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator yield at that point?

Mr. GRIFFIN. I am glad to yield.

Mr. ROBERT C. BYRD. I beg the Senator's pardon for interrupting him in the middle of a sentence. If he would prefer, I will wait until he finishes.

Mr. GRIFFIN. If the Senator would wait, I would appreciate it; but I am always glad to yield to the distinguished majority leader, for whom I have such respect and admiration.

Mr. ROBERT C. BYRD. "A word fitly spoken is like apples of gold in pictures of silver."

I thank my friend.

Did not the Senator from Michigan have before the committee Mr. Linowitz, at which time he could have asked Mr. Linowitz questions concerning the purported conflicts of interest? If the answer is "Yes," my next question is, Did the Senator ask such a question?

Mr. GRIFFIN. I say to the distinguished majority leader that the first opportunity that this Senator had, or was aware of, was when Mr. Linowitz came before the Foreign Relations Committee after the treaties had been negotiated.

Mr. ROBERT C. BYRD. Yes, but did the Senator ask the questions then?

Mr. GRIFFIN. It was a little late to get into his qualifications to be a negotiator at that time, because the treaties had already been negotiated. But I say to the Senator that at that time I do not think I was aware of the concerns I am now expressing.

Mr. ROBERT C. BYRD. The Senator will agree, will he not, that Mr. Linowitz was before the committee on two occasions?

Mr. GRIFFIN. After the treaties were negotiated?

Mr. ROBERT C. BYRD. On September 26 and October 19, in open session.

Mr. GRIFFIN. This is after the treaties were negotiated.

Mr. ROBERT C. BYRD. So the Senator had two cracks at Mr. Linowitz.

Mr. GRIFFIN. Obviously, the question before the committee at that time was not whether he was qualified or whether he should be confirmed. It was a de facto situation. We were presented with a treaty that had already been negotiated, and the question then was, What were we going to do?

Mr. ROBERT C. BYRD. Why raise the question now? He was before the committee; and if the treaties already had been negotiated, why not confront him with that?

Mr. GRIFFIN. I will address myself to that.

Mr. ROBERT C. BYRD. Then the record here would have been made clear.

Mr. GRIFFIN. It is a legitimate question, and I will address myself to it.

Mr. SARBANES. Mr. President, will the Senator yield, just to develop this point one step further? I think there is one other important factor.

Mr. GRIFFIN. If the Senator from Maryland will permit me, I have something more to say, and it may be that in my statement I

will answer the point of the Senator from Maryland. If not, I will yield to him.

Mr. SARBANES. I hope the Senator from Michigan will address himself to the April 20, 1977, meeting that was held with the negotiators, a closed meeting, to brief the members of the Senate Foreign Relations Committee on the progress with respect to the treaties; that meeting was well before the date to which the Senator has just referred.

Mr. GRIFFIN. That could be.

Mr. SARBANES. That, of course, provided an opportunity to the Senator to raise the very points to which the Senator is now addressing himself.

Mr. GRIFFIN. May I continue?

Mr. SARBANES. I hope the Senator, in the course of doing that, will address that meeting as well.

Mr. GRIFFIN. Perhaps I am wrong, but as I read the statement made on February 10 by the distinguished majority leader, it appears to me that he was suggesting that the President of the United States has a free hand in appointing individuals to participate in diplomatic functions. In fact, however, the President's power in this regard is limited by both the U.S. Constitution and statutory law.

Article II, section 2, clause 2 of the Constitution gives the President the power to "nominate, and by and with the advice and consent of the Senate," to "appoint ambassadors and other public ministers."

At least since 1855, the term "ambassadors and other public ministers" has been interpreted to mean "all officers having diplomatic functions, whatever their title or designation."

I am here quoting an Attorney General's opinion of 1855 (7 Ops. Atty. Gen. 168).

It is true that on occasion during our history Presidents have appointed individuals to serve as ambassadors in a limited and special way for a President—particularly where some secrecy about the fact of the appointment was essential. However, in 1972 Congress formalized the arrangement by amending the Foreign Service Act of 1946 to preclude any such appointment for more than a 6-month period without Senate confirmation.

Let me read from the language of section 501(c) of the Foreign Service Act. It says:

On and after the date of enactment of the Foreign Relations Authorization Act of 1972, no person shall be designated as ambassador or minister, unless that person is appointed . . . in accordance with . . . clause 3, section 2, of Article II of the Constitution . . . except that the personal rank of ambassador or minister may be conferred by the President in connection with special missions for the President of an essentially limited and temporary nature of not to exceed six months.

The President does not have the power to assign individuals to perform diplomatic functions for a period exceeding 6 months without obtaining the advice and consent of the Senate. And appointments for less than 6 months which do not go before the Senate are by law supposed to be limited to assignments "of an essentially limited or temporary nature."

Given the tremendous importance of the Panama Canal Treaty negotiations and the fact that under previous administrations nego-

tiations had continued without success for over a decade, in my view the President was at least ill-advised when he circumvented the Senate by appointing Mr. Linowitz on a temporary basis. After all, the Senate is under the Constitution an integral part of the treaty-making process—and surely the President must have known at that time that it would be difficult to get two-thirds of the Senate to ratify treaties that would, I will not say give away the Panama Canal, but which would seriously change the relationship.

Why the President did not—and I can only speculate as to why he did not—take the Senate into his confidence to the extent of submitting the name of the negotiator to the Senate for confirmation, I do not understand. But I think it is unfortunate that now we find out about some matters which I think Mr. Linowitz probably could have explained. He should have laid them before the committee. I have no doubt that he could have cleared the air, but I think it is very disturbing to find out these matters later. It is against this background that these treaties, it seems to me, have to be judged.

Perhaps it was just a coincidence that it was precisely 6 months to the day following the Linowitz appointment that “agreement in principle” was announced by the negotiators. But let me say that I am not the only one who has come to the conclusion that these treaties are poorly drafted and full of ambiguities—indicating that, perhaps in haste to meet a deadline, language was used which should not have been accepted. Let me just say the dean of the University of Panama School of Law, Prof. Camilo Perez, has described these treaties as “one of the most imperfect treaties in the entire history of international law.”

And Professor Perez further said that the United States must bear responsibility for any conflicts of interpretation, because the treaty was “signed in a hurry because the time given to Linowitz to complete negotiations was running out.” I am quoting here the dean of the school of law of the Republic of Panama.

Mr. SARBANES. Mr. President, if the Senator will yield, does the dean of that school of law oppose or support these treaties?

Mr. GRIFFIN. I really do not know.

Mr. SARBANES. It is my understanding he opposes them as being too accommodating to the interest of the United States. Is this correct?

Mr. GRIFFIN. That may very well be. I do not know.

I received in the mail last week a letter from Mr. Linowitz indicating that he understood I had several questions about his appointment as conegotiator for the Panama Canal treaties and would welcome the opportunity to discuss them with me.

I have written back to Mr. Linowitz. In my letter I do not indicate that I would not meet with him privately, but I make it very clear that I would rather read his response to the matters that have been raised. I would be delighted on his behalf to put his letter, or whatever his response is, in the Congressional Record, since it is in the Record that the concern about his appointment and his participation has been raised.

I ask unanimous consent, Mr. President, that copies of his letter and my response may be printed in the Record at this point.

There being no objection, the letters were ordered to be printed in the Record, as follow:

WASHINGTON, D.C., February 14, 1978.

Hon. ROBERT P. GRIFFIN,
U.S. Senate, Washington, D.C.

DEAR SENATOR GRIFFIN: I understand that you have several questions about my appointment as Co-Negotiator for the Panama Canal Treaties, and I would welcome the opportunity to discuss them with you.

Please let me know when it might be convenient for me to drop by. I'll be looking forward to it and will await word from your office.

With appreciation,
Sincerely,

SOL M. LINOWITZ.

FEBRUARY 17, 1978.

Hon. SOL M. LINOWITZ,
Washington, D.C.

DEAR MR. LINOWITZ: Thanks for your recent letter.

Enclosed is a copy of my Minority Views filed as part of the Senate Foreign Relations Committee's report on the Panama Canal treaties. You may be particularly interested in that portion beginning on page 198.

Of course, I would be pleased to have the opportunity to look over your comments concerning those or any of the other points that have been raised in connection with the treaties.

Sincerely,

ROBERT P. GRIFFIN, U.S. Senator.

Mr. GRIFFIN. To the point made by the distinguished Senator from Maryland, I can only repeat, as I said before, that—once treaties are negotiated and laid before us—I suppose that, of course, we can go back and try to conduct a fullscale investigation of the principal participant's background and what his qualifications and possible conflicts of interest may have been. This Senator certainly did not do that and did not feel that that would be the question before the committee at that time. We were then looking at the treaties. They were already negotiated.

Mr. SARBANES. If the Senator will yield, the date I cited to him was an April 20 date. This was well ahead of the treaty date. Will the Senator yield on this point?

Mr. GRIFFIN. I am yielding, yes.

Mr. SARBANES. Fine.

Mr. GRIFFIN. Does the Senator want the floor?

Mr. SARBANES. No, I just want to make a comment and address a question to the Senator.

Mr. GRIFFIN. Sure.

Mr. SARBANES. I think it is terribly unfortunate to bring in what I consider to be in personam arguments with respect to the merits of these treaties whose provisions are before us concerning the rights the United States has pursuant thereto. Now the Senator may choose to engage in a personal argument with respect to Mr. Linowitz. I think that is unfortunate for the following reasons. These points were raised early on at the beginning of last year, if the Senator will recall. Does the Senator contend that the matters which he is raising he only discovered recently?

Mr. GRIFFIN. Some of them, yes.

Mr. SARBANES. The matters that the Senator has cited were placed in the Record by other opponents of the treaty early in the

beginning of 1977 and, therefore, were on the public record and were responded to by a letter from the chairman of the Foreign Relations Committee who cited the clearance that had been given to Mr. Linowitz with respect to the conflict of interest question by legal counsel at the State Department. The Senator may then go on and say he disagrees with the legal opinion, but the fact—

Mr. GRIFFIN. No, the Senator has not said that.

Mr. SARBANES. But the fact remains the opinion was sought and an opinion was rendered. Therefore, I think it is unfortunate to engage in the sort of in personam attacks on Mr. Linowitz that have just taken place.

Furthermore, as I indicated earlier, when the Senator responded to the distinguished majority leader with respect to raising these issues in the hearings before the Senate Foreign Relations Committee, and the response of the Senator from Michigan was that the hearings took place after the treaty and, therefore, he felt in a different posture with respect to raising the issue. But on the 20th of April, we had a closed hearing of the Foreign Relations Committee to get a briefing from the negotiators with respect to how matters were moving, and it is not my recollection that the Senator from Michigan raised the issue with Mr. Linowitz at that point.

Mr. GRIFFIN. May the Senator from Michigan have the floor again?

Mr. SARBANES. Surely.

Mr. GRIFFIN. I thank the Senator.

I think the Senator from Maryland is altogether missing the point that I am trying to make.

The point is not whether or not Mr. Linowitz was guilty of a conflict of interest. I am willing to concede that if he had had the opportunity in a confirmation hearing to explain his situation that he could have convinced us that there was no conflict of interest despite these items in his background. I wish he had had that opportunity.

What disturbs this Senator very much is that he was put in a position to negotiate a Panama Canal treaty in a 6 months' period, where he was operating under a very tight time deadline. As one lawyer and one Senator who has studied these treaties very carefully, when I find over and over again unfortunate and ambiguous language used, and when I find that at the last minute in the negotiation, in order to get a treaty, presumably, we gave away the right to even negotiate to build another canal in another country—then I think it is not altogether inappropriate to observe how this appointment was made, and the fact that he was operating under a 6 months' time limit.

Whatever the reason was for the President doing that, to me it was not a good idea—and, as I have already said, I think it was an affront to the Senate to circumvent the confirmation process by not submitting the name of the negotiator in such an important situation to the Senate for confirmation.

That is my point. I am not trying to attack Mr. Linowitz. I am not trying to say that he is guilty of any conflict of interest. I am only saying that it was unfortunate, if we want to build confidence in the treaties themselves, confidence within the Senate, and confi-

dence around the country, that it was not handled in the regular appropriate way.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. GRIFFIN. Of course.

Mr. SARBANES. First of all, I want to make one correction. The date of the meeting that I referred to was the 1st of April, not the 20th of April.

Mr. GRIFFIN. Well, I do not think that is relevant to the argument I am making.

Mr. SARBANES. No, but I want the record to be very clear if the Senator wishes to pursue the conflict-of-interest question.

The Senator is now separating two issues, and I think at least in that regard making some progress, because the question of conflict of interest was raised in the course of this debate by the Senator from Michigan.

If it is not relevant to the consideration, which I understand is the point the Senator is now making—he is dealing only with the question of a title in a 6-month period, contending there was undue haste at the end of that because the title would no longer apply, then it should not have been brought up. The introduction of the conflict-of-interest question was made by the Senator from Michigan. I regard that as extremely unfortunate, because it was unanswered much earlier, and if it was not answered to the Senator's satisfaction, he had the opportunity to pursue the matter ahead of the treaty being negotiated.

As to the second point, the 6 months' period, as the distinguished majority leader pointed out, Mr. Linowitz remained available to be part of the negotiating team with Ambassador Bunker. Therefore, the loss of the title was not important with respect to the treaty.

The third point I have underscored earlier. Since we have had these personal attacks with respect to the negotiator and with respect to some of the parties in Panama, I must stress that in the end we come back to an examination of the terms of the treaties. Are the terms of the treaties protective of American interests? That is what is at issue. So I would hope the Senator would not, in the course of trying to deal with the substance and the merits of the treaties, on which I recognize there are legitimate differences, in fact, undercut people personally, which it seems to me is not only irrelevant but unfortunate with respect to some able and competent individuals.

Mr. GRIFFIN. Well, I do not think it is irrelevant to call attention to the fact that there was a time frame of very short duration; namely, 6 months, in which this negotiator had to complete a treaty, and to note the fact that it was precisely on the expiration date of that 6-month period that the treaty agreement was reached.

I keep going back again to the fact that under the Constitution as it has been interpreted, all officers having diplomatic functions, whether they are to be titled Ambassador or whatever, are to be appointed and confirmed by the Senate, with the exception of the statute—and I am not sure even that is constitutional; that we can modify the Constitution and say that anyone having a diplomatic function can be appointed even for a 6-month period.

I would note, for example, that all Army officers, all Navy officers, and all Air Force officers are nominated and confirmed by the

Senate. We may do it routinely, but it is required by the Constitution.

I just make the point again that I think, as we try to look at the merits of these treaties, which I have done in my minority views, which in the most part are dealing with the merits of the treaties, it is inescapable to also look at the background and the context in which these treaties were negotiated.

I am sorry that it is necessary to bring that up. I felt that the statement made by the distinguished majority leader had to be responded to. I welcome Mr. Linowitz' written explanation, and I will be glad, on his behalf, to put it in the Congressional Record, to make the record complete.

Mr. SARBANES. Mr. President, in view of the statement which has just been made by the distinguished Senator from Michigan, I ask unanimous consent to have printed in the Record at this point excerpts from the Congressional Record of March 10, 1977, of an exchange of correspondence between Chairman Sparkman of the Foreign Relations Committee and the State Department dealing both with the legal authority for the 6-month appointment of Mr. Linowitz as Ambassador, and also dealing with the conflict-of-interest question which was raised earlier in the course of the debate by the Senator from Michigan.

I think it is important that this exchange of letters be placed in the Record at this point to indicate very clearly that the matters which are now being raised, as it were after the fact, were addressed at the very beginning of 1977; and I submit that the distinguished Senator from Michigan had more than ample opportunity to pursue the issues had he chosen to do so.

Mr. GRIFFIN. This was after the appointment had been made, and the authority of the Senate had already been circumvented; is that correct?

Mr. SARBANES. No; the Senator from Michigan had at that point, well ahead of the conclusion of any treaty, an opportunity if he wished to pursue these issues, either or both of them, or any additional ones that he felt the appointment raised.

It is my understanding—and if I am in error I would certainly like to be corrected—that the Senator from Michigan made no effort to do so prior to filing his minority report to the Foreign Relations Committee report—in other words, prior to the year 1978.

This is an exchange of correspondence inserted in the Congressional Record on March 10, 1977, almost a year ago, which addresses directly of the points which the Senator has been raising here on the floor today.

There being no objection, the material was ordered to be printed in the Record, as follows:

APPOINTMENT OF AMBASSADOR SOL LINOWITZ

Mr. SPARKMAN. Mr. President, I want to bring to the attention of my colleagues a couple of items of information bearing on the appointment of Ambassador Sol Linowitz to be a conegotiator in the Panama Canal talks.

In this regard, I wrote to Secretary of State Vance shortly after he discussed this appointment with me. Our exchange of correspondence on this issue makes it clear that Ambassador Linowitz's appointment will not extend beyond 6 months; and that

this appointment is limited to the role of conegotiator and is not intended in any way to supplant Ambassador Bunker's role.

I ask unanimous consent that this correspondence be printed in the Record at the close of my remarks, along with that provision of the Foreign Service Act of 1946, as amended, which provides for short-term Presidential appointments with the personal rank of Ambassador.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 1.)

Mr. SPARKMAN. In addition to the above, Mr. President, I want to bring to my colleagues' attention a letter dated March 7, which I received from the Department of State and which bears on certain conflict-of-interest allegations with respect to Ambassador Linowitz's current position. The conclusion of this letter reads as follows:

"As a result of the Department's review and the foregoing undertakings by Mr. Linowitz, the Acting Legal Adviser gave a written opinion which concluded that the requirements of the applicable statutes and Department of State regulations on conflicts of interest had been satisfied."

Mr. President, I believe this letter and enclosures will be of interest to my colleagues and I ask unanimous consent that it, too, be printed in the Record following the above-mentioned material.

The PRESIDING OFFICER. Without objection, it is so ordered.

(See exhibit 2.)

EXHIBIT 1

JANUARY 31, 1977.

Hon. CYRUS R. VANCE,
Secretary of State,
Department of State, Washington, D.C.

DEAR MR. SECRETARY: I am writing you with respect to our recent conversation concerning the appointment of Mr. Sol Linowitz.

It is my understanding that this appointment will be made for a period not to exceed six months and for the purpose of putting Mr. Linowitz in the position of U.S. co-negotiator on the Panama Canal talks. As I indicated to you, I have no objection to this arrangement for a not-to-exceed-six-month period, so long as the negotiations from the U.S. side are headed up jointly by Ambassador Bunker and Mr. Linowitz. I am sure you will agree with me that Ambassador Bunker has performed admirably throughout his tenure as chief negotiator and I am confident, as I am sure you are, that he will continue to perform in this fashion until these negotiations are brought to a successful conclusion.

I know that you will apprise me of any misunderstanding on my part about Mr. Linowitz's role. Similarly, I would appreciate being informed beforehand of any change in the co-negotiating procedure.

Sincerely,

JOHN SPARKMAN,
Chairman.

THE SECRETARY OF STATE,
Washington, February 10, 1977.

Hon. JOHN SPARKMAN,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: Thank you for your letter of January 31 concerning the appointment of Mr. Sol Linowitz. That is to confirm that your understanding that Mr. Linowitz is to be appointed as Co-Negotiator with Ambassador Bunker on the Panama Canal Talks, with the personal rank of Ambassador for a period not to exceed six months, is entirely correct. There has been absolutely no change in the co-negotiating procedure.

Sincerely,

CYRUS VANCE.

EXCERPT FROM FOREIGN SERVICE ACT OF 1946, AS AMENDED

APPOINTMENTS

SEC. 501. (a) The President shall, by and with the advice and consent of the Senate, appoint ambassadors and ministers, including career ambassadors and career ministers.

(b) The President may, in his discretion, assign any Foreign Service officer to serve as minister resident, charge d'affaires, commissioner, or diplomatic agent for such period as the public interest may require.

(c) On and after the date of enactment of the Foreign Relations Authorization Act of 1972, no person shall be designated as ambassador or minister, or be designated to serve in any position with the title of ambassador or minister, unless that person is appointed as an ambassador or minister in accordance with subsection (a) of this section or clause 3, section 2, of article II of the Constitution, relating to recess appointments, except that the personal rank of ambassador or minister may be conferred by the President in connection with special missions for the President of an essentially limited and temporary nature of not exceeding six months.

EXHIBIT 2

DEPARTMENT OF STATE,
Washington, D.C., March 7, 1977.

Hon. JOHN J. SPARKMAN,
Chairman, Senate Foreign Relations Committee, U.S. Senate.

DEAR MR. CHAIRMAN: In light of certain statements by a member of the Senate and a member of the House with respect to Ambassador Sol M. Linowitz, I would like to make the following observations which may assist you and the members of your Committee in responding to questions or inquiries.

Ambassador Linowitz was appointed, last February 10, as Co-Negotiator for the Panama Canal Treaty, in the capacity of Special Government Employee with a six-month appointment to the personal rank of Ambassador, in accordance with applicable Federal and Department of State regulations and established procedures. He is serving in this capacity without compensation.

The Department of State conflict of interest regulations provide that no Department employee may "have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with his Government duties and responsibilities" (22 CFR 10.735-205). Pursuant to these regulations, Mr. Linowitz prior to his appointment submitted to the Department a full statement of his memberships on boards of directors as well as his financial holdings. These were reviewed thoroughly by the Office of the Legal Adviser.

In the cases of two companies, Pan American World Airways, Inc., and Marine Midland Banks, Inc., Mr. Linowitz furnished information from them outlining their activities and financial interests in Panama. Appended are the statements from the Presidents of these two companies. Based on the Department's review, Mr. Linowitz agreed that in the unlikely event any aviation issues arise during the course of the treaty negotiations which might be of possible interest to Pan American, he would recuse himself from participation in the negotiation of any such issues. Continued membership on the board of Marine Midland Bank did not violate the applicable regulations because of the relatively low level of financial transactions of the bank with and in Panama.

Mr. Linowitz also agreed that his law firm "is not now and will not while I am serving in this capacity, represent any client on any matter related to the Panama Canal Treaty negotiation or the Canal Zone."

In the case of Mr. Linowitz' financial interests, two companies in which he had small shareholdings—AT&T and Texaco—did have business which the Legal Adviser believed might be affected by the outcome of the Canal Treaty negotiations. Consequently, Mr. Linowitz agreed to sell his shares in those companies, and has done so.

As a result of the Department's review and the foregoing undertakings by Mr. Linowitz, the Acting Legal Adviser gave a written opinion which concluded that the requirements of the applicable statutes and Department of State regulations on conflicts of interest had been satisfied.

Sincerely yours,

KEMPTON B. JENKINS,
*Acting Assistant Secretary
for Congressional Relations.*

NOTE

Note to F. C. Wiser.

Re Pan Am Activities in Panama—Intertrade.

Intertrade is a small distribution company, wholly-owned by Pan Am. Established in 1972, its principal functions are:

Provides bonded warehouse services, including customs clearance services and some inventory management services. It now has facilities at three locations: Colon Free Zone, Panama Airport, and Panama City.

Provides extensive local trucking services primarily between the Airport and its bonded warehouses.

Acts as Pan Am's General Sales Agent in Colon and certain other points in Panama.

Provides sea-air transshipment services; arranges for the receipt of goods by sea from Japan and other points in the Orient and for onward shipment, usually by air to points in Central and South America.

As indicated in the attached 1977 projections, 1977 Intertrade sales are expected to increase from the 1976 level of \$703,000 to \$946,000 and net profit before tax from \$125,000 to \$142,000. Pan Am originally invested \$10,000 to establish the company. The underlying book value of our equity is now \$170,000.

Intertrade is under the direction of Art Summer, who has been with Pan Am 35 years, most of them as a resident of Panama. The other 58 employees are citizens of Panama.

Also attached is a recent brochure on Intertrade which may be of interest. I understand you are being provided with information on SDISA through Art Best.

CHARLES W. TRIPPE.

JANUARY 7, 1977.

Note to F. C. Wiser.

Subject Pan American Operation, Panama.

Sales office location: Edificio Hatillo, Avenida Justo Arosemena, Panama City, Republic of Panama.

Hours/Telephone: Mon.-Fri. 8:00 a.m.-12 Noon/1:00 pm-5:30, Sat.-Sun. closed. Telephone: 25-5425.

Airport/location: Tocumen International Airport, located approximately 18 miles from Panama City. The Airport operation at the present time, is 100% handled by Pan American personnel, with the exception of inbound cargo, which is handled by Intertrade.

Director: Reeder Chaney. Office Phone: 25-6510. Home Phone: 26-0589.

Mr. Chaney is the only international employee in Panama, and is responsible for not only Panama, but offline west coast/South American General Sales Agents in Colombia, Ecuador, Bolivia, and Peru.

Present Employment: 151 people.

Passenger Operations: 75 movements/month.

Passenger Sales/1976: \$10,000,000.

Cargo Sales/1976: \$4,000,000.

General Information: New Airport and terminal facilities will be in operation by fall of 1977.

Separate Corporations in Panama:

(a) Intertrade (separate report being prepared by C. Trippe).

Intertrade is wholly owned Panamanian cargo company and is the general Sales Agent for Pan American on the Atlantic side of the canal for cargo and passengers. They are also general Sales Agents for Pan Am for the balance of the Republic of Panama, other than the City of Panama.

An agreement has recently been signed with Intertrade to do all of our inbound cargo handling at Tocumen Airport.

(b) SDISA (Servicios y Diversiones Internacionales, S.A.).

A Pan Am wholly owned Panamanian Catering operation located at Tocumen Airport servicing all carriers.

A. S. BEST.

PAN AMERICAN OPERATIONS, PANAMA

Prior to World War II, Pan American operated from both the Atlantic and Pacific side of the Canal Zone in Panama. When World War II started, the operation at France Field, located on the Atlantic side, was consolidated with the operation at Albrook Field on the Pacific side.

Pan American's operation continued at Albrook Field until the Republic of Panama developed an International Airport at Tocumen in October, 1949.

At one time, our operation in Panama was considerably more active than at present. Due to retrenchment in military forces, reduction in Panama Canal Zone international employees, long-range and wide-bodied aircraft, Pan Am has decreased its total activity through Panama.

The present 151 employees represent only 9.2% of our employees in Latin America or slightly over 1% of our employees worldwide in the field marketing group. Likewise, today the total sales of \$10,000,000 for passengers and \$4,000,000 for cargo represents .8% of our revenue.

MARINE MIDLAND BANKS, INC., OPERATIONS RELATED TO PANAMA

A. Past or Dormant Investments.—

1. Banco Inmobiliario de Panama S.A.—This is a small mortgage bank in Panama that engages in medium- to long-term housing mortgages and the warehousing of mortgage paper. We have just sold our 2½ percent interest.

2. Financiera Centroamericana S.A.—This is a general finance company engaged in commercial, industrial, and real estate lending in Central America, as well as holding an equity interest directly and indirectly in bonded warehouses in Central America and the Caribbean. This 22.4 percent investment was just disposed of.

3. Servicio de Anuario Telefonico Internacional S.A.—This company sold and distributed telephone books in several Latin American countries. We have preferred shares at modest value. This investment will be written off.

B. Current Investments.—

Marine, through Intermarine London, owns Bream Shipping, which was formed a few years back in conjunction with the international lending operations of Intermarine London. This company is presently not being used; however, it has limited assets resulting from prior activities conducted external to Panama.

C. Branch Operations.—

Most international banks have involvements in Panama consistent with that country's currency relationship with the dollar and its favorable climate as a financial center. Accordingly, the Marine started in Panama with a Regional Representative Office for Central America in 1971. It subsequently opened a branch operation in October 1973 to complement the Representative Office with a primary focus on generating corporate business in Panama and Central America, as well as deposit gathering from Latin America. As of November 30, 1976, it has total claims of approximately \$32.4 million (of which \$18.5 million is claims in Panama, and the remainder is almost entirely claims due from other Central American corporate clients). In Panama much of its business involves financing trade of corporations located in the Colon Free Trade Zone. The combined Representative Office and Branch have a staff of 25, 3 of whom are U.S. nationals. This operation is not large when compared to the activities of several others.

D. Loans.—

As a large international money center bank, the Marine conducts business throughout the world. Panama has long been a center for trade, as well as a notable financial center. Loans in Panama are a national consequence of the position of the bank and the country.

Marine Midland, either directly from New York or through the Bahamas or Panama Branch or foreign affiliate, has a \$100,000 short-term unsecured loan available to the Hydroelectric Power Authority of Panama.

There is a \$100,000 loan to the Agricultural Development Bank in Panama.

There is a \$4 million loan to the Republic of Panama due in November, 1983. There is Marine's share in a \$115 million international syndicated loan, managed by Citibank/New York. InterUnion/Paris, in which Marine directly owns 45 percent, also has a loan of \$2 million to the Republic of Panama.

In addition to these direct loans to the Government of Panama or institutes of the Government, the Marine is engaged in normal short-term lending operations through the banks and the private sector in that country.

Intermarine owns two Panamanian special-purpose shipping companies, International Ship Finance (Panama) Inc., and Avon Shipping, Inc. These companies each own a Panamanian flag vessel on behalf of Japanese owners, which vessels are financed by Intermarine. These corporations are financing vehicles, and they are only notionally involved with Panama.

Mr. GRIFFIN. I will be glad to read that. The point that disturbs this Senator, however, is that the President chose this irregular method of appointing a negotiator in such an important situation.

I, of course, had hoped that we would have treaties before us that I could consider were in the national interest, and that I could support. But I find so much that is wrong with them, so many ambiguities, so many things that in my humble opinion do not serve the interests of this country, that I must raise the point that they very well could have been negotiated in a hasty, last minute situation, and that disturbs me very much.

Mr. President, I yield the floor.

Mr. SCOTT. Mr. President, I ask unanimous consent that Charles J. Conneely of the staff of the Armed Services Committee be afforded the privileges of the floor during the consideration of this measure.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SCOTT. Mr. President, having listened to the colloquy between the two distinguished Senators, I am going to make my statement in its entirety, without yielding the floor, and then I will be glad to respond to any questions that any Senator might have.

I might say at the outset that I have been advised that our statements are no longer being carried on the radio since it is after the hour of 5 o'clock. Perhaps we can relax a little more at this time.

[Mr. Zorinsky assumed the chair.]

Mr. SCOTT. Mr. President, many thoughts have been expressed by various Senators since we started considering whether to advise and consent to the canal treaties. One suggestion was that we pay some attention to the views of the people of the country. My own mail is becoming heavier, although there is little, if any, change in the ratio of those for and against the treaties. Needless to say the overwhelming majority of the mail is in opposition to ratification. This in spite of every effort by the administration to educate the people to its point of view.

In fact, our chief negotiator, Ellsworth Bunker, stated in a talk in Los Angeles on December 2, 1975, that—

Our presence in the canal has a constituency among the American people—but our negotiations to solve our problem there do not. So, if we are to gain support, we must find it through candid and reasonable discussion.

These discussions, however, have not been productive insofar as changing the public view on giving the Canal Zone to Panama. While the State Department has been attempting to educate the American people to their point of view, we should remember that throughout our history the ultimate decisions in the United States have been made by the American people. Alexander Hamilton

recognized this during the debates on the Constitution in 1788 when he said:

Here, sir, the people govern.

If our votes in the Senate are to reflect the views of the American people, these treaties will be defeated.

My opposition, in a broad sense, is that the treaties are written in a way to meet the demands of Panama and further the best interests of Panama rather than the best interests of the United States. At the present time the United States has possession and control of the canal. From the viewpoint of our own national interest there is no need to negotiate a new treaty. In my judgment, we do not obtain any benefits from these treaties but we lose substantially all of the interests we now have in the Canal Zone. It would appear that our negotiators have been willing to give Panama anything it wanted and that Panama has wanted everything it could get. This has resulted in a one-sided treaty. A treaty that, in my opinion, is not in the interest of the United States or in the interest of the free world.

Perhaps it would be well to initially consider what we have in the Canal Zone that will be lost by the ratification of these treaties. First, of course, is the canal itself, together with the installations, material, and equipment used in its operation. The canal is an important artery of commerce of great value from an economic and military point of view. Ownership will immediately be transferred to Panama, as more gradually will complete control. At the present we have roughly 3,300 American citizens residing in the Canal Zone who are civilian employees of the canal government and approximately 6,200 dependents of these employees. The American military forces consist of roughly 8,500 members with somewhat over 11,000 dependents, plus an additional 1,200 civilian employees assisting our military forces for a total of 30,186 Americans presently residing in the Canal Zone, according to testimony by General McAuliffe, the head of our southern military command. Of course, there are quarters, both military and civilian; 17 military bases; the Panama Railroad; the Thatcher Ferry Bridge crossing the canal on the Pacific side; highways of various kinds, including one crossing the entire isthmus; schools, hospitals, stores, and recreational facilities; the Military School of the Americas where officers from the various Latin American countries receive training and the jungle warfare school where our own troops are trained for jungle fighting. We have several pipelines of various sizes across the isthmus; pier complexes to handle cargo and storage, warehouses for material awaiting transshipment. It should also be recalled that all of the improvements within the Canal Zone were constructed by the United States, or purchased from the French company; that yellow fever and malaria were conquered, sanitary water and sewage systems established; that many American lives were lost in the establishment of this project which has been called the "moonshot" of its day. These facilities are said to have a replacement value of approximately \$10 billion.

I believe the exact figure is \$9.8 billion.

It is said that fewer than 1 percent of the original work force that built the canal were Panamanians.

I do not know, Mr. President, the nature of all of our military facilities within the Canal Zone but there have been newspaper accounts of foreign agents operating within the zone and it would appear that in closed session each Senator should be informed fully regarding additional military use, if any, being made of the Canal Zone. It would appear that this is the southern most base of operation for our military forces in the Western Hemisphere and military aid programs for all of South America are directed from our bases located within the zone.

In addition to the tangible assets that would be lost, the world community might well lose the right to cross the Isthmus of Panama to avoid the much longer route of going around the entire South American Continent to get from the Atlantic to the Pacific ocean at prices shippers can afford to pay. The United States has always permitted transits of the canal at cost and, in fact, in recent years I understand that there has been a deficit in the operation of the canal even though tolls have been raised. But immediately after ratification, Panama will receive 30 cents per ton on all material passing through the canal, plus an annuity of \$10 million per year, an additional annuity of another \$10 million annually if toll revenues permit, and \$10 million for providing fire, police, and sanitary services. There is no doubt that Panama will charge all that the traffic will bear when it is able to fix the rates. Last year I visited five South American countries, Colombia, Peru, Brazil, Argentina, and Chile. Even the leaders of these countries who support transfer of the canal to Panama wanted some provision against increases to tolls. Concern was also expressed about Communist influence and ultimate Communist control of the canal.

We cannot afford to ignore the Russian buildup of its military and naval forces; of its support for revolutionary movements throughout the world; Soviet pilots flying MIG aircraft in Cuba; or Russia supplying weapons and material for Cuba to intervene in the internal affairs of others nation; of Egypt, Ghana, and Somalia finding it necessary to expel the Russians; of Canada expelling more than a dozen Russian diplomats for attempting to bribe Canadian citizens to obtain intelligence information.

Russia using other nations to achieve its subversive goals in Africa is illustrated in a concise statement on page 29 of the February 20 issue of Time magazine entitled, "Moscow's Helping Hands." It points out that a number of Warsaw Pact nations, including East Germany, are aiding Cubans in Ethiopia, Angola, and other places. I ask unanimous consent that this statement be printed at this point in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows.

MOSCOW'S HELPING HANDS

"Doing the Kremlin's dirty work" is the way one Western intelligence official refers to them. Another labels them "Moscow's cat's-paws." These derisive descriptions refer to Communist countries that are busily reinforcing Soviet support for Ethiopia with sorely needed arms as well as military and political expertise.

Cuba has been the most prominent of Moscow's proxies, with 3,000 troops in Ethiopia, 19,000 in Angola and about 4,000 in nine other states. In recent years other Communist-ruled nations—most notably in Eastern Europe—have dispatched elite units to black Africa to serve Soviet foreign policy interests. Presumably, this

strategy has been designed to help Moscow maintain a low profile and thus escape being branded a neoimperialist.

The efficient and ideologically rigorous East Germans have apparently been selected as the most trustworthy ally. First sent to Ethiopia last summer, East Germany's forces there now number an estimated 1,000. Senior East German officers assigned to the Ethiopian Defense Ministry helped to reorganize the country's armed forces, and no doubt have contributed to the planning of the current offensive. Other East Germans have been advising the Ethiopians on the military and ideological training of the police, militia, regular armed forces and youth groups. A hard-lining East Berlin Politburo member, Werner Lamberz headed a delegation that advised Addis Ababa about reconstructing the country's economy on orthodox Marxist lines.

The army and secret police of nearby South Yemen have been learning the latest security techniques from some 2,000 East Germans, assisted by about 4,000 Cubans, some of whom also seem to serve as a kind of Praetorian Guard for the country's repressive Premier Ali Nasser Mohamed. East Germany is also believed to be running three training camps in South Yemen for radical Palestinian commandos. East Berlin has dispatched "Brigades of Friendship," consisting of military, ideological, security and medical cadres, to Angola; in Mozambique, the East German "diplomatic" mission has become the largest in the country, exceeding even that of the Soviet Union. East Germany's increasingly complex African operations are now handled by a special secretariat in East Berlin, headed by Deputy Minister of Foreign Trade Alex Schalk.

Hundreds of Czechs, Hungarians, Poles and Bulgarians are also aiding Ethiopia's forces. Technicians from Prague and Budapest have supervised the arrival of large quantities of weapons, such as AK-47 automatic rifles and machine guns, made by Warsaw Pact countries. Transporting arms and men from Eastern Europe to Ethiopia formerly presented only minor problems, since they were flown from their staging area in Libya over an unsuspecting Sudan. Until they were expelled in May, Russian advisers in Khartoum had tampered with the Sudanese radar network to create a blind spot in its coverage, in effect creating a "corridor" through which Soviet planes flew undetected.

Ominous though the Soviet presence in Ethiopia may be, Moscow may yet bungle this political opportunity as it has bungled others. Despite heavy political and military investments in Ghana, Egypt and Somalia, the Russians were ultimately tossed out of those countries. They and their cat's-paws may start to suffer if the war on the Horn begins to exact a toll. According to intelligence reports, Cuba's military presence abroad is now so unpopular that troopships must leave Havana at night.

Mr. SCOTT. Mr. President, let me read just the first part of the statement.

All these happenings add credence to the warning of the former Chairman of our Joint Chiefs of Staff, Adm. Thomas H. Moorer, in testimony on January 31 before our Senate Armed Services Committee. He said:

The defense and use of the Panama Canal is wrapped inextricably with the overall global strategy of the United States and the security of the free world. I submit that, if the United States opts to turn over full responsibility for the maintenance and operation of such an important waterway to a very small, resource poor and unstable country as Panama and then withdraws all U.S. presence, a vacuum will be created which will quickly be filled by proxy or directly by the Soviet Union as is their practice at every opportunity.

So, Mr. Chairman, and members of the committee, do not be surprised if this treaty is ratified in its present form, to see a Soviet and/or Cuban presence quickly established in Panama. In any event, any confrontation over the "neutrality" of the canal then becomes a confrontation with the Soviet Union rather than with Panamanian guerrillas or terrorists. With the Soviets already on the scene, as Senator Goldwater has pointed out, fighting our way in—with or without the help of the small 1,500 men Panamanian Army will not be without unnecessary loss of U.S. men and material, not to mention loss of the use of the canal.

I believe a permanent United States presence in the Panama Canal Zone to be the only feasible and safe posture for all of the nations of this hemisphere. In saying this I must also emphasize that the year 2000 is meaningless insofar as the requirements for the security of this hemisphere are concerned. The threat, the problems,

the global balance will not change as if by magic in the year 2000, so why should we pass this dilemma down to our children and grandchildren.

Let us remember that Admiral Moorer, as Chairman of the Joint Chiefs of Staff was our No. 1 military man from 1970 to 1974. Although presently retired I believe his opinions are entitled to great weight. Therefore, I asked his views on the testimony of a presently active military commander, Admiral Weisner, the commander in chief of the Pacific, who previously had testified before the Subcommittee on Manpower and Personnel of the Armed Services Committee: The question posed was, if the canal was not under the control of the United States, could he see possible adverse effects on his command in the Pacific?

Admiral Weisner answered:

I can see an adverse effect, Senator Scott. It takes considerable time to move items by sea from the east coast to the Pacific. Without the Panama Canal you are adding 3 weeks time in shipping critical items as ammunition from East Coast ports rather than from West Coast port.

Then I asked him, aside from the time elements, would he see any need for an increase in the naval strength of this country if we did not have control of the canal. He answered:

Yes, we would have to put these critical items shipped by sea over a greater area to accomplish the same purpose.

Would we need a larger navy? and he said:

That is right.

When I asked Admiral Moorer whether he agreed with Admiral Weisner, he responded:

I agree with him on every point.

In fairness, I believe the treaty supporters agree that the Panama Canal is very important to our national security. Treaty supporters constantly argue that it is "use rather than ownership that is important" and that the United States can better assure use of the canal by ratifying the present treaties. Secretary of Defense Brown in his testimony before the Foreign Relations Committee, stated:

Use of the canal is more important than ownership.

He later noted:

I think the canal is more likely to remain open to us with friendly Panama and a friendly Latin America than in a situation where the people of those nations look at the canal as an American ownership of the canal, and it works as an insult to them, as a threat to them.

There seems to be a strange logic that the United States would be in a better position if it reduced its present military installations in the Canal Zone from 17 to 4 after the treaties are ratified and entirely withdraw our military presence from the canal in the year 2000. The argument goes that, with a friendly Panama, the canal would likely be more available for the use of U.S. commercial and military ships.

What is ignored here is to whom we are giving the canal—today to General Torrijos and tomorrow to who knows what government in Panama, given that country's political instability.

Let us discuss for a moment who General Torrijos is. He is the dictator of Panama who took over that country from a lawfully

elected government "at the point of a gun" in 1968. He is the same dictator who has increased the national debt of Panama from some \$167 million to over \$1.5 billion, the highest per capita national debt in the world. He is the dictator who has compiled a dismal record on human rights, according to Freedom House. He is the same dictator who has open admiration for Castro and who, on his return to Panama after the signing of the treaties in Washington last fall, sent the following message to Castro:

On my return trip to my country and flying above the sky of Cuba, I salute you with friendship always . . . in Latin America, our name is associated with feelings about dignity that have been channeled toward a shameful period of colonialism.

This is the same Fidel Castro who has 19,000 to 20,000 Cubans in Angola and several thousand Cubans in Ethiopia and, apparently, sees a need to have Soviet pilots fly air defense missions for him in Cuba. Torrijos is the same dictator who has never met the American Governor of the Canal Zone. This according to testimony of the Governor. I asked Governor Parfitt, when he testified before the Subcommittee on Separation of Powers of the Judiciary Committee, his personal opinion as to Communists within the structure of the Government of Panama.

Governor Parfitt, an active major general in our Army, responded:

I believe the general consensus is that the Panamanian Government itself is not Communist-leaning, but advisers in various places within the government are in fact Communists.

I asked, "This would be advisers to General Torrijos? Some of his advisers are believed to be Communists?"

Governor Parfitt answered, "That is correct."

Let me add that Governor Parfitt also testified at this hearing that our Government has not asked him whether the proposed treaty should be negotiated.

It seems untenable that the top U.S. official, the Governor of the Canal Zone, would not be asked his opinion before the treaties were signed.

But, Mr. President, it does not appear that we would be giving up our \$10 billion canal to any great or reliable friend of the United States. This may in part account for the fact that Americans are bombarding the Senate with mail against ratification.

We are told that it really does not matter what General Torrijos is—a dictator—a friend of Castro's. The important thing is that the United States has the right to intervene after the year 2000 if the neutrality of the canal is violated. In addition, we also would be permitted "expeditious passage" of our ships during time of crisis.

As a practical matter, what does each of them mean? The right to intervene presumably means that the United States could move troops back into the Canal Zone if we felt that the neutrality of the canal was violated. What would be the effect of that if Panama violated the neutrality of the canal? Would we have the military run the canal after the year 2000? The same could be said of the "expeditious passage" of our ships. Does anyone really think that the United States would land military forces in Panama if our ships did not get what we thought was "expeditious passage" during a crisis? What is to stop the Panamanians from having a

"slow-down" during a crisis in which they did not take our side—for example, with Cuba or any Communist nation.

As a practical matter, what is the advantage of intervention or "expeditious passage" when one compares it to current U.S. presence in and control over the Canal Zone? The entire Neutrality Treaty, even the proposed clarifying amendments, remind me of a "shell game." We are never going to know exactly what our rights are, whether after giving away title and control we will have the fortitude to return to the Canal Zone to enforce our rights, whatever they may be. If his treaty was a contract it might well be held to be void because of vagueness. Today we own the Canal Zone, we control it, our troops are there. I see no reason to change from a certain position of strength to an uncertain one of potential weakness.

U.S. MILITARY PRESENCE IN CANAL IMPORTANT

Admiral Holloway in his testimony before the Armed Services Committee stated that—

Because of the importance of the Canal, as a military man, I would very much like to have seen the complete responsibility and control of the operation and defense of the Canal in U.S. hands . . . We (the military) deplore the situation that leads us to have to resort to these treaties in order to ensure our continued use of the Canal.

Admiral Holloway also made clear his view that—

Without bases, the introduction of U.S. forces would take longer and be more costly.

Admiral Moorer stated:

I believe a permanent U.S. presence in the Panama Canal Zone to be the only feasible and safe posture for all of the nations of this hemisphere.

In response to a question on the importance of the United States having rights in Panama after the year 2000, Admiral Moorer responded:

I think it is mandatory that we maintain a presence through one kind of agreement or another.

INTERNAL THREAT TO CANAL

Some type of insurgency from inside of Panama is generally considered to be the most likely threat to the canal in the event the treaties are not ratified. Lieutenant General McAuliffe, the U.S. Southern commander, our top military man in the Canal Zone, stated in his testimony before the Armed Services Committee, that with forces under his control:

Under the most likely threats, we can limit such interruptions (to the Canal operation) to ones of short duration.

General McAuliffe also testified that sabotage of the canal was a difficult job.

In this regard, Admiral Moorer testified:

The most likely attacks can be handled with present forces. So far as the fear of another Vietnam is concerned, there is absolutely no comparison.

He added that—

The Canal itself is tough. One hand grenade, or stick of dynamite will not bring the Canal operations to a complete halt as some suggest. While I do not doubt that

there could be student demonstrations motivated from time to time by—to quote Ambassador Bunker—“persons trained in communist countries for political action,” I do not think they comprise a threat that will bring about closing of the Canal or serious confrontation.

FORCES REQUIRED TO DEFEND THE CANAL

General McAuliffe testified before the Armed Services Committee:

If we are looking at simply a period of increased tension, then I would say my forces would need to have some modest augmentation security and surveillance forces in order to maintain our capability for defense over a sustained period. If on the other hand, we are faced with widespread violence . . . civil disturbances, guerrilla action and insurgency, then . . . my estimate (of reinforcement required) runs upward of about the sum total of 40,000 troops. . . .

Admiral Moorer testified:

The proponents of these treaties proclaim again and again that the only way to handle the internal threat is to ratify the treaties and give up the Canal. It is repeated over and over again that we are not interested in ownership, only continued use, which can be acquired only with the help of the Panamanians. Otherwise, they say, 100,000 troops will be required to defend the Canal and we will immediately be plunged into another Vietnam. I do not accept any of these scare statements. In the first place, a major part of the income of Panama is due directly to the existence of an operating Canal. If the Panamanians make an effort to sabotage the Canal, they are the ones that will be harmed. Most of them know this. In the second place, it is a gross overstatement to suggest that 100,000 men will be required to defend against saboteurs even if they are supported by the 1500 men Panamanian armed forces. I estimate that 50,000 or less would be adequate even in the face of an unusually large scale determined effort with outside support.

ATTITUDE OF LATIN AMERICA TOWARD TREATIES

Mr. President, one of the great myths surrounding these treaties is the view that the United States will alienate all of Latin America if we do not ratify these treaties. This point of view would have us believe that all of Latin America strongly supports U.S. turn-over of the canal to Panama.

Let us address this point. When former Deputy Secretary of Defense Clements testified before the Armed Services Committee, he indicated that Robert Hill, former Ambassador to several Central and Latin American countries, asked him to inform the committee that his contacts indicated most of these countries did not favor the treaties, because they were “convinced it would be an added cost to their economy” and because they were concerned “with respect to the security of the canal” since most of their trade depends upon efficient and economical operation of the canal.

At a meeting of the Organization of American States last year, the nations of Latin America passed a resolution by an overwhelming vote of 17 to 0 with three absentees to reaffirm:

The principle that the Panama Canal tolls should exclusively reflect the actual operating costs.

Panama abstained from this vote and apparently implicitly criticized the Organization of American States (OAS) for even considering the matter.

When Lt. Gen. Gordon Sumner, Chairman of the Inter-American Defense Board, testified before the Armed Services Committee he stated that the 19 countries of Latin America which comprise the Inter-American Defense Board:

Look at this Canal as the "Canal of the Americas" and it is important to those countries.

When asked concerning the views of Inter-American Defense Board countries on the treaties, General Sumner stated that he had talked to:

The Presidents, the Ministers of Defense and the high level military people of the 17 countries besides the United States and Panama, and that all express a very grave concern about the treaties.

He testified that—

They see the possibility here for conflict. They also see the possibility for mischief making by the Communists. * * *

He went on to add that all of these countries have "some type of Communist subversion or terrorism going on in their countries." General Sumner indicated that all members of IADB has "expressed reservations about the fact that the United States will no longer be in Panama. Once we do not have the bases there, then the entire area becomes destabilized."

Mr. President, from my own visits to Latin America made last year, I can confirm the views of both Ambassador Hill and General Sumner. There was considerable concern, particularly in countries on the west coast of South America concerning possible toll increases. Without question, the countries I visited in Latin America were worried about the possible involvement of Communists in Panama once the U.S. presence there was reduced or eliminated.

VIEWS OF RETIRED OFFICERS

Maj. Gen. J. Milnor Roberts, retired, executive director, Reserve Officers Association, testified before the Senate Foreign Relations Committee and indicated that of 282 admirals and generals who responded to a letter from him on the canal treaties, 278 opposed. That would only leave four in support of the treaties. Let me cite some of the officers opposed: Gen. Lyman L. Lemnitzer, U.S. Army; Adm. John C. McCain, the former commander in chief, Pacific; Gen. Charles L. Bolte, former Vice Chief of Staff, Army; Maj. Gen. Ernest L. "Mike" Massad, former Deputy Assistant Secretary of Defense; Maj. Gen. Kenneth O. Sanborn, former commander, U.S. Air Force—South Panama; and Brig. Gen. John S. D. Eisenhower, U.S. Army Reserves, son of the late President Eisenhower. These are among the flag rank officers opposed to Panama Canal treaties signed by President Carter on September 7.

Mr. SARBANES. Mr. President, will the Senator yield at that point?

Mr. SCOTT. Mr. President, I decline to yield until I finish my statement. Then I will be glad to yield.

Several more names might be of interest to Senators:

Lt. Gen. Robert W. Colglazier, Jr., AUS, retired, former Deputy Chief of Staff—Logistics.

Lt. Gen. Stanley "Swede" Larsen, USA, retired, former Deputy Commander in Chief, Chief of Staff, U.S. Army—Pacific.

Vice Adm. J. F. Bolger, USN, retired, former Deputy Chief of Naval Personnel.

Maj. Gen. Glenn C. Ames, AUS, retired, nationally recognized leader, also, in the National Guard Association, Association of the U.S. Army, and former adjutant general of California.

Maj. Gen. Hombor I. "Pete" Lewis, USAFR, former Chief of Air Force Reserve.

There is even a Carter:

Maj. Gen. Leslie D. Carter, USA, retired, of Midlothian, Va.

As General Roberts testified:

Both Secretaries Rusk and Kissinger brought out the importance of grassroots knowledge. I suggest to you that right here we have more grassroots than you have seen for a long time, and the grassroots are overwhelmingly against the proposed treaty in Panama.

I know that much has been made of the support of the current members of the Joint Chiefs of Staff for the proposed treaties. In this regard, let me cite the testimony of Admiral Holloway before the Armed Services Committee who stated:

Because of the importance of the Canal, as a military man, I would very much like to have seen the complete responsibility and control of the operation and defense of the Canal in U.S. hands.

He further stated:

We (the military) deplore the situation that leads us to have to resort to these treaties in order to ensure our continued use of the Canal.

Admiral Holloway made clear his view that—

Without bases, the introduction of U.S. forces would take longer and be more costly.

It would appear that from strictly a military point of view the JCS would have preferred to have military personnel and bases in Panama, but that when they considered the political situation there the JCS came down on the side of the treaties.

Mr. President, the Commander in Chief favors these treaties. He has said so many times on nationwide television and otherwise. Active military personnel have been taught the chain of command concept that they are subject to higher authority. It is ingrained in them. But once they have retired a greater freedom exists to exercise their own independent judgment. To me that explains why there is a difference of opinion—diametrically opposed positions between the active and retired military leaders.

It appears to me that giving up the canal will weaken our Nation and I cannot help think of Neville Chamberlain's efforts to obtain "peace in our time" shortly before World War II. In my judgment we should reject both treaties as being contrary to the national interest.

Mr. President, I am glad to yield to the distinguished Senator from Maryland.

Mr. SARBANES. Mr. President, I wish to address the point that the Senator from Virginia just made with respect to the act of the Joint Chiefs of Staff. The subject has been discussed before in the course of this debate, and I think it is an absolute disservice to the acting members of the Joint Chiefs of Staff to imply that on this issue they are not reflecting their own true personal opinions.

We had the Joint Chiefs before our committee and directly put that question to them. General Brown was very forthright in indicating that he understood his responsibilities when he appeared

before a congressional committee in response to direct questioning, that he gave his personal opinion, that that was what he was doing, that he had no difficulty with disagreeing with the Commander in Chief in those circumstances if, in fact, he disagreed. He then went on to voice his very strong support for these treaties.

Other retired members of the Joint Chiefs and service chiefs—Gen. Maxwell Taylor, General Ridgway, Admiral Zumwalt, General Westmoreland, General Norstadt—have endorsed these treaties. People may disagree with their judgment, but I hope that no one is going to question either the motives or the honesty or the integrity of either the Acting Joint Chiefs or former Joint Chiefs.

I disagree with the judgment or the wisdom of retired members whose names the Senator from Virginia has cited, who oppose the treaties, but I do not question their honesty or their forthrightness. I think it is a disservice to the Joint Chiefs to suggest that they are taking their position when it does not represent their true views.

Mr. SCOTT. I say to the distinguished Senator from Maryland that I have very high regard for the military. I have been privileged to serve on the Armed Services Committee since coming to the Senate. I have become personally acquainted with a large number of them, and I do not believe it is a question of their integrity. I think it is a question of indoctrination over the years. The Commander in Chief favors these treaties and his subordinates that are holding office. If we would put it on a more personal level, if in the Senator's own office, as a Member of the U.S. Senate, the Senator took a certain position—and we are talking about civilians now—I suspect that the members of the Senator's staff would take a similar position. When the Commander in Chief speaks, well, General Singlaub should listen. Perhaps he did not listen closely enough and he was called back and reprimanded.

Mr. President, let me read a letter that I received from a constituent that bears directly on this point. It is addressed to me, Senator William Lloyd Scott, U.S. Senate, Washington, D.C.

DEAR SENATOR SCOTT: As a registered and active voter of Virginia I am writing to ask that you vote against ratification of the Panama Canal Treaties. I must also request that you not use my name in this matter as I have been told indirectly to support these treaties by General David C. Jones, Air Force Chief of Staff.

I am enclosing a copy of a message that General Jones sent to all commanders. Paragraph 5 makes it quite clear that we as military personnel are expected to support these treaties.

Although I cannot speak out publicly against the Panama Canal Treaties, I will not speak out in support of them either. * * * I would appreciate it if you and your staff not reveal how you received the enclosed message.

The unclassified telegram has a number of identifying features indicating the wide distribution it received. With these features removed, it reads to the following commands to which it was referred. And, Mr. President, I ask unanimous consent that this telegram from General Jones with regard to the Panama Canal Treaties be printed at this point in the Record in response to the questions raised by my distinguished colleague from Maryland. I will be glad to let him have a copy if he cares to read it in its entirety.

There being no objection, the telegram was ordered to be printed in the Record, as follows:

For Commanders from General Jones.

Subject: Panama Canal Treaties

1. On 10 Aug. 1977 Panamanian and U.S. negotiators announced agreement in principle on a conceptual framework for two new treaties. One, the neutrality treaty, provides for the permanent neutrality of the canal; the second, the Panama Canal Treaty, deals with the operation and defense of the canal. Both treaties would enter into effect after ratification and document exchange processes are complete. The neutrality treaty will be of indefinite duration, whereas the Panama Canal Treaty will terminate in all aspects on 31 December 1999.

2. The Panama Canal is a major defense asset, the use of which enhances United States capability for timely reinforcement of United States forces. Its strategic military advantage lies in the economy and flexibility it provides to accelerate the shift of military forces and logistic support by sea between the Atlantic and Pacific Oceans and to overseas area. United States military interests in the Panama Canal are in its use, not its ownership. The proposed treaties would assure that access to and security of the Panama Canal are protected in time of war and peace.

3. As President Carter has stated, "We will have operating control and the right to protect and defend the Panama Canal with our own military forces until the end of this century. Under a separate neutrality treaty we will have the right to assure the maintenance of the permanent neutrality of the canal as we may deem necessary."

4. The Air Force actively participated in the development of all defense related aspects of the proposed treaties, and fully supports them. They would provide a basis for development of a continuing friendly relationship between the United States and Panama which would be of significant importance in insuring that the Panama Canal would be available to the United States when needed. Once the U.S. no longer operates the canal, the proposed neutrality treaty would provide an adequate basis for safeguarding our interests in the canal.

5. It is important that our personnel, particularly our senior people, understand our support for the proposed treaties.

Mr. SARBANES. May I say to the distinguished Senator from Virginia that the telegram is not responsive to the question I raised and the question, to put it again, is does the Senator from Virginia question or doubt that the endorsement of these treaties by the current Joint Chiefs of Staff represents their own personal view as to what was in the best interests of the United States?

Mr. SCOTT. No, I do not.

Let me read the Senator what I said.

Active military personnel have been taught the chain of command concept that they are subject to higher authority. It is engrained in them, but once they have retired a greater degree of freedom exists to exercise their own independent judgment.

To me that explains why there is a difference of opinion, diametrically opposed positions between the active and retired military leaders.

Mr. SARBANES. General Brown, if the Senator will yield further, stated in his testimony before the Foreign Relations Committee, first of all, that—

The rules are quite clear that in response to interrogation before a congressional committee we answer fully and factually. The public record is quite clear where we have been in opposition to a Presidential decision.

And he then cited two examples and then went on to say, and I am now quoting General Brown, Chairman of the Joint Chiefs of Staff:

So it is wrong to say that in the case of the Panama Canal we are doing this only because a decision has been made. I have personally worked very diligently for 4 years to achieve these treaties with Ambassador Bunker and subsequently with Ambassador Linowitz also and as we have testified the key point that finally found its expression in a treaty of neutrality was conceived within the Defense Department. We have worked hard for this treaty because we feel it is right.

And I am only asking the Senator from Virginia not to question—he may disagree with General Brown's judgment, he may quarrel with where he comes down on this issue—but I would hope he would not question General Brown's own personal integrity with respect to the position he has taken and enunciated so clearly on this issue.

Mr. SCOTT. Let me say that I have not questioned the integrity of General Brown. I have defended General Brown on two occasions when his name was brought before our Senate Armed Services Committee for statements that he had said that were subject to criticism by some. But I would ask the distinguished Senator how would he account for the vast difference in opinion between the retired military and the active military? I do not believe there is the slightest doubt numberwise, rankwise, that the retired military are opposed to this treaty. You can name a few names.

Mr. SARBANES. That is right.

Mr. SCOTT. But you cannot name a great many names. The percentage of the retired military are against this treaty.

Mr. SARBANES. In response to the Senator from Virginia, first of all I would say that there are a number of very distinguished retired military who support the treaty, some of the best military leaders we have had. Second, the current joint chiefs are the ones who have the responsibility for protecting our defense and strategic interests and they, therefore, are required to analyze the options very carefully and the choices that are before the country.

Let me just quote General Wilson, the Commandant of the Marine Corps, in testimony before the Senator's committee, not before the Senate Foreign Relations Committee, before the Committee on Armed Services:

General Wilson said:

I can assure you that no one has put any pressure on me nor would I succumb if they did. I reach my position independently and I believe the other chiefs reach their own views independently.

These are the active people who have the responsibility and they have to make some tough judgments and they have to examine the matter very carefully.

Again the Senator may end up not agreeing with the judgment they make, but I do not think their good faith, their straightforwardness, and their honesty in reaching that judgment should be put into question. That is the point I am addressing. I think the distinguished Senator from Virginia ought to, as I think all of us have tried to do, accept the motivation and the honesty of the people on either side of this debate and not question their own personal view when they have clearly stated that this is what their opinion represents in response to direct questions before the congressional committees.

Mr. SCOTT. Mr. President, I have twice responded to the distinguished Senator from Maryland. Active military personnel have been taught the chain-of-command concept that they are subject to higher authority. It is engrained in them. But once they have retired a greater freedom exists to exercise their own independent judgment.

To me this explains why there is a difference of opinion, diametrically opposed positions between the active and retired military leaders.

I cited a few minutes ago the response to the letter from Major General Roberts, retired, executive director of the Reserve Officers Association, where of 282 admirals and generals who responded to a letter from him on the canal treaties, 278 opposed, less than 2 percent for, less than 2 percent favored the treaty.

And I would ask the distinguished Senator from Maryland, because I have attempted to respond to him, why does he believe that there is such a difference between the retired military and the active military, because undoubtedly there is. I have put in the Record additional names, not wanting to take the time to read those names. I can read others if need be.

Mr. SARBANES. How many names did the distinguished Senator from Virginia cite in the course of this canvas?

Mr. SCOTT. Two-hundred eighty-two admirals and generals who responded to a letter from him on the canal treaties. Two-hundred seventy-eight were opposed. Now this is the executive director of the Reserve Officers Association. I think that is a respected group.

Mr. SARBANES. What was the nature of the letter which he sent?

Mr. SCOTT. I believe it is shown in the record of the Armed Services Committee, and I would be glad to read from the report of the committee.

Let me just start reading from page 587 of the hearings before the Committee on Foreign Relations, the distinguished Senator's committee. He says:

Well, to take a look at that impression I wrote a personal letter to all of the flag-rank members of our association which are in excess of 700, and included many retired regulars, many regular officers as well as reserve and guard. This is what I said to them in part:

"You are certainly aware that the administration has mounted one of the most massive public relations campaigns ever directed from the White House in an effort to convince the American people that the treaty will be good for them. A significant part of the pro-treaty propaganda is designed to show that the military security of the United States would not be damaged. The present active duty Joint Chiefs have been persuaded to give their blessing to the treaty, and the chairman, General George Brown, has attempted to line up some flag-rank retirees on his side. However, Admiral Moorer, Admiral Burke, and other distinguished senior officers who are no longer subject to disciplinary action because they oppose administration policy, are on record in opposition to the treaty for very cogent reasons.

"It is my personal belief that the overwhelming majority of American military leaders are opposed to the 'pay-away' of the American Canal in Panama. Those of us who are not 'muzzled' should speak up so that our fellow citizens are not misled into the conviction that military leaders think the treaty is the greatest thing since we landed on the Moon."

As a result of that I have received replies and just this morning got a couple of more from 282 admirals and generals of the Armed Forces, from the regular component, the Reserve, the National Guard, Army and Navy and Air Force, Marines, and Coast Guard.

Of the 282, 278 opposed the treaty.

That is better than 98 percent of those responding opposed the treaty.

Mr. SARBANES. Will the Senator yield?

Mr. SCOTT. Certainly.

Mr. SARBANES. The letter to which they were responding was a solicitation, in that they were asked to join in public opposition to the treaties.

Mr. SCOTT. Well, it would appear so.

Mr. SARBANES. Yes, indeed, it certainly would appear so. It was a direct appeal that they join with General Roberts in opposing the treaties.

Mr. SCOTT. The distinguished Senator is placing his own interpretation, because why would not the people who felt strongly the other way—they were afforded the opportunity, and only four of them said to the contrary. They were not afraid of being disciplined.

Mr. SARBANES. They obviously did not want to join. How many letters were sent out?

Mr. SCOTT. The record says approximately 700.

Mr. SARBANES. 700. So well less than half of those to whom the letter was sent responded.

Mr. SCOTT. Well, I am told that when 10 percent respond, the Library of Congress has indicated to me that that is a good response, and I think this is an excellent response.

Mr. SARBANES. That is a good response to a communication from a Member of Congress. It may not be a good response when an association is communicating with its own members. But in any event—

Mr. SCOTT. It is certainly a valid sample, this response is.

Mr. SARBANES. As a factual matter, the response to a letter soliciting people to join in a matter—

The PRESIDING OFFICER (Mr. Allen). Under the previous order, the treaty debate is to end at 6 o'clock. The time has run over 5 or 6 minutes, and the Chair is unable to indulge the Senators further.

Mr. SCOTT. Mr. President, I appreciate the courtesies of the Chair.

ADDITIONAL STATEMENTS SUBMITTED

Mr. HATCH. Mr. President, press accounts have recently indicated that major issues of the Panama treaties were not resolved until the concluding weeks of the period of negotiations. It has also been asserted that these concessions were made as a result of pressure brought by Panama through a threat to reveal embarrassing actions taken covertly by the United States.

The Senator from Utah is not in a position to prove or disprove the allegations about Panamanian threats. However, it is possible to establish that significant concessions—this Senator would call them rash and dangerous concessions—were made at the last moment. There was certainly no need to rush this treaty, or to make such concessions. Yet the record now can show that such concessions were made in fact.

The Department of State has recently made available a July 11 draft of the Panama Canal Treaty. The draft made available is in Spanish and cannot be printed in the Congressional Record. However, a brief analysis of the July version has been made by staff, and shows conclusively that major decisions were made after that date.

Mr. President, I ask unanimous consent that the analysis and comparison of the July draft be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

According to a recently obtained preliminary draft of the Panama Canal Treaty, a number of significant concessions were made between July 10, the date on this document, and September 7, the date of signing of the final versions.

Several articles included in the official version do not exist in the preliminary draft. The latter contains no provisions for employment with the Panama Canal Commission (Article X, official document), or injunction against American Commission employees undertaking political activity in Panama (Article V). Similarly, the text does not address itself to the display of the Panamanian or American flag (Article VII). There is no mention either of the procedure to be used in the statement of possible disputes about the interpretation of the texts. (Article XIV).

A number of articles are substantially different. Whereas the official text (Article XII) calls for an American-Panamanian feasibility study of a possible sea-level canal, the preliminary draft flatly gives the U.S. the right to build it, with construction to begin fifteen years after the entry into force of the treaty. In the latter document, the clause giving Panama veto power over construction of a canal in a third country by the United States does not exist.

Differences exist with regard to the payments to be made to Panama. The annual \$10 million payment in return for the public services Panama assumes in the former Canal Zone is given no mention. (This draft does not include details on the other payments, which were apparently still being negotiated at the time).

There are also variations with regard to the procedure to be followed in connection with certain lands (Article IX). The principal one relates to lands to which the licensing procedure is not applicable, or ceases to be applicable following the entry into force of the treaty. Under the July draft, individuals who own real property located on these lands may continue using the land at a cost no higher than that being paid before the enactment of the treaty. Under it, furthermore, Panama must allow the individuals to buy the land at a price which cannot exceed \$500 an acre. In connection with the transfer of U.S. government property to Panama, (Article XII, official treaty) the Panama Railroad is not mentioned.

Under Article VIII of the official treaty, up to 20 officials of the Panama Canal Commission qualify for diplomatic immunity. Under the July draft, by contrast, a far higher number, 75, may receive it.

The provisions for the termination of the agreement are different in the two texts. While the final version calls for the treaty to expire on December 31, 1999, under the July draft it would end on that date or any time thereafter, with one year's prior notice required of the party wishing to terminate the agreement.

In the July draft, the section of the Annex detailing functions which may thereafter be performed by the Panama Canal Commission is not present. The section listing the functions which the Commission shall not perform exists in the preliminary draft, but two clauses are omitted from it. These are "commercial pier and dock service, such as the handling of cargo and passengers" and the blanket statement, "Any other commercial activity of similar nature, not related to the management operation or maintenance of the Canal." At present pier and dock service is one of the principal sources of revenue of the Panama Canal Company.

In comparing the finished English and Spanish version of the Panama Canal Agreement, a number of discrepancies come to light. The Spanish text "to handle" as the translation "to manage" in the context of American activities; similarly, it describes the Panama Canal Commission as having a "Board of Directors" which will "direct," while the English text refers to a "Board" which will "supervise." It is interesting to note that these problems are not present in the Spanish language July draft. Both "to manage" and "shall be supervised by a Board" are translated accurately.

DRUG TRAFFICKING IN PANAMA: AN APPRAISAL OF THE PROPOSED PARTNER OF THE UNITED STATES

Mr. HELMS. Mr. President, tomorrow, under a unanimous-consent agreement, the Senate will go into a closed session to discuss the allegations that have been brought against Panama with regard to trafficking in drugs. Such a procedure has both advantages and disadvantages. While it will allow Senators to examine and debate material now sealed in the files of the Select Committee on Intelligence, it will also prevent the American people from forming their own conclusions of the evidence. We have seen in the fruits of the Warren Commission the distrust and uncertainty which such a

procedure breeds when it is applied to deeply felt, emotional issues. There must be no hint of coverup, no suggestion that secrecy has been imposed to silence politically damaging revelations.

If these treaties are ratified, the American people will be entering a 22-year partnership that confers great benefits upon a foreign government—benefits that could have been kept for the American people. The American people will be justifiably angered if it turns out that the Panamanian Government is controlled by an international gangster.

A major problem involved in the discussion of such matters in a closed session is that it imposes serious constraints upon any Senator who participates. A Senator must bend over backwards to avoid discussing privileged matters; he has to err on the side of too much caution. Sometimes the procedure has the effect of putting a gag upon knowledge already in the possession of a Senator before he is given access to classified matters. Since the Senator from North Carolina has not yet had access to the files of the Intelligence Committee, he would like to discuss today the publicly known issues and facts before the record is closed. What I hope to do today is to lay down some basic principles as a public framework for the closed debate tomorrow.

BASIC PRINCIPLES

Here are the considerations we ought to keep in mind:

First. The issue is not an internal matter of Panama. The Panamanian drug traffic has very much involved the health and welfare of the United States.

Second. The Panamanian drug traffic is not a matter which is to be viewed as a problem in which many nations are involved in the general context of international relations; we have always had a special relationship with the Republic of Panama.

Third. Panamanian drug traffic has itself been stamped with a special character; the role of Panama has been unique and far reaching.

Fourth. The overwhelming evidence on the public record of the Panamanian drug traffic in the early seventies is not to be dismissed as past history; the participants today occupy positions of trust in the present regime in Panama.

Fifth. The absence of aggressive investigative or diplomatic action by the United States since the signing of the Kissinger-Tack agreement of February 1974 is not to be taken as evidence that Panama has been "cleared"; rather, the obvious self-interests of both governments suggest either a coverup or a temporary cessation of activity during negotiations and Senate debate.

Sixth. Although it is important to sift all evidence relating to the complicity of Omar Torrijos himself, Torrijos himself is not the issue. The focus should be on Panama as such; its form of government; its record of enforcement and cooperation over the past 10 years; and the complicity of a broad range of Panamanian officials and their relatives and friends.

Seventh. The evidence we are looking for with regard to the Panamanian dope traffic does not have to be limited to the type of evidence that would convict in a U.S. court. We are debating the

conferring of a great benefit in Panama, at great expense to ourselves, and we are not trying to convict in a court of law.

Eighth. Finally, it is not correct to treat the Panamanian drug problem as a side issue to the treaties; for the treaties would place the United States in an intimate and mutual partnership with Panama that would be unparalleled in our relationship with any other nation in the world. Moreover, the provisions of the treaty and its related agreements place our Nation in the position where the United States is specifically prohibited from enforcing drug traffic controls in a U.S. Government facility that has great potential for criminal abuse.

THE EVIDENCE

The evidence now available shows that Omar Torrijos has aided, abetted and protected the drug traffic in Panama. In brief form, the evidence for the complicity of high Panamanian officials in the narcotics traffic is this:

First. Panama's geographic location and its transportation facilities make it an ideal location for the transfer and control of narcotics shipments either by sea or by air.

Second. In a 1973 report based on testimony and on-the-spot investigation by the House Merchant Marine Committee, Panama was found to be the conduit for one-twelfth of the heroin coming into the United States—enough for the daily supply of 20,000 addicts.

Third. Cases involving drug trafficking reached the highest levels of the Panamanian Government. Omar Torrijos and his Foreign Minister Juan Tack led public efforts to discredit and cover up revelations of such drug trafficking incidents.

Fourth. Moises Torrijos, brother of Omar, was indicted by a grand jury of the U.S. District Court for the Eastern District of New York as a coconspirator in a New York case in which five Panamanians were convicted and imprisoned for narcotics trafficking. The indictment still stands, and Moises Torrijos is liable for arrest if he steps on U.S. soil.

Fifth. According to the sworn statement of Leland L. Riggs, Jr., former Customs attaché at the U.S. Embassy in Panama, a warrant had been issued to arrest Moises Torrijos on the basis of the indictment, and that he, Riggs, was ordered to arrest Moises upon his scheduled arrival in the Canal Zone from Spain by passenger ship. However, Moises was forewarned, disembarked in Venezuela, and arrived by air, landing in Panama. Mr. Riggs points out that only the U.S. State Department and the CIA had advance knowledge of the planned arrest, and "Moises Torrijos could only have been alerted to the planned arrest by U.S. authorities."

Sixth. John Ingersoll, then Director of the Bureau of Narcotics and Dangerous Drugs, traveled to Panama, met with Col. Manuel Noriega, Chief of Panamanian Intelligence, and with Gen. Omar Torrijos, and discussed the indictment and warrant.

Seventh. Moises Torrijos had earlier been Panamanian Ambassador to Argentina, and had been declared persona non grata for his activities in that country. Even though he was persona non grata in Argentina, even though he was indicted in the United States, even though his government had been informed of the indictment,

he was named Ambassador to Spain. He now enjoys high favor and currently is also director of treaty information for Panama. Despite this new responsibility, Moises Torrijos has never come to the United States since his indictment, not even for the treaty signing ceremony on September 7, 1977.

Eighth. The arrest of Raphael Richard Gonzales at the John F. Kennedy Airport on July 8, 1971, with 151 pounds of heroin, led to a series of arrests and convictions of Panamanians and to the indictment of Moises Torrijos. Richard was the son of the Panamanian Ambassador to the Republic of China (Taiwan) and was attempting to use a diplomatic passport to bring in the heroin without customs inspection. Under international law, Richard was not entitled to a diplomatic passport; yet he bore such a passport signed by the Panamanian Foreign Minister, Juan Tack. Richard had made successfully four previous such deliveries of heroin undetected.

Ninth. The arrest and conviction of Joaquin Him Gonzales, air traffic controller of Panama's Tocumen International Airport, pointed up the crucial role which Tocumen has played in international smuggling. Him directed planes carrying millions of dollars worth of heroin to special areas of the airfield, where the cargoes were guarded by uniformed members of the Panamanian Guardia Nacional. Him was arrested in U.S. territory in the Canal Zone, and convicted in Texas, where he had arranged heroin deliveries. He was also an associate of Moises Torrijos.

Tenth. The Yolanda Sarmiento case points up the role of the Colon Free Zone in international smuggling. Intended to be a duty-free location for the import, display, and sale for export of manufactured goods, the Free Zone is not under the control of Panamanian Customs, but of the Guardia Nacional. According to Leland Riggs, Jr., the U.S. Customs attaché in Panama, Yolanda Sarmiento was responsible for shipping 100 pounds of heroin monthly to the United States. This heroin was stored in the Colon Free Zone. The Free Zone is 50 miles across the isthmus from Tocumen Airport; reportedly the heroin was shipped from the airport to the Free Zone in Guardia trucks. The United States recently agreed to the expansion of the Free Zone by leasing Old France Field, which is in U.S. territory, to Panama for \$1 a year.

Eleventh. Another Torrijos brother, Hugo, is in charge of the Panamanian state gambling casinos and the national lottery, operations which generate large amounts of unaccounted-for cash. He also owns a large nightclub which is a center for prostitution and retail drug dealing. The arrest of Gerado Sanclemente for narcotics in June 1977 created consternation. Sanclemente is married to a cousin of the Torrijos brothers; he was induced to come to Panama from Colombia and to set up various business enterprises under their protection. He lived in a building owned by Hugo, which was also the offices of the National Casinos. His apartment in this building was the center of drug dealing. According to depositions taken in Panama, Hugo intervened to urge Sanclemente to give himself up. Subsequently, Sanclemente was taken to a medical clinic near a private airport used by the Guardia and Government planes; he escaped from the clinic and was taken away by a waiting plane.

Twelfth. A third Torrijos brother, Marden, is traveling ambassador extraordinaire for the Government of Panama. Although no further information is available as to his duties and activities, the documented use of diplomatic passports for narcotics trafficking casts a cloud over the legitimacy of his appointment.

Thirteenth. Several investigative sources report that Omar Torrijos is a business partner with Frank Marshall Jimenez in several businesses relating to transportation, including trucking firms, bus-lines, and nonscheduled airlines. Also included in their interests is a freight forwarding firm that controls shipments into and out of the Colon Free Zone. Marshall is a fugitive from Costa Rica, a former member of the Costa Rican legislature, who used his legislative immunity to cover extensive liquor smuggling operations. When his immunity was lifted by Costa Rican authorities and arrest threatened, Marshall fled to Panama.

IMPLICATIONS

The facts related above have profound implications for the consideration of the Senate during the debate on the Panama Canal treaties. The first considerations go to the integrity of the Panamanian Government; the second go to the effect on the treaties of the treaties themselves.

It is sometimes said that the integrity of the Panamanian Government or the character of its leaders are irrelevant to the treaty debate; it is said that the treaties represent the universal aspirations of the Panamanian people no matter what government might be in charge. Nevertheless, the only way that we can deal with the Panamanian people is through their government. It is self-evident that the treaties are agreements made with the government, not with the people. Therefore, even if it be granted for the sake of argument that the treaties do represent the aspirations of the people, if the government is deeply flawed it cannot be the vehicle for the fulfillment of those aspirations.

Although corruption exists in almost every government, including our own, the key to integrity is whether there also exist the checks and balances which can identify that corruption and eliminate it. No one can pretend that the Panamanian Government is a representative government, or that it contains checks and balances. Even outside the governmental system, there are no political parties, no free press, or other countervailing political forces. In form it is a military dictatorship; in practice it is a fiefdom for the Torrijos family and their favored cronies.

Although the Panamanian Government has made a great show of narcotics enforcement, in practice most of those arrested are small dealers, or third country nationals who are attempting to muscle in on the territory. The market for the Panamanian dope trade is not Panama, but the United States. Only those with the right connections can prosper; those who are arrested know that they are subject to extortion if they want their freedom.

This posture is evident in the restrictions which were placed upon U.S. agents working out of the U.S. Embassy in Panama. They received cooperation from Panama only so long as their cases dealt with "little people." Before they could proceed to investigate

a case, permission had to be obtained from Panamanian officials; the moment the case involved any member of the National Guard or substantial amounts of drugs, permission was denied. On the side of the U.S. Government, State Department officials worked hand in glove to reinforce these restrictions on U.S. narcotics agents. The actions taken to thwart the impartial justice of the U.S. judicial system in the case of Moises Torrijos is a sensational example; but the daily effect of similar actions in operational activities is bound to have a chilling effect on the effectiveness and output of U.S. narcotics agents.

The impact of the narcotics trade upon the United States hardly needs to be discussed. It takes a toll not only in the thousands of addicts whose lives are ruined, but in the climate of crime and fear in our cities, the toll of robberies, injuries and deaths suffered by thousands of innocent citizens, the increased costs of welfare and medical attention, and the social costs of the decay of our great cities. The fact that Panama's leaders would participate in or condone such injuries to the United States should make us pause before we confer substantial benefits upon them.

IMPACT OF THE TREATIES

The ratification of the treaties would have the following impact:

First. The treaties would make us an intimate partner with a corrupt regime which uses the machinery of government for criminal gain. The benefits which will be conferred upon Panama will be placed into the trust of this corrupt regime. The daily knowledge of the citizens of Panama that the United States is supporting this regime in power and pouring millions of dollars into corrupt hands will inflame hostility and hatred against us. The over-riding object of the treaties purportedly is to improve relations with the Panamanian people; but it is far more likely that our relations will become worse.

Second. Panama would take total jurisdiction over customs. The treaties and related agreements specifically provide that offenses in narcotics trafficking will be under Panamanian jurisdiction, even in the canal operating areas. At the present time, U.S. Customs officials are able to search ships, make arrests (as, for example, in the case of Joachim Him, and in the attempt on Moises Torrijos) and to pass on information to Customs officials waiting at ports in the United States. None of this will be possible under the treaties.

Third. Panama will take charge of the Ports of Balboa and Colon, including piers, warehouses, and security. Thus it will be possible for a corrupt government to control completely the shipments of narcotics by sea, just as the Panamanian Government now controls Tocumen Airport.

Fourth. The Panama Canal Company presently has an Internal Security Division, which includes a narcotics intelligence unit. When the treaty is implemented, the canal organization no longer will collect narcotics intelligence. The canal operation, which has thousands of Panamanian workers, many of them in daily contact with foreign ships, will be a U.S. Government agency under the treaty; yet the United States will not be able to enforce or even

collect information on the violation of U.S. narcotics laws on U.S. Government property.

Fifth. The unique geographic location of Panama at the midpoint between the two continents makes it ideally suited as a center for drug smuggling by airplane. The United States will be hampered in its drug enforcement programs because we will no longer have agents free to operate in the Canal Zone; U.S. enforcement personnel attached to the U.S. Embassy will continue to be under restrictions from officials who put good relations with Panama above the broader interests of the American people.

Mr. President, in order to provide a basis for the debate on the drug problem tomorrow, I ask unanimous consent that the following documents be printed at the conclusion of my remarks:

First. The statement of Leland Riggs, Jr., for the use of the Subcommittee on Separation of Powers;

Second. A series of articles by UPI reporters Nicholas Daniloff and Cheryl Arvidson on the drug situation in Panama;

Third. Excerpts from the book, "The Secret War Against Dope," by Andrew Tully, dealing with the Raphael Richard case;

Fourth. Excerpts from a 1973 report of the House Merchant Marine Committee dealing with narcotics trafficking in Panama.

There being no objection, the material was ordered to be printed in the Record, as follows:

STATEMENT OF LELAND L. RIGGS, JR.

Leland L. Riggs, Jr., being duly sworn, deposes and says as follows:

I, Leland L. Riggs, Jr., am a retired Special Agent in Charge of the United States Drug Enforcement Administration. I am familiar with facts involving narcotics intelligence collection in Central America.

I first became a criminal investigator for the U.S. Bureau of Customs in January, 1964, after having spent 8½ years as a highway patrolman. I was first assigned by the Bureau of Customs to duties in California where I conducted narcotics smuggling investigations for a period of 6½ years. Therefore, I was promoted from Customs Special Agent to Senior Customs Representative and was transferred to Mexico City, Mexico. Inasmuch as I am bilingual and speak Spanish, my assignment to Mexico was deemed to be advantageous to the agency.

While assigned to Mexico City, I had sole responsibility for Customs narcotics intelligence gathering and for conducting followup investigations forwarded to me by our domestic offices of investigation. My area of responsibility included not only the Republic of Mexico but additionally all of Latin America. However, 95 percent of my investigative time concerned either Mexico or the Republic of Panama.

During the time I was in Mexico in 1970 and 1971, I conducted several investigations in Panama. Subsequently, in June of 1972, I was appointed Customs Attache and instructed to establish an office in the American Embassy in Panama City, Panama. This occurred during the period when the entire Bureau of Narcotics and Dangerous Drugs agents force had been expelled *persona non grata* from Panama. I served as Customs Attache until July 1, 1973, at which time the Drug Enforcement Administration was formed and I then also assumed command of the Panamanian functions of the Bureau of Narcotics and Dangerous Drugs when the Bureau of Customs narcotics functions were merged with those of the BNDD. In short, I became the Special Agent in Charge of the combined office.

I left Panama on June 17, 1974, to become the Special Agent in Charge of the DEA District Office in Brownsville, Texas. Thereafter while on temporary assignment as Project Manager for a special DEA operation in Colombia directed against clandestine cocaine processing laboratories in Colombia, on November 30, 1975, I was attacked, beaten, and pushed off a retaining wall to a street below and suffered several fractured vertebrae, a broken ankle, kidney damage, and assorted cuts and bruises. The DEA subsequently retired me on August 24, 1976, for medical disability reasons.

When I first began conducting investigations in Panama, the BNDD Agent in Charge advised me that we had to be very careful about informing Panamanian

government officials concerning our work since they were corrupt and also involved in narcotics trafficking. I soon learned from personal experience that this advice was sound.

During September, 1970, I traveled to Panama to conduct a follow-up investigation regarding a Yolanda Sarmiento case involving shipments of heroin from Panama to New York. Although I do not have presently in my possession intelligence reports prepared by me at that time, I do recall certain aspects of the case. Yolanda Sarmiento reportedly was smuggling approximately 100 pounds of heroin monthly into the United States. This heroin was reported to be stored in the Colon Free Zone in the Republic of Panama.

The Colon Free Zone is a large, fenced-in, heavily guarded section of Colon, Panama, on the Atlantic side where duty-free items are displayed in numerous stores for purchase, by persons and businesses based primarily in South America. I was advised by U.S. Canal Zone officials and a confidential source that the Guardia Nacional controlled and guarded this enclosed area. I later did manage to gain entrance with a U.S. Canal Zone official; however, we were only permitted to go into the showcase areas of the various stores. The Colon Free Zone is entered at a gate guarded by uniformed members of the Guardia Nacional. Although the Government of Panama does have a Customs Office and there are Panamanian Customs Agents, Panamanian Customs does not have responsibility for control of the Free Zone.

During 1970, United States Customs Agents in New York were able to effect the arrest of Yolanda Sarmiento, Emilio Diaz Gonzales, and others; however, Yolanda Sarmiento was released on bail, subsequently fled the country, and became a fugitive in Argentina. As best I recall, Emilio Diaz Gonzales escaped from prison in New York and is believed also to have fled the country.

My efforts to continue a follow-up investigation of the Sarmiento case were essentially unsuccessful because of the problem inherent in free movement within the Colon Free Zone resulting from the control of the Free Zone by the Guardia Nacional of the Government of Panama.

During my trips to Panama, I became aware of a BNDD investigation concerning the Panamanian chief air controller, Juaoquin Him Gonzales. Juaoquin Him was reportedly directing heroin from Panama into Texas and using his official capacity in the Government of Panama to facilitate the movement of this heroin. He was subsequently indicted by a U.S. Grand Jury in Texas and was arrested when he entered the U.S. Canal Zone to attend a softball game. Joaquin Him was tried and convicted for facilitating the transportation of narcotics into the United States.

I understand that the arrest of Juaoquin Him caused considerable dissension between the Ambassador and the U.S. narcotics agents in Panama. I experienced similar problems in connection with the Raphael Richard-Moises Torrijos case.

I learned of the Richard-Torrijos case after my assignment as the Customs Attache to the American Embassy in Panama. In fact, I became directly involved in the investigation concerning Moises Torrijos, now Panamanian Ambassador to Spain, and Raphael Richard Gonzales, the son of the then-Panamanian Ambassador to Taiwan. Richard was arrested on the evening of July 8, 1971, at John F. Kennedy Airport in New York in possession of 151 pounds of heroin. Immediately prior to his arrest, he claimed diplomatic immunity and asserted that his suitcase could not be opened and searched due to his diplomatic passport. A U.S. customs inspector advised him that he was accredited as a diplomat in Taiwan, not in the United States, and therefore had no diplomatic status in the United States. Also arrested that evening was Nicolas Polanco, a reported chauffeur-bodyguard of Moises Torrijos. Moises Torrijos was then the Panamanian Ambassador to Argentina; and he is the brother of Dictator Omar Torrijos.

The day following the Richard arrest, Guillermo Alfonso Gonzales was also arrested upon his arrival in New York City from Panama for the purposes of accepting delivery of the heroin Richard had attempted to bring into the country. Others arrested the same day were Jose Francisco Oscar San Martino, an Argentine, and Cesar and Amarico Altanirano, both Panamanians.

Subsequent investigations of the same case led to the indictment of Moises Torrijos by a Grand Jury of the U.S. District Court for the Eastern District of New York. Torrijos was indicted as a co-conspirator with the above-mentioned defendants. Thereafter, a warrant for the arrest of Moises Torrijos was issued by the U.S. Court for the Eastern District of New York. One the basis of the evidence of a warrant, I was instructed to be on the alert to effect an arrest in the event Moises Torrijos traveled from Spain through the U.S.-controlled Panama Canal Zone.

During either late 1972 or early 1973, I was advised that Moises Torrijos, accompanied by his wife, was traveling from Spain to Panama on a passenger vessel.

Subsequent information showed that the vessel would dock in Cristobal, Panama, within the U.S.-controlled Panama Canal Zone. Arrangements were therefore made to effect the arrest of Moises Torrijos in the U.S. territory upon his arrival. However, Moises Torrijos was obviously informed of his impending arrest and departed the vessel at Caracas, Venezuela, where he flew by commercial airliner to Tocumen Airport within the Republic of Panama. When the vessel arrived, only Mrs. Moises Torrijos disembarked. Inasmuch as the only parties aware of the planned arrest of Moises Torrijos other than BNDD were the U.S. Department of State and the Central Intelligence Agency, Moises Torrijos could only have been alerted to the planned arrest by United States authorities.

During my tenure as Special Agent in Charge of Drug Enforcement, I did not have another opportunity to effect the arrest of Moises Torrijos. In fact, during my tour of duty as Customs Attache before assuming command of the combined Customs and BNDD forces, I was advised that Washington officials of the Bureau of Narcotics and Dangerous Drugs traveled to Panama, met with Colonel Noriega, Chief of Panamanian Intelligence, and with General Omar Torrijos, and alerted them both to the existence of an indictment and warrant concerning the General's brother, Moises. To the best of my knowledge, the warrant for the arrest of Moises Torrijos is still in existence and presumably, if he touches U.S. soil, he is still liable to arrest.

During my tour of duty in Panama, several cases which were presented to the Panamanian enforcement officials were mysteriously terminated or not given proper attention. Due to my knowledge of their involvement, many cases were not presented to Panamanian enforcement officials so as not to compromise my investigation. Finally, I did not feel that I had the full support of the diplomatic community in the pursuit of my assigned mission in Panama, especially in those matters which tended to implicate officials of the Government of Panama. In any event, due to the eventual assignment of a State Department employee as the narcotics coordinator, I was relegated to a secondary position. Similar conditions now exist in most embassies where Drug Enforcement personnel are assigned, and in almost all cases the Department of State employee has no narcotics training nor expertise. It is my opinion that Department of State personnel are placed in the position of narcotics coordinator primarily to insulate and protect the activities of the Department of State from any so-called disrupting incident regarding narcotics enforcement directed against an official of the host government.

Given under my hand and seal on this the first day of December, 1977, in the City of Washington, District of Columbia.

LELAND L. RIGGS, Jr.

UPI INVESTIGATION OF DRUG TRAFFICKING IN PANAMA—PART I

(By Nicholas Daniloff and Cheryl Arvidson)

WASHINGTON.—Since 1971, the U.S. government has received a stream of allegations linking Panama's Supreme Revolutionary Leader, Gen. Omar Torrijos, his family and associates to drug trafficking, a UPI investigator has disclosed.

The allegations—some from officials, others admittedly second-hand—come from informants, drug pushers and agents. They are in files of the Canal Zone government, the Drug Enforcement Administration, the U.S. Army, the CIA, and congressional committees.

Attorney General Griffin Bell wrote Sen. Jesse Helms, R-N.C., last October that a grand jury had reviewed allegations against Torrijos and found insufficient evidence to warrant action.

The Justice Department says Torrijos has been "neither the subject nor target of an investigation." Federal drug enforcement chief Peter Bensinger states the disclaimer more cautiously: "General Omar Torrijos has never been the target of investigation."

President Carter is aware of the allegations. Carter, Bell and Bensinger met last fall to discuss their implications in the uphill battle to win Senate ratification of the treaties that would turn the Panama Canal over to Panama.

The allegations prompted the Senate to schedule a rare closed session Feb. 21 to examine them.

Treaty supporters call the drug questions peripheral to the canal issue.

But Sen. Robert Dole, R-Kan., says they involve the integrity of the Panamanian government and its ability to stand behind the agreements.

The current Senate ratification battle is so close opponents feel the drug issue could defeat the treaties. Supporters, short of the needed two-thirds majority, have accepted changes in the treaties, but hope to avoid the volatile drug issue.

United Press International began its investigation in January. Two UPI reporters examined scores of documents, many supplied by treaty opponents. These included investigative reports, affidavits, congressional testimony and interviews with officials in Panama and Washington.

Among at least 45 files on "the Panama connection" compiled by DEA, there are dossiers on Omar Torrijos, his brother Hugo, head of Panama's casinos; his brother Moises, Panama's ambassador to Spain; Col. Manuel Antonio Noriega, chief of Panama's intelligence service; and other officials and associates.

During the investigation, UPI confirmed that Moises Torrijos was indicted in the Eastern District of New York for heroin trafficking in 1972. A bench warrant for his arrest was issued May 16, 1972.

An attempt to arrest Moises Torrijos in December 1972 in the Canal Zone failed, according to several sources, because the Torrijos brothers were tipped by high U.S. officials. So far as is known, Moises is still subject to arrest on U.S. territory.

UPI also learned of a series of unusual actions to safeguard DEA files on the Panamanian situation. The files were moved several times during one week in October and rumors circulated on Capitol Hill that some documents may have been removed.

U.S. concern about narcotics smuggling through Panama goes back to the Vietnam War period. U.S. narcotics agents estimate up to 47 tons of narcotics arrive in this country from Panama each year.

This volume has led U.S. officials to suspect that the "Panama connection" operates either with the aid or negligence of Panamanian officials.

"There's no doubt that senior officials in that country are involved," one former official told UPI. The source, who asked not to be named, had direct responsibility for stopping the narcotics flow from Panama.

Panama, linking the oceans and North and South America, is a natural transit point for contraband. Whenever goods are consigned to bonded warehouses for trans-shipment, smugglers have opportunity to hide drugs in legitimate cargoes.

For at least the last 17 years, drug agents have watched goods and passengers transiting the canal, the U.S. Canal Zone, Panama's free trade zone at Colon and Panama City's Tocumen International Airport.

One airport official, Jose Delgado, was named by two Panamanian informants as a connect for cocaine packages from Colombia destined for Omar Torrijos.

Former Panamanian intelligence agent Alexis Watson told House investigators Jan. 5 about an incident he witnessed at the airport in November 1976:

"There is a Colombia guy * * * he says he is Torrijos' second cousin. He used to come to Panama each week. When he came * * * this is something that I investigated and I saw the package * * * he carries some packages. He was received by Torrijos himself. They went to a place in the free zone of the airport * * * a guy named Delgado, and left the package there."

Watson told House Merchant Marine Committee investigators he did not see the contents, but was convinced they were drugs. He said a Panamanian Air Force pilot told him he was flying to El Salvador to deliver just "one package that Delgado has from Torrijos."

A second Panamanian informant also named Delgado and others in sworn testimony: "Their actions and involvement with Torrijos and other Panamanian officials make it highly probable that they are either actively involved or at least very knowledgeable of narcotics being smuggled into and out of Panama."

Watson told House investigators the Transit S.A. company, which he said was operated by Omar Torrijos and Noriega, handles Colombian coffee with cocaine inside.

Watson said in November 1975 he saw associates of Torrijos take "three sacks of two kilos of cocaine" out of coffee bags. He said Carlos Duque, manager of Transit S.A., and Orejita Ruiz, a former Torrijos bodyguard, and a Lt. Col. Cecilio Fisher of the National Guard were involved. The second Panamanian witness also said Duque and Fisher were in the drug traffic.

In 1972, Watson also said he saw Omar Torrijos, Panamanian President Demetrio Lakas and a suspected drug dealer named "Padilla" in Lakas' office dividing about \$200,000 in \$100 bills. "I think if Padilla is there, it was drugs," Watson said.

Noriega, who last week called Watson "a paranoid and an embezzler," was praised recently by Bensinger for anti-narcotics efforts. But in DEA intelligence reports, Noriega is mentioned along with other drug traffickers.

Watson also testified Noriega ordered him in 1971 to release Padilla's brother and an American he had arrested in Panama City.

"I called my commander and told him I had two people with cocaine, five or six pounds. I gave their names, I had their identification in my hand. Immediately I received the order, 'Put those people on liberty.'"

The House interviewers asked: "Who was your commander?"

WATSON. "Noriega."

INVESTIGATOR. "You called Noriega on the radio?"

WATSON. "He didn't speak to me, but the order received by radio said: 'Number One says to free those people'."

INVESTIGATOR. "'Number One' meant Noriega?"

WATSON. "Yes."

The congressional testimony meshes with the picture emerging from the following DEA documents:

A 1973 document states that Colombian suspect Andres Velasquez planned a trip to Tocumen Airport to make a drug drop for the Torrijos brothers.

A 1974 report quotes an informant as saying Frank Marshall Jimenez "worked directly with and for Gen. Omar Torrijos in Panama and that between the two of them, they control the contraband traffic from the free zone of Colon, Panama."

It also states the Torrijos brothers "own 33 1/3 percent interest in the Gran Hotel de Costa Rica and that the gambling casino there was operated by the Torrijos interests . . . This hotel has been suspected of being a contact point for international narcotics couriers."

A 1975 document states Ramiro Rivas, owner of a Panamanian cement company, tried to buy a freight company to help move drugs for Omar and Hugo Torrijos.

In an interview, a high U.S. diplomat in Panama criticized Omar Torrijos for retaining Hugo as director of national casinos: "It's just too much of a temptation."

Hugo Torrijos' name surfaced when Panama seized 145 pounds of cocaine at Tocumen Airport on June 9, 1977.

One suspect was Gerardo Sanclemente, a Colombian married to a Torrijos relative, Gloria Nubia Quinceno. Sanclemente allegedly helped move narcotics through the airport. He carried a "courtesy of the port" card, which assured him favored treatment and a letter from Hugo Torrijos to Delgado.

Senora Sanclemente quoted Hugo as telling her in a phone call, "I want Gerardo to give himself up, it's the only way I can help him. I want him to call Dario Arosemena (chief of Panama's equivalent of the FBI) at 22-2415, and turn himself in; he won't be mistreated or anything."

Sanclemente complied. Because he was ailing, he was confined to a hospital near Panama City's Paitilla airport."

In October of last year, a second suspect held in Paitilla medical center bribed a guard and escaped to Colombia. Rumor's swept Panama City that Sanclemente had escaped, too. U.S. authorities in Washington and Panama City denied the rumors.

Questions about Hugo Torrijos' activities still circulate.

"Hugo Torrijos has a background from 20 years before as a cocaine addict," Watson told investigators. "Everybody in Panama knows. If you ask someone in Panama, 'Where can I buy cocaine.' They will tell you, 'go to Hugo.'"

Watson recalls, too, seeing Omar and Hugo publicly snorting cocaine in a bar run by Hugo in 1961: "We started drinking when about 12 midnight, I saw him and Hugo take drugs. And I asked (a companion) what is Omar doing?"

He said: "They are big, so you don't have do anything about it."

Watson is convinced Omar Torrijos no longer handles drugs personally.

Omar can't be so stupid to handle this thing in that way, Watson told UPI in a telephone interview Feb. 10 before leaving the United States for a hiding place abroad. Watson fears his disclosures will provoke Torrijos to reprisals.

Next, the supreme leader's brother—an indictment and a tipoff.

PART II

WASHINGTON.—One of the best documented instances of Panamanian government involvement in narcotics led to the indictment of Omar Torrijos' brother Moises, now Panama's ambassador to Spain, for heroin trafficking.

A two-month UPI investigation of the case turned up allegations that the Panamanian "Supreme Revolutionary Leader" was tipped off to the indictment against his brother by high U.S. officials and that Moises was able to evade arrest.

On July 3, 1971, Rafael Gonzalez, the 23-year-old son of the Panamanian ambassador to Taiwan, was arrested at New York's Kennedy Airport with 154 pounds of heroin in his suitcase.

Richard was carrying a diplomatic passport signed by Juan Tack, then foreign minister, who represented Panama in canal treaty negotiations during the Nixon-Ford years.

Richard claimed diplomatic immunity, but customs agents determined he did not have legitimate diplomatic status.

Also arrested was Nicholas Polanco, chauffeur for Richard's uncle, Guillermo Gonzalez, a former bodyguard of Moises Torrijos, was believed to be a ringleader in heroin smuggling.

Customs agents discovered the trip was Richard's fifth trip with similar amounts of heroin, according to police reports. On previous trips, Guillermo Gonzalez had accompanied Richard, but this time, Richard and Polanco were to telephone Gonzalez in Panama on delivery of the heroin.

The agents persuaded Richard to call his uncle and urge him to come to New York. When Gonzalez arrived, he was arrested. Three others, an Argentine and two Panamanians, also were arrested. Gonzalez was convicted of heroin smuggling and sentenced to seven years in prison.

When the news reached Panama, according to one Panamanian who was present, Col. Manuel Noriega, Panama's intelligence chief, told an associate. "You heard this ass-hole kid stuck his foot in it?"

Another Panamanian informant told House Merchant Marine subcommittee investigators that the associate replied, "Yes, yes, we're going to fix it."

Subsequent investigations resulted in the indictment of Moises Torrijos as a co-conspirator in the transportation of heroin. The indictment was handed down by a grand jury in Eastern District of New York, in May 1972 and a bench warrant for the arrest of Moises was issued on May 16, 1972, U.S. sources said. As far as is known, the indictment and warrant remain in force, meaning Torrijos is subject to arrest on U.S. territory.

A former high government official familiar with the case told UPI the evidence against Moises went far beyond helping obtain a diplomatic passport for Richard: "I've been told fairly recently that we have one hell of a good case against Moises Torrijos."

At the time of the Richard arrest, Moises was Panama's ambassador to Argentina. Later in 1971, he was recalled at Argentina's request after causing offense at a diplomatic reception. He was then assigned as Panama's ambassador to Spain.

The indictment has never been unsealed although the Miami Herald last October quoted Justice Department sources as confirming its existence.

UPI learned that U.S. narcotics agents tried to arrest Moises Torrijos in December 1972 but failed because other U.S. officials apparently had tipped Omar Torrijos to the indictment.

UPI was told by three sources that John Ingersoll, former head of the Bureau of Narcotics and Dangerous Drugs—DEA's predecessor—went to Panama and passed the information to the Panamanian leader.

Retired DEA agent Leland Riggs, who tried to apprehend Moises Torrijos, gave a sworn affidavit to a Senate Judiciary subcommittee stating he was assigned to the case on his arrival in Panama in June 1972: "I was instructed to be on the alert to effect an arrest in the event Moises Torrijos traveled from Spain through the U.S. controlled Panama Canal Zone."

Riggs said in December 1972, "I was advised that Moises Torrijos, accompanied by his wife, was traveling from Spain to Panama on a passenger vessel. Subsequent information showed that the vessel would dock in Christobal, Panama, within the U.S. controlled Panama Canal Zone."

Riggs said arrangements were made to arrest Torrijos in Cristobal when the ship arrived.

"However, Moises Torrijos was obviously informed of his impending arrest and departed the vessel at Caracas, Venezuela, where he flew by commercial airliner to Tocumen Airport within the Republic of Panama. When the vessel arrived, only Mrs. Torrijos disembarked.

"Inasmuch as the only parties aware of the planned arrest of Moises Torrijos other than BNDD were the U.S. Department of State and the Central Intelligence Agency, Moises Torrijos could only have been alerted to the planned arrest by United States authorities," the Riggs affidavit said.

UPI determined that on June 21, 1972, six months before the arrest attempt, BNDD chief Ingersoll went to Panama to discuss the indictment with Omar Torrijos.

The following is a second-hand account which Senate investigators say they obtained from a "principal" at the meeting:

Omar Torrijos was sitting in a hammock with his feet propped up and smoking a cigar when Ingersoll and his group arrived.

Ingersoll told Torrijos he was reluctant to discuss the situation but "in fairness" he thought the general should know that his brother, Moises, had been indicted in New York for heroin smuggling and a warrant had been issued for his arrest.

"The guy at the meeting said Torrijos made no move at all. He continued to smoke his cigar and there was no change in his facial expression. He didn't even take his feet down," the Senate source said.

Ingersoll offered to send someone to Panama to discuss the indictment with Moises, but the general said that wouldn't be necessary. But some time later, Torrijos contacted U.S. officials to send someone to meet with his brother.

Riggs, when questioned informally by Senate investigators, said he didn't know about the Ingersoll trip. But Riggs said his diary noted a Jan. 30, 1973, visit to Panama by Jerry Strickler, who Riggs identified as head of a Latin American division of BNDD in Washington.

After discussions with American officials, Strickler and agent Ed Heath met with Moises Torrijos, a session Riggs said he had assumed was the "first official notification" of the indictment.

UPI reached Ingersoll in Paris where he now works for IBM. He was asked about his trip to Panama in June 1972.

"I don't know what you're talking about," Ingersoll replied. "You expect me to remember what I was doing in June of 1972?"

Ingersoll said he had traveled to Panama "several times" to meet with Omar Torrijos but told the reporter to ask "the DEA people," * * *

"I'm not denying or confirming it, and I suggest to you that if you want a denial or a confirmation that you refer your quote allegation unquote to the Department of Justice," Ingersoll said.

UPI learned from three sources—all in narcotics enforcement at the time—that a "government decision" led to Ingersoll's meeting with Torrijos where information on Moises' indictment was relayed.

Two sources said they believed the decision was made to put "pressure" on the Torrijos government.

One said the purpose was to reinstate agents who had been expelled from Panama in March 1972, after press leaks about the Richard investigation implicated Moises and Tack. The other source said Ingersoll might have offered to "go light" on Moises if Panama would strengthen anti-narcotics efforts.

The third source said the trip was made to avoid "an international incident." He said three White House meetings were held to discuss the tipoff. At these meetings, the source said, were Ingersoll, Egil Krogh, chairman of Nixon's cabinet level narcotics committee, Vernon Acree, former U.S. customs commissioner, and State Department representatives.

Ingersoll, the source said, got the assignment because of his "acquaintanceship" with Torrijos "and could approach him on a discussion basis."

"After the indictment was returned, there was a lot of concern and consternation over that fact because it did involve the brother of Torrijos. . . . The concern was if he came to the United States, he would be arrested. I think some of the State Department people were concerned over the fact that this might cause or create some kind of international incident," this source said.

PART III

WASHINGTON.—A UPI inquiry into drug trafficking allegations against Panamanian strongman Omar Torrijos poses questions about what happens when U.S. foreign policy objectives and narcotics law enforcement collide.

Several sources interviewed by UPI during a two-month investigation left a clear impression U.S. officials sometimes give "preferential treatment" when drug investigations—often based on hearsay—lead to officials of foreign governments, including but not limited to Panama.

The policy goes back at least to the early 1970s. It exists, sources indicated, because diplomatic and political considerations frequently take preference over narcotics enforcement efforts. In these cases, it is not deemed in the best U.S. interest to vigorously pursue the leads.

It also was suggested that despite known Panamanian government involvement in drug dealing, U.S. narcotics agents still need a working relationship with the country's police to stop other drug smuggling to the United States.

"Some (cooperation) is better than none," one current drug official commented.

A former enforcement official told UPI, "We have to do business there. If they're corrupt, we have to find out how they're being corrupted."

"I have no doubt that what the U.S. government really knows about these allegations will eventually become known," one American diplomat in Panama said.

"But in the meantime," he said, "the United States is in a real dilemma. Our intelligence files contain potentially libelous information on many world leaders. Are we to make these known to the public? Or should we withhold them because they may be libelous and because their release might affect foreign policy interests?"

The Carter administration inherited this policy, but the practices followed in the past became highly meaningful when Carter's negotiations reached agreement on treaty proposals to phase out U.S. control of the canal.

Alleged drug involvement by Torrijos, his brothers and his government may be peripheral to the question of ratifying the treaties, as their supporters claim, but it also could bolster opponents attacks on the integrity of the Torrijos regime! In fact, conservative opponents concede the drug allegations may now be their only hope to stop the treaties.

Faced with intense conservative opposition and an uphill ratification battle last fall, the Carter administration apparently decided last fall to take extraordinary efforts to keep the drug questions out of the public eye.

Included were administration pressures to quash a congressional inquiry that could have brought some allegations to light, secret movement and possible removal of DEA documents relating to the drug charges, and a decision to limit congressional access to the materials by giving them to the Senate intelligence committee.

In late September, Sen. James Allen, D-Ala., a leading treaty opponent, held the first hearings on the treaties before his Judiciary subcommittee.

Allen's subcommittee knew nothing of the drug allegations. Instead, it was focusing on reports involving U.S. bugging of Omar Torrijos.

The subcommittee wanted to find out whether Torrijos used knowledge of the bugging to blackmail American negotiators into making concessions. This suggestion was later denied by the Senate intelligence committee.

Allen's subcommittee issued two sets of subpoenas to an Army sergeant who supposedly sold the information to Torrijos and top officials of intelligence agencies and the Justice Department.

The first subpoenas dealt specifically with the bugging incident. A second set—far more broad—was issued later. Quentin Cronnelin, staff director of the Allen subcommittee, believes the broad scope of the second subpoenas caused alarm because they might have opened up the drug issue.

Attorney General Griffin Bell, in a Sept. 29 letter to James Eastland, D-Miss., chairman of the Judiciary Committee, said the subpoenas were "overboard" and said they "could result in a serious misunderstanding" between the Intelligence and Judiciary committees.

The administration enlisted help from Senate Democratic Leader Robert Byrd, like Eastland a member of Allen's subcommittee, and from the top members of the intelligence committee—Sen. Daniel Inouye, D-Hawaii, and Sen. Barry Goldwater, R-Ariz.—to stop the Allen hearings.

After what one individual described as "the most intense pressure I've ever seen" on Allen, including threats of Senate censure, the Alabama Senator backed off. The hearing was canceled and the subpoenas became moot.

About this time, two vocal treaty opponents, Sens. Jesse Helms, R-N.C., and Bob Dole, R-Kan., were getting hints of raw intelligence data in government files relating to the Torrijos regime and narcotics.

The Allen subcommittee hearings were cancelled on Sept. 30—a Friday.

Documents and rumors circulating on Capitol Hill suggest that on the following Monday, there was a White House meeting between Bell, President Carter and others.

The Justice Department confirms that Bell met with Carter that day, but the White House claims to have no meeting recorded. However, the White House press office said that Carter might have met with Bell without a record of the session being made.

Congressional sources told UPI that at the Oct. 3 session and at another meeting later that week—reportedly Thursday, Oct. 6—there was considerable discussion about the drug material and its ramifications on the treaty debate if it became public.

A suggestion reportedly was made to Carter that he classify all government documents on the subjects as "national security" material.

The President rejected this suggestion, sources said, and accepted a second option—limited disclosure to “safe” congressional sources, including the Senate intelligence committee, Byrd and Senate Republican Leader Howard Baker.

UPI ascertained that Bell and DEA chief Peter Bensinger did, in fact, brief Baker, Byrd, Inouye and Goldwater Oct. 6 on the drug allegations.

According to congressional sources, at this meeting Byrd told Bell and Bensinger that the best way to keep the lid on the drug allegations would be to send the files to the intelligence committee where strict security could assure “no leaks.”

Later in the day, sources said the same briefing was given House Speaker Thomas O'Neill, who reportedly told Bensinger that “under no circumstances” should the files be sent to any House committee because of possible leaks.

A large number of drug files were moved from DEA to the Senate intelligence committee in late October or early November. Senators must sign a pledge not to reveal what they read in committee files under threat of action by the Senate Ethics Committee.

An intelligence committee report based on these documents was presented in secret session to the Senate Foreign Relations Committee, and a “sanitized version” is due to be released soon.

A closed session of the Senate will also be based on the material in the hands of the intelligence committee.

Although administration officials have repeatedly stated that all the government's files relating to Panama drug ties were sent to the intelligence committee, UPI was told that some material may have been removed before it reached Capitol Hill.

There have been suggestions that some sensitive material may have been placed in Bell's office safe or may have been destroyed.

In addition, UPI received reports that the DEA files relating to Panama were moved at least four times during one week in October—all but once without the usual accounting and receipting procedures to protect them—before they reached the intelligence committee.

Dole made the first public mention of files being moved from the DEA headquarters to its Washington field office during Senate debate on Oct. 13. The movement of files also came up with State Department officials during a hearing by Allen's subcommittee Nov. 15.

But when UPI attempted to get more information, reporters had to gather details indirectly, apparently due to a Bensinger warning on Oct. 7 that any DEA employee who leaked material on Panama would be fired and face criminal charges.

Congressional sources gave UPI details said to come from a DEA employee afraid to provide information directly to reporters. The information passed through two people before being relayed to UPI.

UPI was told that on Oct. 7, the Panama files were moved under high security from their normal storage site in DEA to the 10th floor of the building. One of the offices on the 10th floor is that of Gordon Fink, assistant DEA administrator for intelligence.

The following was the procedure as described to UPI:

With armed guards posted, the files were spread across table tops and examined, and particularly sensitive material removed. Bill Link, an assistant to Bensinger, was identified as supervisor of the operation.

Once the files reached the 10th floor, Link reportedly ordered the normal procedure known as a “paper trace”—requiring people in possession of files to sign receipts for them—suspended.

The files were sifted until 9 p.m. Between 11 p.m. and midnight, Bensinger went to the White House to brief Carter. Carter reportedly voiced concern over the impact of the information on the treaties if it became public.

The White House said it had no record of a late night visit by Bensinger on Oct. 7 but because of the lateness of the hour, conceded it might not have been recorded.

On Saturday, Oct. 8, an individual provided details on the file movement to a congressional source. At that time, he expressed concern about the security of the files.

On Sunday, Oct. 9, the files were moved to the field office. They were returned to headquarters Thursday, Oct. 13, to an individual identified as “Goe,” head of Latin American security. Bob Goe is chief of the Latin American section of the Office of Intelligence.

A former high federal narcotics enforcement official, being interviewed on a different subject, volunteered that he had heard the files also were moved at during that week to Bell's office.

"I know first hand that when all this erupted (the allegations of Torrijos involvement in drug traffic), the files were moved from DEA to Justice," the source said. "I was told. There's no question about it."

A congressional source said he understood some material might have been put in Bell's office safe.

UPI also was told that on Oct. 11, a DEA secretary for routine reasons asked for a file labeled "Panama-Miami." She was denied the file and questioned for three hours by Fink's security division to find out if she was the source of a leak.

UPI was also told—again by congressional sources who said the material was coming from high in the DEA—that the Panamanian drug files allegedly contain information about members of Congress.

These sources said at least one current senator is named as receiving a campaign contribution that may have come from a foreign government and that the files hint of intelligence work done by DEA involving members of Congress.

Dole filed a Freedom of Information request with the DEA on Oct. 14, 1977, for material on the Panamanian drug allegations. He listed 45 specific files relating to the possible involvement of Torrijos, his family and his government in drug dealing.

After some delay, Dole received a 75-page report with none of the material requested. Dole said it was "heavily censored" and "almost totally sanitized."

"All I ended up with was a bunch of newspaper clippings," the senator said.

When Dole protested, Bensinger replied that DEA "was conforming to the specific request and direction of the Senate leadership of both parties that files regarding Panamanian officials and the family of Gen. Omar Torrijos be made available specifically to the Senate intelligence committee."

Bensinger told Dole: "We have complied fully with that directive and have furnished them complete file information. As we indicated at that time, Gen. Omar Torrijos has never been a target of investigation."

But, in an earlier letter to Sen. Jesse Helms, R-N.C., Griffin Bell conceded Omar Torrijos was the object of a grand jury investigation.

Helms had written Bell in October enclosing a raw intelligence file naming Omar Torrijos and asking for information.

Bell responded that DEA learned CBS planned a report on the document, and the Justice Department public information office "informed CBS that a grand jury investigation based on the report had failed to produce any evidence linking the chief of state to the illegal drug traffic."

In practice, Bell said, "DEA and the Department of Justice should not give credibility to such hearsay allegations by announcing the steps, if any, taken to investigate them."

Bell said he therefore had instructed the Justice Department spokesmen to state that none of the allegations have resulted in investigations of Torrijos.

The order stuck: to this day the Justice Department refuses to state there was a grand jury investigation of Omar Torrijos.

Dole, on his return from Panama, wrote Bensinger that Omar Torrijos had promised to contact DEA and help the senator secure the drug files. But Bensinger replied with information about cooperation between the Panamanian authorities and the DEA on drugs. Dole fired back a letter saying, "I believe you misunderstood the point of my communication to you."

Bensinger then conceded there were two matters involved and suggested "with respect to DEA file material, I would again recommend that you contact the Senate Select Committee on Intelligence which has copies of all DEA files regarding this matter."

When UPI requested a briefing on the Panamanian drug situation from DEA, reporters were told there could be no questions about Torrijos.

UPI tried to contact Leland Riggs, a retired DEA agent who once attempted to arrest Moises Torrijos, about an affidavit the agent gave to Senate investigators.

A congressional source placed an introductory telephone call for the reporter. After declining to answer four calls from the reporter, Riggs told the congressional staffer he had received word from an individual in DEA whom he knew and trusted. Riggs said the DEA official cautioned him "not to talk to anybody except the Senate Intelligence Committee."

"I'm on ice," Riggs said.

UPI also sought to reach a DEA agent in Denver who had been involved in the investigation that led to the indictment of Moises Torrijos. The agent, Wilbur Place, said he needed permission from Bensinger before talking to anyone.

That, he conceded, was unlikely.

THE SECRET WAR AGAINST DOPE

(By Andrew Tully)

CHAPTER 10—DIPLOMATIC STEW

Cases like that of the heroin-carrying picture frames have caused United States Customs inspectors everywhere to adopt an amiably sardonic attitude toward their more glamorous colleagues in the investigative Customs Agency Service. The mostly anonymous inspectors, many of them now women, like to joke that the sleuths are "the first line of defense against junk—after us." In point of fact, this is true because the overwhelming majority of dope smugglers try to sneak their stuff into the United States through the legal channels provided by the Customs inspection routine. If the inspector misses the contraband in a suitcase or picture frame, the agent has no case. But in the past decade Customs inspectors have become more than just people in uniform who paw through a traveler's personal effects with infuriating care. They have been trained in their own investigative procedures. They have learned to recognize the smuggler's "profile," to be suspicious of numerous visa and entry stamps showing extensive travel, and to take a second look at an individual whose passport bears the seal of a country with a casual, if not corrupt, attitude toward smuggling. Among other characteristics, the average inspector tends to view with leery eye the wayfarer with diplomatic credentials. He has learned that some members of this elegant tribe are wily practitioners of the old shell game and that it is unwise to take them on faith. Thus the interest shown in a young Latin American who arrived in the United States on a summer evening in 1971.

As any poker expert can testify, a successful bluff depends to a large extent on an accurate appraisal of the other player's intelligence. Raphael Richard González, twenty-four, son of the Panamanian Ambassador to Nationalist China, was handsome and personable, but he was not very bright. It had never occurred to him, apparently, that United States Customs inspectors knew a thing or two about the international regulations applying to diplomatic passports.

When Richard arrived at New York's Kennedy International Airport from Panama shortly after 7 p.m. on July 8, 1971, he was carrying a diplomatic passport that showed he was a member of the ambassador's family. The passport bore a B-2 visa issued at the United States Embassy in Panama for multiple entries into the United States until August 31, 1974. With a special elegance befitting his position, Richard presented the passport to Customs Inspector Joseph Ania, who greeted him with the courteous respect due an envoy's son.

But if Ania was courtly, he also had the instinctive suspicion of his breed. He wondered about that multiple-entry visa and about Richard's luggage, which consisted of four large Samsonite suitcases and an attaché case.

"What's in your bags, sir?" Ania asked Richard.

"Summer clothing," replied Richard, abstractly.

Ania hefted one of the large suitcases. It seemed unusually heavy for a bag containing "summer clothing." He also noted that when he turned the suitcase from one end to the other, the contents shifted.

Customs, in the person of Inspector Joseph Ania, had good reason to be interested in travelers entering the United States from Panama. Despite the preceding eighteen months, the little "republic" operated by the strong man General Omar Torrijos had become one of the principal conduits for illicit dope trafficking aimed at the American market. One estimate was that as much as one-twelfth of the heroin used by American addicts passed through Panama, which means that approximately 20,000 drug users in the United States got their daily supply by this route.

Moreover, the Panama Canal Zone was an American military base, and law enforcement people were concerned over the statistic which revealed that one-third of the prison population in the Zone was incarcerated on drug charges. Diplomatically, too, there was the danger that the narcotics traffic could complicate months-old negotiations on a new Panamanian sovereignty over the 500-square mile Zone but keep the defense and operation of the canal under American control.

There was also gossip, some of which found its way into print in American newspapers, that cronies of General Torrijos and officials of his regime were involved in the heroin trafficking and were stashing huge profits in Swiss bank vaults. Thus Richard's diplomatic passport made him suspect rather than giving him the privileged respectability such a document commonly bestows on its holder. Customs had no desire to meddle in foreign policy, but the bureau willy-nilly had an official, obligatory curiosity about the baggage of potential smugglers.

"Would you mind opening your bags?" Ania asked Richard.

Richard politely demurred. Waving his passport languidly, he told Ania, "I have diplomatic immunity."

"I'm afraid not," replied Ania. "Your passport shows that neither your father nor you is accredited to the United States, only that your father is accredited to Taiwan. Immunity granted only by the country to which a diplomat is accredited."

There was a brief legal discussion. Then Richard informed Ania that, anyway, he was in transit to Madrid and therefore his luggage was subject to examination only when it reached its final destination. If that was true, Ania retorted, why was Richard's luggage not in the custody of Braniff Airlines for transshipment to Spain? Richard was unable to account for this. "It's the airline's fault," he said. At any rate, Richard was not about to stand still for an examination there and then of his luggage.

Inspector Ania went through channels. He notified Supervisory Inspector Leonard Simon of the impasse, and Simon escorted Richard to a small conference room for a little chat. Richard steadfastly refused to open his bags. He now explained that, anyway, he had lost the keys to the luggage. Thereupon, Simon dispatched an aide on an errand. The aide was back in a few minutes with a set of duplicate keys obtained from a large Customs collection at the airport.

Simon opened all four suitcases and the attaché case. None contained clothing or toilet articles. They did yield 140 plastic bags of white powder. A simple field test of the powder revealed a positive finding for heroin.

Special Agent John Giery was summoned, and he placed Richard under arrest for violation of the federal narcotics laws. After Richard had been informed of his rights under the Constitution, Agent Giery offered the young man some fatherly advice. Richard thought things over, then agreed to cooperate.

He told his interrogators that he had traveled from Panama with Nicolás Polanco, "a kind of bodyguard." Polanco, said Richard, had already cleared Customs and had observed his arrest from the "Fishbowl" area of the observation deck in the International Arrivals Building. Both Richard and Polanco had been instructed to contact the heroin shipper, an uncle of Richard's named Guillermo Alfonso González, López, upon their arrival in New York. Richard gave Agent Giery González's telephone number in Panama—645-357.

An alert was placed with the New York Telephone Company to put a hold on any calls to the Panama number. Meanwhile, according to Richard's instructions, the agents checked the young man into Room 897 of the McAlpin Hotel at 34th Street and Broadway.

At about 10 p.m., Customs got a call from the telephone company. Agents forthwith descended on a public telephone booth at 42nd Street and Eighth Avenue. There they arrested Polanco while he was waiting to get through to González. An agent hung up the phone for Polanco. Customs hoped to have its own little chat with González, later, an eventuality Polanco's warning call would have thwarted.

Thus when agents escorted Richard to his room at the McAlpin about midnight, they were delighted to hear the telephone ringing. Richard had his instructions. When the caller turned out, as he hoped, to be González, he told his uncle, "Everything is okay."

The agents heard González ask Richard why he was so late checking into the hotel.

"I got lost," Richard told him. He also informed his uncle that Polanco, by then incarcerated in a cell in the Federal House of Detention, was "downstairs getting a sandwich."

"Okay," González told Richard. "I'm leaving on a Lan-Chile flight arriving at ten o'clock this morning at Kennedy. Stay in your room and wait for me."

As the official Customs report put it: "Arrangements were made in New York for the expected arrival of Guillermo González." Some arrangements. A call was put through to the Customs office in Miami, and instructions were given to the agent in charge there to put a man on the plane González would be taking to New York. Thanks to Richard, the Miami office could be provided with description of the youth's uncle—Panamanian, five feet, five inches tall, slim build, about 135 pounds, mustache, black hair, white complexion, forty-two to forty-six years of age.

Then Richard talked some more. He told his interrogators he had made five previous flights from Panama to the United States with heroin in his luggage—four in the fall of 1970 and one in January, 1971. On all these flights, Richard said, González accompanied him as "bodyguard."

González arrived at Kennedy Airport at 11:30 a.m. via Miami. Unknown to González, it was a couple of Customs agents who escorted him to a taxicab operated by Special Agent Mario Sessa. González told Sessa to take him to the McAlpin Hotel. En route, the Panamanian informed Sessa that he had a friend in the Hotel Edison

and asked if Sessa knew the Edison address. Sessa gave him the address. González thanked him and remarked that he must remember to call his friend that night.

Upon his arrival at the McAlpin, González went directly to Room 897, where he greeted Richard and made some small talk. Then, with Customs men eavesdropping, González told his nephew to place a call to the Hotel Edison. When the call was put through González took the phone and was connected with an Oscar San Martin in Room 834. González and San Martin arranged to meet in the bar of the Edison within the hour. When González hung up, he was arrested by agents who had been sequestered in an adjoining room.

Like Richard, González was willing to talk. He explained that his arrangement with San Martin for delivery of the heroin required him to place the four suitcases and attaché case in the locked trunk of a rented car, then leave the car in a public parking lot and deliver the parking ticket to San Martin. Ten minutes later, agents had rented a car and stashed Richard's luggage in the trunk. Under surveillance, González drove to a parking lot at 1250 Broadway where he left the car, then set off to deliver the parking ticket to San Martin.

With Customs men still dogging his footsteps, González dutifully arrived at the Hotel Edison, where he met San Martin and turned over the ticket. With González and his guardian agents standing by, San Martin placed a phone call from the hotel lobby. González then departed with his agents, while other Customs men remained to keep an eye on San Martin. Within a few minutes, a man later identified as Américo Altamirano arrived at the Edison and had a brief conversation with San Martin, after which San Martin returned to his hotel room under surveillance.

Agents followed Altamirano to a building at 310 West 47th Street. He left the building several minutes later, accompanied by a man later identified as his brother, César. The brothers walked around in aimless fashion for more than twenty minutes before arriving at the lot where the rented car was parked. There they separated, with César proceeding to the parking lot office while Américo strolled about in the immediate neighborhood.

César presented the parking ticket to a uniformed attendant named Duane Lane, whose full-time job was special agent of the Bureau of Customs. Lane drove the rented car from its space and delivered it to his customer. Then, as César attempted to climb into the car, he was arrested. When César refused to talk, his brother, Américo, was arrested on a nearby street. At about the same time, agents arrested San Martin at the Hotel Edison.

It was a little after 4 p.m. on July 9, 1971. It had taken Customs less than twenty-four hours to round up all six persons involved in the smuggling attempt. Agents had seized 151 pounds of pure heroin with a street value estimated at up to \$27,000,000—enough to supply the habit of every addict in New York City for almost a month.

The apprehension of Guillermo Alfonso González López also provided the Customs' Intelligence Division with some raw intelligence to be squirreled away for possible use on another day, in another case with diplomatic ramifications. On González' person were found various papers and an address book, which, in Customs' carefully calculated—and absolutely necessary—double-talk, "indicated" that González had had "associations with" some big names in Latin-American governmental and diplomatic circles, including at least one head of state, at least two ambassadors, assorted Cabinet ministers, and a couple of high-ranking military officers.

As one Customs official put it: "All these names make fascinating reading, but we couldn't lay a glove on their owners even if we had admissible evidence. They're a problem for their own countries unless they get in trouble on American soil and even then we probably couldn't hold them. In the meantime, we're not in the business of toppling foreign governments no matter what kind of creeps they have running their stores."

Besides, Customs at the time was preoccupied with its part in the final disposition of the case of Raphael Richard, *et al.* As receiver of the heroin, Oscar San Martin drew the stiffest penalty—a twelve-year prison sentence on each of three indictment counts, to run concurrently. González, the operation manager, got seven years in the pen, and Richard three and a half years after both pleaded *nolo contendere*. Américo and César Altamirano each got two years, but charges against Richard's bodyguard, Nicola Polanco, were dismissed by the United States Attorney's office after he had served almost six months in jail awaiting trial.

Meanwhile, however, Congress had become inquisitive about the drug situation in Panama, and in March, 1972, Customs' intelligence on official Panamanian involvement in heroin trafficking became a matter of public record. The vehicle of this exposé was a draft report by the unlikely Panama Canal subcommittee of the House

Merchant Marine and Fisheries Committee headed by Representative John M. Murphy, Democrat, of New York.

The connection lay in the fact that the subcommittee had been studying and conducting hearings on the United States position in Panama vis-a-vis the future operation of the Panama Canal and jurisdiction over the Canal Zone. Among the experts to which the subcommittee turned was Customs Commissioner Myles J. Ambrose, who arranged a briefing for the panel by a group of special agents on January 24.

In a far-ranging review, the briefing agents cited some chapter and verse on thirty major heroin seizure cases during the preceding eighteen months. The seizures ranged from 13 pounds to several hundred pounds, and five of the seizures—or one-sixth of the total—involved the Republic of Panama. According to the subcommittee's draft report, "The briefing team concluded that based on the Customs investigation" the Richard case "reached into the highest levels of Panamanian officialdom and included Moises Torrijos, the brother of General Omar Torrijos, and the Panamanian Foreign Minister, Juan Tack."

The report on the briefing also noted that Nicolás Polanco, Richard's bodyguard, was a chauffeur for Richard's uncle Guillermo González, and that González was a longtime friend and former bodyguard of Moises Torrijos. Added the report: "The Customs agents claimed that because Richard's father was in Taiwan at the time of these transactions that he got his diplomatic passport from Moises, who had access to them as a Panamanian ambassador. Customs confirmed the Bureau of Narcotics and Dangerous Drugs' report that Juan Tack had signed the diplomatic passport."

Although the subcommittee acknowledged that narcotics trafficking was "basically an American problem run, in part, by Americans and criminals in other countries . . . as in every other part of the world, local nationals and officials succumb to the enticement of easy money and are lured into the drug traffic. This has happened in Panama."

The subcommittee was almost as rough on the State Department, which it charged "has had an historic policy of ignoring or denying the involvement in the narcotics traffic into the United States of high-ranking officials of friendly foreign governments . . . The question is [whether] the United States is negotiating a treaty that involves a 70-year, five-billion-dollar U.S. commitment, not to mention the security of the United States and this hemisphere, with a government that condones or is actually involved in a drug-running operation into the United States."

Although it flopped, the Richard caper combined two smuggling methods—one as old as international relations and the other a product of the jet age. A proper diplomatic passport has been the perfect *laissez-passer* for the carrier of contraband since the days of ancient Canaan. Travel by commercial airline enables the dope supplier in Marseilles to promise speedy, often same day delivery to the wholesaler in New York, Miami or Chicago, and payment within a matter of days. It has brought to the narcotics trade the rapid turnover of the supermarket.

However he travels, an accredited diplomat's person and baggage are safe from customs inspection. The same is true of the individual traveling with a head of state or a high government leader paying an official visit to a foreign country, no matter how clerkly his status. By courtesy and tradition, none of the visiting team's baggage is examined; and, of course, the diplomatic "pouch"—which might be as big as a piano box—is always inviolate. Occasionally, however, authorities are able to gather enough evidence of suspicious associations to move against even these privileged persons, in what might be called "the international interest"—for want of a handier term.

EXCERPTS FROM REPORT ON ACTIVITIES DURING THE 92D CONGRESS OF THE COMMITTEE ON MERCHANT MARINE AND FISHERIES

AN OVERVIEW OF THE NARCOTICS PROBLEM IN PANAMA

One of the most pressing problems facing the United States—drug use and drug trafficking—has apparently not been overlooked by the young Americans in the Panama Canal Zone. According to reports coming to the Subcommittee, young dependents of military and civilian families "turn on" to "Panama Red", the local brand of marijuana, as readily as their counterparts in the United States turn to similar hallucinogenic drugs. A large percentage of the prison population in the Canal Zone is being held on drug charges.

Subcommittee investigators have been told that American G.I.'s have sought assignment to Panama because of the easy availability of cheap high grade dope. And this is not a recent development. As far back as 1968 members of the 101st

Airborne Division reportedly volunteered for duty at the jungle training schools in Panama because of the lure of drugs. The Subcommittee has been told by U.S. drug law enforcement officers that the Panamanians have complained about the use of marijuana by U.S. troops and have charged that our G.I.'s have corrupted Panamanian troops by introducing them to drug use during what they ironically describe as "joint" maneuvers.

Since a clamp-down on major Mexican airports, Panama has become the conduit through which passes enormous quantities of dope—an estimated one twelfth of the heroin in a recent one year period—used by U.S. addicts. This means that at one point in time roughly 20,000 American drug addicts were getting their daily supply by this route. Large quantities of cocaine have also transited the Zone into this country.

With the increase in heroin and cocaine coming through the Canal Zone, the possibility of drug epidemics that have plagued our military bases and the dependents of both military and civilian support personnel in most parts of the world is a constant threat. This happened for example, in the sprawling U.S. air base, Ching Chuan Kang (CCK), Taiwan, on Okinawa, in the Philippines, and, of course, on a massive scale in Vietnam. Wherever this happens, our military strength is sapped, our image before the people of the host countries is tarnished and our capabilities to operate defense positions and vital installations such as the Panama Canal are diminished.

Given the sensitive nature of our current relations with Panama, we cannot afford to have the picture distorted by the use of drugs or the activities of mercenary American nationals, "soldier of fortune" pilots, and others who are making small fortunes by running thousands of pounds of the world's illicit dope through the Republic of Panama. There are, of course, many points surrounding the United States where criminals transship narcotics into the United States—but these areas do not have a canal vital to the defense and commerce of the Americas and the entire world.

As Chairman Garmatz of the Merchant Marine and Fisheries Committee said in mandating the Subcommittee, we must keep abreast of all of those factors affecting the smooth and efficient operation of the Canal.

The narcotics traffic is a threat to our people there, to their children, to the American image in that country and to the relationships between our two countries. We must not let international dope peddlers and drug traffickers imperil the American position in Panama. It should be and must be stopped as quickly as possible and the Subcommittee intends to see that the Bureau of Narcotics and Dangerous Drugs Panama Task Force does this as quickly and efficiently as they did in Okinawa where a special BNDD led task force arrested 71 traffickers in nine months—mostly American servicemen and dependents—and all but wiped out the traffic on that island which contains 50,000 U.S. troops and civilians.

The Subcommittee in no way wishes to cast all of the blame on Panama or its officials for the sudden emergence of Panama as a pipeline for heroin and other drugs into the United States. It is basically an American problem run, in part, by Americans and criminals in other countries. * * *

Another case which prompted the original BNDD assessment of Panamanian official involvement centered around Joaquin Him Gonzales, a notorious smuggler who was arrested in the Canal Zone by U.S. authorities on February 6, 1971. Within two weeks he was brought to Dallas, Texas, for his active participation in the drug market and tried for conspiracy.

Him Gonzalez was international transit chief at Panama's Tocumen Airport and he used his high position to protect shipments of drugs to the United States. He was accused on this occasion of sending to Dallas somewhat over a million dollars worth of heroin. Gonzalez was allegedly a Torrijos protege and this relationship was made clear when the Panamanian Government mobilized all its resources, something it had not done until that point, for the offender to be returned to Panama. Reports in the press cited the "angry outburst" and "outraged" protest of the Panamanian Government—led by Juan Tack—over the arrest of Gonzalez.

An indication of the duplicity of certain Panamanian officials is found in a comparison of their public statements and their private or official actions in this regard. For example, in October 1972, Colonel Manuel Moriega, the Intelligence Chief of the National Guard, proclaimed a desire for Panama to become the enforcement center for fighting the drug traffic in Latin America. Yet that same month intelligence reports of the United States Government sustains the 1971 BNDD assessment and we still find that Panamanian officials and security agents are allegedly involved in narcotics trafficking. A similar "offer" was made on April 8,

1972, which received worldwide publicity. However, U.S. officials, when questioned by the Subcommittee, were unaware of any direct contact by the Panamanian Government which would have brought this about.

The arrest of Manuel Rojas Sucre, the nephew of Panama's Vice President Arturo Sucre at Kennedy International Airport on December 3, 1972, with cocaine, liquid hashish, and a diplomatic passport (his mother is Panama's consul general in Montreal) is further indication of a need for continued efforts by the United States Government to impress upon the Panamanians the seriousness with which we view the drug problem.

THE POSITION OF THE DEPARTMENT OF STATE

The State Department has had a history policy of ignoring or denying the involvement in the narcotics traffic into the United States of high-ranking officials of friendly foreign governments.

While the Department has taken a "soft" approach to the narcotics problem generally, in Panama it has reached an absurd extreme. For example, the Subcommittee was told by the director of the BNDD that as a result of the strong Panamanian objections to the arrest of Him Gonzalez it is highly doubtful that the State Department would ever again allow the arrest of a Panamanian national in the Canal Zone; BNDD agents claimed the Panamanians were only paying lip service to narcotic drug enforcement and that the big trafficking was going on full tilt with the knowledge, sanction and even involvement of certain Panamanian officials and Guardia members.

After a preliminary Subcommittee report was released in March of 1972, on the involvement of Panama's Foreign Minister and others in that government in the narcotics traffic, three BNDD agents assigned to work out of the U.S. Embassy in Panama City were declared persona non grata and given 12 hours to leave the country. This ultimatum was delivered on national television by Foreign Minister Juan Tack. This was done after Tack had arranged for the agents to sign letters written by the U.S. Ambassador in Panama denying they had discussed with the Chairman of this Subcommittee the relationship of government officials of Panama to narcotics smuggling into the United States. In subsequent testimony before this Subcommittee, one of the agents stated that he had, in fact, discussed with staff members of the Subcommittee such high-level involvement. There were public denials by various administration agency heads of the charges made in the Subcommittee report—the most heated coming from the Department of State. However, a recent government document supplied to the Subcommittee compiled from information and intelligence gathered by the several agencies with a responsibility for international narcotic law enforcement reached the following conclusion on the so-called "Latin connection":

"Generally speaking, the greatest detriment to effective enforcement in Latin America is corruption. The corruption goes all the way to the top of some Latin American governments. One of the more glaring examples of official corruption is the country of Panama. . . ."

This Subcommittee is in accord with the proposal made by the authors of this report when they concluded:

" . . . Because of the known involvement of Panamanian government officials in the international narcotics traffic, the U.S. Government should take a firm stand in the current negotiation of a new treaty for the continued use of the Panama Canal Zone.

"The new treaty should continue to vest authority for the Canal Zone in the Canal Zone Police. The U.S. should not abrogate its authority to arrest fugitives from the U.S. who appear in the Zone, regardless of their nationality. The U.S. should not forego the right to remove such fugitives to the appropriate federal jurisdiction. By taking a strong stand, the U.S. will continue to provide adequate protection to the large number of U.S. citizens who reside in the Canal Zone. It will also prevent international traffickers from obtaining refuge in the Zone as they now do in Panama. More importantly, it will also demonstrate to the rest of the continent that the U.S. is completely serious about controlling the flow of narcotics into the country. It is recognized that by taking this stand, the Government of Panama will attempt to retaliate by creating incidents similar to those that occurred in 1964."

In summary, the Department of State has put a higher priority on placating an increasingly hostile and demanding regime in Panama than it has on taking a firm stand against government that is a major factor in allowing the international flow of heroin and cocaine presently inundating the United States. This is in spite of a wealth of evidence and intelligence that would dictate a firmer course of action.

The question that has apparently been left for the Congress to answer is: Is the United States negotiating a treaty that involves a 70 year—5 billion dollar U.S. investment, not to mention the security of the United States and this hemisphere with a government that condones or is actually involved in a drug-running operation into the United States?

In view of the weak reaction of the Department of State to the narcotics traffic in Panama, it is the conclusion of this Subcommittee that it is incumbent on the Subcommittee to let the Congress—and in turn the Panamanians—know that the United States will not tolerate the use of diplomatic channels and the attendant immunity to be used to funnel drugs into this country.

AMENDMENTS SUBMITTED FOR PRINTING

PANAMA CANAL TREATIES—EX. N, 95-1

AMENDMENT NO. 33

(Ordered to be printed and to lie on the table)

Mr. ALLEN submitted an amendment intended to be proposed by him to Executive N, 95-1, the treaty concerning the permanent neutrality and operation of the Panama Canal.

(The remarks of Mr. Allen when he submitted the amendment appear earlier in today's proceedings.)

AMENDMENTS NOS. 34 THROUGH 39

(Ordered to be printed and to lie on the table.)

Mr. HATCH submitted six amendments intended to be proposed by him to Executive N. 95-1, the Panama Canal Treaty.

Mr. HATCH. Mr. President, as in executive session, I submit and send to the desk six amendments to the Panama Canal Treaty. I ask unanimous consent that they be printed in the Record.

There being no objection, the amendments were ordered to be printed in the Record, as follows:

AMENDMENT No. 34

In paragraph 1 of article I, after "Upon its entry into force," insert "subject to the enactment of the implementing legislation referred to in paragraph 5,".

In the first sentence of paragraph 2 of article I, after "related agreements," insert "and subject to the enactment of the implementing legislation referred to in paragraph 5,".

At the end of article I, add the following:

"5. For all purposes of this Treaty, the two Parties undertake to enact, in accordance with their respective constitutional processes, the legislation necessary to implement the provisions of this treaty, including the legislation necessary to exercise the power of the Congress of the United States of America under article IV, section 3, clause 2 of the Constitution of the United States of America, relating to the disposal of territory or other property belonging to the United States of America."

AMENDMENT No. 35

In the first sentence of paragraph 1 of article III, after "as territorial sovereign," insert "but subject to the enactment of the implementing legislation referred to in Article I,".

In paragraph 10 of article III, after "Upon entry into force of this Treaty," insert "subject to the enactment of the implementing legislation referred to in Article I,".

AMENDMENT No. 36

In the first sentence of paragraph 1 of article XI, after "The Republic of Panama shall" insert a comma and the following: "subject to the enactment of the implementing legislation referred to in Article I,".

In the second sentence of paragraph 1 of article XI, after "upon the date this Treaty enters into force," insert "subject to the enactment of the implementing legislation referred to in Article I,".

AMENDMENT No. 37

In paragraph 1 of article XIII, after "Upon termination of this Treaty," insert "and subject to the enactment of the implementing legislation referred to in Article I,".

AMENDMENT No. 38

In paragraph 3 of article III, at the end of the text immediately above subparagraph (a), add the following: "The operating revenues of the Panama Canal Commission shall be deposited in the Treasury of the United States of America.".

In the first sentence of paragraph 5 of article III, strike out "Panama Canal Commission shall reimburse" and insert in lieu thereof "United States of America shall reimburse, only after the amount of such reimbursement has been appropriated.".

AMENDMENT No. 39

In the text of paragraph 4 of article XIII immediately above subparagraph (a), strike out "Panama Canal Commission" and insert in lieu thereof "United States of America, only after such amount has been appropriated,".

In paragraph 4(a) of article XIII, strike out "Canal operating revenues" and insert in lieu thereof "the Treasury of the United States of America" .

In paragraph 4(b) of article XIII, strike out "Canal operating revenues" and insert in lieu thereof "the Treasury of the United States of America" .

In paragraph 4(b) of article XIII, strike out the last sentence.

In paragraph 4(c) of article XIII, strike out "Canal operating revenues to the extent that such revenues" and insert in lieu thereof "the Treasury of the United States of America, if its receipts from the Panama Canal Commission".

In the last sentence of paragraph 4(c) of article XIII, strike out "Canal operating revenues" and insert in lieu thereof "such receipts."

COMMUNIST CUBA TO BACK PANAMA

Mr. GOLDWATER. Mr. President, appearing in the Miami, Florida paper, the *Diario Las Americas*, was an article written in Spanish that has been of great concern to people who oppose the canal treaty. I have translated this and ask unanimous consent that it be printed in the Record. I hope that my colleagues in the Senate will read it and I hope they will pay a little more attention to the proximity of Cuba to the Panama Canal and the proximity of other countries not exactly friendly to the United States who while they want the canal to continue to operate, would probably take up the defense of what the Panamanians would call an intervention by the United States if and when it becomes necessary for us to defend the canal. There being no objection, the article was ordered to be printed in the Record, as follows:

COMMUNIST CUBA TO BACK PANAMA

MEXICO CITY, D.F., January 28.—Cuban Foreign Minister Isidoro Maimierca stated that Cuba would back Panama militarily if the people of that country were to request assistance to defend themselves against a U.S. aggression.

"We will aid any government that requests it in order to fight for its independence and social justice," added Malmierca who is here to share in the work of a Cuba-Mexico Joint Commission.

Within this ideological framework, the Cuban Foreign Minister stated that his country's troops would remain in Angola until that country's security had been assured "against the racist armies of South Africa and Zaire."

Malmierca also stated that Latin American integration "is a permanent aspiration of the Cuban revolution" but much progress yet remains to be made.

Finally, Malmierca stated his "dismay" at the presence of U.S. troops in Guantamo and the possible intervention of the U.S. Navy in the Panama Canal.

THE PANAMA CANAL TREATIES CLOSED SESSION DEBATE

Mr. DOLE. Mr. President, at 10 o'clock, the Senate will go into closed session to discuss and hear discussed and perhaps hear the record on certain allegations involving General Torrijos' alleged drug trafficking.

Mr. President, as one who is very concerned about this, I would hope that following the closed session, whether it ends today, tomorrow, or whenever, the Senate would, in its wisdom, vote to make that information available to the public. There might be some exceptions, if there is any possibility that someone's life might be endangered or someone might be exposed to physical harm.

But having traveled around the country a great deal in the past 10 days, there is a great interest in the Panama Canal debate across the country. Some are for the treaties; some are opposed to the treaties; and some have not made up their minds.

It seems to the Senator from Kansas that one way to discourage the American people is to somehow keep secret information that should be made available.

The Senator from Kansas said on a number of occasions that there is not any direct bearing or direct connection between the alleged drug trafficking and the treaties themselves. The Senator from Kansas never made that charge. But I can say as far as the American people are concerned there is a direct bearing because, as I sense the mood of the American people, they do not want us voting for the treaties if, in fact, there is some connection between drug trafficking and General Torrijos.

So it would seem to me, as we prepare to go into closed session, there are a number of questions that must be addressed.

We must determine whether General Torrijos has ever been "the subject"—as distinguished from "the target"—of an investigation by either the U.S. Justice Department, the U.S. Drug Enforcement Administration, or a U.S. grand jury, with respect to illegal Panamanian drug operations. If so, we should know the results of that investigation and if not why not, considering the several allegations contained within DEA files.

We should also address the question whether or not General Torrijos if not a direct participant is in any way aiding, abetting, protecting, or tolerating illegal drug traffic passing through Panama.

If there is a sealed indictment, as there now appears to be, involving the brother of General Torrijos, Moises Torrijos, as a coconspirator in illegal drug operations, is there additional evi-

dence in the possession of the DEA that Moises Torrijos is guilty of drug trafficking? What elements of this matter were discussed between John Ingersoll, Director of U.S. Bureau of Narcotics and Dangerous Drugs, and Omar Torrijos in Panama on June 22, 1972?

Does the Senate Intelligence Committee have possession of all 45 DEA files on the list supplied by this Senator, including so-called DEACON and DEACON 2 files? Who do they suggest about the participation by the Torrijos family and other Panamanian Government officials in illegal narcotics operations? What information do they contain regarding connections between Omar Torrijos and Cuban President Fidel Castro?

These are some of the basic questions that hopefully will be addressed in the closed session which is about to commence.

But, I think, finally, the American people have a right to know as much as possible and, unless the motion is made by some other Senator, the Senator from Kansas intends to move that we lift the cloak of secrecy insofar as we can pertaining to the evidence revealed to other Senators on the floor at 10 o'clock.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. Morgan). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

THE U.S. FUTURE AND THE PANAMA CANAL

Mr. KENNEDY. Mr. President, last month, at Endicott College, former Senator Henry Cabot Lodge made a very sensible and compelling speech in support of the Panama Canal Treaties. He stressed our political, security, and commercial interests in the new treaties and warned that failure to ratify them "would surely poison our relations with the whole Latin American world." I commend this speech, from an elder statesman of Massachusetts, to all my colleagues, and ask unanimous consent that it be printed in the Record.

There being no objection, the speech was ordered to be printed in the Record, as follows:

THE U.S. FUTURE AND THE PANAMA CANAL

President Carter has asked the Senate to ratify two separate treaties. One is the Panama Canal Treaty which provides for the administration of the canal by the United States for the rest of this century (after which it goes to Panama). The other treaty, known as the Neutrality Treaty, guarantees that the canal will be open and neutral permanently, both during and after the period covered by the Panama Canal Treaty. It gives the United States the power to act in defense of the Canal's neutrality in time of need.

Supporting President Carter's request is former President Ford, former Secretary of State Kissinger and the Joint Chiefs of Staff. Four Presidents have recommended that the treaty of 1903 be changed and brought up to date. I am supporting the President.

Let me say that when a President makes a proposal in the complicated field of foreign affairs he is entitled to have the benefit of the doubt—at least at the outset. After all, he knows things that we do not know. Later, as we gain in knowledge and experience, we may conclude that the President is wrong, but, at the beginning, he is entitled to the benefit of the doubt.

Our relations with the Panama Canal are governed by the Treaty of 1903 which said that the U.S. in Panama would be "as if we were sovereign". But we never were actually sovereign and we did not want to be. So there is no question of "giving up our sovereignty" over territory which belongs to us, like Alaska or the Louisiana territory. The crucial question is whether we shall so conduct ourselves that we incur the hatred, rather than the respect, of Latin America. That—rather than "sovereignty"—is truly important.

The present state of affairs should be changed. It makes enemies for us. After all, there is no need for the United States to run the courts, the schools, the street cleaning, and the fire department in Panama—and we do not do so. But in the Canal Zone, which is a ten mile swath of about 600 square miles and which cuts the country in two, we do run the local government. Understandably this seems unreasonable and somewhat colonial to the Panamanians.

We Americans can be proud of the Panama Canal. The building of it was surely one of the greatest adventures of all times. Nothing else in history even remotely equals it. If you exclude the two World Wars, it was much the biggest and costliest effort that was ever mounted and it affected the lives of tens of thousands of people throughout the world. It was the "moonshot" of the early 20th century.

Now, here we are after 74 years under the Treaty of 1903, and Panama is entering a new phase which has already split public opinion. I believe that the long-headed and sagacious thing to do is to ratify these two treaties.

Remember that the canal will not be turned over to Panama until the year 2000, that the permanent right of the U.S. to defend the canal is specifically assured in the treaty and that today the largest supertankers and U.S. aircraft carriers are too big to pass through the canal, but a sea level canal probably could handle the biggest ships.

I have also heard the statement made that the US taxpayers should not have to pay the Panamanians to take the canal back. This is not going to happen: the payments to be made to Panama for the use of its territory will come from canal tolls, not the US taxpayer. As the Joint Chiefs have repeatedly stressed, US military—and commercial—interests in the canal are interested in its use, not in who owns it.

A statement of General Marshall's, although made in another context, is pertinent here. He said that national security is achieved not just by military power, necessary though that sometimes is, but also by actions which subtract from the number of one's potential enemies and which add to the number of one's potential friends. I believe that in the case of Panama, we need good will for us, throughout Latin America, and do not need the real estate in Panama.

If this pending effort to remove the appearance of colonialism by ratifying the two treaties were to fail, such failure would surely poison our relations with the whole Latin American world. It might well involve our troops in the Canal Zone in an expensive guerrilla warfare with Panamanian rebels. Viet Nam should have taught us how costly a guerrilla war can be. We would in such a case be paying an enormous price in order to keep our special position in the Canal Zone, a position which we are better off without.

On the other hand, to transfer ownership of the canal to Panama would tend to give us new friends and reduce the number of our enemies. To me, this course, even though it is not easy to do, is the constructive course to follow.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The PRESIDING OFFICER. Under the previous order, the Senator from Alabama (Mr. Allen) is recognized to make a motion with regard to the treaty on which there shall be 30 minutes under the control of the Senator from Alabama, with the quorum call not to come out of the 30 minutes time.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished Senator from Alabama may yield to me for not to exceed 5 minutes, without the time being charged against him.

Mr. ALLEN. If the Senator will yield, of course, with the proviso I not lose my right to the floor.

Mr. ROBERT C. BYRD. Yes.

The PRESIDING OFFICER. The Senator from West Virginia is recognized on that basis.

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Alabama.

Mr. President, the Senate, in closed session, over a period of somewhere between 9 and 10 hours yesterday and 4 hours today, has completed a full and detailed discussion of investigations undertaken by the Senate Select Committee on Intelligence in regard to certain issues, which I have referred to heretofore as peripheral issues, which have become involved in the debate on the Panama Canal treaties.

The committee specifically and in detail examined several issues which were alleged to have a bearing on the Panama Canal treaties now being considered by the Senate.

First, the committee investigated charges that, because of some of the U.S. intelligence operations in Panama, Panamanian authorities pressured our negotiators and, as a result, somehow extracted a better deal on certain provisions of the treaties.

Second, the committee exhaustively investigated charges of drug trafficking by members of the Torrijos family, and others, and the allegations that these charges in some way had a bearing on the outcome of the treaty negotiations.

Third, the committee intensively investigated charges of payoffs which were alleged to have been sought by high-level executive and legislative branch officials in return for arranging certain increases in the annuity to be paid Panama under the treaty.

The chairman of the Intelligence Committee, Mr. Bayh, set forth in great detail the committee's findings with respect to these charges and the vice chairman, Mr. Goldwater, participated actively in the proceedings. The committee's findings have been fully related to the Members of the Senate during the course of this debate and the findings on the allegations were negative on all counts.

My understanding of the information presented to the Senate leads me to these conclusions:

First, there is no evidence showing that U.S. intelligence operations had any bearing on the outcome of the negotiations leading to the formulation of the treaties.

Second, there is no evidence that would stand up in any U.S. court of law linking General Torrijos to any illegal narcotics operation of any kind. In addition, there is no evidence that the committee has been able to find to suggest that the drug issue, in general, had any bearing whatsoever on the final outcome of the negotiations.

Finally, there is absolutely no evidence, in spite of intensive investigation, that any legislative or executive official ever sought any payoff or kickbacks of any kind whatsoever.

Mr. President, these findings are extremely important and should put to rest the charges that have been made, the allegations that have been made, and with which the Senate has dealt at great length during these 2 days. These allegations, innuendoes, and insinuations have been, at best, remote issues peripheral to the essential question: Are these treaties in the best interest of the United States?

Mr. President, I commend the chairman of the Intelligence Committee, Mr. Bayh, and the vice chairman, Mr. Goldwater, and all members of that committee, for their exhaustive and tireless investigations and for their detailed presentation of the committee's findings. The Senate is deeply indebted to the committee. It is my hope, Mr. President, with these investigations behind us and with presentation of the report which Chairman Bayh has made, that the Senate can now proceed with its debate on the treaties and can contend with the real issues that go to the merit of the treaties.

I thank the distinguished Senator for yielding.

Mr. GRIFFIN. Mr. President, will the Senator from Alabama yield to me?

Mr. ROBERT C. BYRD. Mr. President, do I have any time remaining of my 5 minutes?

The PRESIDING OFFICER. The Chair advises that the 5-minute period has expired.

Mr. MCCLURE. Mr. President, will the Senator yield for a unanimous-consent request?

Mr. ALLEN. Yes, provided I do not lose my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MCCLURE. Mr. President, I ask unanimous consent that the Senator from Michigan (Mr. Griffin) be allotted 5 minutes under the same conditions in which the majority leader just spoke.

Mr. ALLEN. I have no objection.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the distinguished minority leader have 5 minutes, under the same conditions.

Mr. ALLEN. I have no objection.

Mr. GRIFFIN. I yield to the minority leader.

Mr. JAVITS. Mr. President, I would like 5 minutes, following Senator Baker.

Mr. ALLEN. I have no objection, under the same conditions.

Mr. BAKER. I thank the Senator from Michigan for letting me go ahead.

Mr. President, I only wish to say that I am pleased that the Senate went forward with this rather extended closed session.

As I indicated to the distinguished Senator from Kansas (Mr. Dole) when he suggested this some time ago at a Republican policy luncheon, I think it is imperative that all Members of the Senate have available a forum where they can freely discuss all the facts available to the Intelligence Committee. I think that has been done. I do not know what the final result will be.

I, of course, will look forward to the Senate's final determination on this issue. I think this will be helpful.

I, too, commend Senator Bayh, the chairman of the Intelligence Committee, and Senator Goldwater, the vice chairman of the Intelligence Committee for their diligence, their careful preparation, and their presentation to the Senate.

One of the reasons I sought to amend these treaties, in cosponsorship with the distinguished majority leader and 76 other Members of the Senate, rather than agree to a memorandum of understanding between President Carter and General Torrijos, is that, under circumstances such as these, I felt that it was imperative that we deal government to government; that, on the one hand, the amendment should originate in the Senate as a formal action by this body. By the very nature of things, amendments would require the formal institutional concurrence of the government of Panama.

I reiterate, Mr. President, that we are not dealing here with General Torrijos or his brother. We are dealing with the Republic of Panama, and I know of no charges against that country.

I believe that the amendments proposed by the distinguished majority leader, by me, and by 76 others fully take into account all difficulties that have been discussed in this session.

THE PRESIDING OFFICER. The Senator from Michigan (Mr. Griffin) is recognized for 5 minutes, under the unanimous-consent agreement.

MR. GRIFFIN. Mr. President, I was surprised, frankly, that arrangements were made to cut into Senator Allen's time and would be on this subject and of this nature, expressing conclusions regarding the closed session. But since that is the case, I should like to raise a procedural point.

I want to be sure that the transcript of these secret sessions, so-called, when it is made available—and there has been a unanimous-consent agreement that a sanitized version will be made available in 72 hours—be an actual transcript of what has been said here and not a revised version.

I say that because this Senator is among the guilty from time to time in taking the transcript and embellishing on what he said and perhaps adding an argument here or subtracting an argument there, as the convenience is. But there is one important difference.

In those open sessions, the press is covering what we say. In this closed session, no one on the outside knows what is going on, if we are able to rewrite the Record.

The majority leader has made arrangements, under a unanimous-consent agreement, that each Senator who participated will have a period of time to edit his remarks.

I ask the majority leader if it is the understanding that the intent of the rules will be observed strictly and that the committee

that has been appointed to sanitize the Record will also review the transcript, to see that Senators are confined to punctuation and grammatical changes and that there are no changes of substance so far as the transcript is concerned.

Mr. ROBERT C. BYRD. Yes, I would hope that would be the case; that Senators would confine themselves to making grammatical corrections only and would not add arguments pro or con in relation to the issues that have been raised and discussed.

Mr. GRIFFIN. Is the committee charged with the responsibility of seeing that we will have that kind of transcript? It seems to me that that is very important.

Mr. ROBERT C. BYRD. The Senator was here last evening when I entered the request, and there was no objection to it. I cannot speak for the committee. So far as I am concerned, I will not even look at the transcript. I did not have much to say. I sat and listened a bit. I will not even go and look at it. So far as I am concerned, we can agree by unanimous consent that no Senator be allowed to make any changes other than that.

Mr. GRIFFIN. I thank the majority leader.

Then, Mr. President, I ask unanimous consent that the original transcript of the proceedings of the closed session, as edited by each participating Senator, be retained and that the appointed committee review the editing by each Senator, as well as the sanitizing for security purposes, before the transcript is released.

Mr. BAYH. Mr. President, reserving the right to object.

The PRESIDING OFFICER. Reservation is heard.

Mr. BAYH. Reserving the right to object—and I shall not object—as the chairman of this committee, who has been involved in an almost round-the-clock debate for the last couple of days, I enthusiastically support the suggestion of the Senator from Michigan. I feel that that really was the thrust of the majority leader's motion in the first place. We want to get all the information out for the American people which will not jeopardize lives and jeopardize the security of the country.

Mr. GRIFFIN. I thank the Senator from Indiana. I am glad he agrees.

I yield to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I am glad the Senator from Michigan has made this request. This has long been a bug in my bonnet, that we are allowed to go backstage and change our remarks, not just change the punctuation and grammar, but that we are completely able to reedit what has been said and put in things that have not been said.

I recall that at one time last year I made a prolonged speech on the B-1, and the next day in the Record I saw a reply from a colleague, indicating that he had debated me. He was not even on the floor.

So I hope we will not only make this a rule for this one instance but also that we can adopt this as a rule, that we can correct nothing but grammar.

As far as that goes, I have more confidence in the Official Reporters of Debates than in my own staff, to correct my poor grammar and my poor punctuation.

Mr. GRIFFIN. It is especially important in a closed session, which is not open to the public or the press.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Michigan?

Mr. ROBERT C. BYRD. Mr. President, reserving the right to object—and I will not object—let us just read the whole request, so it is in the Record. I made this request in order that the press might have available to it, at the very earliest hour possible, the transcript of the closed session.

If the Senator will allow me, under a reservation of objections, and I do not intend to object, the unanimous-consent request which was made and granted was as follows:

That at the conclusion of the closed-door session a complete transcript of the proceedings be personally delivered in a sealed envelope by the chief reporter to the Secretary of the Senate; that until Thursday noon, tomorrow noon, the transcript of the remarks of each Senator who participated in the debate be made available by the Secretary of the Senate, under his direction, only to said Senators, not to staff, but to said Senators, for revision of their said remarks and that for this purpose the transcript be secured in room S-406 of the Capitol, the Office of Classified National Security Information; and further, that the staff of the Intelligence Committee be authorized under the direction of the Secretary of the Senate, or his designee, the chairman and ranking member of that committee, meaning Mr. Bayh and Mr. Goldwater, and the minority leader and the majority leader, the Senator from Kansas (Mr. Dole), the Senator from Maryland (Mr. Sarbanes), the Senator from Michigan (Mr. Griffin), the Senator from Idaho (Mr. Church), and appropriate persons from the executive branch, to sanitize the completed remarks in that same room, S-406 of the Capitol, and that when such sanitization is completed the sanitized version of the closed-session remarks be released to the news media no later than 50 hours after the conclusion of the closed session.

That request was granted.

I compliment the Senator from Michigan on his concern and on the requests that he has now made. I do not think any arguments pro or con ought to be made by any Senator.

Mr. GRIFFIN. Or ought to be added.

Mr. ROBERT C. BYRD. Pardon?

Mr. GRIFFIN. The Senator does not think they should be added.

Mr. ROBERT C. BYRD. They should not be added. Yes. I do not think any arguments pro or con ought to be made by way of addition to those to the transcript.

Mr. GRIFFIN. Correct.

Mr. ROBERT C. BYRD. And in view of the fact that Mr. Griffin is going to be one of those Senators selected to oversee the sanitization of this transcript, I am confident that no arguments pro or con will be added, and I congratulate the Senator. I not only do not object, but I join him in making the request.

The PRESIDING OFFICER. Is there objection? The Chair hears no objection.

Without objection, it is so ordered.

Mr. GRIFFIN. Mr. President, if I have any time remaining on my 5 minutes, I just thank the majority leader. I am sure that that is

what he intended by the original agreement, but if there were any misunderstanding each Senator is on notice now that except for grammatical and punctuation changes, and so forth, no change in substance of the transcript will be permitted.

I yield to the Senator from Utah, if I have the floor.

The PRESIDING OFFICER. The time of the Senator has expired, and by previous agreement the Senator from New York (Mr. Javits) is recognized at this time.

Mr. JAVITS. Mr. President, I have 5 minutes. I happily yield a minute to my colleague and friend from Utah.

Mr. GRIFFIN. That is fine.

Mr. JAVITS. Go ahead, I say to Senator Garn. I just yielded a minute to him.

Mr. GARN. I thought the Senator meant after he finished.

I thank the Senator very much.

I cannot help but stand and respond to the distinguished majority leader's analysis of the closed session. The majority leader is accurate when he says that no evidence was reported that would hold up in court, but I do not want the impression left from his remarks that there was not a great deal of evidence, and I speak as a member of the Intelligence Committee, of overwhelming circumstantial and hearsay evidence, and I admit that any reasonable person in the country who had the opportunity to read all of it would conclude that the Torrijos brothers and many other high Panamanian officials were involved in drug traffic.

I just do not want that impression. It is a legalistic point of view.

Mr. LEAHY. Mr. President, will the Senator yield?

Mr. GARN. Let me finish. I am on Senator Javits' time.

I also would make one other remark that, where we are passing this off, what we are dealing with is a corrupt illegal dictatorship, just like we do in Korea and Vietnam.

The PRESIDING OFFICER. The time of the Senator from Utah has expired.

The Senator from New York, Senator Javits.

Mr. JAVITS. Mr. President, I have only 4 minutes, if the Senator will forgive me.

Mr. LEAHY. I shall make a unanimous-consent request.

Mr. JAVITS. Sure.

Mr. LEAHY. Mr. President, I ask unanimous consent that upon the completion of the time of the Senator from New York, I have 3 minutes under the standing agreement we have.

Mr. JAVITS. Perhaps Senator Bayh would like 2 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. BAYH. Perhaps the Senator from Indiana should be heard from under the same circumstances, if there is no objection, not to exceed 5 minutes in deference to our friend from Alabama.

The PRESIDING OFFICER. Is there objection to either of the requests of the Senator from Vermont or the Senator from Indiana?

The Chair hears none. It is so ordered.

Mr. JAVITS. Mr. President, I rise, first to thank Senator Allen for his customary courtesy and, then, because I have participated in this aspect of the debate both before the Foreign Relations Committee and here on the floor, both in the open and in executive closed-door session, to make this point which I think is critical. I used

these words and I use them again. Torrijos is no angel. He is a military dictator. And I have little doubt that there are very few angels that one can find in any country in high office particularly any more than Panama. And I have little doubt, too, that there is a good deal that went on here in the narcotics traffic.

It is said that it has been materially improved, and I think Senator Bayh is a very reliable authority on this, and that is to the good.

But what I have sought to make very clear is let us not lose the main point. Let us remember that one of the most traditional ways of trying to beat something is by trying to discredit it on a totally collateral issue, and that is all I said about this.

The fact is that this is a treaty for 23 years and then it is succeeded by a treaty in perpetuity, all of which binds the people of Panama and the people of the United States. I will not be here. Many of the rest of us will not be here. And Torrijos will not be there probably, and many of the people who are with him now will not be there:

The question is, therefore: Are the peoples bound and is this good for the United States?

And those of us who contend for the treaty say, one, the plebiscite binds the people of Panama just as we are bound once the Senate acts and the necessary implementing legislation is passed and, second, this is good for the United States because the alternatives are all too dire and our opponents never deal with the alternatives. They just assume that we are still in 1903, when you can pull off these deals. Well, you cannot. It is 75 years later. And the alternative, Mr. President, is Mozambique, Rhodesia, South Africa, and all of the chaos which we see in the world.

Here the people of Panama have enough discipline and enough patriotism to bind themselves for 23 years substantially to continue the present situation.

This seems to me to be the acid test of the reasonableness with which the people of Panama down there are faced, and I deeply believe the people of our own country ought to be just as reasonable.

THE PRESIDING OFFICER. The Chair, under the previous order, now recognizes the Senator from Vermont.

MR. LEAHY. Mr. President, I will be brief.

I think that the transcript will give the American people a chance to make a determination of the involvement of the Torrijos family and anybody else.

I must rise in response to my good friend from Utah when he said that we do not have enough evidence to stand up in court, but nonetheless we have the circumstantial evidence, and so on and so forth.

Having been a prosecutor for 8½ years, I have heard so many times law enforcement agencies or others say. "Well, I know that even though we can't prove it I know so-and-so is guilty."

I like to think that we have come a lot further than that. And I like to think that we rely on real evidence and not on hearsay, not on will-o'-the-wisp allegations.

I wish to align myself with the statements and the conclusions reached by our distinguished majority leader. They are the same conclusions that I also reached.

I would also hope that at the same time we are not saying that we are dealing with a saint, we are dealing with Saint Omar I here by any means.

But I think that we are being a little bit sanctimonious here in the Senate when some of the people opposing these treaties will stand up and say how concerned they are that we are talking about a dictator who is alleged to have been involved in some kind of drug activity—I do not know whether this means that somehow they have found religion themselves—when I see the positions taken by some of the same Senators during the time of Vietnam, when we spent \$150 billion of the American taxpayers' money, 55,000 American lives, and hundreds of thousands of Vietnamese lives in support of various dictators that we embraced wholeheartedly, many of whom were involved more than anybody in Panama in the drug traffic.

Let us not play two sides, of the same coin, Mr. President. I think the distinguished Senator from New York is absolutely right when he says we are losing sight of the main issue in the peripheral matters. It makes no sense to go around and pick and choose our dictators depending upon which particular political bloc in this country happens to support which particular action. I think that our hands are a lot cleaner on this treaty than in a lot of the activities urgently supported by Members of this body in the past.

I yield back whatever time I have remaining.

Mr. ALLEN. Mr. President, a number of Senators asked me for time. I wonder if it might be in order that I ask unanimous consent that I be recognized at 3 o'clock instead of 2 o'clock, at which time I was supposed to be recognized, in order that I might yield first to the distinguished Senator from Indiana (Mr. Bayh), then to the distinguished Senator from Nevada (Mr. Laxalt), and then to the distinguished Senator from Michigan (Mr. Griffin) in that order, for 4 minutes each.

The PRESIDING OFFICER. The Chair would advise that the Senator from Indiana, under the previous agreement, was to receive 5 minutes.

Mr. ALLEN. I see. Very well, 5 minutes.

The PRESIDING OFFICER. Is the request of the Senator from Alabama, then, that the others receive 5 minutes, or 4 minutes?

Mr. ALLEN. No, I want to be recognized for 3, if I may.

The PRESIDING OFFICER. You wish to be recognized for 3 minutes?

Mr. ALLEN. Yes. Then 3 minutes for Laxalt, 3 for Griffin, and did Senator McClure wish to be recognized also? An additional 3 minutes for Mr. McClure, at the end of which time the Chair recognize me in accordance with the previous order.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Alabama? The Chair hears none, and it is so ordered.

The Chair now recognizes the Senator from Indiana (Mr. Bayh).

Mr. BAYH. Mr. President, I appreciate very much the courtesy of the Senator from Alabama, and I doubt very much whether I will use the full 5 minutes. The Senate has heard considerable from me over the last almost continuous 14 hours.

I rise not to get involved in the dispute or in some of the opinions that have been expressed by some of my colleagues, but only to point out, now that we have gone into public session and the public is now aware of what is being said, that I think it is important, perhaps, to briefly lay the foundation of what the Intelligence Committee was commissioned to accomplish, and what we have tried to do over the last 2 days.

Our committee was not asked to make a value judgment on the merits of the treaties, but rather to make available all of the intelligence information relative to drug trafficking and its relationship with the Torrijos family, and if indeed any of that did exist, to what extent not only did it exist, but did it impact on the treaty negotiations?

We attempted, to the best of our ability, to make available the product, either specifically or in a generalized summary from information contained in thousands of documents that have been at the committee's disposal for a period of several weeks.

I think it is important for the public to know that over a period of several days all of this information has been available to every Member of the U.S. Senate who wanted to take advantage of the information and read it. Understandably, Senators have many things to do, and thus not all Members of the Senate were able to take advantage of that opportunity.

I think that the statement which has been released publicly accurately describes the summary of the committee. There is no need for the Senator from Indiana to restate it, and I think as quickly as we possibly can, we should make the transcript of the entire discussion available. We were fulfilling a rather difficult dual responsibility, and I salute the Senator from Arizona (Mr. Goldwater) for his cooperation in this regard. On the one hand, we had the responsibility of making information available, all of the information available to our Senate colleagues, so that they could make an intelligent decision. On the other hand, we had a responsibility not to release information that can endanger lives or damage the collecting mechanism of our intelligence community, so that they will no longer be able to perform that very important function.

The more information we can make available to the American public, so they can have access to what actually has gone on here in the last few days, the better off we are going to be. None of us, and I feel very few of our American constituents, would want us to release information that could endanger lives or cause damage to the future security of our country.

THE PRESIDING OFFICER. Under the previous order, the Chair now recognizes the Senator from Nevada (Mr. Laxalt) for 3 minutes.

MR. LAXALT. Mr. President, I would like to make a point or two in connection with the statement of the proponents indicating that these sessions have not been constructive. As far as the Senator from Nevada is concerned, they have been exceedingly constructive. There have been indications, principally from the majority leader, that all the peripheral questions with which we are dealing have now been disposed of. That, in the judgment of this Senator, is not the case. I think the hearings raised far more questions than they answered and that it is evident that the Intelligence Commit-

tee, as fine a job as they did, had a narrow focused inquiry. It has been said that the character of General Torrijos and the Panamanian leadership is only a peripheral issue. That, in the judgment of many of us, is not a peripheral issue; it is central to the consideration of this body as to whether we enter into this agreement.

It has been said that they are all the same, the Panamanians are no worse than the rest. I submit to my colleagues that the difference here is that we are not just handing out money; we are handing over a large and vital strategic asset. It is actually critical to the people of this country to know whether or not we are going to enter into an agreement with a government which may be engaging in extensive drug smuggling, or which may be engaged extensively in corrupt government practices. That is basic, it is central to this issue, and as far as this Senator is concerned, we are going to continue this line of inquiry throughout the course of the debates.

I yield whatever remaining time I have to the Senator from Michigan.

The PRESIDING OFFICER. The Chair would advise that the Senator from Michigan (Mr. Griffin) has 3 minutes in his own right, and a minute and a half of the time remaining to the Senator from Nevada.

MR. GRIFFIN. I thank the Chair. I shall not try to evaluate the record of the closed sessions. When the transcript is made available to the public and to the press, it can be evaluated then. Suffice it to say that there is a serious problem.

The Panama connection with respect to narcotics is not a small item. As the indictment made public this morning indicates with respect to the brother of Omar Torrijos, we are not talking about small amounts of marihuana; we are talking about large amounts of heroin. As was publicly revealed, there were 70 kilos of heroin involved in that particular situation, which I think is somewhere in the neighborhood of 150 pounds. There is every reason to believe that these are not isolated instances, but part of a wider pattern.

I think the bottom line here, though, is what do they have to do with the treaties before the Senate? Some point out that they bear on the character of the credibility of the leadership of the other nation with whom we are dealing, and that is true.

Let me make another point: If the drug problem is a serious problem in the United States, and it is certainly related to crime, and we want to do something about it, these treaties, if they are ratified, greatly diminish and reduce the capability of the United States to cope with the illicit drug traffic.

Why do I say that?

Well, we may turn the canal over to Panama in the year 2000, but under these treaties it is 30 months after ratification that we turn police power and customs jurisdiction over to the Republic of Panama—30 months.

At the present time, of course, the United States, as if it were sovereign, has complete control and jurisdiction within the Panama Canal Zone. We not only can arrest people; we can even inspect vessels going through the canal which we believe or suspect are carrying nuclear missiles, contraband, or drugs. Thirty months

after we ratify these treaties customs jurisdiction will vest in the Republic of Panama. We will no longer be able to inspect vessels.

Then even more interesting about these treaties is that under the accompanying documents, agreements, and implementation of article III and article IV, we would agree that anyone apprehended by the United States for violation of drug traffic, whether he be a U.S. citizen or a Panamanian, will have to be turned over to the Republic of Panama immediately.

That is very interesting.

Under both of these provisions there is procedure that if a U.S. citizen or a Panamanian is apprehended by the United States and he is charged with murder, rape, robbery, violence, or trafficking in drugs or crimes against the security of Panama—whatever that is—we will be obligated immediately to surrender him and turn that person over to the Republic of Panama.

Those who have confidence in the Republic of Panama, of course, concerning the drug traffic will think that is a fine provision. But in this Senator's mind it would be a great weakening of the capability of the United States to deal with the drug traffic problem.

I admit there are many other considerations whether or not these treaties should be ratified. That is not the only one or the most important one, but it is an important factor.

The PRESIDING OFFICER. The time of the Senator has expired. The Senator from Idaho (Mr. McClure) is recognized.

Mr. McCLURE. A parliamentary inquiry, Mr. President. I understand that I am now to be recognized and the Senator from Alabama (Mr. Allen) is to be recognized at 3 o'clock; is that correct?

The PRESIDING OFFICER. That is correct.

Mr. McCLURE. I ask that 3 minutes of the time between now and 3 o'clock, which I will not use, be granted to the Senator from Kansas (Mr. Dole).

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. McCLURE. Mr. President, the entire issue of what was said or was not said or what was revealed or was not revealed in the secret session of the Senate is one thing, but I do not think we should allow a characterization of the sessions of the last several hours of today and yesterday to be characterized as being meaningless. Nor am I much impressed by the eloquence of my good friend from Vermont who said that, because of his experience as a prosecutor, we should not pay attention to something if we could not convict in court.

If my memory serves me correctly, and I was here during nearly all of the debate and discussion over the last 2 days, the Senator from Indiana being pressed on this point said he was satisfied by a preponderance of the evidence, even though the evidence may not be sufficient to convict in a court because in a criminal court it requires satisfaction beyond a reasonable doubt.

Are we going to erect in our minds a barrier to the consideration of substantial evidence of corruption in this regime and drug trafficking by this regime simply because it would not be sufficient to carry the burden of proving beyond a reasonable doubt?

I would say the American people have a right to expect that we are not going to deal with that kind of a regime and wipe out of

the record everything that we cannot prove beyond a reasonable doubt, which is what some are suggesting.

I know there are some who said that the proceedings yesterday were boring. I do not know why they should have thought they were boring. They were not even here. I sat here through all of it. I was not bored. Why? Because the evidence that was brought forth I think is credible, is compelling, and is certainly something that the American people are going to be concerned about. It cannot be boring when upon one instance, one proven instance, there were 150 pounds of heroin carried into New York City.

The charge was made that this regime is no more corrupt than the regimes in South Vietnam. I do not recall that South Vietnam was charged with bringing heroin into New York City. That difference, I say, is worthy of consideration by the people of the United States as well as the Senate.

The PRESIDING OFFICER. The time of the Senator from Idaho has expired. The Chair recognizes the Senator from Kansas.

Mr. DOLE. I thank my distinguished colleague.

I regret I was unable to be here when other statements were made concerning the sessions. As one who suggested that we have the closed-door session, it seems to this Senator that certain facts have been made available to the public.

This Senator will say, as I have said before, I never suggested for one moment that somehow the negotiators are somehow influenced by drug trafficking, or anybody else, but I am suggesting that the American people are concerned with whether or not General Torrijos is a man of credibility, a man of integrity.

I will say again, we have analyzed some of our genuine mail. About 48 percent opposed the treaty because of Mr. Torrijos. So he is a factor in these debates. He must be because President Carter never mentioned his name once during the fireside chat.

We must look at the total record.

The Senator from Kansas believes that, based upon what we have heard and cannot reveal, and what was revealed in the sanitized version yesterday on page 15, clearly indicates that Torrijos still has drug traffic. He turned his head as far as government officials were concerned. He helped his brother avoid arrest.

It seems to this Senator, if I were a protreaty Senator—I still have not decided—if I were a protreaty Senator I would be out trying to get all of the information I could to the American people about drug traffic.

I think the hearing was a good exercise. I will be pleased when the transcript is made public so that the American people can judge.

I do not know who would characterize it as a waste of time. Many things we do are a waste of time if one is not interested or if one's mind is made up. For all those who had their minds made up maybe it was a waste of time, whether they were for or against the treaty.

By actual count there ranged between 70 and 24 or 25 Senators on the floor all day yesterday. Today the attendance was about normal for open sessions on the canal treaties, 5, 6, 7, 8, 9, 10, 12. But there is an interest. If the Senator from Kansas is any judge there were some Senators on the floor yesterday, the important

ones, who have not yet made up their minds. They are the ones we are addressing. They are the ones being focused upon in these debates. I would hope that they receive information that may be helpful.

As I told the distinguished chairman of the committee (Mr. Bayh) and the distinguished ranking minority member (Mr. Goldwater), if the facts indicate there was no involvement by General Torrijos, the Senator from Kansas will say so, and say so publicly. I think I can be objective in what I heard, what I saw, and what I read in the last 2 days.

I would just conclude by turning to page 15 of the public report, if my time does not expire:

Some sources have provided intelligence which we view as reliable and which we believe suggests that General Torrijos knew about narcotics traffic by government officials—

Plural—

and did not take sufficient action to stop his brother's activities. Intelligence reports also contain other allegations asserting that General Torrijos assisted his brother.

It seems to me that the record is made. The record made in the closed session is even more complete. When it is made public, as it should be, with very little censorship, I trust, then the American people will be in an even better position to judge the pros and cons of this particular debate.

The PRESIDING OFFICER. (Mr. Moynihan). The Senator from Alabama is recognized.

Mr. ALLEN. Mr. President, I ask unanimous consent that I may yield 3 minutes to the distinguished Senator from Alaska (Mr. Gravel) with the time not to be charged against the 30 minutes reserved for me.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alaska is recognized for 3 minutes.

Mr. GRAVEL. I thank my colleague. I just felt that the statements that were made should not go un rebutted. I looked in at the secret session around noontime, when, essentially, most of the membership of the Senate was available to attend. What I saw was Senator Dole, Senator Griffin, and the patient Senator Sarbanes, listening to them drone on. You could not draw flies to this Chamber, and I can assure you if there were something salacious that was going to be revealed, we would all have been here, quite attentive, to listen to it.

I think the long and short of it is that, without revealing what went on in the secret session, I could say that what was said here I read in the newspapers in the last 2 or 3 weeks. There is nothing, really nothing, that came out yesterday of any note or of any value, yesterday and today, that we have not already read about. And most of it, in fact all of it, is unsubstantiated charges, besmirching the character of the head of state of Panama.

It is a good tactic to have a secret session, because you create an aura that something unusual was said, and as a result of that you give credence to these unsubstantiated charges. I think it is most unfortunate, because it detracts from what is really essential in this regard; that is, the use of the Panama Canal by American interests.

I think that when the SALT Treaty comes before us, if we are going to be faced with secret sessions going to the character of Mr. Brezhnev, we are going to be in real trouble trying to get some treaties through this body. That is essentially the same tactic that was employed; that is, let us not talk about the Nation, let us not talk about the broad national interest; let us just pick out some little flaw that we think might sell, from a spectacularized and sensationalized point of view, to the salacious appetite of the American public and concentrate on that as a device of appealing to the negative side of the issue.

I think that is most unfortunate. I think the issue is and still remains, are these treaties the best available to guarantee the future utilization of the Panama Canal by American economic interests? I think that argument has not been addressed one iota in the last 2 days by all of this silliness and this waste of time.

I thank my colleague for yielding to me.

Mr. ALLEN. I am happy to accommodate the distinguished Senator.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. ALLEN. I thank the Chair.

Mr. President, when I conclude my remarks, I shall offer a motion on behalf of myself and Mr. Laxalt, Mr. Garn, Mr. Hansen, Mr. McClure, Mr. Thurmond, Mr. Griffin, Mr. Wallop, Mr. Lugar, Mr. Tower, Mr. Dole, Mr. Goldwater, Mr. Helms, and Mr. Scott, that the Senate proceed to the consideration of the Panama Canal Treaty Ex. N (95th Cong., 1st sess.), Calendar No. 2. But I do not present it at this time. I merely state that it is my intention to offer the motion on behalf of myself and the distinguished Senators whose names I have called.

Before getting into the matter of the motion, I do wish to comment on remarks made by the distinguished Senator from Idaho (Mr. Church) on Monday. I sought on Monday to gain the opportunity to rebut his statement, but the opportunity did not present itself. I have informed the distinguished Senator from Idaho (Mr. Church) that, at this time, I do plan to seek to rebut the remarks that he made.

He took sharp issue with me when I stated that the treaties under consideration do provide that the canal is to be operated on the basis of neutrality and that warships of belligerent and enemy countries would have access to the canal under the treaties before the Senate. I stated that that was not the situation under the present regime. The distinguished Senator from Idaho stated that that was one statement that was so striking that he must reply to it at that time:

It was asserted that by virtue of the neutrality provision in the treaties, we somehow open the canal to warships of other nations, including enemy ships.

I will read from the treaty itself, the Neutrality Treaty, article II.

The Republic of Panama—

And theretofore, it is stated that the United States of America and the Republic of Panama agreed, and I might say that this

shows the prospective operation of this Neutrality Treaty, because it speaks of the Republic of Panama—

The Republic of Panama declares the neutrality of the Canal in order that both in time of peace and in time of war it shall remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality, so that there will be no discrimination against any nation, or its citizens or subjects, concerning the conditions or charges of transit, or for any other reason.

So it is open, under the treaties under consideration, to the peaceful transit by the vessels of all nations on terms of entire equality in time of peace and in time of war.

If that does not mean that belligerent vessels can transit the canal peacefully, I do not know how we could state it.

The distinguished Senator from Idaho then referred to the provisions of the Hay-Pauncefote Treaty. Senators not familiar with the treaty might assume that that was a treaty, since this seems to be something of a Spanish word, "Pauncefote," might assume that that was a treaty between the United States and Panama. But that is not the case. The distinguished Senator from Idaho, it seems to me, has introduced a new dimension into this discussion, because he resurrects the Hay-Pauncefote Treaty—not the Hay-Bunau-Varilla Treaty that has been denigrated here on the floor so often by the proponents of the proposed treaty, but the Hay-Pauncefote Treaty. That was a treaty between the United States and England, of all countries, having to do with the operation of a canal when and if the United States built one. It came about in the year 1901.

The Bunau-Varilla Treaty did not come until 1903.

The distinguished Senator quoted a neutrality provision in the Hay-Pauncefote Treaty. And when the Senator from Alabama had the temerity to suggest that the regime as to the operation of the canal was changed back in 1914, he was called to task even though as it states here, as shown by the Record in page S1885, that "This agreement"—talking about the protocol of 1914—"This agreement allows certain vessels neutral status"—this is the Senator from Alabama, speaking on February 20:

which was as written into the treaties, but it also requires, as I recall, such shipping to remain in Panamanian waters for 3 months, before transiting the canal, and vice versa. I do not have the document with me at this time. It is called the Protocol of 1914, and I will introduce it into the Record later.

I ask unanimous consent that I may provide, at the conclusion of my remarks, for printing in the Record the protocol to which I have referred.

The PRESIDING OFFICER. Without objection, it is so ordered.
(See exhibit 1.)

Mr. ALLEN. I will read from the protocol of October 10, 1914. This was signed on behalf of the United States by Robert Lansing—he was at that time Assistant Secretary of State, later he became Secretary of State—and Eusebio Morales.

That would seem to me, Mr. President, that this name would indicate that Mr. Morales was a Panamanian. We have heard so much talk about the 1903 Treaty not being signed by a Panamanian. I believe Mr. Morales was a Panamanian and he signed this protocol, the effect of which was to provide a method by which belligerent vessels of an enemy nation could be effectively denied access to the canal.

I will read another paragraph from it, the second paragraph; it has only two paragraphs:

That hospitality extended in the waters of the Republic of Panama to a belligerent vessel of war or a vessel belligerent or neutral, whether armed or not, which is employed by a belligerent power as a transport or fleet auxiliary or in any other way for the direct purpose of prosecuting or aiding hostilities, whether by land or sea, shall serve to deprive such vessel of like hospitality in the Panama Canal Zone for a period of three months, and *vice versa*.

I call attention, Mr. President, to the date of this protocol, October 10, 1914, as World War I was getting started.

The practical effects of this protocol will involve the rights of the United States to exclude belligerents from the canal. As many Senators have heard of it, doubtless, for the first time, I might state that possibly the hearing of it for the first time caused the assertions taking me to task on the subject.

I would like to read from the Record here where Mr. Church says:

Mr. President, there is nothing in the evidence before the Foreign Relations Committee to suggest that any subsequent agreement altered, obviated or repealed the provisions of the Hay-Pauncefote Treaty, nor is there anything in the record to suggest or imply that the United States ever operated the canal except in accordance with the principles of neutrality as set forth in that treaty.

So, Mr. President, the distinguished Senator from Idaho has introduced into the discussion the Hay-Pauncefote Treaty of 1901 and he states that nothing has been done to alter, obviate, or repeal the provisions of the Hay-Pauncefote Treaty.

So I might just say parenthetically, it looks as if we will not make much progress on this. We are going to also have a treaty with England to do away with that being the Hay-Pauncefote Treaty, because in a number of respects it is inconsistent with the provisions of the treaties before us.

But this protocol of 1914, in effect, provides that a belligerent vessel seeking access to the Panama Canal from Panamanian waters would have to remain in Panamanian waters for 3 months before entering the canal.

Well, during that time, it would be there as a sitting duck, a duck in a rain barrel, to be picked off by its enemy nation, and *vice versa*.

If it were in the Canal Zone waters first, it would then have to remain there for 3 months before going into Panamanian waters.

Bear in mind that the territorial waters of the Canal Zone would extend for 3 miles beyond the shore.

So, Mr. President, to show that that was the method they had of containing enemy vessels, make them wait for 3 months in the Panamanian waters and not have immediate access to the canal, or if they came to the canal first and then went out into Panamanian waters, then they would have to stay 3 months in canal waters and, in any case, they were denied free and open access to the canal.

Now, Mr. President, as World War II comes along, or as it is seen coming, because this added exchange of notes took place on August 25, 1939, there is an exchange of notes between Mr. William Dawson representing the United States and Narcisco Garay repre-

senting Panama, and I would assume Mr. Garay was not a Frenchman as has been said of Bunau-Varilla.

This was an agreement entered into in arms-length dealing. Mr. Dawson writes the Panamanian Government:

EXCELLENCY:

My Government assumes that the protocol signed by the Secretary of State and the Minister of Panama on October 10, 1914,¹ dealing with hospitality extended in the waters of the Republic of Panama and of the Canal Zone to belligerent vessels of war or those employed by belligerent powers for the purpose of prosecuting or aiding hostilities is still in force.

This was 25 years later. In 1939, it might have caused some concern as to whether the Panamanians still recognized this method of containing belligerent vessels:

However, it would be appreciated if in view of existing circumstances.

What circumstances? The oncoming World War II which got started, I believe, about a week after these notes were exchanged:

However, it would be appreciated if in view of existing circumstances, the Government of Panama would signify in writing that it shares the view of the United States as to the present force and effect of this protocol.

Accept, Excellency, the renewed assurances of my highest consideration.

WILLIAM DAWSON.

So the Secretary of the Foreign Relations and Communications in Panama replies:

I have the honor to advise Your Excellency in reply to your esteemed note No. 38 of this date that the Government of Panama considers that the protocol signed at Washington on October 10, 1914, by the Minister of Panama in the United States of America, Dr. Eusebio A. Morales, and the Secretary of State of the United States, Robert Lansing, is at present in effect and may be applied by both countries whenever circumstances require.

I call attention also, Mr. President, to the fact that the Panama Canal Treaty wipes out this protocol, this exchange of notes, wipes out everything as between Panama and the United States, leaving only the neutrality provision of the treaties under consideration which, as I have read, is effective in war and in peace.

So, Mr. President, it would seem to the Senator from Alabama that he was fully justified in saying that the treaties before us would allow access to the canal by enemy vessels, whereas the present regime, in depending on the Protocol of 1914, puts a very effective condition and limitation on free access to the canal.

So the Senator from Alabama merely wished to answer, this being the first opportunity he has had to answer the comments made by the distinguished Senator from Idaho (Mr. Church).

Now, Mr. President, getting to the matter of the motion that I will present in a few moments: There are two treaties, as we all know, but for the record I will say that there is a Panama Canal Treaty that provides for the transfer of the canal over to Panama, the conditions under which the canal is to be transferred. This treaty expires with the end of this century.

Then there is the other treaty, which does go into effect at the same time as the first treaty I mentioned but has no real area of operation; because for the remainder of this century, the United States is going to defend the canal. So there is not any great field of operation for it until the next century.

¹ EAS 160, post, p. 786.

However, it is my contention, and the contention of Senators who have joined me in cosponsoring this motion, that we first should decide whether or not we are going to give the canal away, before we decide how we are going to defend it, starting with the year 2000.

We have under consideration now the Neutrality Treaty, to be followed by the Panama Canal Treaty. This motion seeks to reverse the order. No time would be lost. All the debate has been general. Not a single amendment has been offered to article I of the Neutrality Treaty. All the debate that has been engaged in could apply to both treaties.

Is this the first time an effort has been made to change the order of treaties? I say no. I refer to page 822 of Senate Procedure, where it states:

A motion to lay aside a treaty and take up another is not in order, the motion should be to proceed to the consideration of a particular treaty, which if agreed to would have the effect of displacing the pending or unfinished treaty, but the Senate can have no unfinished executive business.

So we could not just lay it aside. We have to move to proceed to something else, and it still remains on the calendar. It does not kill the other treaty. It just says we are going to consider the Panama Canal Treaty, and we are going to consider whether we give the canal away, before we worry about defending it in the year 2000.

So the present situation puts the cart before the horse. We need to decide first whether we are going to give the canal away.

Mr. President, I make this assessment of the time it is going to take in considering these treaties. I have stated this to the majority leader and the minority leader, and I have stated it to the President of the United States.

I believe we all are concerned about how long it is going to take to complete action on these treaties. After all, amendments are going to be offered. I said on the first day the treaties were before the Senate that several dozen are going to be offered. I hope we will have a vote. My assessment is that if we reverse the order of these treaties, we will save at least a week. We will save at least a week of debate.

How could that be? We have the same treaty. The reason is that the leadership amendment has some 78 sponsors, and the Senator from Alabama is one of those sponsors. If we cannot do anything better—and I think we can—I would support the leadership amendment on the right to come back in after the year 2000. I think that needs to be amended, and I have an amendment to do that. But if the leadership amendment is agreed to, then obviously the proponents of the treaties will say, "Well, that's the only amendment needed. Let's stonewall the rest of the amendments and get through with this."

However, many of us regard these two treaties as two integral parts of a whole. Right now, they are indivisible, as we see it. They are the canal treaties, and we oppose these canal treaties.

Those who oppose the treaties are not going to be very anxious to come to a vote on the Neutrality Treaty. The proponents will claim victory and say, "We have the only amendment we really need adopted. Therefore, let's close the thing out."

That would not take place, I assure Senators. Still, that would be the argument.

The point is, however, that we are not going to reach the leadership amendments any time soon; whereas, if we take up the Panama Canal Treaty first and dispose of it, I would say that the Neutrality Treaty could be wrapped up in possibly a couple of days.

There might be five, six, seven, or eight legitimate amendments trying to strengthen it, trying to strengthen our national security, trying to strengthen our defense position, trying to underscore the conditions under which we might come in, giving us the right to retain troops past the year 2000, if the President deems it is necessary for the defense of the canal. So five, six, or seven amendments are all we need, once we decide the other.

Also, Mr. President, going this route, going the route of considering the Neutrality Treaty first, the leadership is depriving many Senators of the opportunity to vote favorably on the Neutrality Treaty.

I feel that after extensive debate on the Panama Canal Treaty, after efforts to amend the treaty on the floor, after that finally has been agreed to, if it is, then the Neutrality Treaty, already having 78 votes for the leadership amendment, would be approved overwhelmingly. That would show what great Pan American solidarity we have here in the United States. By approving this Neutrality Treaty, by possibly 90 to 10, something of that sort, we could say to Mr. Torrijos, "Let's look at how the Senate has fallen in step here. We have contained these amendments. We have not let them adopt any amendments but the one that you agreed to. So we have great solidarity here, great Pan American feeling."

But we are not going to have that if we insist on acting on the Neutrality Treaty first.

So the effect of this motion. Mr. President, is in no way to defeat the treaties. It is just has a different order of consideration of the treaties.

Let us decide first, if we are going to give the canal away, and let us decide second, how we are going to go about defending it in the year 2000.

I believe we are putting the cart before the horse. I believe this motion would set the amendments aright. I believe that it would result in the final vote on the Neutrality Treaty being an overwhelming vote in favor—provided, of course, the treaty itself is approved. I assume that the leadership would not go to the second treaty if the first treaty is defeated. But if the first treaty is approved, we will see an overwhelming vote in favor of the Neutrality Treaty, after sincere and constructive efforts have been made to make it better for the United States, better from the standpoint of our right to defend the canal.

EXHIBIT 1

NEUTRALITY

Exchange of notes at Panama August 25, 1939, confirming protocol of October 10, 1914

Entered into force August 25, 1939

54 Stat. 1811; Executive Agreement Series 160

The American Ambassador to the Secretary of Foreign Relations and Communications

EMBASSY OF THE
UNITED STATES OF AMERICA,
Panama, August 25, 1939.

Note No. 38

EXCELLENCY:

My Government assumes that the protocol signed by the Secretary of State and the Minister of Panama on October 10, 1914,¹ dealing with hospitality extended in the waters of the Republic of Panama and of the Canal Zone to belligerent vessels of war or those employed by belligerent powers for the purpose of prosecuting or aiding hostilities is still in force. However, it would be appreciated if in view of existing circumstances, the Government of Panama would signify in writing that it shares the view of the United States as to the present force and effect of this protocol.

Accept, Excellency, the renewed assurances of my highest consideration.

WILLIAM DAWSON.

His Excellency

*Señor Doctor Don Narciso Garay,
Secretary of Foreign Relations
and Communications.*

The Secretary of Foreign Relations and Communications to the American Ambassador

[Translation]

PANAMA, August 25, 1939

SECRETARIAT OF FOREIGN RELATIONS AND COMMUNICATIONS

Diplomatic Department

D.D. No. 1890

MR. AMBASSADOR: I have the honor to advise Your Excellency in reply to your esteemed note no. 38 of this date that the Government of Panama considers that the protocol signed at Washington on October 10, 1914, by the Minister of Panamá in the United States of America, Dr. Eusebio A. Morales, and the Secretary of State of the United States, Robert Lansing, is at present in effect and may be applied by both countries whenever circumstances require.

I avail myself of the opportunity to renew to Your Excellency the assurances of my highest and most distinguished consideration.

NARCISO GARAY,
*Secretary of Foreign Relations
and Communications.*

His Excellency

WILLIAM DAWSON,

Ambassador of the United States of America, City

¹EAS 160, post, p. 786.

NEUTRALITY

Protocol of an agreement signed at Washington October 10, 1914.

Entered into force October 10, 1914.

Confirmed by agreement of August 25, 1939.¹

[38 Stat. 2042; Treaty Series 597]

PROTOCOL OF AN AGREEMENT CONCLUDED BETWEEN HONORABLE ROBERT LANSING, ACTING SECRETARY OF STATE OF THE UNITED STATES, AND DON EUSEBIO A. MORALES, ENVOY EXTRAORDINARY AND MINISTER Plenipotentiary OF THE REPUBLIC OF PANAMA, SIGNED THE TENTH DAY OF OCTOBER, 1914

The undersigned, the Acting Secretary of State of the United States of America and the Envoy Extraordinary and Minister Plenipotentiary of the Republic of Panama, in view of the close association of the interests of their respective Governments on the Isthmus of Panama, and to the end that these interests may be conserved and that, when a state of war exists, the neutral obligations of both Governments as neutrals may be maintained, after having conferred on the subject and being duly empowered by their respective Governments, have agreed:

That hospitality extended in the waters of the Republic of Panama to a belligerent vessel of war or a vessel belligerent or neutral, whether armed or not, which is employed by a belligerent power as a transport or fleet auxiliary or in any other way for the direct purpose of prosecuting or aiding hostilities, whether by land or sea, shall serve to deprive such vessel of like hospitality in the Panama Canal Zone for a period of three months, and *vice versa*.

In testimony whereof, the undersigned have signed and sealed the present Protocol in the city of Washington this tenth day of October, 1914.

[SEAL]
[SEAL]

ROBERT LANSING.
EUSEBIO A. MORALES.

Mr. ALLEN. I believe the public interest will be served, Mr. President, by agreeing to this motion which I now send to the desk and ask that it be stated by the clerk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Alabama (Mr. Allen), for himself and Mr. Garn, Mr. Laxalt, Mr. Hansen, Mr. McClure, Mr. Thurmond, Mr. Griffin, Mr. Wallop, Mr. Luger, Mr. Tower, Mr. Dole, Mr. Goldwater, Mr. Helms, and Mr. Scott, moves that the Senate proceed to the consideration of the Panama Canal Treaty (Executive N, 1st Session, 95th Congress), Calendar No. 2.

Mr. ALLEN. I yield the floor.

The PRESIDING OFFICER. The question is on the motion.

The Senator from Idaho.

Mr. CHURCH. Mr. President, first of all, I would like to reply to the able Senator from Alabama in connection with the argument we had on Monday, in which the able Senator charged that, under the provisions of the pending treaty, enemy ships in time of war would have use of the Panama Canal.

In reply to that allegation, I said that from the moment the United States began operating the canal in 1914 we have maintained a regime of neutrality as it relates to the transit of ships through the canal.

I said, further, that this regime of neutrality was rooted in the Hay-Pauncefote Treaty of 1901. This afternoon, the able Senator from Alabama said that I had added a new dimension to this debate, by referring for the first time to a treaty which preceded the Bunau-Varilla Treaty of 1903 and which, indeed, was not a treaty between the United States and Panama at all, but one between the United States and Great Britain.

Mr. President, this gets us back to the elementals of the case. The Bunau-Varilla Treaty of 1903 incorporates by reference the regime of neutrality to which the United States agreed in the Hay-Pauncefote Treaty of 1901. It thus is directly relevant to the question before us and can in no way be considered as a new dimension in this debate.

Let me quote from article XVIII of the Bunau-Varilla Treaty of 1903 between the United States and the newly established Republic of Panama.

Article XVIII reads as follows:

The Canal, when constructed, and the entrances thereto shall be neutral in perpetuity, and shall be opened upon the terms provided for by Section 1 of article three of, and in conformity with all the stipulations of, the treaty entered into by the Governments of the United States and Great Britain on November 18, 1901.

So there is the starting place: 1901, the Hay-Pauncefote Treaty between the United States and Great Britain, by which the United States committed itself in perpetuity to a regime of neutrality for the operation of the Panama Canal.

The Hay-Pauncefote provisions were incorporated by reference into the Bunau-Varilla Treaty of 1903 in article XVIII thereof.

But the Senator from Alabama alleges that, subsequent to 1903, namely, in 1914, and again in 1939, the United States and Panama entered into a different agreement. He has entered it in the Record and he has interpreted the protocol to mean that it somehow superseded or altered the provisions relating to the regime neutrality in the original treaty of 1903.

Mr. President, the Senator from Alabama misconstrues the meaning and intent of the protocol of 1914, renewed in 1939. I am sure that he has done so believing his interpretation to be accurate, but the history of the case establishes that the 1914 United States-Panama protocol concerning neutrality has nothing to do with the question of the transit of ships through the canal, whether warships or ships of commerce. The 1914 agreement does not speak to the transit rights of belligerent vessels through the canal nor does it relate to the obligations we assumed under the terms of the Hay-Pauncefote Treaty or the Bunau-Varilla Treaty. Rather, it deals with the application to Panama and the Canal Zone of the principles of international law which then governed the rights and duties of belligerent nations and neutral nations during wartime.

Mr. President, remember we are speaking of 1914 and 1939. We are speaking of a period that predates the United Nations Charter, a period when the rules relating to neutral nations and belligerent nations were set forth in the Hague Convention of 1907. In that period, belligerent warships could not refuel in ports of a neutral country until 3 months had elapsed from the time of their previous refueling in that country. This was a part of an international convention, relating to the rights of belligerent ships to fuel or refuel in neutral ports. It had nothing whatever to do with the right of transit through the Panama Canal.

The 1914 protocol simply provides that, when the United States and Panama are neutral in a conflict between other nations, the ports of the Panama Canal Zone and Panama shall be treated as ports of the same neutral nation. In other words, Mr. President, this protocol is simply an agreement between Panama and the

United States that the rules of international law then applicable to the rights of belligerent nations to use neutral ports would apply in the Canal Zone and in Panama as though both were one neutral nation when both the United States and Panama were neutral in a conflict between other nations.

Here is the controlling provision of the protocol:

That hospitality extended in the waters of the Republic of Panama to a belligerent vessel shall serve to deprive such vessel of like hospitality in the Panama Canal Zone for a period of 3 months, and vice versa.

The true meaning of this protocol is totally different from the interpretation given it by the distinguished Senator from Alabama.

It is true that this protocol will be terminated once the New Panama Treaty takes effect, because the Canal Zone will then cease to exist as a separate jurisdictional entity. Thus, the 1914 protocol which addresses the use of ports in the Panama Canal Zone would have no further application.

All the ports of both Panama and the Canal Zone would then be in the territory of the same nation, thus rendering the protocol moot.

So you see, Mr. President, these two agreements, first entered into in 1914 and reaffirmed in 1939, have nothing whatever to do with the question of transit through the Panama Canal. They in no way conflict with the statements I made on Monday concerning the pledge by the United States in perpetuity to operate the Panama Canal as an open and neutral waterway.

Now, of course, Mr. President, we are all concerned about whether enemy ships, in time of war, should be permitted to use the Panama Canal. In the First and Second World Wars, no enemy vessel ever presented itself for transit through the canal. Our Navy would not let them present themselves. Our Navy had command of the seas, of the access to the canal on both the Pacific and Atlantic sides. Our Navy was in a position to prevent any enemy vessels from approaching the canal. That is how we denied the use of the canal to enemy ships—on the high seas. This was the only practical way of doing it, anyway, since to allow an enemy ship to come within firing distance of the canal would, of course, have jeopardized the canal itself.

So let us put aside these arguments of obfuscation. Or, if they are going to be made, let us at least interpret the agreements correctly. In any case, the agreements, even if interpreted correctly, had precious little to do with our success in two world wars in preventing enemy ships from transiting the canal. There was no paper agreement we relied upon for that purpose; we relied upon the U.S. Navy, and we will again if ever we should engage in another war.

So I would hope that the Senate would not be deflected by arguments of this kind.

Under the new treaties, Panama and the United States, between now and the end of the century, and then, for the indefinite future, would guarantee a continued regime of neutrality for transit through the canal. Nowhere in the new treaties does the United States undertake to guarantee enemy vessels transit to the canal. We would continue to rely, as we have in the past, upon our ability

to control access to the canal on the high seas, for this is the only truly effective protection that exists.

Mr. President, before leaving this particular subject, let me say that, in one respect, the new treaties improve our position. The existing 1903 treaty does not commit the Republic of Panama to exclude foreign troops from its territory. Under the existing treaties, if the Government of Panama were to invite foreign troops into Panama, we would have no legal basis to complain, even if those foreign troops were encamped right up against the fences of the Canal Zone.

Mr. ALLEN. Mr. President, will the Senator yield for a moment at that point?

Mr. CHURCH. I will just as soon as I complete this point.

Mr. ALLEN. I just hope the Senator has heard of the Monroe Doctrine, when he talks about backing Russian and Cuban troops up against the fences.

Mr. CHURCH. I hope the Senator from Alabama is not attempting to portray the Monroe Doctrine as a treaty. The Monroe Doctrine is a unilateral declaration by the United States describing our policy regarding foreign intervention in this hemisphere. It does not affect the point that I was making, that under existing treaty arrangements with Panama, the Panamanian Government does not covenant to keep foreign troops out of its territory, and we would have no legal basis to complain should the Government of Panama invite them in.

But the new treaties improve our position. Under the Panama Canal Treaty we can keep our troops in Panama until the end of this century. Then the Neutrality Treaty comes into play. Article V of the Neutrality Treaty states:

After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the canal and maintain military forces, defense sites and military installations within its national territory.

So not only is the Senator from Alabama wrong in suggesting that existing treaty arrangements do not commit the United States to maintain a regime of neutrality with respect to the transit of vessels through the canal, but he also fails to recognize that the security of the canal is actually improved by provisions of the new treaties, since Panama guarantees not to permit foreign troops on its soil.

Now, Mr. President, I would like to turn briefly to the motion made by the able Senator from Alabama to reverse the order of consideration of these two treaties.

His argument seems based mainly upon the contention that the Neutrality Treaty does not go into effect until the year 2000, and, therefore, if we first consider its provisions, and then the provisions of the Panama Canal Treaty itself we have put the cart before the horse.

First, the Neutrality Treaty goes into effect at the same time as the Panama Canal Treaty. It is not delayed until the year 2000; so the argument made by the Senator from Alabama is without foundation.

Let me read article VIII of the Neutrality Treaty, because that specifically establishes when the Neutrality Treaty becomes effective. Article VIII reads:

The instruments of ratification of this Treaty shall be exchanged at Panama at the same time as the instruments of ratification of the Panama Canal Treaty, signed this date, are exchanged. This Treaty shall enter into force, simultaneously with the Panama Canal Treaty, six calendar months from the date of the exchange of the instruments of ratification.

So, Mr. President, this is not a case where the Panama Canal Treaty takes effect and then, years later, the Neutrality Treaty takes effect. Rather, the two treaties become effective simultaneously.

The Panama Canal Treaty, it is true, gives the United States primary responsibility for defense of the canal until the year 2000. But this certainly does not relegate the Neutrality Treaty to a secondary role until that time.

First of all, with the exception of article 5 which contains Panama's promise not to permit foreign troops on its territory after the year 2000, the same regime of neutrality will be in effect before 2000 as after, and this regime will be equally applicable to the operation of the canal by the United States or Panama.

Secondly, the Panama Canal Treaty provides that the United States will have the primary responsibility for defense of the canal, but our response to a threat will have to be in accordance with the provisions of the Neutrality Treaty.

Finally, it is just as important for the United States to be able to act against any threat to the canal and to have priority passage through it before the year 2000 as it will be after that date.

Indeed, Mr. President, the committee's two major recommendations for amending these treaties relate to the Neutrality Treaty. I think Senators want to know what decision is going to be made on such crucial matters as the right of American warships to priority passage, that is, our right to go to the head of the line whenever there is either an emergency or a need as we define it; I think Senators will want to know that the United States will have the right, in perpetuity, to intervene to keep the canal open, neutral, safe, and secure.

Let the vital matters be decided first. That is not putting the cart before the horse. It is proceeding in a logical fashion. This is why the Foreign Relations Committee recommended that these treaties be taken up in this order, which is the prerogative of the committee.

I would hope the Senate will uphold the committee's decision that the Neutrality Treaty be considered first. It is logical, sensible, and, I think, in line with the desire of the majority of the Members of the Senate.

I therefore urge the Senate to reject the motion offered by the able Senator from Alabama.

The PRESIDING OFFICER. The Senator from Alabama (Mr. Allen) is recognized.

Mr. ALLEN. Mr. President, I would like to answer some comments made by my very distinguished and able colleague, the distinguished Senator from Idaho (Mr. Church). He is the ranking Democrat on the Foreign Relations Committee and early next year will become the chairman of that committee. He has great knowledge, great learning, great expertise in the field of foreign relations. I must salute him for that great knowledge.

The distinguished Senator sort of passed off my comments about the Hay-Pauncefote Treaty. He said, "Yes, that is true. That is now incorporated in the 1903 treaty." He spoke approvingly of the provisions of the Hay-Pauncefote Treaty incorporated in the Hay-Bunau-Varilla Treaty. I might say I believe that is about the only complimentary comment which has been made here on the floor about the Hay-Bunau-Varilla Treaty. That is, by the proponents of the proposed treaty.

We have heard it denounced by nearly every speaker for the proponents. But lo and behold, here is a good provision that the distinguished Senator from Idaho has referred to. The Hay-Pauncefote Treaty has been incorporated in the Hay-Bunau-Varilla Treaty.

Well, that is fine, but that does not kill the Hay-Pauncefote Treaty. I have very high authority for the fact that that treaty is still in force and effect.

The distinguished Senator from Idaho on Monday stated it was still in effect.

He said:

Mr. President, there is nothing in the evidence before the Foreign Relations Committee to suggest that any subsequent agreement altered, obviated or repealed the provisions of the Hay-Pauncefote Treaty.

So we are still bound by the Hay-Pauncefote Treaty, according to the distinguished Senator from Idaho on Monday.

Mr. CHURCH. Will the Senator yield?

Mr. ALLEN. Yes, I will be glad to yield. The Senator was kind enough to yield to me. I will be delighted to yield.

Mr. CHURCH. I rise only to say that the Senator is quite correct. The Hay-Pauncefote Treaty still remains in effect, and shall remain so even after the entry into force of the new Neutrality Treaty with Panama. The British Government shares our view that the two treaties are entirely consistent. So our action in giving consent to ratification of the Neutrality Treaty or the new Panama Canal Treaty, would in no way vitiate the Hay-Pauncefote Treaty.

Mr. ALLEN. It is still in force and effect, is that right?

Mr. CHURCH. It would remain in force and effect. The Governments of the United States and Great Britain are agreed upon that point.

Mr. ALLEN. In the areas where it is inconsistent with the treaty under consideration, would it not have to be changed or abrogated?

Mr. CHURCH. I might say to the Senator that the two treaties are thought to be consistent. There are some provisions in the Hay-Pauncefote Treaty which are no longer relevant to the times, and additional provisions in the Neutrality Treaty not contained in the Hay-Pauncefote Treaty. But the Governments of the United States and Great Britain see no conflict between the Hay-Pauncefote and the Neutrality Treaty and, therefore, see no reason to terminate their 1901 agreement.

Mr. ALLEN. In other words, it is still in full force and effect, is that right?

Mr. CHURCH. The Senator is right.

Mr. ALLEN. I would like to read here as regards the neutrality operation of the canal at this time:

The Permanent Court of International Justice at The Hague on August 17, 1923, in the case of the S/S Wimbledon, defined "neutrality" of the Panama Canal as meaning the freedom of ships of all nations to transit the Canal without discrimination in time of peace, making specific reference to the Hay-Pauncefote Treaty of November 18, 1901, between Great Britain and the United States, in the following terms:—

The distinguished Senator made reference earlier today to the U.N., and I would feel therefore we should call attention to the Permanent Court of International Justice. These are the words of that court:

" * * * while there are various stipulations relating to the "neutralization" of the canal * * * there is no clause guaranteeing the free passage of the canal in time of war as in time of peace without distinction of flag and without reference to the possible belligerency of the United States, nor is there any clause forbidding the United States to erect fortifications commanding the Canal. On the other hand, by the Treaty of November 18, 1903, the Republic of Panama granted to the United States "in perpetuity the use, occupation and control" of a zone of territory for the purposes of the canal, together with the use, occupation and control in perpetuity of any land and waters outside the zone which might be necessary and convenient for the same purposes; and further granted to the United States in such zone and in the auxiliary lands and waters "all the rights, power and authority" * * * which the United States would possess and exercise if it were the sovereign of the territory * * * to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority." The Treaty further conceded to the United States the right to police the specified lands and waters with its land and naval forces "and to establish fortifications for these purposes." * * * by the Proclamation of May 23, 1917 (of President Wilson), issued after the entrance of the United States into the war, the use of the canal by ships, whether public or private, of any enemy or the allies of an enemy, was forbidden, just as, by Article 380 of the Treaty of Versailles, the Kiel Canal is closed to the vessels of war and of commerce of nations not at peace with Germany."

Mr. President, I ask unanimous consent that this letter addressed to the distinguished Senator from North Carolina (Mr. Helms) dated October 16, 1977, from the Honorable George Jackson Eder of Washington, D.C., be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

WASHINGTON D.C.,
October 16, 1977.

Hon. JESSE HELMS,
Russell Building, Washington, D.C.

DEAR SENATOR HELMS: According to the papers, the statement of understanding between President Carter and Panamanian dictator Torrijos has "clarified" the meaning of the pending Treaties.

The only thing that is in fact clear is that the Administration is continuing to mislead the American public by using words such as "neutrality" in a way to allay all suspicion, when the very texts of the Treaties themselves—and of the six supplementary documents—define those words in a way that they have never been used before.

The Permanent Court of International Justice at The Hague on August 17, 1923, in the case of the S/S Wimbledon, defined "neutrality" of the Panama Canal as meaning the freedom of ships of all nations to transit the Canal without discrimination in time of peace, making specific reference to the Hay-Pauncefote Treaty of November 18, 1901, between Great Britain and the United States, in the following terms:—

" * * * while there are various stipulations relating to the 'neutralization' of the canal * * * there is no clause guaranteeing the free passage of the canal in time of war as in time of peace without distinction of flag and without reference to the possible belligerency of the United States, nor is there any clause forbidding the United States to erect fortifications commanding the Canal. On the other hand, by the Treaty of November 18, 1903, the Republic of Panama granted to the United States 'in perpetuity the use, occupation and control' of a zone of territory for the purposes of the canal, together with the use, occupation and control in perpetuity of

any land and waters outside the zone which might be necessary and convenient for the same purposes; and further granted to the United States in such zone and in the auxiliary lands and waters 'all the rights, power and authority * * * which the United States would possess and exercise if it were the sovereign of the territory * * * to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority'. The Treaty further conceded to the United States the right to police the specified lands and waters with its land and naval forces 'and to establish fortifications for these purposes'. * * * by the Proclamation of May 23, 1917 (of President Wilson), issued after the entrance of the United States into the war, the use of the canal by ships, whether public or private, of an enemy or the allies of an enemy, was forbidden, just as, by Article 380 of the Treaty of Versailles, the Kiel Canal is closed to the vessels of war and of commerce of nations not at peace with Germany."

Theodore Roosevelt had emphatically opposed the original draft of the treaty negotiated between Secretary Hay (under McKinley) and Lord Pauncefoot because it provided that the U.S., in the event it built an interoceanic canal, would be prohibited from fortifying it: "I insist that the canal will be absolutely in our control in a military sense." England acquiesced in that interpretation of neutrality in 1901, before the canal was built, and again in 1912, when it was nearing completion: "Now that the United States has become the practical sovereign of the Canal, His Majesty's Government do not question its title to exercise belligerent rights for its protection."

And President Wilson took full advantage of that interpretation of "neutrality" in World War I, not only by banning all enemy ships, but even proclaiming (November 16, 1917) that no enemy alien should "enter or be found within the Panama Canal Zone." Franklin Roosevelt amplified these prohibitions in World War II, and no nation in the world ever questioned our right to protect, defend and police the Canal and Canal Zone and adjacent waters, and to sink and destroy enemy warships wherever found, or considered that we were violating our guaranty of the Canal's "neutrality".

But under the pending Treaties, as pointed out in my memorandum of September 26th, the warships and auxiliary vessels of all nations must be allowed to transit the Canal freely, without inspection, search or even surveillance, in time of war or of peace, and the policing of the Canal is entrusted exclusively to the Panamanian police and fire departments.

Furthermore, this new meaning of "neutrality" is to be guaranteed by all nations of the world under the accompanying "Protocol", and will be immediately applicable—not just after the year 2000. The provision that the United States "shall have primary responsibility to protect and defend the Canal" until the year 2000 is grossly misleading and just another example of hasty—or tricky—draftsmanship. It is meaningless if we cannot police the Canal or interfere with enemy warships and submarines in the Canal or in the "territorial seas" of the Republic of Panama—which are not defined in the Annex "B" that purports to define them.

Thus far, no witness and no commentator in the media has supported his opinion, for or against ratification, by a direct quotation of the terms of the treaties, and there is no evidence that any of them has actually read the two Treaties, the three Annexes, the Protocol, and the two implementary agreements. In other words, they don't know what they are talking about, and I am sure that the same would be true of Averel Harriman, Mrs. Lyndon Johnson and the other notables who are forming a task force to steam-roller the opposition.

One particularly fatuous and famous commentator has said that the whole question is trivial as the Canal no longer has any military importance. If that is true, I'd like to know why the Administration plans to pay Panama over two billion dollars for the privilege of operating and maintaining it—and at least double that amount if inflation proceeds at present rates.

Sincerely yours,

GEORGE J. EDER.

[Mr. Gravel assumed the chair.]

Mr. ALLEN. Apparently, the right of the United States to forbid the passage of any of the vessels through the Panama Canal was upheld by the permanent Court of International Justice. So, apparently, under the existing regime, our Nation does have the right to close the Panama Canal to belligerents.

The distinguished Senator from Idaho—he was not talking about it, but with reference to the statements that the 1903 treaty, the

Hay-Bunau-Varilla Treaty, is weighted in favor of the United States, his argument is that the way belligerent shipping, belligerent vessels can be prevented from going through the canal is to stop them out at sea. How cynical, then, it is to say in the treaties:

The Republic of Panama declares the neutrality of the canal in order that both in time of peace and in time of war it shall remain secure and open to peaceful transit by the vessels of all nations on terms of entire equality . . .

We have granted to enemy ships under the treaty the right to transit the canal, but we say that is meaningless because we are going to meet you out at sea. It seems to me to be rather cynical to say we are going to grant them one right and then say we are going to deny them that right by keeping them from getting there.

The distinguished Senator further said that I ought not to be putting erroneous constructions on the protocol of 1914, that I ought not to do that. He cites as a contrary view to the construction that I put on this protocol—he said it does not apply, I believe I am correct, to belligerent vessels seeking to transmit the canal. It did not have anything to do with transiting the canal, he said. Well, what are the vessels there presenting themselves to the canal for if it is not to transit the canal? And does it apply to belligerent vessels or not? This is what it said:

That hospitality extended in the waters of Panama to a belligerent vessel of war or a vessel belligerent or neutral, whether armed or not, which is employed by a belligerent power as a transport—

If it were a transport, it would not be anchoring outside the Panama Canal; I assume it would be seeking to transit the canal—as a transport or fleet auxiliary or in any other way for the direct purpose of prosecuting or aiding hostilities, whether by land or by sea—they are not just anchoring out there. They would be belligerent vessels, I assume. They are seeking entry.

The fact that it is in Panamanian waters, this says:

Shall serve to deprive such vessel of like hospitality in the Panama Canal Zone—

Well, how are they going to get in the Panama Canal Zone if it does not transit the waters of the canal zone?

For a period of 3 months, and vice versa.

So that these belligerent vessels which, for some reason, have just come there, are hovering around the canal, not seeking to transit the canal, the distinguished Senator would have us believe—they have to stay there 3 months before they can move from Panamanian waters to canal waters; or, if they are in canal waters first, and that would be possible on account of the 3-mile limit, then they cannot move to Panamanian waters for 3 months. That does not sound like much neutrality to me if you are going to imprison them there for 3 months.

The distinguished Senator says, no, I must not put that construction on it, because he places another construction on it. That is the only authority he cites, his own construction.

Mr. SARBANES. Will the Senator yield on that point?

Mr. ALLEN. No, I will not, until I finish my remarks. Then the Senator can make such remarks as he wishes.

That is the authority we have for a different construction. But the Senator sort of chastises me a bit for having the temerity to

offer my construction on what this 3-months' delay for belligerent vessels means. That does not sound like much neutrality. That does not sound like giving free and open access to the canal, to me. So I feel that my construction, since I have the letter of the agreement; the wording of the agreement, before me, even though I do not serve on the Foreign Relations Committee, might be just as valid and perhaps a little more so than that of the distinguished Senator from Idaho.

Also, the distinguished Senator was sending up some sort of scare signal about Cuba, that Panama could invite in Cuban troops or Russian troops, back them up against the Panama Canal fence, and we could not do anything about it.

I asked him if he had ever heard of the Monroe Doctrine. He said, yes, that is not a treaty. Well, the Monroe Doctrine either means something or it does not mean something. Under the Monroe Doctrine, I do not believe we should look with great favor on the Russians, in the Senator's hypothetical case, either the Russians or the Cubans taking over Panama. I do not believe that would be looked on with a great deal of favor.

Now, the Senator says, well, we ought to consider the Neutrality Treaty first, and he says it goes into effect at the same time as the other treaty. That is true. I made that same statement in my opening remarks, that it goes into effect 6 months after the exchange of notes of ratification, just like the other treaty. But the point that I am making is that the canal is going to be well defended for the rest of this century, even under the Panama Canal Treaty, because we have the primary responsibility of defending it. So we are going to defend it with or without the Neutrality Treaty.

If the Senators are worried, if the Senator is worried about the Neutrality Treaty not being approved, he could, I believe, by unanimous consent, insert a provision in the Panama Canal Treaty that it not become effective until the Neutrality Treaty is approved. The Senator is sitting there with 78 votes on the leadership amendment, so it would seem no doubt but what the Neutrality Treaty would be passed very shortly after the Panama Canal Treaty.

He also talks about the fact that we need to go to the head of line in an emergency. Well, who determines whether it is an emergency or not? The leadership amendment is silent. It is silent on that subject.

What is an emergency to us might just be another day for Panama after it gets control of the canal in the year 2000.

They might say, "We see no emergency, what are you talking about?" "Oh, well, we have got to get through the canal, we have got to go over there to the other ocean, we're in a hurry."

They do not get into such a big hurry down in Panama. They just think, do it tomorrow.

So I do not believe that this leadership amendment is very good at that point.

Also, it has another joker in it, that is, when we talk about intervening down there to protect the neutrality of the canal, the amendment also provides that in our doing this, though, we must not interfere with the internal affairs of Panama. That is in the

leadership amendment, taking care of the Panamanian wish, not the wish of the American people.

The American people are not concerned about whether or not we interfere with the internal affairs of Panama. That is written into the leadership amendment. We cannot do anything to interfere with the internal affairs of Panama.

Also, Panama decides if they do not want the U.S. vessels any more to transit the canal. Maybe in the next 22 years Panama will come under the influence of these Cuban soldiers and Russian soldiers that the distinguished Senator from Idaho talks about. Suppose Panama is a satellite of Cuba or a satellite of Russia. Suppose transit of our ships through the canal is denied. We are bound not to interfere with the internal affairs of Panama.

I think going down there and opening up that canal would result in some sort of internal disturbance down there. It would interfere with the internal affairs of Panama.

So it would seem to me, getting back to the motion itself, that it is in the public interest. I believe it is in the interest of shortening the time to be spent on this debate. I believe it is in the interest of logic. I do not know that that is such an impelling force, however, in our deliberations. But in the interest of logic, I feel that we ought to decide first whether we are going to give the canal away or whether we are going to start defending it in the year 2000.

I am mindful that the treaty goes into effect the same time as the other. We have already got the defense of the canal taken care of in the Panama Canal Treaty. We are charged with primary responsibility. We do not need bother about that. But we need worry, I believe, about defending it after all our troops are pulled out.

That is one of the amendments I have, to provide that the President of the United States, if he deems that the military presence of the United States is necessary for the defense of the canal, or for preserving its neutrality, can so certify to the Government of Panama prior to December 31, 1999, and retain our troops there.

But under the leadership amendment, prior to the year 2000 we have to get all of our troops out.

How are we going to defend the canal if we do not have a presence there? We have a presence by landing paratroopers and having amphibious landings. Those are the only two ways I know of to get in there.

So that is what the leadership amendment does and I feel that this leadership amendment is not going to solve anything.

I do feel that we can act, and act hurriedly, on the Neutrality Treaty if the Panama Canal Treaty is approved first and I believe that failure to go first with the Panama Canal Treaty will add a number of days to the consideration of these treaties.

I think another bad reason, as I mentioned at the outset—I do not believe the distinguished Senator from West Virginia was here and I would like to repeat it—that another good reason, and I appeal to the distinguished Senator from West Virginia to consider this reason, is that if the Neutrality Treaty is voted on first there are many of us who regard the two treaties as one package and even though we want the canal to be defended and we want it to be defended in a whole lot stronger fashion, apparently, than the

leadership amendment provides for, many of us are going to have to vote against the Neutrality Treaty, because it is part of the overall package, whereas, if the Panama Canal Treaty be first approved, there would be no reason whatsoever why the Neutrality Treaty could not be approved overwhelmingly in short order.

So by going this route, the Senator is depriving many Senators of this Pan-American effort, to show great Pan-American feeling here by an overwhelming vote. It would be much more overwhelming. I do not know if it would be overwhelming anyway. I do not know who is for it and who is not. But it would be much greater, I feel sure it would be greater by quite a few if it is not rushed through first.

Many who would vote for it as a second treaty cannot vote for it as the first treaty. I would like to leave that thought with the distinguished Senator from West Virginia.

Mr. ROBERT C. BYRD. Mr. President, I have been pondering that thought for quite some time. I heard the Senator make that statement while I was in my office listening to the debate on the radio.

It is a very appealing argument. It is a very subtle one. It is very persuasive one on the surface. But I will get to that a little later.

The distinguished Senator from Montana is on his feet. He wishes to speak. The distinguished Senator from Maryland has sought two or three times to get the floor.

I would like to yield the floor and let those Senators get the floor in their own right, or retain it and yield it to them by unanimous consent.

I would simply like to be able to move to table the pending motion within a reasonable amount of time without shutting off debate. Several Senators have been waiting.

Mr. SCOTT. Mr. President, will the Senator yield briefly?

Mr. ROBERT C. BYRD. I yield.

Mr. SCOTT. I wish to make some comments—5 minutes or so—in support of the motion of the distinguished Senator from Alabama. I hope the Senator will withhold a motion to table until those on this side also have had an opportunity.

Mr. ROBERT C. BYRD. Very well.

Mr. President, I ask unanimous consent that after Mr. Melcher and Mr. Sarbanes and Mr. Scott and Mr. Helms have addressed the Senate, I be recognized to make the motion to table the pending motion, with the provision that I be recognized no later than a quarter to 5. That would be 25 minutes from now. Would that be agreeable?

Mr. SCOTT. Mr. President, reserving the right to object, if the distinguished Senator would include in his unanimous-consent request that each Senator should talk no more than 5 minutes, that would give us equal opportunity.

Mr. ROBERT C. BYRD. That would be fine.

Mr. President, I ask unanimous consent—

Mr. HELMS. Mr. President, reserving the right to object, I would be willing to defer my comment, provided I could be recognized immediately after the vote.

Will the Senator include that in the request?

Mr. ROBERT C. BYRD. I will be happy to have the Senator precede me. I should like to make the motion no later than 30 minutes

from now, and I would like about 5 minutes before making the motion.

The PRESIDING OFFICER. Is there objection?

Mr. HELMS. Mr. President, reserving the right to object, I will not object if it is understood that the Senator from North Carolina will be recognized immediately after the vote on the motion to table or the motion by the Senator from Alabama, whichever occurs first.

Mr. ROBERT C. BYRD. Mr. President, let me ask again. I ask unanimous consent that the Senator from Montana (Mr. Melcher) may be recognized, that the Senator from Maryland (Mr. Sarbanes) may be recognized, that the Senator from Virginia (Mr. Scott) may be recognized, and that I then be recognized; that it also be understood that I be recognized no later than 15 minutes before 5 p.m. today; that immediately upon the disposition of the motion by Mr. Allen, whether by a tabling motion or not, the distinguished Senator from North Carolina (Mr. Helms) be recognized.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. HELMS. I thank the Senator.

The PRESIDING OFFICER. The Senator from Montana is recognized.

Mr. MELCHER. Mr. President, the junior Senator from Alabama (Mr. Allen) proposes to reverse the consideration by the Senate of the two treaties. He proposes to take up the first treaty first. I believe he is correct in his motion. I believe his motion should be adopted.

Article V of the Neutrality Treaty, or the second treaty, has only one sentence:

After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the canal and maintain military forces, defense sites and military installations within its national territory.

That is the one sentence of article V of this Neutrality Treaty, and the Panama Canal Treaty referred to therein is the first treaty.

This treaty, the Neutrality Treaty, assumes the ratification of the first treaty. Without the first treaty, this neutrality treaty makes no sense. Without the first treaty, this treaty does not stand alone. This procedure of taking up the second treaty, the so-called Neutrality Treaty, simply defies logic, defies the intelligence of the Senate as well as the intelligence of the American public.

If this treaty should be approved before the first treaty, it will serve as a signal that the Senate must intend that the basic treaty will be approved. I believe it is wrong and without logic to consider these treaties in this order.

For that reason, Mr. President, I hope that Senator Allen's motion to reverse the consideration will be agreed to by the Senate.

The PRESIDING OFFICER. The Senator from Maryland is recognized.

Mr. SARBANES. Mr. President, I wish to address two points.

First, as to the question of the interpretation of the protocol of 1914, as reaffirmed in 1939, I point out that the view presented by the able Senator from Idaho (Mr. Church) is not just his personal view. It is the view that the two governments adhered to and the view that was in fact applied by the governments.

It is very important in this debate to agree at least on the underlying basis of the debate, and the interpretation that was placed on this protocol by the able Senator from Alabama was not the interpretation placed upon it by the parties to the protocol.

What the protocol was intended to deal with was the neutrality law as it applied in 1914 under the Hague Convention. That law said that belligerent warships could not renew their fuel supply in the ports of the same neutral country until 3 months had elapsed from the last refueling. The protocol was intended to deal with that question and not the question of transiting through the canal.

What we did by that protocol was, in effect, to make the ports of the Canal Zone and the ports of Panama the ports of one neutral country, so that a belligerent ship could only stop once every 3 months for refueling purposes and could not come to a port in Panama and then in less than 3 months come back to a port in the Canal Zone.

That is what the protocol did, that is what the two parties to the protocol understood it did, and that is how they applied it—then and again in 1939, during the subsequent neutrality period.

It is very important that what the protocol meant be fully understood. I submit to the Senate that the interpretation put forth by the distinguished Senator from Idaho (Mr. Church) with respect to these agreements between the United States and Panama—and note that agreements between our two countries were needed to cover the situation—is the correct interpretation.

Second, I should like to address the question of the motion that is pending before us and the comments of the distinguished Senator from Montana, that we should take up the first treaty first and the second treaty second.

There is no first or second treaty. There are two treaties before the Senate which have been negotiated. There is the Permanent Neutrality Treaty, and there is the Panama Canal Treaty. Without one treaty, the other does not really make sense. The two treaties have to be seen together, as a package.

The distinguished Senator from Montana says that if you do not act on the first one, the other one does not make sense. The same thing applies in reverse. Both treaties are essential to one another. Neither treaty stands alone.

The Panama Canal Treaty, by its own terms, will terminate on December 31, 1999. In judging that treaty, it is essential to know—since that treaty, by its own terms, is to end at the close of the century—what will follow. What will follow is governed by the terms of the permanent Neutrality Treaty. Therefore, in logic, in reason, and in terms of importance—it seems to me eminently clear that the treaty to which the Senate should first address itself is the permanent Neutrality Treaty. That is the order in which the committee made the judgment they should be considered. That is the order in which they are now pending before us on the floor of the Senate.

I think that the motion of the distinguished Senator from Alabama should be defeated and that the Senate should proceed with its business in the manner in which we are now proceeding, which I submit is orderly, logical, and, above all, takes the most important things first.

The PRESIDING OFFICER. The Senator from Virginia (Mr. Scott).

Mr. SCOTT. Mr. President, I do not address the merits of either treaty at this time, but do rise to support the motion of the distinguished Senator from Alabama, that the order of consideration of the treaties as recommended by the Committee on Foreign Relations be reversed.

The letter of transmittal of these treaties by the Secretary of State to the President is that first is the Panama Canal Treaty and second the treaty concerning the permanent neutrality and operation of the Panama Canal. The same order is in the letter of transmittal by the President to the Senate, that we first consider the Panama Canal Treaty.

I believe that just logic and commonsense requires that we consider them in the order that has been recommended to us by the Secretary of State and the President. I do not know the basis for the Foreign Relations Committee reversing that order, but there must be some reason for it. There may be some type of advantage that they might consider that would be gained by reversing it. Certainly, in my judgment ratification of the neutrality treaty is no basis for ratification of the canal treaty. It just appears that we are reversing things. It would appear that first we should decide whether or not we are going to give away this American canal. As long as we have ownership and control of the canal, then there is no reason for us to enter into a treaty of neutrality and the treaty itself, when you look at it, the neutrality treaty, article V, says after the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the canal and maintain military forces, defense sites and military installations within its national territory. Within its national territory, of course, should the canal treaty be ratified, would include the Canal Zone. At the present time, it does not include the Canal Zone since that is not the territory of the Republic of Panama.

It seems to me that, first, we ought to decide whether or not there will be a transfer of title and control of the Canal Zone before we consider this question of neutrality. It just is not logical to consider it any other way. I have studied the matter and I see no basis at all. We could go through it and there are a number of features in here. It starts out in article I, "The Republic of Panama declares that the canal is an international transit waterway."

What right does the Republic of Panama have to declare what shall happen to the canal when the canal is the property of the United States? It is only after the other treaty is ratified and after we return the property to Panama that this treaty actually is logical to be considered at all.

I would hope that the position of the distinguished Senator from Alabama will prevail. I understand that our distinguished majority leader intends to move to table and I would hope that the motion to table would be defeated so that the Senate can then express its will on the merits of considering the order of considering the two treaties.

The PRESIDING OFFICER. Under a previous order, the Senator from West Virginia (Mr. Robert C. Byrd) is recognized.

Mr. ROBERT C. BYRD. Mr. President, the distinguished and very able and learned Senator from Alabama (Mr. Allen) has moved to

proceed to the consideration of the Panama Canal Treaty. He has stated that if the Senate considers first, as it is presently on course of doing, the Neutrality Treaty, many Senators would be deprived of the opportunity to vote for the Neutrality Treaty; whereas, otherwise they might vote for it, if, indeed, the Senate acted first on the Panama Canal Treaty and gave its approval to the ratification of that treaty.

That coin has two sides. There are many Senators who would not vote for the Panama Canal Treaty and who will not vote for the Canal Treaty, and I am one of them, until first we can settle the questions which are involved in the amendments that have been offered by the joint leadership and have been cosponsored by 76 other Senators.

So, that is a two-way street. It is a very appealing argument the distinguished Senator from Alabama has made and it almost persuades me when he leaves me to feel that if we go ahead and vote on the Panama Canal Treaty, first, that we can just brush off the Neutrality Treaty within a matter of 1 or 2 days and 90 or more Senators may vote to support that treaty. But I am not quite persuaded. As I say, there are those of us who have very serious questions that we want answered with respect to the Neutrality Treaty before we vote on the Panama Canal Treaty.

The distinguished Senator from Alabama has said that we have the cart before the horse. The distinguished Senator from Maryland said it very accurately when he said there is no first treaty, no second treaty, we have two treaties here that we are considering and they are both part of one and the same debate really, and one and the same overall issue and subject.

But the cart is not before the horse, Mr. President. The Foreign Relations Committee reported first on the Executive Calendar a neutrality treaty and then reported the Panama Canal Treaty. To make the argument that because the President in submitting these two treaties to the U.S. Senate for its consideration submitted first the Panama Canal Treaty and then second the Neutrality Treaty, to argue that the Senate itself ought to follow the President in its sequence of reporting these treaties to the Senate, the Foreign Relations Committee, in other words, should have followed that sequence, is to denigrate the role of the Senate. The Foreign Relations Committee was under no obligation to report first on the Executive Calendar the Panama Canal Treaty. As a matter of fact, it was under no obligation to report both of them or either of them. But the committee quite appropriately and wisely, in my judgment, reported first for the Executive Calendar the treaty concerning the permanent neutrality and operation of the Panama Canal.

Now, I personally want to know, before I vote for the Panama Canal Treaty, which relinquishes control by the United States as of December 31, 1999, of the Canal Zone, where we stand the next day. I want to know where we stand on January 1 in the year 2000. What will be our rights in times of need or emergency with respect to our war vessels? What will be our recognized rights in respect of guaranteeing the neutrality of access to and out of the canal on January 1, of the year 2000? I want to know that first, before I relinquish control, on December 31, 1999, of the canal.

That was the logic by which the Foreign Relations Committee, in its wisdom, reported to the Executive Calendar the treaty that is now being debated before the Senate.

So the cart is not before the horse. The horse is before the cart; and I maintain that is where the horse ought to be. The horse ought to be before the cart, and let us leave the horse before the cart.

Mr. President, I—

Mr. ALLEN. Mr. President, will the Senator yield? Anticipating that the Senator is going to make a motion to table, will the Senator yield me 3 minutes that I might answer him, before he does so?

Mr. ROBERT C. BYRD. I yield to the Senator right now.

Mr. ALLEN. Three minutes will be sufficient.

Mr. ROBERT C. BYRD. I yield to the Senator right now.

Mr. ALLEN. I thank the Senator for yielding to me to answer some of his remarks.

The distinguished Senator from West Virginia (Mr. Robert C. Byrd), the able and distinguished majority leader, who, of course, is the ablest parliamentary strategist and technician in the Senate, or possibly that has ever served in the Senate, knows quite well that if he is disturbed about the question of the Neutrality Treaty being considered after the Panama Canal Treaty, and he wants to know what is going to be in it, he knows quite well that he could easily attach an amendment to the Panama Canal Treaty stating that it would not become effective until the Neutrality Treaty has been agreed to, and possibly he would get unanimous consent to do that.

Furthermore, standing there with 78 committee votes on his amendment, there would be no danger whatsoever that the Neutrality Treaty will not pass. After all, we have 22 years to pass the Neutrality Treaty, so I do not believe we are going to get caught up in any rush of time.

I would like to make this appeal to Senators: I feel that possibly some 65 or so Senators are committed to vote for these treaties. I hope that commitment extends only to final passage of the treaties—if I said amendments a moment ago, I meant treaties. I hope that commitment extends only to the final vote on the treaties, and that Senators, during the course of this debate, which is going to last 4, 5, 6, 7, or 8 weeks, will consider with an open mind constructive amendments that will be of benefit to the people of the United States, and that will further protect our national interests. I hope that Senators who are so committed—and the Senator from Alabama is not one of those, as might be imagined—will draw back unto themselves a little bit of independence here.

You will not be violating any pledge to vote for these treaties in changing the order, so that we can have a systematic and logical time and order of consideration of these treaties. Do not feel that because you are committed to vote for the treaties, you have got to vote with the leadership every step of the way, because you are going to find yourselves, a little later on, voting on constructive amendments that the leadership is going to tell you are not necessary to be passed.

So let us use a little bit of independence, I will say to the Members of the Senate, and vote your convictions on these matters

as they come up, and still keep the commitment that I know many of you have to the President and to the leadership to vote final approval of the treaties.

This motion is sound. It does bring up the proper treaty for consideration first. I say again, it is my assessment, it is not final in any sense of the word, but it is my assessment of the situation that we will cut at least a week off the total time necessary to consider both treaties if we will reverse the order of consideration of the treaties.

I express my appreciation to the distinguished majority leader, who is always courteous and leans over backwards to accommodate Senators who disagree with him.

Mr. ROBERT C. BYRD. Mr. President, will the Senator agree to a time limitation on these two treaties if I will agree to reverse the order?

Mr. ALLEN. No, sir, but speaking for myself—

Mr. ROBERT C. BYRD. I did not understand the Senator.

Mr. ALLEN. I said no, sir, but speaking for myself and myself only, I would be willing to agree to a time limitation on the Neutrality Treaty, such time limitation to start on final action on the Panama Canal Treaty.

Mr. SCOTT. I would object to that, Mr. President.

Mr. ROBERT C. BYRD. I have not propounded such a request, but I wanted to see if the distinguished Senator from Alabama would be willing to enter into a time agreement encompassing both treaties—

Mr. ALLEN. I would on the Neutrality Treaty.

Mr. ROBERT C. BYRD. In the event that we would agree to his motion.

I yield to the distinguished minority leader.

Mr. BAKER. Mr. President, I shall not take very long. It is very interesting to see the two most distinguished parliamentarians in the Senate bowing and tipping their crowns to each other in this fashion on the Senate floor. As the Senator from Tennessee, I will say that the best advice I can give myself would be to stay in my place, because otherwise I might get hurt.

But, Mr. President, I feel some obligation to rise in opposition to the motion of the distinguished Senator from Alabama, because I feel some responsibility—not total responsibility, of course, but some responsibility—for the configuration in which these treaties were reported by the Foreign Relations Committee.

I am a member of that committee, and I advised my colleagues on the Foreign Relations Committee that I had a big problem with these treaties; that I had searched my conscience, as the Senator from Alabama suggested that we should; and that I had to do something to make them consistent with the interests of the United States. To be specific, that I had to propose certain amendments to remove certain ambiguities in a way that would require concurrence of the Panamanian Government, not just General Torrijos.

While I have never asked the members of the Foreign Relations Committee to acknowledge to me that this situation may have been one of the reasons why they chose to report the treaties in this order, I rather suspect it may have been. Then, as today, I could

not vote for these treaties if I were not assured in advance that the Neutrality Treaty was going to be improved, if the defects and ambiguities were not taken care of by the amendments now at the desk of every Senator, cosponsored by 78 Senators.

The Senator from Tennessee thus faces a real dilemma. That is, if we were to reverse the order of these treaties and vote on the Neutrality Treaty first, as I have stated up and down the length and breadth of my State of Tennessee, I could not vote for the treaties.

It is only if we pass perfecting amendments to the Neutrality Treaty that I could say, in good conscience, as I have said earlier, that the national security interests of this country are fully protected.

I would urge, Mr. President, that we preserve the order of precedence in which the treaties were reported by the Foreign Relations Committee. I think it is the logical way to approach this problem. It gives the Members of the Senate the maximum opportunity to express their will and judgment on the future of the canal and the American interests in it after the year 2000. I think it gives us the maximum opportunity to provide that additional improvement to the treaties that only the Senate can bring to bear.

The distinguished Senator from Alabama said, if I understood him correctly, that we should search our conscience. I remember a city councilman in my hometown in Tennessee who was running for reelection once. He campaigned on television and he said:

Now, tomorrow is election day and I want you to search your conscience. If your conscience says to vote for T. S. Walker, vote for T. S. Walker, and if it says don't, you argue with your conscience.

[Laughter.]

All I want to say in conclusion, Mr. President, is I do not know which side of the issue any particular one of my colleagues may be on right now, and I am not going to argue the merits of the treaty. All I am going to say is when you search your conscience, you should come to the conclusion that we need to amend the Neutrality Treaty before we dare proceed with the question of what happens to the canal on a permanent basis. I very much hope the majority leader will move to table this motion, and I will support him enthusiastically.

Mr. ROBERT C. BYRD. I thank the distinguished minority leader.

The Neutrality Treaty raises questions many Senators want to have answered before we proceed to the Panama Canal Treaty. The real controversy, of course, is on the legality of the treaty. Unless the Senate can be satisfied with these amendments, unless we can have assurances that the Neutrality Treaty will provide, as amended by these leadership amendments, unless we can nail down the important points concerning our rights to take action to protect the canal, then it does not make sense to consider the Panama Canal Treaty.

Therefore, it is with reluctance, Mr. President, that I now move to table the motion made by the distinguished Senator from Alabama. I ask for the yeas and nays on my motion to table and hope that Senators will support my motion to table.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered and the clerk will call the roll.

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Delaware (Mr. Biden) and the Senator from Colorado (Mr. Haskell) are necessarily absent.

Mr. STEVENS. I announce that the Senator from Utah (Mr. Hatch) is necessarily absent.

I further announce that, if present and voting, the Senator from Utah (Mr. Hatch) would vote "nay."

The result was announced—yeas 67, nays 30, as follows:

[Rollcall Vote No. 33 Ex.]

YEAS—67

Abourezk	Hatfield, Mark O.	Muskie
Anderson	Hatfield, Paul G.	Nelson
Baker	Hathaway	Nunn
Bayh	Hayakawa	Packwood
Bellmon	Heinz	Pearson
Bentsen	Hodges	Pell
Brooke	Hollings	Percy
Bumpers	Huddleston	Proxmire
Byrd, Robert C.	Humphrey	Randolph
Case	Inouye	Ribicoff
Chafee	Jackson	Riegle
Chiles	Javits	Roth
Church	Kennedy	Sarbanes
Clark	Leahy	Sasser
Cranston	Long	Sparkman
Culver	Magnuson	Stafford
Danforth	Mathias	Stevenson
DeConcini	Matsunaga	Stone
Durkin	McGovern	Talmadge
Eagleton	McIntyre	Weicker
Glenn	Metzenbaum	Williams
Gravel	Morgan	
Hart	Moynihan	

NAYS—30

Allen	Garn	Schmitt
Bartlett	Goldwater	Schweiker
Burdick	Griffin	Scott
Byrd, Harry F., Jr.	Hansen	Stennis
Cannon	Helms	Stevens
Curtis	Johnston	Thurmond
Dole	Laxalt	Tower
Domenici	Lugar	Wallop
Eastland	McClure	Young
Ford	Melcher	Zorinsky

NOT VOTING—3

Biden	Hatch
Haskell	

So the motion to lay on the table was agreed to.

Mr. ROBERT C. BYRD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

Mr. CHURCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. Bumpers). The Senate is not in order. Senators will please take their seats or retire to the cloak-room. The Senate will suspend until we have order.

Will Senators please take their seats or retire? The Senate is still not in order.

The Senator from West Virginia.

Mr. Robert C. Byrd addressed the Chair.

The PRESIDING OFFICER. Under the previous order, the Senator from North Carolina is to be recognized.

Mr. ROBERT C. BYRD. Will the Senator yield?

Mr. HELMS. Yes.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. I thank the distinguished Senator from North Carolina for his courtesy in yielding.

Mr. President, for the information of the Senate, there will be no more rollcall votes this evening.

May I ask the distinguished Senator from North Carolina whether or not he intends to speak this evening or whether he intends to speak tomorrow?

I understand that the distinguished Senator from Massachusetts (Mr. Brooke) wishes to speak this evening.

Mr. HELMS. Mr. President, in response to my friend from West Virginia, it is my intention to speak, but I will yield to the able Senator from Massachusetts for whatever time he may desire and I shall follow him.

Mr. ROBERT C. BYRD. I thank the Senator.

Mr. HEINZ. Will the Senator yield for a unanimous-consent request?

Mr. HELMS. Yes.

Mr. HEINZ. I thank my good friend from North Carolina.

Mr. President, I ask unanimous consent that Bill Ranch of my staff be granted privilege of the floor during consideration of the Panama Canal treaties.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAFEE. Mr. President, I have a similar request for Lee Verstandig and Ed Hawley of my staff.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROOKE. Does the Senator from North Carolina yield?

Mr. HELMS. I yield to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts will please withhold until we have order in the Senate.

The Senator from Massachusetts.

Mr. BROOKE. Mr. President, I thank my distinguished colleague from North Carolina for yielding.

Mr. President, the Senate's ultimate decision on the Panama Canal treaties will have a significant impact both upon our self-image as a nation and upon the perceptions of others regarding our role in the world. It is our solemn obligation to make our debate on the ratification issue a thorough and deliberate effort. The interest of the American people would be ill served by a "rush to judgment." While the impatient would have us believe that time is somehow of the essence, I have found no evidence that such is the case. Rather, I believe the case is compelling for a complete and

thorough airing of every aspect of the matter that is before us. On this issue, the "wheels of the Senate should grind slowly and exceedingly fine."

I raise this matter because I recall that in 1972 we handled another issue of great importance in a rather impetuous manner. In retrospect, the conclusion seems inescapable that we gave far too little attention to the ambiguities of the SALT I agreements and their consequences. If we had not done so, we could have perhaps avoided many of the developments that make passage of a SALT II agreement problematical at best. We should not repeat our error of undue haste as we consider the Panama Canal treaties.

Mr. President, we have all experienced a great deal of soul searching and agonizing over these treaties and their implications. A great deal of interest has been shown by the American people in the matter and they have communicated that interest to us.

There can be no doubt that it is our responsibility to examine seriously the views of those we represent. This does not mean that we simply determine that 51 percent of those writing oppose ratification and, hence, determine our vote. That is not expected of us and, indeed, would insult those who had sufficient confidence to elect us to office. What it does mean is that we must thoroughly explore their concerns, determine the weight they should be given, and then choose what is the proper course of action that will best serve the interests of our country and its people. And that is the key, for it is not the interests or pride of Panama, or the satisfaction of one ideological need or another that are of importance on this matter. This is one of those occasions in the Senate when the issue compels us to rise above parochial concerns, for what we are talking about here are matters of the highest national importance with far-reaching, if as yet unforeseen consequences for our country.

Mr. President, we all know that the treaties we will finally vote upon will not be the same as those originally sent to the Senate by the President. It is an open secret that language changes will be made to guarantee the right of the United States to take action, unilaterally if necessary, to defend our access to the canal and to provide for priority passage of our naval vessels through the canal when we determine that an emergency exists requiring such an action. I have cosponsored the amendments of relevance to these issues. If the treaties did not contain them, I would be unable even to consider voting in favor of ratification. And, I emphasize consider, for there are still too many loose ends to permit me, at this time, to indicate my final decision. Let me illustrate why this is the case.

In recent weeks, controversy has arisen regarding the explicit or implicit financial aspects of the treaties. Some have dismissed concern over financial issues as just an obstructionist tactic of those committed to opposing ratification. Such a characterization is both unfair and indicative of an attitude of careless disregard of the right of the American people to understand exactly what this country is being asked to undertake.

Personally, I am still troubled by the financial aspect for several reasons. First, it is apparent that the treaties and the process of

their negotiation have created a high level of expectation among Panamanian officials as to the anticipated monetary windfall for Panama over the 22-year period until the canal is turned over. One Panamanian spokesman has stated his expectation that Panama would receive over \$2.2 billion during that period. Such expectations, if largely unfulfilled, as they are likely to be, could set the stage for renewed agitation for a Panamanian takeover of the canal before the year 2000. Indeed, it is not inconceivable that passage of the treaties, with gross ambiguities regarding likely financial outcomes, could lead to an exacerbation of tensions rather than a lessening of the same in a relatively short period of time.

Excessive expectations have also been engendered by the administration's commitment to Panama to put together an aid package that could initially total \$345 million in loans and credits. While the informal statement to this effect is not binding in a legal sense, I have no doubt that the Panamanians fully expect to receive such aid. With others I believe there should be no linkage, explicit or implicit, between the aid question and the treaties.

Indeed, I think the Senate, in the form of an understanding, should make clear that nothing in the treaties, or in the negotiations of which they were a result, should be construed as in any way committing the United States to provide economic or military assistance to Panama. The aid issue is one to be examined completely independent of our consideration of the treaties. I am, therefore, offering amendments to that effect today. We should leave no room for misperceptions.

There is also a great deal of uncertainty about the financial provisions of the treaties themselves. For instance, the treaty provides that Panama is to receive from canal revenues a payment for services to be provided. During the first 3 years, the payment is to be \$10 million annually. Every 3 years the cost of the services are to be re-examined and the payments are to be adjusted up or down to reflect actual costs. The uncertainty arises regarding how possible surpluses over actual costs of services are to be handled in the first 3 year period. Theoretically, the actual cost of the services for each of the 3 years could be \$5 million. At the end of the period this would leave a total of \$15 million excess over cost. Would that excess be applied to the next 3 year period and correspondingly reduce the rate of yearly payment? Or, would it be returned to the commission? Or, would it be a disguised subsidy to the Panamanian Government? The administration to date has not been able or willing to indicate which would be the case. And, should anyone conclude that concern on this issue is merely nitpicking, let me suggest that it is situations such as this that are tailor-made for corruption and graft. And our secret sessions yesterday and today provide ample evidence that corruption is certainly possible in Panama.

As another example, one can point to the unresolved issue of whether or not the annual interest payment to the U.S. Treasury from canal revenues on the U.S. investment in the canal will be discontinued. This payment is approximately \$20 million per year. Its forfeiture would naturally decrease U.S. revenues. It is my understanding that the administration intends to recommend that the payment be discontinued. Its desire to do so raises a question in

my mind as to the capacity of the canal to generate sufficient revenues to cover all the anticipated costs. It appears the administration is seeking to implement the self-fulfillment of its projections of canal financial viability by extracting an invisible subsidy from the Treasury.

A third example relates to the borrowing authority presently given the Panama Canal Company. The PCC has the authority to borrow up to \$40 million to cover deficits in operations.

Will the administration recommend that this authority be continued for the commission at the same level or at an increased level? There has been some talk of doubling the borrowing authority. Again, this approach would indicate to me administration uneasiness about the financial self-sufficiency of the canal under the provisions contained within the treaties.

An important aspect of the whole issue of canal revenues is the apparent obligation the United States would assume to make up deficits should there be inadequate revenues. Under the treaties, Panama is guaranteed that the canal will be turned over to it in the year 2000 free of liens or obligations. Therefore, if revenues between now and the year 2000 are insufficient, any debts incurred by the canal commission left unpaid apparently will have to be absorbed by the United States.

In this regard, I also must admit to a great deal of concern over the administration's attempt to convince the American people that they would not be required to foot the bill for payments to Panama. This is true only in a very narrow technical sense. The payments to Panama would come off the top of canal revenues and hence the bookkeeping entry would show a transaction between the commission and Panama. Yet, any deficits that arise, which would likely be the result of greatly increased payments to Panama, would have to be borne by the American taxpayer in one way or another. Therefore, it is somewhat disingenuous for the administration to argue that there is no possibility that the taxpayers would, in fact, be required to meet part of the cost of the payments to Panama up to the year 2000.

There are many other aspects of the financial arrangements that remain obscure and ill-defined at present. However, I will not discuss them here. I do wish to emphasize, however, that the most troubling aspect in the financial area is the possibility, indeed, in the minds of many, the likelihood that canal revenues will be insufficient to cover the payments to Panama, the operating and capital costs of the canal and payments due the United States. Thus, it seems clear to me that the United States, if these treaties are ratified, would assume actual and contingent financial obligations of a significant magnitude. The administration has sought to downplay this aspect of the matter. It is the duty of the Senate to make sure that the American people are fully aware of all the financial implications of the treaties.

Having pointed out the gaps that exist in our knowledge about the financial aspects of the treaties, I nevertheless acknowledge that exact predictions of future developments in this area are difficult if not impossible to make. Treaty proponents seek to exude an aura of confidence that toll increases will be sufficient to cover all anticipated costs without engendering the self-defeating effect of

forcing shippers to use alternative routes. This strikes me as a bit of whistling in the dark to buck up one's courage.

Opponents of the treaties, on the other hand, predict direly that the deficits will be great, especially after 1984, and that the American people will be forced to foot the bill.

Given the track record of economic projections over the past decade, it is difficult to have a high degree of confidence in the estimates pro or con on this issue. And, I certainly do not expect anyone to state specifically what will actually be required of the United States to meet possible deficits. But, I am convinced that it is the responsibility of the Senate and the administration to point out the range of appropriation to point out the range to meet possible deficits. Indeed, implementing legislation should clearly spell out the procedure by which the decision will be made to request appropriations and the manner by which any moneys thus provided will be paid back. It would be intolerable for the United States to assume obligations without being fully aware of if and when it could expect repayment.

I believe that this brief review of yet-to-be-finalized aspects of the treaties clearly indicates that the Senate is not yet in a position to decide on the ratification question. Indeed, it is clear to me that we should not do so until we have in hand the implementing legislation to be proposed by the administration and have had a chance to examine it in detail. Even our own Congressional Budget Office has stated that:

* * * because the implementing legislation has not been submitted, a complete estimate of the budget impact of the Treaties is impracticable at this time.

I find it difficult to understand why the administration has been unable to provide us with this legislation. It is my understanding that it promised to do so early last fall. And rightly or wrongly, the administration's failure leads many to presume that it is holding back information that is important to our decision. I hope that the leadership will make clear to the administration that the vote on ratification will not occur until the Senate has had the opportunity to review the implementing legislation. It would be a mockery of the process of advice and consent to vote on the treaties, only to find subsequently that we are asked to undertake obligations we had not fully been aware of during our debate.

Mr. President, as I said at the beginning of my remarks, it makes no sense to me for the Senate "to rush to judgment" on this matter. During the next few days, I hope the leadership will explain why there seems to be a compulsion to do so. I certainly will not be prepared to agree to putting the matter of ratification to a vote until all pertinent information, including the implementing legislation, is put before the Senate. Only in this way can we be assured that our final decision will be made in a way that both educates the public as to why it is being taken and eliminates the debilitating ambiguities that threaten any effort to find a satisfactory solution to the vexing question of the future of the Panama Canal.

Mr. DOLE. Mr. President, will the Senator yield?

Mr. BROOKE. Yes; I am very pleased to yield.

Mr. DOLE. Let me say to the distinguished Senator from Massachusetts he has raised some of the concerns that many of us have in this body, whether we support or oppose or are undecided about the treaties, and that is the economic impact they will have and, second, in the end of his speech is a very important point that I think has not been stressed, and that is the fact that we do not have the implementing legislation yet.

I think the Senator from Massachusetts is absolutely right. We should not be asked to ratify or approve the treaties until we have that implementing legislation, to see how much it is going to cost.

I would hope with the Senator, in effect, serving notice on all of us, we better just take our time and let the administration get it up to us. In other words, they either have to speed it up or have to take more time.

But the distinguished Senator from Mississippi, Senator Stennis, has said this will cost the American taxpayer some money. It is not an accurate statement to say in a fireside chat it does not cost the taxpayer one dime.

The Senator correctly pointed out the increased tolls will add up to \$2.26 billion. In addition, there are other payments.

And I think the Senator from Massachusetts certainly made the record clear and raised a number of good questions with reference to the economic benefits.

We want to help the people of Panama. That is not the problem. But I think, as the Senator suggests, we want to make certain we know what it is going to cost the American taxpayers.

I find the taxpayers in the State of Kansas, and I am sure it is certainly true in the State of Massachusetts, feel they are pretty well taxed already.

This may not add a great deal to that burden, but it is certainly significant, and I commend the distinguished Senator from Massachusetts.

Mr. BROOKE. I thank my distinguished colleague from Kansas, and he is absolutely correct. I certainly did intend to serve notice that I for one will do everything possible to forestall the vote on ratification of these treaties until such time as the American people and the U.S. Senate, which, is called upon to vote on a ratification, have full knowledge of all the financial implications of the treaties, and have reviewed the implementing legislation in detail. I deem this to be essential prior to the votes on ratification.

I cannot for a moment understand why the administration has failed consistently since last fall to send the implementing legislation to the Senate for its review.

Mr. DOLE. If the Senator will yield a second, I think they will understand when they hear about the speech of the Senator from Massachusetts this afternoon. They will understand when they know there are not enough votes for ratification. I do not say it critically. I just say it as a matter of fact. But once they know the votes are not there, we will see the movement that the Senator has been requesting.

Mr. BROOKE. I think the Senator from Kansas is well aware that I feel very strongly on this matter, as I have tried to indicate in my speech to the Senate today. Even more so I feel deeply that we should not divide this country on this issue. It is one of importance

and of relevance, to be sure. And I think we ought to know all of the facts, every detail, concerning what the treaties are, what they are not, what the treaties involve, what they do not involve, and how much it is going to cost the American people if they are ratified.

We cannot "buy a pig in the poke." We ought to know exactly what we are talking about. And these statements which have been thrown out, as the Senator from Kansas has said, that they will not cost the American people a penny, are obviously not true. It will cost the American people. The question is, How much will it cost the American people and is the cost a necessary one to bear because of our natural interests?

Mr. DOLE. How much.

Mr. BROOKE. They should know that.

Mr. DOLE. Not only how much but how long.

Mr. BROOKE. How long is it going to cost us?

Mr. DOLE. Right.

Mr. BROOKE. I think we ought to know that before we get into it.

Why this urgency I cannot say. I just do not know why some feel the need to "rush to judgment."

I think the administration really wanted these treaties ratified last fall when they were first presented to us, and I think they found out we did not want to ratify them then. Many of us gave advice to the President, that the treaties could not be passed at that time. The Senate needed and still needs time to examine the matter in great detail. We needed time for the American people to understand what the treaties are all about; and now more and more people are becoming aware, but we still have not given them sufficient information upon which to make a judgment call.

Such information must include not only the financial arrangements that are involved and how long they are going to be in effect, but also the exact nature of the implementing legislation to be proposed by the administration.

So I thank the Senator from Kansas for his comments. I have known of his sensitivity to this question. And I thank him for the words he said in support of this position.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. HELMS. Mr. President, I, too, want to commend the distinguished Senator from Massachusetts.

His remarks, which he has just completed, represent to me one of the more sensible discourses in this entire debate and, needless to say, I am delighted to hear the position that he has taken. It is a responsible position. It is certainly a position that, in the judgment of the Senator from North Carolina, the vast majority of the American people share with him, and the points he has raised are the very same points which the Senator from North Carolina raised in hearings of the Armed Services Committee.

The American people deserve the right to know specifically and precisely what this is costing them, and once they know that, this Senator is persuaded that the people will react very strongly if, as, and when this Senate should make the mistake of ratifying the treaties.

But be that as it may, the Senator from North Carolina in a moment is going to discuss the moral aspects. He is going to discuss

the corruption in the regime in Panama and, as the Senator from Massachusetts indicated, the people of the United States deserve to know about this so that they can understand without any peradventure just what kind of regime it is, just who it is to whom we are proposing to turn over the Panama Canal.

So I commend the Senator for wanting to get to the bottom and reach the undeniable facts in this case, and I appreciate his comments.

Mr. BROOKE. I thank my distinguished colleague from North Carolina. As he knows, I serve on the Appropriations Committee. I am privileged to serve on that committee. Obviously, we would be faced with appropriations problems which have not even been suggested as yet, and I would hope that the administration would heed our counsel; that it would make known to us explicitly and in detail what the financial arrangements would be and send to us the implementing legislation that is necessary to obtain this information. I do not know, but I think if it fails to do so it will have made a grievous error so far as the Panama Canal Treaties are concerned and will not be living up to its responsibilities—not only to the U.S. Senate but to the country as a whole.

I thank my colleague.

Mr. HELMS. I thank my colleague.

Mr. JAVITS. Mr. President, will the Senator yield to me?

Mr. BROOKE. Yes; if I have time.

Mr. HELMS. Mr. President, just to establish the facts, I do have the floor, do I not?

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. Mr. President, I am glad to yield to my friend from New York.

Mr. JAVITS. I thank the Senator so much.

As usual, Senator Brooke speaks sincerely, eloquently, and always with deep perception. I am his friend as well as his colleague, and I have listened very carefully.

Certainly everything must be laid on the table. I think the closed-door sessions demonstrated that and the fact that the Members charged with sanitizing the transcript are now instructed, as if they needed instructions, to lean over backwards on the greatest public disclosure.

I would also suggest to the Senator that the record before the Foreign Relations Committee is very replete with exactly what he is asking for, other than the implementing legislation which will and should come up here—no question—unless there is a good reason which I have not heard.

Mr. BROOKE. The Senator said it will come up?

Mr. JAVITS. I believe so.

As I say, unless there is some good reason from the administration which I have not heard as to why they do not or they cannot.

Mr. BROOKE. If the Senator will yield, we have been promised the implementing legislation since last fall. We have still to this date not received it.

Mr. JAVITS. Well, as I say, I do not think, you know, that is anything unreasonable, asking to see the shape of the implementing legislation, unless there is some good reason why it cannot be tendered.

Mr. BROOKE. Which we do not have.

Mr. JAVITS. Which we do not have, and the Senator is just as reasonable as I am. Though I am a strong proponent of the treaties, I think whatever the Senate needs to judge them, it should have. As to the finances, that has been gone into very deeply, and the record is very complete on that score. The drug business has now been gone into very deeply, as it should have been.

All I wanted to point out is my respect for whatever the Senator says and whatever he thinks on any issue, whether I agree or disagree.

Second, this record now is very full of a great deal of the information which the Senator has sought, and I would most respectfully offer to the Senator my facilities, and I think I can be presumptuous enough to offer those of the Foreign Relations Committee, with a view toward satisfying the Senator or his staff, if he delegates it, as to what is in, so that the Senator can quickly, without going through volumes, refer to it, and what is not in; and I think it would be helpful to the Senator to undertake that review.

I do not think the Senator intended any derogation. If he did, as I am sure he did not, he is too much of a lawyer for that—the facts are very replete already, and I think the Senator should apprise himself fully that there is a complete record, and be brought up completely to date on everything we actually have of the kind he has discussed.

Mr. BROOKE. If the Senator will yield there, I appreciate the Senator's very generous and kind remarks. The Senator from New York, as he has said, is a very dear and close personal friend of mine, and a most distinguished member of the Foreign Relations Committee, and I intend no disrespect nor any criticism of the hearings or the work that the Senate Foreign Relations Committee and its very able staff have performed.

However, I beg to disagree with my friend from New York as to the completeness of the record insofar as what the financial obligation of the United States will be; and this is a matter of concern to me as well as the matter of the implementing legislation, which the Senator has said is of concern to him as well as to me.

The other point which I made was the need for the American people to know all of the facts relative to the Panama Canal treaties prior to a vote on ratification. I, for one, did not see the necessity for the closed session in the first instance. Frankly, I attended as much of those sessions as I could consistent with my responsibilities in the Appropriations and Banking, Housing, and Urban Affairs Committees; but to me, just the appearance that we are trying to keep something from the American people, unless it is a matter of national security or a matter of the rights of individuals—they have to be protected, and I can understand that—should be avoided. To the greatest extent possible everything should be in open session. The public has a right to know. I just think that we have to have all of the information, and I would hope it will be.

Let me state to the distinguished Senator from New York that I have looked at and read the Foreign Relations Committee report. As a matter of fact, I have said to my constituents time after time that I would not even begin to make a decision on the Panama Canal treaties until the report of the Foreign Relations Committee,

which is the appropriate committee having the responsibility in the main for looking very closely and in detail at the treaties, had been submitted and studied.

So I do respect the committee system, and I certainly have high regard, as the Senator knows, for the Committee on Foreign Relations. But I repeat the fact that you still cannot tell me today just what it is going to cost. I know you cannot specify it in its entirety; I said that in my remarks on the floor today, that we cannot hold you to an exact amount. But I am personally convinced that we still have an inadequate understanding of just how much it may ultimately cost the American people, and for how long they may pay the costs implicit in the treaties. That is one thing I think the record is not complete on, in addition to the question of the implementing legislation.

Mr. JAVITS. May I just speak to two points?

The PRESIDING OFFICER. The Senator from North Carolina has the floor.

Mr. HELMS. Mr. President, I have the floor. I want to be as patient with Senators as I can, but I have a tight schedule also.

Mr. JAVITS. Will the Senator allow us all 5 minutes, to the three of us? I will take 1 minute.

Mr. HELMS. Certainly; I will be glad to yield 5 minutes.

Mr. JAVITS. Thank you; I just wanted to make two points. First, I was not conscious of using the word "complete," and if I did use it, I apologize.

Mr. BROOKE. Thank you.

Mr. JAVITS. I am a lawyer, and there is no such word as "truth" and there is no such word as "complete."

Mr. BROOKE. One of the best lawyers in the country, in fact.

Mr. JAVITS. But I did feel, and I tried to say, that the record was replete, with 2,500 pages of questioning.

Mr. BROOKE. Oh, you said replete; I see.

Mr. JAVITS. Yes, and with 1,700 pages of background documents. Second, as to the money, there will be a debate on that beginning tomorrow. I think we can project, subject to the usual consideration of a businessman's risk, about what it will cost.

Mr. BROOKE. Will you discuss the ambiguities regarding the \$10 million to be paid Panama for actual cost of services I referred to? You will get into that as well?

Mr. JAVITS. Exactly.

Mr. BROOKE. I look forward to that debate, to hear and listen to what the committee has done in that regard.

Mr. MATHIAS. Mr. President, I guess the Senator from New York has the control of this 5 minutes.

Mr. JAVITS. I yield 1 minute to the Senator from Rhode Island (Mr. Chafee) and the rest to Senator Mathias.

Mr. MATHIAS. Very briefly, the Senator from Massachusetts has introduced some very interesting questions and expressed his concerns here, and I think what he has raised points up a question in my own mind which I hope the Senator from New York and other members of the committee will be able to discuss in some detail, and that is how this operation by committee for the next 22 years is going to work out, the sort of joint effort which will be required between now and the year 2000, whether there has been thinking

as to who will make the decisions, or how the decisions will be reached, in the operation of the canal.

These questions could affect the financial picture very greatly, and the committees, as we know, here in Congress, are great institutions for exposing issues and illuminating arguments and educating those who are privy to them, but they are not necessarily the best instruments for executive decisions. I think that is an area we want to look at very carefully.

Mr. BROOKE. Yes, I would certainly agree with our distinguished colleague from Maryland that that is a very important area that needs to be explored, but which to this date has not been explored, and which I think we should explore. I would hope in the days of debate to follow, we will explore it.

Mr. CHAFEE. Mr. President, I would just like to congratulate the Senator from Massachusetts on his fine statement. However, I would like to take issue, if I might, with him on a couple of points.

The suggestion of the administration whisking this through, that it is a steamroller, I do not really think that is quite a fair suggestion. These treaties were signed on September 7, and there has been a good deal of advance discussion about them prior to that. Since September 7, it is as though an invasion had taken place in Panama, the number of people who have been down there to have a look. So I feel there has been some pretty thorough discussion of these treaties. At the earliest, it will be 5 months from when the treaties were signed to when they are even voted on.

Mr. BROOKE. Will the Senator yield?

Mr. CHAFEE. Yes.

Mr. BROOKE. Does the Senator think that is an unreasonable period of time for a matter of this magnitude, considering the fact that even though it has been 5 months since the signing of the treaties, the implementing legislation has not to this minute been submitted to the Senate for its review?

Mr. CHAFEE. Well, I look on the implementing legislation as the tail that has got to follow the dog. In other words, the implementing legislation has to conform with the treaties.

Frankly, I do not have that concern over the implementing legislation because we have to know what is in the treaty, and we should have a thorough discussion.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I yield 1 more minute to the Senator from Rhode Island.

Mr. CHAFEE. I know the Senator from North Carolina has been waiting patiently. I hope we can get further into this discussion.

Mr. BROOKE. I welcome this opportunity for discussion with my colleague. We have spent a lot of time on this matter, but I am not sure that we have spent it on substantive issues.

Mr. CHAFEE. I quite agree.

Mr. SARBANES. Will the Senator yield me 2 minutes?

Mr. HELMS. I would be delighted to yield.

Mr. SARBANES. I want to address briefly three points the distinguished Senator from Massachusetts made.

First of all, I agree with the Senator from Rhode Island. I do not think it is fair to characterize the process pursued by the Senate as rushing to judgment.

Mr. BROOKE. I would say that the administration wants this ratified in such a short period of time without the benefit of all the facts. That is the question of judgment.

Mr. SARBANES. I think the Senate is trying very hard to get to the facts in a careful and thorough manner.

Second, on the economic questions, I think the material on that issue is in the hearing record. There are a lot of conflicting opinions on that issue and where you come out depends on the assumptions you are prepared to make and the premises Senators are prepared to work upon.

In fairness to the President, what he said in his speech was that the payment to Panama, the payment provided under the treaty to Panama—would come from tolls and responsible economic analysis shows that to be possible.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I yield 3 minutes to my friend from Virginia (Mr. Harry F. Byrd, Jr.) and then I believe the distinguished Senator from Kentucky has a conference report.

Mr. FORD. I have a conference report which will take 1 minute. After these people, the Senator may not have any time left.

Mr. HELMS. I hope the Senator from Massachusetts will not leave.

Mr. BROOKE. I would never leave when the distinguished Senator from Virginia is prepared to talk.

Mr. HARRY F. BYRD, Jr. I thank my friend from Massachusetts.

I noted comments were made with regard to the implementing legislation. I noted Mr. Herbert J. Hansell, a legal advisor to the Department of State, testified before the Foreign Relations Committee on September 29, 1977. This is what Mr. Hansell said, he being the legal advisor to the State Department:

Frankly, Mr. Chairman, I am pleased to have this opportunity to report to this committee on the proposed legislation to implement these treaties that is being prepared for submission to Congress in the near future. That legislation, of course, will be an essential component of the overall program for the implementation of the treaties.

That, I believe, is the point which the able Senator from Massachusetts was making a little while ago.

Mr. BROOKE. Precisely, and that is the point that the Senator from Rhode Island completely missed because he felt it was the tail wagging the dog. I do not think it is the tail wagging the dog. I think it is another essential part of the dog as is the tail.

Mr. HARRY F. BYRD, Jr. The legal advisor of the State Department says it is an essential component of the treaties.

Mr. BROOKE. Of course.

Mr. HARRY F. BYRD, Jr. Then in another statement at that same meeting before the Foreign Relations Committee on September 29, Mr. Hansell said:

We hope to have a complete draft available for submission to both Houses of Congress within several weeks. We have been at work on it for some period of time. Certainly, before the end of October we expect to have it to you.

Well, October has come and gone, November has come and gone, December has come and gone, January has come and gone. February is here and is about to go next week.

So I join with the able Senator from Massachusetts in expressing some dismay that the Congress has not been provided that information, although it was promised not later than the latter part of October.

Mr. BROOKE. I appreciate the information given by my able colleague from Virginia.

I also refer to the Foreign Relations Committee report, supplemental and minority views, where the head of the Congressional Budget Office informed the Committee:

Clearly, because the implementing legislation has not been submitted, the complete estimate of the budget impact of the treaties is impracticable at this time.

And we still do not have that. Obviously, it is still impracticable at this time to find out what the budget impact will be.

I think now we should be talking about what the budget impact would be before we talk about any legislation.

Mr. HARRY F. BYRD, Jr. And since we do not know what the budget impact is, we do not know what the impact will be on the American taxpayers.

Mr. BROOKE. That is correct.

Mr. FORD. I ask the distinguished Senator from North Carolina if he will yield me 1 minute.

Mr. HELMS. I yield.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The Senate continued with the consideration of the Neutrality Treaty.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. HELMS. Mr. President, I am glad to have this opportunity to present some of my views.

I have been somewhat dismayed during the past 2 days here on several occasions when it has been asserted that the Panamanian drug connection is irrelevant to the Panama Canal Treaty. With all the vigor that I possess I dissent from that position. One Senator said in this Chamber earlier this afternoon that, in effect, it is silly—and that is the word he used—he said it is silly to be concerned about the dictatorship in Panama even if it had been shipping enormous amounts of heroin and other deadly drugs into the United States.

Well, Mr. President, I say to that Senator, and I say to all others who say this is irrelevant, tell that to the people of the United States, the mothers and fathers whose children are hooked on heroin. Do not just say it here in this Senate Chamber. Tell it to the parents. Tell it to the addicts themselves.

I am confident that the victims of drugs, direct and indirect victims, which Panama has channeled into the United States will refute that argument that it is silly, that it is irrelevant, with all of the strength they possess.

Those who have been heartsick to see lives lost and lives ruined, characters destroyed, even minds blanked out—none of these, Mr. President, will think that it is irrelevant or that it is silly to consider the damage that has been done to the United States by Panama.

Now, let us get that on the record, and I hope this Senator does not hear the pretentious argument again that it is irrelevant, because it is the most relevant thing we can talk about.

While we are talking about the victims of the drug traffic, Mr. President, let us think about the innocent citizens of this country who have been victimized by addicts who are trying to get enough money for a quick fix. Who is going to look out for the interests of the elderly people who have been mugged on their way to the grocery store by addicts looking for an easy mark? Who is going to look out for the ordinary citizen whose home has been victimized by petty burglars, and some not so petty?

Mr. President, let us not imagine and let us not have the American people believe that we are talking about one or two cases in which Panamanians were involved. Oh, no, Mr. President, we are talking about an organized system in which Panama served as the vital link, an organized system which was carried on with the knowledge and the complicity of high officials of the Panamanian Government.

This Senator was not in favor of the closed session yesterday and this morning. He said on this floor, and I suppose I can say this lawfully in open session, the Senator from North Carolina was standing right there, and he said that the session ought to be open because the American people deserved to know what we were talking about. As it turned out, there was almost no necessity whatsoever of closed doors, driving the press out, because there was not any information disclosed on this floor yesterday, with the possible exception of the grand jury indictment, that would have been harmful to U.S. interests.

In any event, the importance of the key cases of drug smuggling into the United States cannot be underestimated. The Rafael Richard case involved some 150 pounds or more of pure heroin. That is just one case. I hope my distinguished colleagues and the American people understand the importance of that one case, Mr. President, because 150 pounds of heroin is enough heroin on the street to supply all the addicts of New York City for a full month.

Was this Rafael Richard just a poor, misled boy? Don't you believe it, Mr. President, because the facts do not support such a conclusion. Mr. Richard, however you pronounce it, had made five previous trips carrying heroin. For almost half a year, this one criminal—and I use that word advisedly—this criminal had supplied the heroin to terrorize the city of New York with addict-related crimes. There was just that much involved.

So I say again, Mr. President, do not try to tell this Senator that it is irrelevant or that it is silly to talk about Panama's drug connection. That one seizure that we discussed yesterday was placed in value at \$27 million. I emphasize that that is just one seizure. We know that it was only one in a continuing system. The money came right out of the pockets of Americans through armed robbery and burglary and prostitution. Any social worker, any

policeman on the beat, can describe the ravages of heroin trafficking in our society.

We also know, Mr. President, that this one case that we talked about yesterday involved not just a single man; it involved a large conspiracy. It is now public knowledge that a high member of the Panamanian Foreign Service was directly implicated, a high ambassador, who is the brother of the head of state in Panama, the dictator in Panama who took control of that country at gunpoint. That is what we are talking about, Mr. President. We are not talking about something irrelevant or silly. We are talking about facts.

Let us not kid the American people. I do not think it is possible to kid the American people. As a matter of fact, this Senator wishes that, somehow, we could have a plebiscite in this country and let the American people vote on this proposition that the Senate is debating today.

The dictator of Panama knew about the crimes. He condoned them by not taking action. He protected his brother. Even the proponents of the treaties acknowledge that.

Now, a news account earlier this week reported that Omar Torrijos now says that he would turn over his brother if the United States would offer proof to support the charges. How beneficent of him. Obviously, Omar Torrijos does not understand the ways of a free society. He does not understand the separation of the judiciary from the legislative and executive branches. He wants to prejudge the evidence.

[Mr. Melcher assumed the chair.]

Mr. HELMS. Mr. President, a grand jury has said that the evidence is credible, and that should be enough to bring this man to trial. Why was not the brother of Omar Torrijos turned over 5 years ago? The dictator Torrijos now says that he did not turn him over because it would have killed his mother, who was alive then. I hope that my distinguished colleagues will think about that. Omar Torrijos was worried about how such a trial would affect his mother.

Well, what about the mothers of the addicts whose lives have been destroyed by the conspiracy in which Moises Torrijos was involved, h'm?

The distinguished chairman of the Select Committee on Intelligence, in his report, which was made public yesterday, has said that Torrijos knew about drug trafficking and did not take sufficient action to stop his brother's activities. Mr. President, that is a very significant conclusion, and the inevitable question is, why did Omar Torrijos take no action? Was it really because he feared for his mother's health? Anybody who believes that will believe anything. As a matter of fact, anybody who believes that, I invite to meet me immediately after the Senate session. I would like to sell him some stock in the Brooklyn Bridge.

Panama is a very small country. Everybody knows everybody's business. Certainly, this dictator, with full intelligence resources at his command, knows everybody's business. So, Mr. President, the Senator from North Carolina can only conclude that the dictator failed to act because he approved of the activity of his brother and others directly or indirectly connected with the Torrijos regime.

Just look at the facts. His brother, the Ambassador, assisted the transfer of narcotics through Panamanian Customs. His Foreign Minister, Juan Tack, signed the illegal diplomatic passport that Richard sought to use for the smuggling operation. From the Him case, we know that Panama's Tocumen International Airport was the center of narcotics transfer and routing and we know that the Guardia Nacional was involved in protecting the shipments of these drugs. Now, this may not be enough to bring into a court of law to convict the dictator, Omar Torrijos, but the Senate of the United States, presumably representing the people of this country and the interest and the security of America, is not seeking to convict him in a court of law.

What we are debating, I presume, and yet I sometimes wonder, what we are debating is whether or not we should go into partnership with him, not whether we have enough evidence to convict him in a court.

We are debating the question of whether Omar Torrijos is a reliable ally and, in any sense, a friend of the United States.

Again I say, Mr. President, that I do wish that the American people—the American people—could have a vote on this question.

Now, one distinguished Senator has been quoted as saying that our debate yesterday was a waste of time.

In the first place, I did not see that Senator on the floor once yesterday. He may have come in and left, but I was here most of the day and I did not see him on the floor one time, so not much of his time was wasted.

But, in any case, the Senator from North Carolina does not agree that debating this drug issue is or was a waste of time.

Certainly, it is not as much a waste of time as it might be to go down to Cuba, for example, and embrace the dictator Torrijos' ally and friend, Fidel Castro, and Senators have done that.

Now, if we want to talk about wasting time, I place that kind of activity in nomination.

When Torrijos left Washington after issuing the statement of understanding with President Carter, he flew back home on a route that led directly over Cuba, and as he flew by Havana, Torrijos radioed a message of felicitations and triumph to his bearded friend in Cuba.

For us, that message was clear. If you embrace Torrijos, then you are embracing Castro.

No, Mr. President, it is not and it was not and it will not be a waste of time to debate the criminal involvement of the Panamanian Government in narcotics trafficking.

In 1973, the House Merchant Marine Committee estimated that one-twelfth of the heroin coming into the United States came with the participation of Panama.

Now, based on evidence that I have received in the past few days, Mr. President, I am confident that that estimate was an understatement, because in recent conversations that I have had with former drug enforcement officials of the United States, men who had firsthand knowledge of the narcotics situation at the time of the indictment of Moises Torrijos, I have learned that the proportion of the drug traffic controlled by Panama in that period was at least one-half.

Now, I acknowledge that precise figures are impossible. But I am told, by people who have reason to know what they are talking about, that one-half, or even more than one-half, is a reasonable—a reasonable—estimate.

We cannot understand why the information relating to the Panamanian drug traffic is relevant unless we put the issue into its international perspective.

Panama has a unique position both in its geography and in the history of international law enforcement.

Without Panama, the heroin explosion that occurred in the late 1960's and in the early 1970's could never have taken place. It would not have happened except for Panama.

Of all the nations in the world, only Panama refused to join with the civilized nations of the world in an international crackdown. Only Panama, Mr. President, only Panama refused to cooperate.

This is the nation, Panama, governed by the same military dictatorship that we now propose to take as an intimate partner in the operations of our canal, and as our ultimate successor by the year 2000.

I heard on the floor over and over, ad infinitum and almost to the point of nausea, that General Torrijos will not last forever. Well, I certainly agree with that. I have had my fill of the man already.

We hear constantly that the patterns of narcotics traffic are changing and that we should think of the Panamanian people rather than of the present regime.

On the contrary, Mr. President, the Panama Canal is a public utility that serves the world. There are many nations for whom the canal is far more important than it is for Panama. The United States, as owner and operator of the canal, has compiled a record of unparalleled service, efficiency, and benefit to all nations.

It is, therefore, particularly relevant, if we now propose to turn the canal over to proven racketeers who have already demonstrated that they put personal gain ahead of the suffering, anguish, and social injury which the narcotics traffic creates throughout the world.

Panama's geographical position is unique, Mr. President. In a moment I shall go into detail to explain why it is under greater pressures from international drug traffickers than any other location in the world.

At the present time, the Canal Zone is U.S. territory under article IV, section 3 of the U.S. Constitution. For narcotics law enforcement purposes, U.S. laws and U.S. standards of enforcement apply in the Canal Zone.

As a matter of fact, Mr. President, without the Canal Zone, we would have never broken the back of the heroin trade as it existed as recently as 1972. We were able to do so in the face of the determined opposition—the determined opposition—of Panama.

The exercise of our sovereign powers in the Canal Zone, the presence of U.S. officials on the spot, the control of the facilities and installations were the key elements that made enforcement possible.

Well, then, Mr. President, we should ask, what is the impact of the treaties on narcotics enforcement?

Under the new treaty, the United States gives up control of the ports, including piers, warehouses, and the stevedoring.

Under article III, section 6, Panama takes over customs and immigration.

Under article IX, section 1, it is recognized that the laws of Panama apply to the U.S.-use areas.

Under article XI, section 1, Panama assumes plenary jurisdiction over the former Canal Zone.

Even during the 30-month transition period, Mr. President, the United States exercises criminal jurisdiction only over U.S. citizens, citizen-employees, dependents, and members of the U.S. Armed Forces, and only for offenses committed during that 30-month transition period and committed in the U.S.-use areas.

Moreover, when we read the implementation agreements we see specific language that shows Panamanian anxiety to control all matters related to drugs.

That is what we have been talking about for the better part of 2 days. That is what some in this Chamber and some outside this Chamber have labeled as irrelevant and on one occasion today, by one Senator, silly. No way, Mr. President.

In the Agreement in Implementation of article III of the Panama Canal Treaty, article XIX, "Criminal Jurisdiction," it provides the following:

4. (a) The Authorities of the Republic of Panama shall notify the authorities of the United States as promptly as possible of the arrest of any United States citizen-employee or dependent.

(b) The following procedures shall govern the custody of an accused United States citizen-employee or dependent over whom the Republic of Panama is to exercise its jurisdiction:

(i) If the accused is detained by the authorities of the Republic of Panama he shall, except when charged with murder, rape, robbery with violence, trafficking in drugs, or crimes against the security of the Panamanian State, be handed over on request to the authorities of the United States in whose custody he shall remain until completion of all judicial proceedings and thereafter until custody is requested by authorities of the Republic of Panama for the execution of a sentence.

(ii) When charged with murder, rape, robbery with violence, trafficking in drugs, or crimes against the security of the Panamanian State, the accused will remain in the custody of the authorities of the Republic of Panama. * * *

Identical provisions appear in the Agreement in Implementation of article IV, article VI (5), with regard to military personnel, their dependents, and the civilian component.

It is to be noted that these provisions refer not to the transition period, but to the general implementation of the treaties. It is highly significant that Panama, by specific exception, demands custody of those accused of drug trafficking. If Panama's record for prosecution and control of narcotics record were excellent, or even good, then the language would be heartening. But Panama's record of coverup, participation in, and protection of, the drug rackets strongly suggests that the Panamanian interest lies more in the manipulation of narcotics control rather than real action.

The only tool of enforcement left would be drug enforcement agency agents attached to the U.S. Embassy in Panama. Such agents lack clear authority; they have been hamstrung and rendered ineffective in the past by political restrictions. It can be assumed that such restrictions would increase under the treaties

because of the overriding necessity of preserving the cooperation of the Panamanian Government in the operation of the canal.

PANAMA'S ROLE IN THE NARCOTICS TRADE

It is important to understand that Panama's role in the narcotics trade is not confined to isolated instances. We are not talking about isolated bilateral deals between criminals in Panama and criminals in the United States. We are talking about a vast international network of criminals around the world that has used Panama, with the approval, protection, and participation of the Panamanian Government—the same government with which we are asked to conclude these treaties.

Before 1968, the pattern of narcotics traffic moved from Turkey to Europe, principally Marseilles. From Marseilles, it moved to the United States, sometimes directly to New York, sometimes indirectly through Mexico or Montreal.

But about that time, our drug enforcement officers in U.S. Customs noticed a change. They were no longer picking up smugglers with big loads of heroin of a hundred pounds or so. Instead, they were picking up small couriers each carrying only 2 or 3 pounds.

Customs officials ran a profile on those arrested and noted a common profile: Most were petty criminals from the countries of the lower cone of South America. Yet they were coming to the United States from Europe.

Moreover, there were other similarities. Certain travel agencies invariably issued their tickets; visas were granted at the same place. Investigation and information received from those arrested and convicted led to the discovery that these petty criminals were recruited and controlled by an international fraternity of criminals. Many who had fled Europe as fugitives who had committed capital crimes had taken up residence in South America under false identities. Nevertheless, they maintained bonds of blood and trust with their counterparts in southern France, Corsica, and Italy.

With the development of these profiles it was an easy thing to pinpoint suspects in advance. Customs executed a rash of successful arrests in a matter of weeks. But the organizers were untouched.

Despite the successful clampdown in New York, the narcotics problem continued to grow. Then U.S. Customs noted that couriers with the same profile (petty criminals from the southern cone) were coming into international airports in Florida, Louisiana, Texas. It was a fairly simple matter to shut off this traffic once the key was discovered. However, the shift pointed to one thing: Bulk heroin was now coming directly from Marseilles to Asuncion, Paraguay.

CONTRABANDISTA SYSTEM

Even though the petty couriers had been cut off again, by 1970 the heroin problem in the United States could only be described as an "explosion." Customs officials were baffled as to how it was getting in. Finally, working on a small clue passed along by a criminal informant, they turned to an investigation of the so-called contrabandista system.

The contrabandista system was well known but did not directly involve the violation of U.S. laws. It was based on the tariffs of 200 to 300 percent that Latin American countries placed on the importation of U.S. luxury goods. A cargo plane load of merchandise—usually a vintage aircraft with second-rate pilots—would leave Miami with its manifests in order.

The first stop was Panama, conveniently 3,000 miles south of the United States. At Tocumen Airport in Panama, the cargo plane would be put under the control of the Guardia Nacional. On the next day, the plane and its contents would leave Tocumen, this time with a new manifest from the Government of Panama certifying that the plane was empty. In South America, the plane of contraband goods would land at a remote private airstrip, unload, and then proceed to its announced destination. Thus when it arrived, the false Panamanian manifest would be correct: The plane actually was empty.

This highly organized operation was managed by the chief air traffic controller of Tocumen Airport; it was not accomplished without regular assessment of "fees." It was so successful that it was extended down to Asuncion, Paraguay, where a special airport was built, complete with warehouses. From Asuncion, short air hops could be made for "distribution" of the contraband goods to Brazil, Argentina, and Uruguay.

As already pointed out, no U.S. laws were violated, since the planes left the United States with their papers in order. It was Panama that was the kingpin of the operation because Panama supplied the false manifests. Furthermore, in another variation, contraband was warehoused in the Colon Free Zone—an area also under the control of the Guardia Nacional—for the convenience of customers who arrived in Panama to take "orders."

DRUGS: THE RETURN TRIP

Once the planes arrived in Paraguay, there was very little to take back on the return trip—horses, perhaps, or exotic tropical fish.

But one U.S. Customs had concluded that bulk heroin had found a new route from Marseilles to Asuncion, it was a simple deduction how it was getting into the United States: It was the contrabandista system in reverse, with Panama as the kingpin. The "empty" planes were now loaded with heroin under the floor boards. Close inspection of planes coming from Panama began to pay off.

THE JOACHIM HIM CASE

In February 1971, an indictment was issued for Joachim Him, the chief air traffic controller at Tocumen Airport. Him was not only providing a way station for the narcotics traffic under the protection of the Guardia Nacional; he was directly involved in routing traffic and organizing sales in the United States. Knowing that the Panamanian Government would give no assistance in dealing with the Him case, and knowing also that the U.S. State Department would attempt to impede any efforts to seek such assistance, U.S. narcotics agents waited until Him fell into U.S. jurisdiction by attending a baseball game in the U.S. Canal Zone.

Him was arrested, brought to Texas (the scene of many of his drug sales operations), convicted, and put in jail.

This case is a superb example of the way that the exercise of sovereign powers by the United States in the Canal Zone facilitated the interdiction of an international drug traffic leading through Asuncion to Marseilles. Without the arrest and conviction of Him, the backbone of the trade route would never have been broken. The Him case was not hearsay and allegation; it was based on provable evidence which brought conviction and a long jail term. Him alone was responsible for sending over a million dollars worth of heroin.

The intimations of noncooperation on the part of Panama proved true. A campaign of vituperation and protest was immediately begun by the Panamanian Government. According to sworn statements given to investigators for the House Merchant Marine Committee the campaign of protest was personally directed and led by Omar Torrijos and Foreign Minister Juan Tack.

THE RAPHAEL RICHARD CASE

In July 1971, Raphael Richard, Jr., was arrested in J.F.K. International Airport with 151 pounds of heroin in a suitcase. Also arrested were Nicholas Polanco and Guillermo Gonzalez, and three others. Polanco was an associate of Moises Torrijos, formerly his chauffeur and bodyguard. Gonzalez, no relation to Him Gonzalez, was, like Him, a former chief air traffic controller at Tocumen Airport.

Like the Him case, this was no matter of hearsay or allegation. The heroin was real. It was worth at least \$27 million. Nor was Richard a naive young man abusing his father's privileges. Richard bore a diplomatic passport, but he had no right to have one. His father was Ambassador to the Republic of China or Taiwan; but the son's passport was in his own name and had been illegally signed by Foreign Minister Juan Tack. And Richard, Jr., admitted that he had made five previous flights carrying heroin to New York, four in the fall of 1970, and one in January 1971.

The magnitude of the operation becomes clear when it is realized that just one such shipment is enough to supply the addicts of New York City for a full month.

The arrest and conviction of Richard and his confederates did not bring any cries of rejoicing from Panama; the incident merely added to the growing cries of protest against U.S. enforcement. Three U.S. drug officials were declared persona non grata and were forced to leave Panama.

Once again the facts point to a major role of Panama in the international drug trade. The amounts brought in in the Richard case, and their frequency, establish conclusively that Panama was a major conduit. It was no casual connection; it was an organized system. Together with the Him Gonzalez case it points to high-level government involvement. The striking coincidence of another former air traffic controller among the cast of characters points to a protected fraternity of smuggling operations.

THE INDICTMENT OF MOISES TORRIJOS

But the Richard case led to something further: the indictment of Moises Torrijos, brother of the dictator. U.S. law holds that anyone involved in a narcotics smuggling operation whose end is the United States is guilty of a crime punishable in the United States. The evidence given to the New York grand jury by the participants in the Richard operations led to the judgment by the grand jury that the evidence of Moises' involvement was serious enough to warrant prosecution.

Once again, this was no hearsay or vague allegations; it was sworn testimony of participants. It pointed to direct involvement of the highest level of Panamanian officialdom. Moises was himself an ambassador, and had the protection of his brother.

Moreover, the case against Moises was strong enough for a warrant to be issued for his arrest, and for a customs agent in Panama to seek to effect his arrest in the Canal Zone. Once again the exercise of U.S. jurisdiction in the Canal Zone was the only solution to a problem that was eating at the heart of U.S. cities. If the arrest had been successful, the Panamanian connection—the linchpin of the whole narcotics traffic—could have been removed at one fell swoop.

But the U.S. State Department thought otherwise. For diplomatic reasons, it preferred to avoid an international incident. It preferred to tamper with the judicial process and to interfere with the course of justice. The executive branch informed Omar Torrijos of the sealed indictment of his brother—an indictment whose very existence was supposed to remain secret. Furthermore, they tipped off Moises of the impending attempt by U.S. customs to arrest Moises in the Canal Zone, so that he slipped out of the net.

PANAMA'S RECORD OF NONCOOPERATION

Panama's record of noncooperation stands alone. Customs officials following the clues given by narcotics suspects and convicts traced backward along the heroin route. In Paraguay even President Stroessner found it prudent to cooperate, and extradited Auguste Ricord, a top narcotics trafficker who had never even set foot in the United States. The conviction of Ricord opened further doors in Latin America. Chile, Brazil, and Argentina, using U.S. customs intelligence, made large seizures, and put many traffickers behind bars.

Finally, as the trail led back to Europe, 31 indictments were issued for individuals in France, Belgium, and Italy, on the basis of customs intelligence; about 20 more were issued on the basis of work by the Bureau of Narcotics and Dangerous Drugs. Through the cooperation of all these governments, these individuals were extradited, brought to the United States, and convicted.

Only Panama stood alone as noncooperative and actively interfering with enforcement efforts. Only Panama stood alone with the brother of the head of state indicted with the main international airport the transit area sanctioned by the Government with the so-called Government free zone as the warehouse site for smuggling, and with the National Guard participating in security arrangements for narcotics.

Indeed, other nations were involved in narcotics trafficking, but never on such high levels and with such complete Government participation.

THE UNITED STATES AS PARTNER

The United States becomes partner with Panama in two ways. In the first place we become a partner in the act of handing over legal jurisdiction and facilities. It is a vote of confidence in the present Government with its record of corruption. In this act, we become collaborationists with the crimes of the past.

But we also become collaborators with Panama for the future. For the next 22 years we become the close partners with a government that, on the grounds of past history, cannot be trusted. If, once the treaties are safely ratified, Panama once more becomes the center of crime for international trafficking, there will be nothing that we can do about it. Yet we will have joint administration of the canal, joint defense of the canal. We will find ourselves implicated in everything that Panama does. There will be no way that we can draw back, without abandoning the canal. Our management skills will be contributing to Panama's financial success, strengthening a government that does not deserve our support. We ought not to be involved. We ought not to give the canal way.

TREATY PROVISIONS TO NARCOTICS TRAFFICKING ISSUES

Mr. President, for the convenience of my distinguished colleagues, I have gathered together provisions of the Panama Canal Treaty and the related Implementation Agreements which relate directly to narcotics trafficking issues.

They are as follows:

Article III, section 6 specifies the transfer of customs immigration, and the courts in the former Canal Zone to Panama. The transfer of customs is crucial to drug enforcement.

Article III, section 6 incorporates by reference the Implementation Agreement to article III, which contains relevant provisions.

Article IV, section 2 incorporates by reference the Implementation Agreement to article IV, which contains relevant provisions.

Article V prevents the Panama Canal Commission from engaging in narcotics intelligence, which is presently an activity of the Panama Canal Company.

Article IX specifies that the law of Panama (including Panamanian narcotics law) shall apply in the installations of the United States.

Article XI limits, during the transition period, the jurisdiction of the United States and reserves jurisdiction to Panama for the broad sweep of offenses.

Article XIX of the Agreement in Implementation of article III of the Panama Canal Treaty reserves custody of those U.S. citizen-employees of the Panama Canal Commission who commit drug offenses to Panama.

Article VI of the Agreement in Implementation of article IV of the Panama Canal Treaty makes similar provisions for U.S. military personnel and the civilian component.

Mr. President, I ask unanimous consent that the relevant parts of the Panama Canal Treaty and the Implementation Agreements be printed in the Record.

There being no objection, the material was ordered to be printed in the Record, as follows:

TREATY PROVISIONS RELEVANT TO NARCOTICS TRAFFICKING ISSUES

ARTICLE III

6. The Republic of Panama shall be responsible for providing, in all areas comprising the former Canal Zone, services of a general jurisdictional nature such as customs and immigration, postal services, courts and licensing, in accordance with this Treaty and related.

9. The use of the areas, waters and installations with respect to which the United States of America is granted rights pursuant to this Article, and the rights and legal status of United States Government agencies and employees operating in the Republic of Panama pursuant to this Article, shall be governed by the Agreement in Implementation of this Article, signed this date.

ARTICLE IV

2. . . . The rights of the United States to station, train, and move military forces within the Republic of Panama are described in the Agreement in Implementation of this Article, signed this date. The use of areas and installations and the legal status of the armed forces of the United States of America in the Republic of Panama shall be governed by the aforesaid Agreement.

ARTICLE V

Employees of the Panama Canal Commission, their dependents and designated contractors of the Panama Canal Commission, who are nationals of the United States of America, shall respect the laws of the Republic of Panama and shall abstain from any activity incompatible with the spirit of this Treaty.

ARTICLE IX

1. In accordance with the provisions of this Treaty and related agreements, the law of the Republic of Panama shall apply in the areas made available for the use of the United States of America pursuant to this Treaty. . . .

ARTICLE XI

1. The Republic of Panama shall reassume plenary jurisdiction over the former Canal Zone upon entry into force of this Treaty and in accordance with its terms.

2. During this transition period, the criminal and civil laws of the United States of America shall apply concurrently with those of the Republic of Panama in certain of the installations made available for the use of the United States of America pursuant to this Treaty, in accordance with the following provisions:

(a) The Republic of Panama permits the authorities of the United States of America to have the primary right to exercise criminal jurisdiction over United States citizen employees of the Panama Canal Commission and their dependents, and members of the United States Armed Forces and civilian component and their dependents, in the following cases:

(i) for any offense committed during the transition period within such areas and installations, and

(ii) for any offenses committed prior to that period in the former Canal Zone.

The Republic of Panama shall have the primary right to exercise jurisdiction over all other offenses committed by such persons, except as otherwise provided in this Treaty and related agreements or as may otherwise be agreed.

AGREEMENT IN IMPLEMENTATION OF ARTICLE III OF THE PANAMA CANAL TREATY

ARTICLE XIX

4. (a) The Authorities of the Republic of Panama shall notify the authorities of the United States as promptly as possible of the arrest of any United States citizen-employee or dependent.

(b) The following procedures shall govern the custody of an accused United States citizen-employee or dependent over whom the Republic of Panama is to exercise its jurisdiction:

(i) If the accused is detained by the authorities of the Republic of Panama he shall, except when charged with murder, rape, robbery with violence, trafficking in drugs, or crimes against the security of the Panamanian State, be handed over on request to the authorities of the United States in whose custody he shall remain until custody is requested by authorities of the Republic of Panama for the execution of a sentence.

(ii) When charged with murder, rape, robbery with violence, trafficking in drugs, or crimes against the security of the Panamanian States, the accused will remain in the custody of the authorities of the Republic of Panama. . . .

AGREEMENT IN IMPLEMENTATION OF ARTICLE IV OF THE PANAMA CANAL TREATY

ARTICLE VI

5. (b) The authorities of the Republic of Panama shall notify the authorities of the United States as promptly as possible of the arrest of any member of the Forces or the civilian component, or a dependent.

(c) The following procedure shall govern the custody of an accused member of the Forces or the civilian component, or a dependent, over whom the Republic of Panama is to exercise jurisdiction:

(i) If the accused is detained by the United States authorities he shall, except when charged with murder, rape, robbery with violence, trafficking in drugs, or crimes against the security of the Panamanian State, remain with such authorities pending the conclusion of all judicial proceedings and thereafter until custody is requested by the authorities of the Republic of Panama for the execution of a sentence.

(ii) If the accused is detained by the authorities of the Republic of Panama he shall, except when charged with murder, rape, robbery with violence, trafficking in drugs, or crimes against the security of the Panamanian State, be handed over on request to the United States authorities in whose custody he shall remain until completion of all judicial proceedings and thereafter until custody is requested by authorities of the Republic of Panama for the execution of a sentence.

(iii) When charged with murder, rape, robbery with violence, trafficking in drugs, or crimes against the security of the Panamanian State, the accused shall be handed over to Panamanian authorities upon their request, or if already in their custody, shall remain with them.

TREATY DRAFT OF JULY 10, 1977

Mr. HELMS. Mr. President, many Members of this body have expressed a legitimate interest in the final concessions that were made to Panama in the closing weeks of the negotiations. The sanitized report of the Select Committee on Intelligence demonstrated clearly that certain events in mid-July may or may not have had a profound impact on the final shape of the treaty. The committees judgment was that it did not.

However, the public has a right to judge for itself. Fortunately, the State Department made available last week a July 10 draft of the treaty. On Monday the distinguished Senators from Utah inserted in the Record a comparison of essential points that were changed or had not been resolved by July 10, based upon the State Department draft.

Unfortunately, for some inexplicable reason, the draft provided by the State Department was in Spanish. The English draft was not made available. On short notice, therefore, a translation was provided by a talented staff member of the Senate Steering Committee, Miss Sylvia Castellanos, so that the distinguished Members of this body can study it at their leisure.

Mr. President, I ask unanimous consent that, for the sake of convenience, the analysis and comparison inserted by Mr. Hatch on

February 20 be printed again in the Record, along with the entire English translation of the Spanish July 10 draft provided by the State Department.

There being no objection, the material was ordered to be printed in the Record, follows:

ANALYSIS

According to a recently obtained preliminary draft of the Panama Canal Treaty, a number of significant concessions were made between July 10, the date on this document, and September 7, the date of signing of the final versions.

Several articles included in the official version do not exist in the preliminary draft. The latter contains no provisions for employment with the Panama Canal Commission (Article X, official document), or injunction against American Commission employees undertaking political activity in Panama (Article V). Similarly, the text does not address itself to the display of the Panamanian or American flag (Article VII). There is no mention either of the procedure to be used in the statement of possible disputes about the interpretation of the texts. (Article XIV).

A number of articles are substantially different. Whereas the official text (Article XII) calls for an American-Panamanian feasibility study of a possible sea-level canal, the preliminary draft flatly gives the U.S. the right to build it, with construction to begin within fifteen years after the entry into force of the treaty. In the latter document, the clause giving Panama veto power over construction of a canal in a third country by the United States does not exist.

Differences exist with regard to the payments to be made to Panama. The annual \$10 million payment in return for the public services Panama assumes in the former Canal Zone is given no mention. (This draft does not include details on the other payments, which were apparently still being negotiated at the time).

There are also variations with regard to the procedure to be followed in connection with certain lands (Article IX). The principal one relates to lands to which the licensing procedure is not applicable, or ceases to be applicable following the entry into force of the treaty. Under the July draft, individuals who own real property located on these lands may continue using the land at a cost no higher than that being paid before the enactment of the treaty. Under it, furthermore, Panama must allow the individuals to buy the land at a price which cannot exceed \$500 an acre. In connection with the transfer of U.S. government property to Panama, (Article XII, official treaty) the Panama Railroad is not mentioned.

Under Article VIII of the official treaty, up to 20 officials of the Panama Canal Commission qualify for diplomatic immunity. Under the July draft, by contrast, a far higher number, 75, may receive it.

The provisions for the termination of the agreement are different in the two texts. While the final version calls for the treaty to expire on December 31, 1999, under the July draft it would end on that date or any time thereafter, with one year's prior notice required of the party wishing to terminate the agreement.

In the July draft, the section of the Annex detailing functions which may thereafter be performed by the Panama Canal Commission is not present. The section listing the functions which the Commission shall not perform exists in the preliminary draft, but two clauses are omitted from it. These are "commercial pier and dock service, such as the handling of cargo and passengers" and the blanket statement, "Any other commercial activity of similar nature, not related to the management operation or maintenance of the Canal." At present pier and dock service is one of the principal sources of revenue of the Panama Canal Company.

In comparing the finished English and Spanish version of the Panama Canal Agreement, a number of discrepancies come to light. The Spanish text "to handle" as the translation "to manage" in the context of American activities; similarly, it describes the Panama Canal Commission as having a "Board of Directors" which will "direct," while the English text refers to a "Board" which will "supervise." It is interesting to note that these problems are not present in the Spanish language July draft. Both "to manage" and "shall be supervised by a Board" are translated accurately.

PANAMA CANAL TREATY, JULY 10, 1977

The Republic of Panama and the United States of America:

Recognizing their important mutual interest in the continuous effective operation of the Panama Canal for the benefit of international commerce;

Wishing to strengthen the ties of friendship and cooperation which have historically existed between them;

Having decided to improve their relationship with respect to the operation, maintenance, protection and defense of the Panama Canal and to eliminate, once and for all, those aspects of the prior relationship which have been a cause of conflict between them; and

Acting in the spirit of the Joint Declaration of Principles initiated by the Foreign Minister of the Republic of Panama and the Secretary of State of the United States on February 7, 1974;

Have decided to create a new treaty to serve as a basis for a new relationship between them, in order to achieve these common objectives and have agreed upon the following:

ARTICLE I

Establishment of a new relationship

1. At the moment of its entry into force, this Treaty cancels and serves as substitute for the Convention between the Republic of Panama and the United States of America, signed in Washington, November 18, 1903 and those treaties and related agreements stipulated in Annex A of this Treaty.

2. In accordance with the terms of this Treaty and related agreements, the Republic of Panama, as territorial sovereign, grants to the United States of America, for the duration of this Treaty, the rights necessary to regulate the transit of ships through the Panama Canal, and to manage, operate, maintain, improve, protect and defend the Canal. The Republic of Panama guarantees to the United States of America the peaceful use of the land and water areas necessary for these purposes. The Republic of Panama shall participate increasingly in the management and protection and defense of the Canal, as provided in this Treaty.

3. The Republic of Panama and the United States of America shall cooperate to assure the uninterrupted and efficient operation of the Panama Canal for the benefit of international commerce.

ARTICLE II

Protection and defense

1. The Republic of Panama and the United States of America commit themselves to protect and defend the Panama Canal, in the manner stipulated later in these documents. Each Party shall act in accordance with its constitutional processes, to meet the danger resulting from an armed attack or other actions which threaten the security of the Panama Canal or of ships transiting it.

2. For the duration of this Treaty, the United States of America shall have the primary responsibility to protect and defend the Canal. For this purpose, the Republic of Panama confers on the United States of America the rights to station, train, and move military forces within its territory and to use areas and installations located within it. Said areas and installations are specified in the Agreement in implementation of this Article, signed this date. The use of these areas and installations and the legal regime applicable to the armed forces of the United States of America in the Republic of Panama shall be regulated by the aforesaid agreement.

3. In order to facilitate the participation and cooperation of the forces of both Parties in the protection and defense of the Canal, the Republic of Panama and the United States of America shall establish a Combined Board comprised of senior military representatives who shall have equal standing. These representatives shall be charged by their respective governments with consulting and cooperating on all matters pertaining to the protection and defense of the Canal, and with planning for actions to be taken in concert for that purpose. Such combined protection and defense arrangements shall not inhibit the identity or lines of authority of the armed forces of the Republic of Panama or the United States of America. The Combined Board, *inter alia*, shall provide for coordination and cooperation with respect to:

(a) the preparation of emergency plans for the protection and defense of the Canal based upon the cooperative efforts of the armed forces of both Parties;

(b) the planning and conduct of combined military exercises; and

(c) the conduct of Panamanian and United States military operations with respect to the protection and defense of the Canal. The Combined Board shall, at five-year intervals throughout the duration of this Treaty, review the resources being made available by the two Parties for the protection and defense of the Canal, and shall make appropriate recommendations to the two governments respecting projected requirements, the efficient utilization of available resources of the two Parties, and

other matters of mutual interest with respect to the protection and defense of the Canal.

ARTICLE III

Operation and management of the canal

1. The United States of America undertakes to manage, operate and maintain the Panama Canal, its works, installations and auxiliary equipment, and to facilitate the transit of ships.

2. The Republic of Panama, as territorial sovereign, confers on the United States of America the corresponding rights necessary to fulfill these responsibilities, including the rights to:

(a) use for these purposes, at no cost, the various installations and areas (including the Panama Canal) and waters, as specified in the Agreement in implementation of this Article, signed this date, as well as such other areas and installations as are made available to the United States of America under this Treaty and related agreements, and take the measures necessary to ensure sanitation of such areas;

(b) make such improvements and alterations to the aforesaid installations and areas as it deems appropriate, consistent with the terms of this Treaty;

(c) make and enforce all rules pertaining to the passage of vessels through the Canal and other rules with respect to navigation and maritime matters, in accordance with this Treaty and related agreements;

(d) establish, modify, collect and retain tolls for the use of the Panama Canal, and other charges, and establish and modify methods of their assessment;

(e) regulate relations with employees of the United States Government;

(f) provide supporting services to facilitate the performance of its responsibilities under this Article;

(g) issue and enforce regulations for the effective exercise of the rights and responsibilities of the United States of America under this Treaty and related agreements; and

(h) exercise any other right granted under this Treaty, or otherwise agreed upon between the two Parties.

3. Pursuant to the foregoing concession of rights, the United States of America shall, in accordance with the provisions of United States Law and the terms of this Treaty, carry out the responsibilities stipulated in paragraph 1 of this Article by means of an agency (hereinafter referred to as the "Administration of the Panama Canal") which shall be constituted by and in conformity with the laws of the United States of America. The agencies of the government of the United States of America known as the Panama Canal Company and the Canal Zone Government shall cease to operate within the territory of the Republic of Panama, including the areas which formerly constituted the Canal Zone, upon the entry into force of this Treaty.

(a) The Panama Canal Administration will be under the supervision of a Board composed of nine members, five of whom shall be nationals of the United States of America and four of whom shall be Panamanian nationals proposed by the Republic of Panama for appointment to such positions by the United States of America.

(b) Should the Republic of Panama request the United States of America to remove a Panamanian national from membership on the Board, the United States of America shall agree to such request. In that event, the Republic of Panama shall propose another Panamanian nationals for appointment by the United States of America to such position. In case of removal of a Panamanian member of the Board of Directors at the initiative of the United States of America, both parties will consult in advance in order to reach agreement concerning such removal, and the Republic of Panama shall propose another Panamanian national for appointment by the United States of America in his stead.

(c) The United States of America shall employ a national of the United States of America as Administrator of the Panama Canal Administration, and a Panamanian national as Deputy Administrator, through December 31, 1989. Beginning January 1, 1990, a Panamanian national shall be employed as the Administrator and a national of the United States of America shall occupy the position of Deputy Administrator. Such Panamanian nationals shall be proposed to the government of the United States of America by the Republic of Panama for appointment to such position by the United States of America.

(d) Should the United States of America remove the Panamanian national from his position as Deputy Administrator, or Administrator, the Republic of Panama shall propose another Panamanian national for appointment to such position by the government of the United States of America.

4. The procedures for the discontinuance or transfer or those activities performed prior to the entry into force of this Treaty by the Panama Canal Company or the

Canal Zone Government which are not to be carried out by the Panama Canal Administration, are set forth in Annex B.

5. The Republic of Panama and the United States of America shall establish a Panama Canal Consultative Committee, composed of an equal number of high-level representatives of the Republic of Panama and the United States of America, and which may appoint such subcommittees as it may deem appropriate. This Committee shall advise the Republic of Panama and the United States of America on matters of policy affecting the Canal's operation. In view of both Parties' special interest in the continuity and efficiency of the Canal operation in the future, the Committee shall advise on matters such as general tolls policy, employment and training policies to increase the participation of Panamanian nationals in the operation of the Canal, and international policies on matters concerning the Canal. The Committee's recommendations shall be transmitted to the two Governments, which shall give such recommendations full consideration in the formulation of such policy decisions.

6. In addition to the participation of Panamanian nationals at high management levels, as provided for in paragraph 3 of this Article, there shall be growing participation of Panamanian nationals at all other levels and areas of employment in the Panama Canal Administration, with the objective of preparing, in an orderly and efficient fashion, for the assumption by the Republic of Panama of full responsibility for the management, operation and maintenance of the Canal upon the expiration of the Treaty.

7. The use of the installations, areas and waters with respect to which the United States of America is granted rights pursuant to this Article, the regimes applicable to the ports of Balboa and Cristobal and the Panama Canal Railroad, and the rights and legal status of the United States Government agencies and employees, operating in the Republic of Panama pursuant to this Article, shall be governed by the Agreement in implementation of this Article, signed this date.

ARTICLE IV

Protection of the environment

The Republic of Panama and the United States of America commit themselves to implement this Treaty in a manner consistent with the protection of the natural environment of the Republic of Panama. To this end, they shall consult and cooperate with each other in all appropriate ways to ensure that they shall give due regard to environmental considerations.

2. A Joint Commission on the Environment shall be established with equal representation from the Republic of Panama and the United States of America, which shall periodically review the implementation of this Treaty and shall recommend as appropriate to the two Governments ways to mitigate the adverse environmental impacts which might result from their respective actions pursuant to the Treaty.

3. The Republic of Panama and the United States of America shall furnish the Joint Commission on the Environment complete information on any action taken in accordance with this Treaty which, in the judgment of both, might have a significant effect on the environment. Such information shall be made available as far in advance as possible to facilitate the study by the Commission of any potential environmental problems and to allow for consideration of the recommendation of the Commission before the contemplated action is carried out.

ARTICLE V

Privileges and immunities

1. The installations owned or used by the agencies or instrumentalities of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements, and their official archives and documents, shall be inviolable.

2. Agencies and instrumentalities of the Government of the United States of America operating in the Republic of Panama pursuant to this Treaty and related agreements shall be immune from the jurisdiction of the Republic of Panama in all matters.

3. In addition to such other privileges and immunities as are afforded to the employees of the United States Government and their dependents pursuant to this Treaty, the United States of America may designate up to 75 officials of the Panama Canal Administration, who along with their dependents, shall enjoy the privileges and immunities accorded to diplomatic agents and their dependents under international law and practice. The United States of America shall furnish to the Republic of Panama a list of the names of said officials and their dependents,

identifying the positions they occupy in the Government of the United States of America, and shall keep such list current at all times.

ARTICLE VI

Laws, execution of laws, and judicial matters

1. The laws of the Republic of Panama shall apply in all its territory, including the areas made available for the use of the United States of America pursuant to this Treaty in accordance with the provisions of this treaty and related agencies. Nevertheless, the laws of the Republic of Panama shall not be applied to matters or events which occurred in the former Canal Zone prior to the entry into force of this Treaty.

2. The rights of ownership, as recognized by the United States of America, enjoyed by natural or juridical private persons with respect to buildings and other improvements to real property located in the former Canal Zone shall be recognized by the Republic of Panama in conformity with its laws. If such properties are located within the areas subject to licensing procedures in connection with the use of the land, established in accordance with this Treaty and related agreements, the two Governments agree that licenses shall be issued to such persons so they may continue the present use of the land on which their property is located. With regard to the areas in the former Canal Zone to which the aforesaid procedures are not applicable, or may cease to be applicable during the life of this Treaty or upon its termination, the Republic of Panama, at any time during the five years following the entry into force of this Treaty, or, if later, the date on which the aforesaid licensing procedure ceases to be applicable, shall permit such persons to acquire the lands on which their buildings or improvements are located. The acquisition price shall be reasonable and, except as otherwise agreed by the two Governments, shall not exceed \$500 an acre. During this five year period, the Republic of Panama shall permit such persons to continue using such lands at a cost not to exceed that which was in effect immediately before that period.

3. The Republic of Panama shall permit natural or juridical persons who, on the date of entry into force of this Treaty are engaged in business or non-profit activities at locations in the former Canal Zone, to continue such business or activities at those locations. To this end, the Republic of Panama shall issue them without delay all the licenses and authorizations which may be required in accordance with Panamanian law. If, subsequently, the Republic of Panama should require such persons to end their activities or vacate their properties for public purposes, the Republic of Panama will grant them compensation commensurate to an equitable market price.

4. The Republic of Panama shall not issue, adopt or enforce any law, decree, regulation, or international agreement which purports to regulate or would otherwise interfere with the exercise on the part of the United States of any right granted under this Treaty or related agreements.

5. Vessels transiting the Canal, and cargo, passengers and crews carried on such vessels shall be exempt from any taxes, fees, or other charges by the Republic of Panama. However, in the event such vessels call at a Panamanian port, they may be assessed charges incident thereto, such as charges for services provided to the vessel. The Republic of Panama may also require the passengers and crew disembarking from such vessels to pay such taxes, fees and charges as are established under Panamanian law for persons entering its territory. Such taxes, fees and charges shall be assessed on a nondiscriminatory basis.

6. The Republic of Panama and the United States of America will cooperate in taking such steps as may from time to time be necessary to guarantee the security of the Panama Canal Administration, its employees and their dependents, and their property, the Forces of the United States of America and the members thereof, the civilian component of the United States Forces, the dependents of members of the Forces and the civilian component, and their property, and the contractors of the Panama Canal Administration and of the United States Forces, their dependents, and their property. The Republic of Panama will adopt such legislation as may be needed to carry out the foregoing purposes and to punish any offenders.

ARTICLE VII

Transition article

1. In order to provide for an orderly transition to the full application of the jurisdictional arrangements established by this Treaty and related agreements, the provisions of this Article shall become applicable upon the date this Treaty enters into force, and shall remain in effect for thirty calendar months. The authority granted in this Article to the United States of America for this transition period

shall supplement, and is not intended to limit, the full application and effect of the rights and authority granted to the United States of America elsewhere in this Treaty and in related agreements.

2. During this transition period, the criminal laws of the United States of America shall apply concurrently with those of the Republic of Panama in certain of the areas and installations made available for the use of the United States of America pursuant to this Treaty, in accordance with the following provisions:

(a) The Republic of Panama permits the authorities of the United States of America to have the primary right to exercise criminal jurisdiction over United States citizen employees of the Panama Canal Administration and their dependents, and members of the United States Forces and civilian component and their dependents, in the following cases:

(i) for any offense committed during the transition period within such areas and installations, and

(ii) for any offense committed prior to that period in the former Canal Zone. The Republic of Panama shall have the primary right to exercise jurisdiction over all other offenses committed by such persons, except as otherwise provided in this Treaty and related agreements or as may be otherwise agreed.

(b) Either Government may waive its primary right to exercise jurisdiction in a specific case or category of cases.

3. The United States of America shall retain the right to exercise jurisdiction in criminal cases relating to offenses committed prior to the entry into force of this Treaty in violation of the laws applicable in the former Canal Zone.

4. For the transition period, the United States of America shall retain police authority and maintain a police force in the aforementioned areas and installations. In such areas, the police authorities of the United States of America may take into custody any person not subject to their primary jurisdiction if such person is believed to have committed or to be committing an offense against applicable laws or regulations, and shall promptly transfer custody to the police authorities of the Republic of Panama. The Republic of Panama and the United States of America shall establish joint police patrols in agreed areas. Any arrests conducted by a joint patrol shall be the responsibility of the patrol member or members representing the Government having primary jurisdiction over the person or persons arrested.

5. The courts of the United States of America and related personnel, functioning in the former Canal Zone immediately prior to the entry into force of this Treaty, may continue to function during the transition period for the judicial enforcement of the jurisdiction retained by the United States of America.

6. In civil cases, the civilian courts of the United States of America in the Republic of Panama shall have no jurisdiction over new cases of a private civil nature, but shall retain full jurisdiction to dispose of any civil cases, including admiralty cases, already instituted and pending before the courts prior to the entry into force of this Treaty.

7. The laws, regulations, and administrative authority of the United States of America applicable in the former Canal Zone immediately prior to the entry into force of this Treaty shall, to the extent not inconsistent with this Treaty and related agreements, continue in force for the purpose of the exercise by the United States of America of law enforcement and judicial jurisdiction during the transition period. The United States of America may amend, repeal or otherwise change such laws, regulations and administrative authority. The two Parties shall consult concerning procedural and substantive matters relative to the implementation of this Article, including the disposition of cases pending at the end of the transition period and, in this respect, may enter into appropriate agreements.

8. During this transition period, the United States of America may continue to incarcerate individuals in the Republic of Panama or transfer them to penal installations in the United States of America to serve their sentences. The Parties shall conclude an agreement whereby nationals of either State, who are sentenced by the courts of the other State, may elect to serve their sentences in the installations located in their country of origin.

Minute adopted in relation to article VII

With reference to paragraph 2 of Article VII of the Panama Canal Treaty, the areas and installations to which the jurisdictional arrangements described in it are applicable are as follows:

(a) The Canal operational areas and the housing areas described in Annex A of the Agreement in implementation of Article III of the Panama Canal Treaty.

(b) The Defense Sites and the Military Coordination Areas described in the Agreement in implementation of Article III of the Panama Canal Treaty.

(c) The Ports of Balboa and Cristobal.

With reference to paragraph 3 of Article VII, the areas in which during the transition period the police authorities of the Republic of Panama may carry out police patrols jointly with the police authorities of the United States are the following:

(a) Those portions of the Canal operational areas which are open to the public at large, the housing areas and the Ports of Balboa and Cristobal.

(b) Those areas of military coordination in which joint police patrols are established in accordance with the provisions of the Agreement in implementation of Article II of this Treaty, signed this date. The police authorities of the two Parties shall formulate appropriate administrative arrangements to plan and carry out such joint police patrols.

ARTICLE VIII

Economic arrangements

1. The United States of America transfers, without charge, to the Republic of Panama all rights, title and interest the United States of America may have with respect to all real property, including non-removable improvements thereon, as set forth below:

(a) Upon the entry into force of this Treaty, such property that was located in the former Canal Zone but that is not within the land and water areas the use of which is made available to the United States of America pursuant to this Treaty. However, it is agreed that the transfer on such date shall not include buildings and other facilities, except housing, the use of which is retained by the United States of America pursuant to this Treaty and related agreements, outside such areas;

(b) Such property located in an area or a portion thereof at such time as the use by the United States of America of such area or portion thereof ceases pursuant to agreement between the two Parties;

(c) Upon termination of this Treaty, all such property and equipment remaining in the Republic of Panama, which had been used by the United States of America for the purposes of this Treaty and related agreements.

2. The Republic of Panama agrees to hold the United States of America harmless with respect to any claim which may be made by third parties relating to rights, title and interest in such property.

3. Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree.

4. In addition, the Republic of Panama shall receive a just and equitable return on its national resources which it had dedicated to the efficient management, operation, maintenance, protection and defense of the Panama Canal, in accordance with the following formula:

ARTICLE IX

Construction of a third lane of locks or a sea-level canal

1. During the life of this Treaty no new interoceanic canal will be built in the territory of the Republic of Panama, except in accordance with the provisions of this article, or as otherwise agreed by the two governments.

2. During a period of fifteen years from the date of entry into force of this treaty, the United States of America will have the right to undertake the construction within the territory of the Republic of Panama of a sea level canal. If the United States should undertake such construction, the work shall be finished within a period of fifteen years from the date of its start, except to the extent that delays may occur through factors outside the control of the United States of America. Nevertheless, under no circumstances will the construction continue beyond the date of termination of this treaty without the consent of the Republic of Panama.

3. In the case that the United States of America should decide to undertake the construction of a sea level canal, the Republic of Panama will put at its disposal, free of charge, the additional land and water areas necessary for this end, under the terms and conditions which are to be agreed upon by the two governments.

4. At any time during the life of this Treaty, the United States of America will have the right to add a third lane of locks to the existing Panama Canal.

5. In the case that the United States of America should decide to add a third lane of locks to the existing Canal, it may use for this purpose, in addition to the areas put at its disposal through another manner in accordance with this Treaty, the land and water areas described in Annex C of this treaty, and such other areas as the two governments may agree upon. The terms and conditions applicable to the Canal operational areas put at the disposal of the United States of America in accordance

with Article III of this treaty will be applicable *mutatis mutandis* to such additional areas.

6. In the exercise of the aforementioned rights, the United States will not make use of nuclear techniques for excavation work without the consent of the Republic of Panama.

ARTICLE X

Ratification, entry into force and termination

1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of the two Governments. The instruments of ratification of this Treaty shall be exchanged at the same time as the instruments of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, signed this date. Both Treaties shall enter into force simultaneously six calendar months from the date of such exchange.

2. This Treaty shall end on December 31, 1999, provided that on December 31, 1998, or prior to that date, either of the Parties has notified the other of its intention to terminate this Treaty. If no such notification was made on December 31, 1998, or prior to that date, this Treaty will end a year after the date on which such notification is made. At such time as notification is given by either Party of its intention to terminate the Treaty, the Parties, without delay, will initiate consultations to consider the continuation of the arrangements between them regarding the Panama Canal which they consider convenient.

ANNEX A

Termination of existing treaties and international agreements

1. The following treaties and other international agreements between the Republic of Panama and the United States of America are terminated and replaced by the present Treaty, in accordance with Article I of this Treaty.

(a) The Isthmian Canal Convention for the Construction of a Maritime Canal, signed in Washington, November 18, 1903.

(b) The Treaty of Friendship and Cooperation, signed in Washington, March 2, 1936.

(c) The Treaty of Mutual Understanding and Cooperation, and the Related Memorandum of Understandings Reached, signed in Panama, January 25, 1955.

(d) The Agreement establishing the boundary of the Canal Zone which is alluded to in Article II of the Inter-oceanic Canal Convention November 18, 1903, signed in Panama, September 2, 1914.

(e) The Boundary Convention, signed in Panama, September 2, 1914.

(f) The Convention regarding the Colon Corridor and certain other corridors through the Canal Zone, signed in Panama, May 24, 1950.

(g) The Trans-Isthmian Highway Convention, signed in Washington on March 2, 1936, the Agreement which complements said Convention, reached through an exchange of notes signed in Washington on August 31 and September 6, 1940, and the Agreement between the Republic of Panama and the United States of America with respect to the Trans-Isthmian Joint Highway Board reached through an exchange of notes in Panama, on October 19 and 23, 1939.

(h) The Highway Convention between the Republic of Panama and the United States of America, signed in Panama on September 14, 1950.

(i) The Convention regulating the transit of alcoholic beverages through the territory of the Canal Zone, signed in Panama on March 14, 1932.

(j) The Protocol of an Agreement restricting the use of the waters of Panama and the Canal Zone by belligerents, signed in Washington, October 10, 1914.

(k) The Agreement for the Reciprocal Recognition of automobile license plates in the Republic of Panama and the Canal Zone, established through an exchange of notes in Panama on December 7 and 12, 1950, and the Agreement establishing procedures for the reciprocal recognition of automobile drivers' licenses in the Canal Zone and the Republic of Panama, established through an exchange of notes in Panama on October 31, 1960.

(l) The General Relations Agreement established through an exchange of notes in Washington on May 18, 1942.

2. All other treaties or agreements between the Republic of Panama and the United States of America which refer to the Canal Zone or any agency, entity or employee of the Government of the United States of America operating in the former Canal Zone shall be applicable, *mutatis mutandis*, to the areas and installations put at the disposal of the United States of America for its use in accordance with this Treaty, and all agencies, entities or employees of the Government of the

United States of America carrying out the service or function provided for under such treaty or accord.

ANNEX B

Procedures for the cessation or transfer of activities carried out by the Panama Canal Company or the Canal Zone Government

1. The Panama Canal Administration shall not perform governmental or commercial functions as stipulated in paragraph 2 of this Annex, provided, however, that this shall not be deemed to limit in any way the right of the United States of America to perform those functions that may be necessary for the efficient management, operation and maintenance of the Canal.

2. The following activities and operations carried out by the Panama Canal Company and the Canal Zone Government shall not be carried out by the Panama Canal Administration, effective upon the dates indicated herein:

- (a) Upon the date of entry into force of this Treaty:
 - (i) Wholesale and retail sales, including those through commissaries, food stores, department stores, optical shops and pastry shops;
 - (ii) Installations for the production of food and drink, including milk products and bakery products;
 - (iii) Public restaurants and cafeterias and the sale of articles through vending machines;
 - (iv) Movie theaters, bowling alleys, and other recreational and amusement facilities for the use of which a charge is payable;
 - (v) The operation of laundry and dry cleaning plants other than those operated for official use;
 - (vi) Installations for the repair and service of privately owned automobiles or the sale of petroleum or lubricants thereto, including the operation of gasoline stations, repair garages and tire repair and recapping facilities, and the repair and service of other privately owned property, including appliances, electronic devices, boats, motors and furniture;
 - (vii) Cold storage and freezer plants other than those operated for official use;
 - (viii) Freight houses other than those operated for official use;
 - (ix) Commercial services to and supply of privately owned and operated vessels, including the construction of vessels, the sale of petroleum and lubricants and the provision of water, tug services not related to the Canal or other United States Government operations, and repair of such vessels, except in situations where repairs may be necessary to remove disabled vessels from the Canal;
 - (x) Printing services other than for official use;
 - (xi) Maritime transportation for the use of the general public;
 - (xii) Health and medical services provided to individuals, including hospitals, leprosariums, veterinary, mortuary and cemetery services;
 - (xiii) Educational services provided to individuals, including schools and libraries;
 - (xiv) Postal services;
 - (xv) Immigration, customs and quarantine controls, except those measures necessary to ensure the sanitation of the Canal;
- (b) Within thirty calendar months from the date of entry into force of this Treaty:
 - (i) Police;
 - (ii) Courts; and
 - (iii) Prison system

3. With respect to those activities or functions described in paragraph 2 above, or otherwise agreed upon by the two Parties, which are to be assumed by the Government of the Republic of Panama or by private persons subject to its authority, the two Parties shall consult prior to the discontinuance of such activities or functions by the Panama Canal Administration to develop appropriate arrangements for the orderly transfer and continued efficient operation or conduct thereof. In the event that appropriate arrangements cannot be arrived at to ensure the continued performance of a particular activity or function described in paragraph 2 above which is necessary to the efficient management, operation or maintenance of the Canal, the Panama Canal Administration may, to the extent consistent with the other provisions of this Treaty and related agreements, continue to perform such activity or function until such arrangements can be made.

UNDERSTANDING NO. 1

Mr. HOLLINGS. Mr. President, on behalf of Senator Bellmon and myself, I have submitted an understanding which we propose to

the resolution of ratification of the Panama Canal Treaty. The understanding relates to the matter of the conditional annuity payment provided for in article XIII 4.C.

Article XIII 4.C. provides for an annual payment of up to \$10 million to be paid out of canal operating revenues, "to the extent that such revenues exceed expenditures of the Panama Canal Commission * * *." The article goes on to say:

In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

We are told that the negotiators intentions were clear that at the expiration of the treaty there would be no obligation to pay any unpaid balance from previous years, in the event there was such unpaid balance. And in his February 6, 1978, letter to Senator Culver, Secretary of State Vance stated:

Any balance remaining due in the year 1999 would not be paid since the Commission has only a contingent obligation to make this payment, i.e., an obligation based on available surplus.

I think we need to be crystal clear on this, however, and that is the genesis of the understanding we are proposing. It will make it clear, in the proper form and fashion, that there is no obligation to pay any such amount after the date of the termination of the treaty.

Mr. President, the following is the language of our understanding:

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the understanding, which is to be made a part of the instrument of ratification, that nothing in paragraph 4(c) of article XIII may be construed as obligating the United States of America to pay after the date of the termination of the Treaty any unpaid balance under such paragraph 4(c) which shall have accrued before such date."

PANAMA CANAL TREATIES—EX. N, 95-1

AMENDMENT NO. 40

(Ordered to be printed and to lie on the table.)

Mr. Allen submitted an amendment intended to be proposed by him to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, Ex. N, 95-1.

AMENDMENT NO. 41

(Ordered to be printed and to lie on the table.)

Mr. Bartlett submitted an amendment intended to be proposed by him to the Panama Canal Treaty, Ex. N, 95-1.

Mr. BARTLETT. Mr. President, article XIII, section 4(c) of the proposed Panama Canal Treaty provides that the Panama Canal Commission to be created by the new treaty will pay a sum of \$10 million a year out of surplus revenues to the Government of Panama. This so-called "Contingency Payment" is above and beyond other payments to be provided by section 4 to the Government of Panama.

In addition, section 4 provides that, in the event insufficient surplus is generated in one year to make the contingency payment, the obligation to make the payment will carry over into subsequent years, thus increasing the chances that the Government of Panama will get its contingency payment. From testimony received by the Senate Armed Services Committee, it is clear that tremendous ambiguity exists as to how the tolls will be set to generate the revenue and how the debt will be accumulated. Our State Department maintains that, at end of 1999, this unpaid balance would not be an obligation of the Panama Canal Commission or the United States. Testimony during the Armed Services Committee hearing stated that Panamanian leaders may believe the contrary.

At this time, however, I wish to alert my colleagues to the relationship of article XIII, section 4(c) to article XIII, section 1 of the treaty which reads as follows:

Upon termination of this Treaty, the Republic of Panama shall assume total responsibility for the management, operation, and maintenance of the Panama Canal, which shall be turned over in operating condition and free of liens and debts, except as the two Parties may otherwise agree.

Section 1 makes it clear that the canal must be turned over free of debt, unless otherwise agreed, thus implying that the accumulation of contingency payment debts, if considered an obligation of the Panama Canal Commission, would become a just debt of the United States and would be payable by the United States upon termination of the Panama Canal Treaty in 1999. While such an interpretation is consistent with the language of the treaty, and consistent with the expectations of some Panamanians as reported to our committee, it is inconsistent with the notion that the contingency payment is to come only out of toll revenues and is not to involve appropriated funds. The contingency payment is to provide an economic incentive for the Government of Panama to cooperate in achieving an economically viable Panama Canal Commission and is not supposed to affect the taxpayer directly.

For that reason I am sending to the desk an amendment for printing which would provide that any accumulated obligations and debts of the Panama Canal Commission resulting from this contingency payment provision shall not be a just debt of the United States in the year 1999 and after.

The original language of section 4(c) reads as follows:

An annual amount of up to ten million United States dollars (\$10,000,000) per year, to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission including amounts made pursuant to this Treaty. In the event Canal operating revenues in any year do not produce a surplus sufficient to cover this payment, the unpaid balance shall be paid from operating surpluses in future years in a manner to be mutually agreed.

My amendment would make the following changes:

At the end of paragraph 4(c) of article XIII, add the following: "Nothing in this subparagraph may be construed to commit the United States of America to pay any part of such unpaid balance to the Republic of Panama after the date of the termination of this Treaty."

ADDITIONAL COSPONSORS—EX. N, 95-1

At the request of Mr. Hodges, his name was added as a cosponsor of amendment No. 20 and amendment No. 21, intended to be proposed to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, Ex. N, 95-1.

[From the Congressional Record—Senate, Feb. 23, 1978]

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume the consideration of Executive N, 95th Congress, 1st session, which the clerk will report.

The second assistant legislative clerk read as follows:

Executive N, 95th Congress, 1st session, treaty concerning the permanent neutrality and operation of the Panama Canal.

The ACTING PRESIDENT pro tempore. Article I is open to amendment.

The Senator from Alabama.

Mr. ALLEN. I do have an amendment to article I. I had not planned to offer it today, although, after discussing the matter with the distinguished majority leader, there are conditions under which I would be willing to offer the amendment. This is amendment No. 40.

What it does is take article I and, by a substitute, knock out all of article I and then, with the substitute, reinstate article I with a proviso. This would be the appropriate place to offer this amendment.

The ACTING PRESIDENT pro tempore. Does the Senator offer the amendment?

Mr. ALLEN. No, sir, the Senator does not offer the amendment. I am discussing article I and the relationship of my anticipated amendment to article I and the need for amendment of article I.

Article I, as contained in the Neutrality Treaty, provides as follows:

The Republic of Panama declares that the canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this treaty. The same regime of neutrality shall apply to any other international waterway that may be built either partially or wholly in the territory of the Republic of Panama.

Then, the substitute which I would add to that language, which would be reinstated by my substitute, provides that the military presence of the United States in what was the Panama Canal Zone on September 7, 1977—and I chose that date because that was the date on which the President and the dictator, Torrijos, signed the treaty—shall be continued beyond December 31, 1999, if the President of the United States deems it necessary for the defense of the canal or the maintenance of the neutrality thereof and shall, prior to December 21, 1999, so certify to the Government of Panama. That would be filling a need or supplying a provision to rectify the omission in the so-called leadership amendment.

The leadership amendment, which, as I understand it, will be offered to article IV, and then another one to article VI—together, they constitute what I call and what is usually called the leadership amendment. I might mention parenthetically, to show why the Senate should have reverse order of these treaties, and this point was made by the distinguished Senator from Virginia (Mr. Scott) on yesterday, this article I in the Neutrality Treaty says:

The Republic of Panama declares that the canal, as an international transit waterway, shall be permanently neutral. * * *

Mr. Scott asked, What became of the United States? Are they not also declaring the canal neutral? It illustrates why we should not have gone to the Neutrality Treaty first, because, obviously, the amendment, even though it goes into effect at the same time as the Panama Canal Treaty, is really not effective until the start of the next century, because the Panama Canal Treaty provides that the United States shall provide the major defense for the canal during the rest of this century. So it is clear proof that this Neutrality Treaty really does not become effective until the start of the next century by the very wording of article I:

The Republic of Panama declares that the canal is neutral.

Well, there is no need of saying, "United States," because we are pulled out completely by the year 2000. But the leadership amendment overlooks the fact that, by the year 2000, the United States will have been obligated, under the terms of the Panama Canal Treaty, to pull all of our troops out of Panama by the year 2000, when, in effect—when, as a matter of practical application—the Neutrality Treaty will come into play. So, we have the anomalous situation that we are trying to provide for the defense of the canal and, yet mandate that we get out of the Canal Zone during this century.

All right. We are out of the Canal Zone at the start of the next century. And, yet, the leadership amendment would say that the United States shall have the right to defend the canal and maintain its neutrality, and it gives that right, but deprives us of the means of doing it, because all of our troops will be out. If we ever decide that we want to go back in to defend the canal or to protect our interests there, or to maintain its neutrality, we have to come into Panama as invaders.

We would either have to have an amphibious landing or we would have to land paratroops there. Either action on our part would cause tremendous international reverberations and would certainly not be conducive to peaceful relations between the United States and Panama and Central and South American countries. So the purpose of my amendment to article I would be to put first things first and spell it out right here, in article I.

The proponents of the treaties, in debate yesterday, said:

We cannot consider the Panama Canal Treaty first; we would have to vote against it. We have first to determine the matter of a proper defense of the canal and maintain its neutrality. We have to get that established.

All right, Mr. President, if we are going to establish the guidelines, if we are going to establish the conditions under which we have a right to defend the canal and maintain its neutrality, let us decide it right here in article I.

What does my proposed substitutes do then for the leadership amendment and for our right to defend the canal and protect our national interests?

Mr. President, we do not know what the political conditions in Panama will be starting with the year 2000. They may go from bad to worse down there.

We know that dictator Torrijos came into power in Panama under a coup d'etat. He was not elected. They do not know anything about free election of their public officials down there. He has never been voted in by the people in Panama.

We understand that he is a left-leaning dictator. We know that he has little or no respect for human rights. We know that he has cozied up to dictator Fidel Castro in Cuba. We know that Russia casts covetous looks at the Panama Canal and the Panama Canal Zone.

We do not know who will be in control of Panama at the year 2000. Panama might be a Communist satellite, it might be a Russian satellite, it might be a Cuban satellite. But I think we can safely assume it is not going to be the world's greatest democracy.

Mr. President, the way to assure they are not going to have a democracy in Panama is to agree to these treaties.

Why do I say that?

Panama, under the treaty—and my authority for this is Economic Minister Barletta of Panama—skim off from toll revenues, and other sources, \$2.262 billion in the next 22 years.

Obviously, that runs a little over \$100 million a year that Panama is to receive. That will support a whole lot of the dictatorial government in Panama. It will be a godsend to dictator Torrijos.

Just think of adding \$100 million a year to the revenues of this dictatorial regime. Obviously, it would perpetuate in office Mr. Torrijos and his regime. It would allow him to continue his failure to recognize and observe the human rights of the Panamanian people.

After all, Mr. President, we are supposed to have a national policy of protecting human rights around the world. I applauded the President for his stand and his drive for seeking to get other nations to respect human rights as we do in this country. But if we give a dictator \$100 million a year, with no strings attached, what reason is there to believe he is going to change his policy?

Mr. LAXALT. Will the Senator yield for a question?

Mr. ALLEN. I am delighted to yield to the Senator.

Mr. LAXALT. Will the Senator from Alabama indicate what the present level of payment from the United States to Panama is? It is true, is it not, it is about \$2,300,000 a year, the present level of payment?

Mr. ALLEN. The present annuity?

Mr. LAXALT. Yes.

Mr. ALLEN. It is \$2,300,000.

I might say at that point to my distinguished colleague, the distinguished Senator from Nevada (Mr. Laxalt), that I am not particularly disturbed about making a substantial increase in the amount of the annuity we pay Panama.

I would be willing to see a tenfold increase in this amount, provided we continue with the control, the maintenance, and the defense of the canal. If we keep the status quo there, then the dollars and cents of it, up to a reasonable amount, would not bother the Senator from Alabama.

Make it \$25 million, but keep the defense of the canal, the maintenance of the canal, and the operation of the canal in American hands. That would be my notion of a proper treaty.

Mr. LAXALT. I thank the Senator from Alabama.

Mr. ALLEN. And it can actually be done without the treaties, of course.

Mr. LAXALT. I think it is important that distinction be drawn, because those of us who oppose the treaties, on the floor here and otherwise, have been placed in the posture of turning our backs on the Panamanians when nothing could be further from the truth.

Mr. ALLEN. That is certainly true.

Mr. LAXALT. It is true our principal concern is protecting a vital, strategic facility for security of this country and the hemisphere.

Mr. ALLEN. Yes. That is certainly the truth.

Mr. LAXALT. For the purpose again of the record, what is the present military component that we have in Panama, in very general terms?

Mr. ALLEN. We have 14 military bases there to defend the canal. Under the treaties, as soon as the Panama Canal Treaty is agreed to, we would drop from 14 bases down to 4 bases.

Certainly, that is somewhat at variance, it would seem to me, with the contention that the canal cannot be defended. If it cannot be defended with 14 bases, why would they think it can be defended with 4 bases?

It seems to me that we are already taking out much of our military presence when we reduce the bases from 14 down to 4.

But further than that, by the year 2000, we have to eliminate all of those.

In addition, I say to the distinguished Senator from Nevada, as to these side agreements that they have—and by the way they take up three times as much wordage as do both of the treaties—the distinguished Vice President stated in response to a parliamentary inquiry I propounded that the Senate has no right to amend these side agreements that have been made. Under these side agreements, even though we have 14 bases now and are going to cut it down to four, every 2 years the Government of Panama and the Government of the United States, during the period up to the year 2000, can negotiate and eliminate those four bases prior to the year 2000. They may do that 2 years from now. I do not know.

Mr. LAXALT. Mr. President, will the Senator yield for a question?

Mr. ALLEN. I yield.

Mr. LAXALT. Have we been told repeatedly on the Senate floor that the reason why we should support these treaties is to minimize the probability of violence and minimize the possibility of sending American boys down there to defend the canal? Have we been told that repeatedly?

Mr. ALLEN. We have been told that, and that was some of the rhetoric that we heard on national television. But it is my belief and my observation that if we give in at this point, during this 22-year period, with their appetite whetted with this \$100 million they are getting down there, they will want an even better deal than that; and they will say, "22 years is too long. Let's renegotiate this, and cut it down to 4, 6, 8, or 10 years."

Mr. LAXALT. Is it not also true that when you are thinking of reducing your military presence, as is contemplated under the canal treaties, from 14 to 3, we are really reducing our effectiveness in defending the canal, thereby increasing our reason for having to send additional troops there in the event it is necessary?

Mr. ALLEN. Yes.

Mr. LAXALT. So it is really counterproductive, is it not?

Mr. ALLEN. Yes, it is.

Mr. LAXALT. As the Senator from Alabama has indicated—and that is why many of us are concerned—we do not want to send our boys down there. We have been told by General McAuliffe and others in charge, other military people, that the existing military presence is more than adequate to defend the canal.

Mr. ALLEN. Yes, they have stated that.

Mr. LAXALT. Yet, by the terms of these treaties, we are going to jeopardize that situation to the extent of reducing our military presence, thereby increasing the risk that we will have to send additional troops there.

Mr. ALLEN. That is exactly right.

Mr. LAXALT. That does not make much sense, does it?

Mr. ALLEN. It does not to me; I will say that.

Mr. LAXALT. To compound it, as the Senator from Alabama has indicated here, in support of his amendment, for which I commend him, because it is badly needed, the leadership amendment presupposes that all is going to go well with the Panamanians in 2000, does it not?

Mr. ALLEN. Yes, it does. Also, of course, it is drafted in the light of the fact that we are going to be completely out of the Panama Canal Zone by the year 2000; and we would have no troops there at all. We would have to bring them in by one method or another.

Mr. LAXALT. Precisely.

I do not know whether the Senator from Alabama was on the floor the other day during the debate I had with Senator Church on this very point—that assuming that we are out of the Canal Zone entirely, which we will be, and assuming there is some kind of difficulty with the Panamanians, whether they are a satellite of the Soviet Union or Castro, or whether they are just in difficulties with us, it is true, as the Senator from Alabama has pointed out, that the only way we can meaningfully protect our rights, as contemplated by the leadership amendment, is to invade that country, is it not?

Mr. ALLEN. Yes; that would seem to me to be so. We would have no troops there, and we would have to bring them in.

Mr. LAXALT. We will either have to make an amphibious landing or land paratroops. Is that not so?

Mr. ALLEN. That is the only way I can say it could be done.

Mr. LAXALT. Is it not the opinion of the Senator from Alabama that that scenario increases the risk to the people of this country, to the security of this country, because that necessarily places us in a position of confrontation with the Panamanian Government?

Mr. ALLEN. That is true.

I might also say that another shortcoming of the leadership amendment is that it contains a special provision that would tie our hands if we observed the treaty provisions, and I believe we are

a treaty observing nation. That would tie our hands with respect to coming in if the Panamanians, rather than a foreign power, were violating the neutrality of the canal and were failing to live up to their obligation; because the leadership amendment has a paragraph stating that in no event does the right that is given us to come in to defend the canal allow us to interfere with the internal affairs of Panama. Well, if they are there, blocking our access to the canal, it certainly seems to me that we would have to interfere with the internal affairs of Panama, if we are going to gain access to the canal.

They have stuck this little thing in not to protect the interests of the people of the United States but, obviously, at the behest of the Panamanians.

Mr. LAXALT. In the process, we stand a great risk, do we not, of subordinating the interests of the American people to those of the Panamanian people?

Mr. ALLEN. Yes.

I say to the distinguished Senator from Nevada that the Senate has the constitutional right, obligation, and duty to give advice to the administration, to give its opinion, not just to consent. It is to advise and consent.

So, as I see the battle shaping up—and this is one reason why we made the effort to go to the Panama Canal Treaty—once the leadership amendment, ineffectual as it is to protect the interests of the United States, is agreed to in the Senate, we are going to hear a hue and cry: “Well, now let’s get on and complete these treaties.”

I predict that we are going to see an effort to stonewall—that is, to resist entirely all constructive amendments offered here on the floor; and that would seem to me to be depriving the Senate of its function of advising as well as consenting.

Mr. LAXALT. Mr. President, will the Senator yield at that point?

Mr. ALLEN. I yield.

Mr. LAXALT. It has been said repeatedly here on the floor and elsewhere that a rejection of these treaties would be tantamount to a rejection of the President of the United States. Is it not true that under the terms and provisions of the Constitution, the President—this President, all before him, and those in the future—has only the power to negotiate in a matter of this kind?

Mr. ALLEN. That is true. The executive branch, of course, does negotiate treaties. They are sent to the Senate then, for such action on behalf of the people of the country that the Senate might care to take in the way of shaping this treaty.

I might say at this point that I feel that Dictator Torrijos jumped the gun when he called a plebiscite in Panama, because he knew full well that this treaty would have to come to the United States Senate. I think it is something in the nature of arrogance on the part of Dictator Torrijos to go ahead and call the plebiscite in Panama, ram it through down there, even though the U.S. Senate has the constitutional right to seek to revise that treaty.

So apparently he has taken the position, “Well, we’ll get the treaty approved by the people of Panama in a plebiscite, and then we’ll go to the Senate and we’ll say, ‘Don’t change it now. Don’t change it, else it will take another plebiscite down in Panama.’”

Well, what is wrong with another plebiscite? I see nothing wrong with another plebiscite. We should have another plebiscite down there if we amend this treaty in substantial form.

So here the treaty is brought before the U.S. Senate, and they say:

Don't amend it. Don't amend the treaty. If so, Dictator Torrijos might have to have another plebiscite down there.

That is the main argument, as I see it, against this effort. We should not be worried about whether Torrijos has to have another plebiscite or not. We should be concerned with what is in the national interest and let Torrijos take such action as he sees fit.

Some Senators say, "I'm not going to vote for any amendment that would call for another plebiscite in Panama." What sort of attitude is that? Should we not determine what is in the best interests of the people of this country and not let Mr. Torrijos determine what action he wants the U.S. Senate to take?

I might state, too—and this is a great show of arrogance on the part of those making the demands on the Foreign Relations Committee—I do not serve on the Foreign Relations Committee, but as——

Mr. HOLLINGS. Mr. President, will the Senator yield?

Mr. ALLEN. For a question.

Mr. HOLLINGS. Yes. Does the Senator think Torrijos in carrying through the plebiscite for approval of the treaties by his people was more arrogant than the Senator from Alabama holding a hearing in June in opposition to the treaties before they were even consummated in August? Which is the more arrogant?

Mr. ALLEN. Before I held them when?

Mr. HOLLINGS. Yes, that is right.

Mr. ALLEN. Held them when?

Mr. HOLLINGS. I just said as to the head of a country carrying through with his plebiscite, the Senator calls that arrogant. If I remember correctly, the Senator was holding hearings in opposition and trying to really wreck the effort of the executive branch and this Government in trying to formulate a treaty in June. Was not the Senator on some Subcommittee for Constitutional Government holding these hearings with admirals coming around and testifying?

Mr. ALLEN. If the Senator will state his question rather than making a speech, I will be glad to answer it.

Mr. HOLLINGS. I am not going to make a speech. I wonder who was more arrogant. The Senator seems to call that arrogant.

Mr. ALLEN. If the Senator will ever come to the point on the question I shall answer.

Mr. HOLLINGS. My point is arrogant.

Mr. ALLEN. All right.

Mr. HOLLINGS. The Senator from Alabama is talking about arrogance.

Mr. ALLEN. All right.

Mr. HOLLINGS. Here is a country that had a plebiscite that the Senator said was rammed through, but there were observers and all. The Senator mentioned only the President can negotiate a treaty. But before the poor President could get a new treaty as had

been agreed to by three previous Presidents, Republican and Democratic, before he could do that in August and have it signed in September, what about the Senator's arrogance in holding hearings—

Mr. ALLEN. Get to the question.

Mr. HOLLINGS. Let me complete the question—in June under some spurious auspices of a Constitutional Government Subcommittee?

Mr. ALLEN. Yes.

Mr. HOLLINGS. And bringing in admirals and telling how the country was going to the dogs.

Mr. ALLEN. I thank the distinguished Senator from South Carolina (Mr. Hollings), and I am glad to see that dictator Torrijos has a staunch defender in the Senate.

Mr. HOLLINGS. No; I am talking about arrogance.

Mr. ALLEN. All right.

Mr. HOLLINGS. Yes.

Mr. ALLEN. I am going to come to that.

Mr. HOLLINGS. Torrijos is totally unpredictable, and I would not know how to defend him.

Mr. ALLEN. I yielded for a question. The Senator now asked his question, and I am going to answer it.

The distinguished Senator from South Carolina wants to know whether the Senator from Alabama is perhaps more arrogant than the dictator of Panama, and he cites as evidence of that fact the Senator from Alabama, chairman of the Subcommittee on Separation of Powers, did hold a hearing, several hearings, for that matter, before which committee some of the greatest legal minds in the country appeared, discussing the constitutional issue involved.

I am certainly glad the distinguished Senator has given me this opportunity to tell what the constitutional issue that is involved is.

The constitutional issue is that the Constitution of the United States, article IV, section 3, paragraph 2, says that the Congress shall dispose of and make all needful regulations with respect to the territory and other property of the United States.

So, the constitutional issue is whether the Senate alone has the power to dispose of property of the United States which the canal, of course, is, and the property in the Panama Canal Zone, whether the Senate by treaty can make that disposition or whether the Constitution is going to be followed, which would require action by the House of Representatives as well as the Senate in the form of a statute providing for the disposition of the property of the United States.

The Senator from Alabama, understanding that the administration had no intention of submitting this matter to the House of Representatives in accordance with the constitutional processes, wanted to establish the constitutional issue involved.

More than 218 House Members have joined in a resolution in the House of Representatives saying, in effect, that the Constitution requires that this issue be submitted not only to the Senate but to the House of Representatives as well in the form of a statute.

Mr. HOLLINGS. Mr. President, will the Senator yield?

Mr. ALLEN. No. I want to answer the Senator's question first before he gets on another one.

Mr. HOLLINGS. That is not the question. I do not question that.

Mr. ALLEN. I am not yielding to the Senator. I hope he will be as courteous to me as I have been to him.

The point involved is as to who is more arrogant, the Senator from Alabama or Dictator Torrijos.

Was it arrogant or was it arrogance on the part of the Senator from Alabama as he saw these treaties approaching and as he felt one of the important issues involved was whether it took action of the Senate and of the House of Representatives—and apparently the administration to this good day say they are not going to submit it to the House of Representatives—was it arrogant of him to try to find out what the Constitution provided on this great issue of separation of powers, the power of the Executive set up against the power of Congress and eliminating one House from consideration? Was it arrogant for the Senator from Alabama to hold this hearing to find out what the constitutional issue involved is and what the answer was?

And I will state to the distinguished Senator that the overwhelming preponderance of legal opinion in this country is that it does require action of Congress to dispose of property of the United States.

So we will leave that to the decision of anyone involved as to who was arrogant in this matter.

But I do say that it was arrogant on the part of dictator Torrijos, this dictator, this person whose regime has no respect for human rights. Knowing full well that the Senate of the United States has the constitutional right to advise and consent to this treaty, and it has a right to amend it in substantial form if it sees fit, was it arrogant of him to ram this treaty through down in Panama without waiting to see what the action of the U.S. Senate would be in this issue?

So that is the point involved. I do not feel it was arrogant of the Senator from Alabama to do his work as chairman of the Committee on Separation of Powers and study this great constitutional issue.

There is no indication to this good day that the administration will submit it to the House of Representatives, even in response to the plea of a majority of the Members of the House of Representatives, and that had to be a bipartisan majority—I guess it could be a Democratic majority only—but certainly the Republicans would have to have the assistance of a large number of Democrats to get 218 names on a resolution over there.

So, the Senator from Alabama makes no apologies for the fact that he did call hearings on this important subject, and the conclusion he reached from these hearings and from this study of this issue is that for a valued transfer of the property of the United States it takes a statute agreed to by both Houses.

The administration apparently feels that it has greater sway here in the U.S. Senate.

(Mrs. Humphrey assumed the chair.)

Mr. ALLEN. And I believe the distinguished Senator from South Carolina in the last Congress was one of the Senators who signed the resolution, cosponsored the resolution, which said that, in

effect, in no event would they support a Panama Canal Treaty giving the Panama Canal to Panama.

I am sure the Senator will correct me if I have misapprehended the facts in this area.

I believe he joined his distinguished senior colleague, Mr. Thurmond, in this way, but apparently now——

Mr. HOLLINGS. Madam President, will the Senator yield so I may comment?

Mr. ALLEN. I will yield for a question.

Mr. HOLLINGS. Why does the Senator not yield for the answer so I may comment intelligently?

Mr. ALLEN. What is the answer then?

Mr. HOLLINGS. There are two answers to two questions.

Mr. ALLEN. I see.

Mr. HOLLINGS. The first question that the Senator asked a second ago was with respect to the resolution which said we shall not yield control. I am quite persuaded, now that the Defense Department has included article IV, the right of defense, that we have not lost actual control in the sense of defending it, and we maintain the use. That is one of the big reasons, of course, that I came out here in support of those treaties; but back to the original question.

The Senator from South Carolina does not think that Torrijos was arrogant in calling a plebiscite. The Senator from South Carolina did not think the Senator from Alabama was arrogant in having hearings before his own subcommittee, but the question was the timing.

The Senator said that Torrijos, this dictator, rammed it through before the Senate, and the Senator does not remember history well, because the President of the United States would have liked to have had an October confirmation of these treaties, too, and it was the Senator from South Carolina, the leadership, and many others, who said we have to have thorough hearings and be deliberate about it and understand this thing so that we did not act precipitantly.

But it was not a question of either one being arrogant but certainly if one was arrogant; namely, Torrijos, from a sense of timing in October, some 6 weeks after it was signed, then how could that be characterized as arrogance from a sense of timing and not the Senator's precipitate hearing even before a treaty was signed.

I just could not understand the logic of that.

Mr. ALLEN. Yes; I do not believe the Senator has answered what I yielded to him for as to whether he was a cosponsor of this resolution in the last Congress saying we were not going to approve the Panama Canal transfer.

Mr. HOLLINGS. No; I was a cosponsor of the resolution, along with Senator John McClellan of Arkansas, that we would not lose control of it.

Mr. ALLEN. The Senator was a cosponsor of that resolution?

Mr. HOLLINGS. That is right.

Mr. ALLEN. One of the 37 Senators who cosponsored it?

Mr. HOLLINGS. Yes; that we wanted the right to defend it.

Mr. ALLEN. Did the Senator go down to Panama to discuss this matter with Dictator Torrijos?

Mr. HOLLINGS. Can I answer that?

Mr. ALLEN. I asked the question.

Mr. HOLLINGS. Yes; I went to Panama. I would have gone and discussed anything at that particular time, when I headed the Senate committee concerned with the Panama Canal. With dictator Torrijos, I would have discussed it with him, but I received word from him indirectly that he would be pleased to see me as chairman of that group, but he would not be similarly pleased to see Senator Scott. I thought that was out. That was definitely out, and I sent word to him I would not see him if he would not see the entire Senate delegation.

Mr. ALLEN. The Senator was down there for the purpose of getting clarification about these treaties?

Mr. HOLLINGS. Oh, yes, sir, there is not any question of that. That is what I was there for.

Mr. ALLEN. I am glad to hear it. If the Senators went down to Panama to get edification on this subject, and find out more about what is involved, I guess they might have checked with the White House for a copy of the treaties and studied them, possibly. I guess possibly going to Panama might—

Mr. HOLLINGS. Well, we do both.

Mr. ALLEN. I see.

Mr. HOLLINGS. Yes; you look at the treaties, you make the trip, you listen to distinguished Senators like yourself who might persuade them—though I doubt it in this particular regard—there are all kinds of ways a Senator makes his judgment.

Mr. ALLEN. I see. Well, I have not been to Panama in some years. I will have to confess that I did, on one occasion, go through the Canal Zone at Government expense, but I happened to be a member of the U.S. Navy, back in 1943, and we were going through the canal moving from the Atlantic theater of action over to the Pacific theater.

I think it is a great engineering achievement. The United States has operated this canal for the benefit of world shipping on a nonprofit basis.

Mr. HOLLINGS. Will the distinguished Senator yield so I can—

Mr. ALLEN. Let me complete my thought. But now we are going to change the whole nature of this operation. We are going to turn it into a profitmaking venture for Panama, if these treaties are passed. That is something I do not think we want to do.

But on the matter of arrogance, I think it is somewhat arrogant for dictator Torrijos to hold court down there as 50 U.S. Senators come down to confer with him. I think that is arrogance as well as it is arrogant to jump the gun on submitting a plebiscite to the people, permitting the question to be decided by plebiscite in Panama, knowing full well that the United States has an opportunity to advise and consent, amend, change, reserve, make reservations, add any number of understandings, and the like. Yet he jumps the gun and has his plebiscite, and now, for some strange reason, he does not want another plebiscite.

And his great influence is being felt here in the halls of the Senate, and I will give a concrete example. After I have done that, I will be delighted to yield to my good friend the distinguished Senator from South Carolina.

The leadership amendment that we have been talking about, and that has fallen so far short of the mark of protecting our national interest, was originally planned as a new article or new articles, and I am sure the point is not important whether they have it in the form of a new article or whether they break it into two articles, as they have with the amendments which are before the Senate now.

The Foreign Relations Committee approved the new article approach. They voted in the Foreign Relations Committee—this is not divulging any secret; in fact, it has been in the press and talked about. It has been talked about on the floor here. It was talked about last Monday; the distinguished Senator from Michigan (Mr. Griffin), who is a member of the committee, talked about it here on the floor of the Senate.

The Foreign Relations Committee put the leadership amendment in the form of new articles or a new article—I am not sure whether it was one article or two—and did not have amendments, but new articles.

Well, the State Department, according to the distinguished Senator from Idaho (Mr. Church) on yesterday, I believe, became alarmed over the fact that new articles are being added to the treaty, and they reported to the Foreign Relations Committee, "Wait a minute, that's not the way to handle this. The Panamanians"—it is a one-man government down there, so I guess that would be Mr. Torrijos—"the Panamanians don't like these amendments in the form of a new article or new articles."

The Spanish word for amendment, "enmienda," I believe, does not signify a major change in a treaty, whereas "reforma," which would be the Spanish designation if new articles are added, indicates a major change; and the State Department felt that the Panamanians would not like this. I do not know why State Department representatives relied on this information. We do not know whether the Panamanians protested to the State Department, or whether the State Department acting on its own initiative, knowing the Panamanians would object, told the Foreign Relations Committee, "Set this thing right; we can't accept it this way."

So the Foreign Relations Committee, after having acted in this area and approved a new article, backed up. They backed up, reconsidered that vote, and went by the form of amendments to two articles, rather than a brand new article.

That proves, Madam President, the fact that the Panamanian dictator has tremendous influence here in the U.S. Senate in shaping the wording of these treaties.

I do not like that. I do not like the fact that it seems to be the attitude of many proponents of the treaties that no substantial amendments, other than the leadership amendments, are going to be accepted here in the U.S. Senate unless Mr. Torrijos gives his advice and consent.

I do not read that in the Constitution. The Constitution says the U.S. Senate shall give its advice and consent, but from a practical point of view Mr. Torrijos is going to say yea or nay on the amendments that the U.S. Senate should consider. Watch and see if the Senator from Alabama is correct.

I was talking to a major Senate proponent of the treaties just yesterday. I asked him, and I called him by his first name, "Would you not support a constructive, substantive amendment to these treaties?"

His answer was, and it was a great surprise to me, "I will not support any amendment that will cause another plebiscite to be held in Panama."

Why should that be the attitude of the U.S. Senate? Why should we say, a majority of us, if it is not satisfactory with Mr. Torrijos we cannot accept it here in the Senate?

There are numerous constructive amendments which are going to be brought before the Senate. The first day we had this matter up I conceded there would be dozens of amendments, and I feel there will be because this is a very complex issue. It took the executive branch of Government 13 years to negotiate this treaty with all of its ramifications.

Well, we have a big task ahead of us here in the Senate. I believe we can do it in less than 13 years. I believe we can. It is going to take some time. We are going to see that these amendments are considered by the Senate, and if they have merit, if they protect the interests of the people of the United States, should they not be adopted, whether Mr. Torrijos agrees or not?

Mr. LAXALT. Will the Senator yield?

Mr. ALLEN. I will yield for a question.

Mr. LAXALT. The Senator has indicated that there was a 13-year period for negotiations. Does the Senator have any information as to whether the treaties which have previously been in negotiation over the past 13 years bear any real resemblance to the current treaties? Is it not true that the treaties under negotiation in that period of time were substantially dissimilar to the treaties now presented to the U.S. Senate?

Mr. ALLEN. Yes; I am not advised just what the differences were. In one area, and this is stated in the Armed Services Committee report, they had actually agreed on a stronger defense provision than they ended up with. They actually agreed to it. Secretary Clements commented upon it. Yet the negotiators said that was not necessary.

Also, right at that point, Ambassador Linowitz, one of the negotiators, was never confirmed by the U.S. Senate. His name was never presented to the Senate. He was appointed under some sort of provision which allowed him to serve for 6 months. It is my understanding that substantial changes were made in the treaty in the last couple of days that Mr. Linowitz had the authority to act.

Yes, there were substantial changes in the treaties in the last few days.

If these changes needed to be made right at the last minute, would it not be entirely appropriate for the U.S. Senate to seek to make changes in these treaties? I do not believe there is any proof that this complex treaty—or these complex treaties—is the last word in a proper treaty. Is the U.S. Senate to abdicate its role of advising and consent?

After about 20 of these amendments have been turned down by the Senate, it is going to give considerable credence to the statement I made that an effort is going to be made to kill all substan-

tive amendments. When that takes place, I think the people of the country will recognize that the final arbiter of the wording of this treaty is not the membership of the U.S. Senate or the large majority of the U.S. Senate, but it is Mr. Torrijos. He will decide whether any amendments are added to this treaty.

Back in 1940, I believe it was, when President Roosevelt was reluctantly accepting a third term as President at the convention—he did not attend the convention but he had people there who represented his interest, and, of course, set up the draft for him—when a problem would come up, and they wanted to ask President Roosevelt about it, he would say, "Clear it with Sidney Hillman," who at that time, I believe, was the strongest labor leader in the country. He said, "Clear it with Sidney."

It looks to me like the U.S. Senate is getting the attitude of saying, as amendments are being discussed and brought before the Senate, "Clear it with Omar Torrijos."

I do not believe that is the attitude that Members of the Senate want to have, that we have to clear our actions with Mr. Torrijos.

I know there are 65 or 68 Senators pledged to support these treaties, but I am hopeful that on issues involving the security of the United States, on issues involving the defense of the canal, Senators will use some independent thinking. As I say, fulfill your pledge to the administration to support the treaties on the final vote on the resolution of ratification, but use a little independence in considering these amendments. If they are constructive, if they add to the security of the United States, let us agree to them. Let us let Mr. Torrijos get them approved down in Panama the best way he can. But, when the treaty leaves the U.S. Senate and goes to the President, let us see to it that it is the best treaty we can turn out from the standpoint of protecting the security interests of the people of the United States. That is all I ask.

I am going to be somewhat suspicious of the steamroller in the Senate if amendment after amendment is knocked down because, in the final analysis, let us face it, Mr. Torrijos says, "I cannot accept that amendment because that would require a new plebiscite."

Mr. LAXALT. Will the Senator yield for a question?

Mr. HOLLINGS. Madam President, when the Senator yields the floor, I should like to be recognized.

Mr. ALLEN. I am glad the Senator is ready to talk. I shall be through in 15 or 20 minutes if he will just have a seat and wait. I will yield the floor to him after a bit.

Mr. HOLLINGS. Very good. The steamroller cannot even get up any steam.

Mr. ALLEN. There may be steam on the side of the opponents.

Mr. HOLLINGS. I would like to get it rolling, but I cannot get the floor. I have been waiting for 2 weeks, but the distinguished Senator from Alabama has had the floor. I have not been able to get 5 minutes, but he has had 5 hours.

Mr. ALLEN. I have more complaints about it than the Senator from South Carolina.

Mr. HOLLINGS. I do not know about complaints, but I would like to satisfy the Senator if I could get the floor.

Mr. ALLEN. I shall be through in 15 or 20 minutes.

I yield to the Senator from Nevada.

Mr. LAXALT. Madam President, the Senator from Alabama has spoken of a steamroller, which would indicate that perhaps the battle on the treaty is lost. The Senator does not subscribe to that theory does he?

Mr. ALLEN. No; I have said there are some 65 to 68 who are pledged on this matter. That is my considered judgment. But there is a good possibility that some of those can be retrieved.

Mr. LAXALT. Because of the amendment procedure.

Mr. ALLEN. They will recognize that it is not in the best interests of the United States and will agree to some constructive amendments. I do not want to discuss my amendment before the lapse of the time that I have suggested I would use.

Mr. LAXALT. I thank the distinguished Senator.

Mr. ALLEN. By the way, Madam President, I ask unanimous consent that when I do offer this amendment, other Senators who care to become cosponsors of the amendment be allowed to add their names ab initio to the amendment, that it appears as introduced by all whose names appear.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. That would be confined to the time that I introduce it, of course.

Madam President, this amendment that I hope to offer, either sometime this week or early next week, adds to the security of the United States in the defense of the canal. That is its sole purpose. There is no deviousness to the matter. It is contained in six or eight lines, but it fills a great omission in the leadership amendment. I say that because, under the leadership amendment in the Panama Canal Treaty, all of our troops have to be out of the Panama Canal Zone, and Panama, for that matter, by December 31, 1999. Then, let us say this neutrality starts right now, but it does not have a great field of operation until the start of the next century, because, under the Panama Canal Treaty, the United States has the defense of the canal for the rest of this century. But, when the Neutrality Treaty that we are working on now comes into play at the start of the next century, under the treaties all of our troops will be out of Panama. We have this great right under the Neutrality Treaty and the leadership amendment, with no troops in Panama, not a one, and the leadership amendment gives us the great right to defend the neutrality of the canal. Well, we snatch away from the country the means to defend the canal and then say, we have the right to defend it—defend it without a single member of the Armed Forces in Panama.

How are we going to defend it? Well, we will defend it by following the route of the leadership amendment that says we have a right to intervene in order to defend the canal and protect its neutrality, but we must not interfere with the internal affairs of Panama in so doing.

That is in the leadership amendment. That is not my suggestion: Do not interfere with that. That is in the leadership amendment. Defend it, but we do not have a single troop there. Defend it, but do not interfere with Panama's Government.

How are we going to defend it, under those circumstances? Well, we are going to drop some paratroops there, or we are going to

have to have an amphibious landing. If somebody can think of any other way to defend a canal, with no troops there, I would like to know how it can be done.

Now, in this amendment, which I am going to offer at the appropriate time, this one little added security measure is added to this concept of all the troops being withdrawn and then having the right to defend it. This adds one little phrase, that the military presence of the United States shall be continued beyond December 31, 1999, if the President of the United States deems it is necessary to do so to defend the canal or to protect its neutrality, and he so certifies to the Government of Panama prior to December 31, 1999.

Now, what could be wrong with that? That does not say that the President is going to opt to do that, but if it is necessary, to defend the canal, to keep some troops there beyond December 31, 1999, why should we not provide for that contingency? Not to accept that amendment would leave a great big hole that you could march an army through, because it does not cover the contingency of troops being needed, the physical presence of troops being needed to defend the canal 22 years from now.

It is a very risky proposition, Madam President, to say that we know what the conditions are going to be down there, that we know the conditions are going to be such that we can withdraw all of our troops.

That is what we are saying, that is what the leadership amendment implies—we know that everything is going to be perfect down there and we will withdraw our troops, but they are going to let us come back in if we force our way back in.

Mr. Castro may control Panama by that time, but we are obligated under the treaties that are written to pull out all of our troops before the start of the next century and then rest on our right to force our way back in.

I believe, in all sincerity, that this amendment would add to the security of the United States. It would add to our ability to defend the canal and the leadership says that is the only area we need to change. They are not worried about the cost to the taxpayer, not going to put any changes there, apparently, just change the right to defend.

But their amendment does not cover every contingency, that is the point. It falls short.

Another provision in the leadership amendment that they set great store by is that in an emergency our warships can go to the head of the line. But the amendment neglected to say who is going to say whether there is an emergency.

A little later on, I am going to seek to add a sentence there that the United States shall be the sole judge of whether an emergency exists.

Panama might say, "Well, we've got the canal here. We own it. We operate it. We skim off \$100 million a year from it and we don't see any emergency. You can wait your turn. We don't see a bit of emergency."

What can we do? No emergency there. No way to determine what is an emergency. And who makes that decision?

That is another defect in the leadership amendment. Plus the fact that it said we cannot interfere with the internal affairs of

Panama, and Panama might be the one, under Torrijos or under Castro or under the Russians, might be the one forbidding us transit through the canal, and we cannot do anything to interfere with the internal affairs of Panama under the leadership amendment.

All I am urging the Senate to do is to consider these matters, consider whether they are in the best interest of the people of the United States.

Let us not decide these questions on whether or not Mr. Torrijos thinks that these are good amendments or whether he thinks that, whether good or not, they would call for another plebiscite.

If the people of Panama are not behind the amendment, if they are not behind the treaties as amended, we do not have much public interest down there, just continue to be harrassed there in Panama in the operation of the Panama Canal.

So I think it would be only right, in the final decision, after the Senate approves these treaties, if it does, for a new plebiscite to be held. That being true, why not draft the treaty along the lines of what is best for the people of the United States? And that will be the amendment I offer.

Other Senators might wish to offer amendments now or at a later time, but since we are on article I, and only article I can be amended at this time under the rules of the Senate in handling treaties, I do plan to offer this amendment. I think it ought to be offered right at the start, to say, "Yes, we're going to add a measure there to help protect the security of the United States, to help us defend the canal."

So that is the amendment that the Senator from Alabama will offer at the appropriate time.

Now, Madam President, I yield the floor.

Mr. Hollings addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina (Mr. Hollings) is recognized.

Mr. HOLLINGS. Madam President, I only have a few moments. At a little after 12 I have to try to make another appointment. But I will try to get into some of the questions raised by my distinguished friend from Alabama.

We have been indulgent—a better word, perhaps, is respectful—of the Senator from Alabama, recognizing his capability of once getting wrought up being able to wreck a process, and in the U.S. Senate we do not want to "wrought" him up, and I do not think he should be.

He has been my friend and I have tremendous respect for him. But I find that under the rule now, unwritten, that we sort of just let him alone and let him talk himself out, and a lot of things go unchallenged.

To get specific, when the Senator was on his feet, he questioned the idea of visitation. He questioned that idea of visiting Panama. He said, "What you ought to do, Senator, is read the treaty. You don't have to go down there if you want to make up your mind about the contents, and the interest, and whether the United States is protected sufficiently. A visit is not in order. What is really in order is to sit and read the treaties."

Now, that is what we have to do. That is a very intelligent approach, before we take a position, we ought to read what we are taking a position on.

Of course, the distinguished Senator from Alabama did not do that with his hearings. He did not wait for a written treaty.

The Senator from Alabama, long before the treaties could be raised, was objecting, and that was his privilege. That was his privilege, under the Subcommittee on Separation of Powers to raise certain questions and start his objecting to a document that had yet to be drawn.

So do not criticize others who were trying not only to read the document, but go see the parties and the country and learn something about a people. One of the most significant things in the entire treaty ratification process is an understanding of the country we have built, as well as the canal we have built.

Now, in July, and I think it was July 15 of this past year, the U.S. Senate, Madam President, passed a resolution unanimously, Senate Resolution 221, on July 15, directing the appointment of Senators to visit certain countries, including Panama and South America, to study the economic and security interests of this Nation in Panama and in those other countries.

Now, why criticize me for making a trip when the Senate directs me to go?

The Senator is on the floor all the time, and I am sure that that never would have passed if he really objected to it. So I went, not willy-nilly and wandering for a place to flit around and land upon; but, on the contrary, at the solemn direction of the U.S. Senate, with a bipartisan group which, incidentally, included the counsel for the Latin American Subcommittee of the Foreign Relations Committee, our distinguished Secretary of the Senate, and the Secretary to the minority, and it was a very educational procedure. So that is why we went.

As I go down the list of things that he brings up, Madam President, I am reminded of the old saying, "A problem for every solution."

Let us go back to when I was trying to fathom the right and the wrong and making initial impressions. In 1967, when I was a member of the Commerce Committee, former Secretary Anderson, chairman of the negotiation team, came to present at that time a proposed treaty that did not include the rights of defense.

The Senator asks, "Was not the treaty today substantially changed and everything else?" Not really—with respect to defense, except what the Joint Chiefs of Staff wrote—article IV. With respect to military occupation by troops, at that particular time it was that we leave after the year 2004; and after negotiating for some 11 to 12 more years, we lost 3 years.

Some who want to continue to negotiate wonder where the trend is and how the United States is faring. Let it be recorded that we lost 3 good years there. Would it not be grant to sit here and let things stay as they are and just do not do anything, if we had that luxury?

It is bunkology that you have to come on the floor and listen to Senators play games. It reminds me of back in the sixties, during the war in Vietnam. You would walk up on the floor, and there

was one backing up a battle. Another one was bombing. Another one was calling them murderers. Another one was saying, "Don't do it"; another was saying, "Do it." Another said, "More troops." Another said, "No, get out."

Those were all scenarios in Vietnam, and now we have all the scenarios after the year 2000, with total disregard.

I am confident that the Senator from Alabama and many in opposition have no idea of the problem in Panama today, no idea of the complexity of the issues involved. The way they talk and try to reduce it down misses the complexity involved.

I guess he wants to make Franklin D. Roosevelt a dictator talking about Sidney Hillman. He said, "Check it with Sidney," and now, "Check it with Torrijos." Well, nothing could be more ridiculous or further from the truth.

It is a complex problem, Madam President.

I will never forget the other night, when Eric Sevareid was retiring. He said, after 40 years at CBS, that when he started, there were all black and white, moralistic questions—the Depression and World War II and McCarthyism—and simple answers could be given. He said that is the one thing that impresses him most after 40 years, that there are no simple answers any more.

And this treaty is not a simple, thou shalt bam, bam, bam—all your rights are spelled out and everything just done exactly right. It explains it in some measure after 13 years and getting the best we could in fairness to the United States, the best we could in fairness to the Republic of Panama. We will go into that when we have time, into the history of it.

People are worrying about what they are going to do in Panama. Read the historical record. Talk to David McCullough, or any historian. It was the United States that breached every one of the agreements and understandings and treaties for the last 70 years. We are almost like the Soviets. I like to get on this floor and tell about, "Why have another agreement with the Soviets, because they never obey them?" If I were a Panamanian, I would have a talk here: "Why have an agreement with the United States?" Because we never keep it.

I could go down the record of history as to who did the violating, but we do not have a chance for that, because we have to tell this nonsense and everything is peaceful and happy and we have no problem down there.

With my limited time, let me simply state, Madam President, that I had the opportunity the other evening to debate former brigade commander Maj. Gen. George Mabry before the American Legion in my State. He is a Medal-of-Honor winner; and if we start another war, I want him to be my commander. He sees things as a commander should see them: forward march; to the rear, march; fire; cease fire. It is a life they are leading, and they learn, and I respect.

I am serving now on the board of the Air Force Academy. I have served at West Point. I am a graduate of military schools, and I think we should have more discipline in society, and more in the Senate. But that is not our option.

They start with this limbo of gag, which is not only nonsense, but insulting. Then they go to the constitutionality argument. The

President did not have constitutional authority to get a treaty. Whoever heard of that? They were starting the hearings and bringing petitions, and some of them believed that, and they went all the way to the U.S. Supreme Court and stopped the Senate. We could not even ratify.

They went from that to Sol Linowitz, that scenario back in again, that he was not even confirmed. The man was not confirmed. What kind of damn juvenile approach is that?

Everyone knows of the entire death of that little country. And you call him a dictator. A squad leader. They do not have an army as good as the South Carolina National Guard. We have more men in the South Carolina National Guard, and better equipped. Bunk. I am tired of listening to it.

It is a little country we built down there. But they went down there. And they said, "Linowitz"—\$1½ billion total debt, \$355 million debt of the banks; and all of a sudden we were going to get a treaty just to get the banks out of trouble down there.

Then we went to the sea level argument. I remember when the Senator from Alabama was here saying:

Wait a minute. Why agree to this Article XII, section 2(b), where we sign off and say we are not going to negotiate anywhere? Look at what they got. They got us; they got us.

He forgot his long history, because when William Jennings Bryan was the Secretary of State under Woodrow Wilson—he broke with Wilson later over World War I—he fashioned rights in perpetuity for us with the country of Nicaragua in the Bryan-Chamorro Treaty, and it held fast until the year 1971.

Now, what happened? We have been having troubles in Panama, and there is evidence after occasion, after riot, after sailor killed, soldier killed, American killed, right on up the line to the election day of Jimmy Carter, 1976, where they bombed in the Canal Zone. What is going to happen afterward? What happened before? What will happen afterward is more of what happened before. Everyone with commonsense knows that.

It is not blackmail. We have to have some judgment in these things.

So it was that when we filed that voluminous Interoceanic Canal Commission report by Milton Eisenhower, Bob Anderson, and all the rest, 5 years and \$22 million, and went all through the Colombia scenario, the Nicaragua, the Costa Rica, everything else as formulated on page 69, they said that the only feasible routes were Route 10 and Route 14 in the Republic of Panama.

But our good Commander in Chief and President—he is a pretty good negotiator; he is the President. He came from Plains, and he beat all the rest of the crowd in the U.S. Senate, and he has been working at it, for the interests of this country. He said, "I don't want to make this treaty and then have some other country build a sea-level route through where we found was the only feasible place."

Torrijos said, "Fine I sign off on that. You don't go anywhere else."

Nicaragua by that time had found that even the rights in perpetuity were giving them trouble down there.

Travel to some of these countries, I say to the Senator. Learn the feelings of the people. They did not even like the rights. When we found we did not want it, then they brought the treaty up for rescission.

Ah, does not the Senator from South Carolina have some pleasures? February 17, the roll was called up yonder: Aiken, Allen. Aha, rescind those treaties—66 to 5. Who rescinded it? And now they talk this last summer and fall about the sea level. The distinguished Senator from Alabama is the one who rescinded it. They forget the history.

We are not granted the luxury of doing nothing.

When Carter walked down that main street, Pennsylvania Avenue, on Inaugural Day, the next day he met with some 11 Latin American Presidents. They said, "Look, Mr. President, President Johnson promised us but didn't deliver. He was all involved in the war in Vietnam. President Nixon, he got involved. President Ford spent 2 years trying to bring integrity back to government. Now you have a good 4-year administration. Vietnam, Watergate, all excuses are behind. We want to see right done as we voted for what friends we have and what is best interest."

We could not find a single friend on March 23, 1973. On that particular date the United Nations Security Council voted just that, to return the sovereignty of the Canal Zone to the Republic of Panama. And we wonder what will happen with all these monkey-shine scenarios.

So they came, and President Carter brought in the Pentagon and Defense chiefs, in a very commendable fashion, I thought, because he talked about misgivings, just as the Senator from South Carolina. We do not want to give up and give away. I am part of that syndrome. I am not part of that "stepping down" in everything. So what I am doing in voting ratification with these amendments on defense, I say to the Senator from Alabama, is not withdrawing from rights but advancing interests—advancing the interests of the United States.

I firmly believe that with all the misgivings and all the changes I could make and the Senator could make, that this is on balance a very, very good thing and a wonderful opportunity, and I hope it pans out, I might end up with egg on my face. Torrijos is unpredictable. I think we can change a bad neighbor into a good neighbor. I think we can act as mature people and do away with colonialism, the last vestige of extraterritorial rights.

But let us not lose the point about the problem because all of those who said we were gagged went right on down. Incidentally, they changed. They were on drugs yesterday. I do not hear anything about drugs today. They got through that. And then the gentleman said, "Oh, we didn't hold that to change any votes; we just wanted the facts."

That is really misleading the American public. Those facts were available to every Senator in the Intelligence Committee when I first heard about it last September, and all reports were filed right there, and some of the new ones brought up, that have now been in the news, operation something like limp time, or march time, or something else of that kind, the Senator from Idaho (Mr. Church), the distinguished former chairman of the Intelligence Committee

said that is publicly filed. They went away from brothers and tried to bring in Castro, and they will bring in now this morning Torrijos telling you have to sign off with Torrijos.

I did not see the gentleman down there. I did think it was an arrogant thing to suggest that I should see him but not the distinguished Senator from Virginia. So I do not defend Torrijos.

I am looking at the Republic, and I am looking at the people, and I am looking through the eyes of those who served, four-star commanders. Ask everyone, whether it is General Wilson, General Underwood, General O'Meara, General Porter, right on down the line. Not gagged. The idea that anybody in public life or the present-day military is dishonest, I resent. I resent the idea.

I saw Adm. Jim Holloway, who was born in Charleston, S.C., standing down there for the big aircraft carrier, and some of the other things. They are not gagged.

We are getting records right now in committees different from the administration and OMB budget with regard to our defenses in the country, I say to the Senator, and he knows and I know it. We work that way.

General Underwood issued just a few weeks ago an article in Retired Officer, February 1978, and incidentally he is not all sold. He calls it, "The Panama Canal Treaty, a Mixed Bag." And I want to quote the conclusion of the article, because I read through very thoroughly and he covers the problem as it appears; namely, a confused problem:

Once a way is found to incorporate the words or at least the sense of the Carter press statement into the treaty documentation or into the text of the treaty itself, it can become a document of great value, certainly worthy of support.

That is generally his conclusion. But how does he reach it? All of my constituency thinks there is nobody here but us chickens. It is just like that cartoon in the New Yorker about:

I never heard of the Panama Canal for 30 years. I never even heard of it. And now I finally can't even live without it.

They have not studied it. They have not gotten a feel for the people. They do not know that Eisenhower, who had been 3 years in that Canal Zone, started that riot in 1964 because he had been there 3 years. He made a treaty and, incidentally, we violated it for not only upping the fees, but he made a treaty that you would have equal employment. Everybody is talking about equal employment. A Republican President did that. He said you could raise the Panamanian flag wherever the American flag was raised, and that is what the children were trying to do.

They talk of communism, and I had a delightful time because I had been in riots and civil disturbances for 4 years. I started with the Marions, Berrigans, wait-ins, sit-ins, and any that you want to mention. They started in Rock Hill, S.C. That is the first march that our distinguished—and I have most respect for him, and I agree on the holiday that our cities voted, and the city of Charleston where I lived—Martin Luther King Day—that we have learned a lot from his leadership, but at that time I was trying to keep the peace and I pulled off the ragged city policemen and put black policemen all around and as a result, when there were arrests made there was not the TV result and they went on to Montgom-

ery and, Bull Connor, gave them what they were looking for. It actually started in Rock Hill, S.C. I had 4 years of it with not a single life lost and not a person with serious injury. And there were not any Communists.

This gentleman I was debating thinks every disturbance like 1964 in Panama was communism.

Then he explained how one could not physically get into the country later on in the debate, but he said certainly colonialism is not the problem.

So now I quote General Underwood, his commander:

Most Panamanians have felt for years that this treaty is unfair to them, disregards their sovereign rights, and urgently needs modernization to reflect today's world rather than the colonial practices that were fashionable 74 years ago.

Going on further, under the limits of time here:

My own position in capsule form, is that the status quo is an unacceptable course of action; * * *

That status quo is what the opposition wants, and when we try to show some judgmental capacity, they say, "Well, we can give them a little more money or do a little bit of this. Oh, yes, we believe in revising treaties and everything else."

But:

My own position in capsule form is that the status quo is an unacceptable course of action; that a new treaty is needed to purify what Panama and much of the world see is outdated colonialist role of the United States; * * *

Madam President, let me read one little paragraph that ought to be brought to the attention of every Senator, and I will have to read it again when we get better attendance on the floor because it points out the problem that they do not think we have, and I quote General Underwood:

The point here is that no collection of legalisms—

No collection of legalisms, I say to the Senator from Utah and the Senator from Vermont and other Senators around—

* * * No collection of legalisms, no expert reading of history to the contrary, no citing of the benefits—

That is another flare they bring up:

* * * No citing of the benefits bestowed upon Panama by our building, operating and defending the canal will ever convince the typical Panamanian that his country's sovereignty has not been violated by our occupation of the Canal Zone and our independent operation of the canal. It makes no difference which side has the best arguments or which side has the cleanest interpretation of history. Panama happens to believe it has been wronged and will persist in that belief to the bitter end.

This is, I interject, Madam President, this is the root cause of the high tension between Panama and the United States:

This is a festering sore that poisons our relations. That is why I would tell visitors who asked for my appraisal of the situation confronting the Southern Command at Panama, "We are walking on eggshells and trying to be light-footed about it."

Now, where are the opposition with all those scenarios? They worry about what is going to happen 20 years from now. I am concerned about what is going to happen in 20 days, what is going to happen in 20 weeks, in 20 months.

I asked about a country like Colombia, when my distinguished colleague from Virginia and I were there. I asked what would

happen if the treaties were rejected. We were told, "They would try to take advantage of it. Turn the treaty down, and there would be violence and bombings." Senator Scott said, "How long would that go on?" They said, "That would go on just as long as the President here allows it, and politically he would have to allow it to go on for several days, perhaps weeks."

It is a sad situation that we come to where a good sized part of our Senators, Members of this body, some in a political vein—and I commend the distinguished minority leader for not joining that; I commend the distinguished former President Gerald Ford, because I really believe if we ratify this treaty we are going to have to attribute a lot to his strong feel of what is in the best interest of this country; but some, just in a political vein, are using the inflammatory language about "ramming the treaties through in a plebiscite," and "What about Omar? Check it with Omar."

That is silly talk. We are here together, trying to make the best we can out of a situation where, as General Underwood says, we are walking on eggs. We do have a problem that they do not want to recognize, and they all think it is a class 1 contract in freshman law, trying to find what the contract means, and where are the ends and bits, and everything else.

I was rather amused about the investigations of the past habits of people, where the Senator from Louisiana admonished us. He said, "Lord, I have been through that." He said, "You can go ahead and study for years on end, through the FBI, CIA, the Attorney General and Justice Department files, and have a merry chase, study for 2 years, and perhaps conclude that you would not join in any kind of treaty or otherwise. But then a year and a half or 2 years would have passed, and we are looking at ourselves."

We could care less about Torrijos, because, as I have said before, he is totally unpredictable. We do care about our interests in the Republic of Panama. We do care about our defense interests, about being naked.

Incidentally, that point should be clearly understood. Why would the commanders of the military all come up and talk in terms of enhancing our defenses? You would think that we were going up there walking away, and had no defenses. I will never forget talking with General Rogers, the Chief of Staff of the Army, one evening. I said, "General, my colleague and other opponents of the treaty say you can't speak for yourselves."

He said, "Oh, no, we all have our inputs, but once a decision is made we support that decision. The difference here," he said, "is as chiefs, we are advocates; we volunteer to go out and make talks and advocate the ratification of these treaties." He said, "We don't have to do that."

Gen. George Brown:

I think to describe the United States, with this action, as proof that the United States is a paper tiger is absolutely wrong. I think rather it shows the United States to be determined to live in the world of today, not in the world of yesterday. I think it shows we profited by the experience of the Portuguese in Angola and Mozambique, the French in Algeria and Indochina, and ourselves in the Philippines. We left the Philippines for the same reasons that I think we should negotiate these treaties. It is in recognition of the importance of the Panama Canal that I feel we should do this, because we would then be guaranteeing, I think, a better opportunity and guaranteed in the future of the use of the canal.

A better guarantee.

Gen. Bernard Rogers, Chief of Staff of the Army:

I can certainly defend the canal much better—

This is a comparison—

much better under the new treaty than under the present one.

Adm. Robert Long, Vice Chief of Naval Operations:

We think these treaties will enhance—

I emphasize the word “enhance”—

the probability of our maintaining the use of the canal.

Gen. Louis Wilson also:

I support the President in seeking the new treaty.

Lt. Gen. Dennis B. McAuliffe, zone commander, the soldier immediately responsible for maintaining the security of the United States there:

Our capability to keep the canal open will be enhanced, considerably enhanced, by the provisions of the treaty.

Therein, Mr. President, is the whole thing. What would we do under the present treaty? They all worry about the year 2000. I hear talk amongst the colleagues; they think that we do not have many veterans among us now. They say, “Oh, we have got so many, 45 Members of the House of Representatives,” Senator from California, “who never served in the military.” And the legion was in town on last evening, and you hear that undercurrent of feeling and apprehension, that before long we are not going to be able to get the votes to defend our country and commit this country, and everything else of that kind.

I worry some about that, too, but I worry more about the present. What would we do under this present treaty to put down an uprising in the next day or two. What would we do? We would have to occupy it. Everyone on this floor agrees with that. We would move in more soldiers; there would be civil unrest, there would be little incidents, a demonstration here, a handgrenade there, and they would bring in, on the 7 o'clock news, two or three bodies with flags around them. Then there would be somebody blow up a steamer. You cannot prevent sabotage, Mr. President, I live in a seaport town. If you think you can protect a vessel, where they are bringing in drugs and contraband, you are fooling yourself. Everybody knows these canal locks are subject to sabotage, and it cannot be prevented except as it has been prevented, by a friendly population and an understanding people, a people with an interest.

Here, under the new treaties, we vest the Panamanians with a vested interest in what they have been fighting for, their own nationalism, their right to determination of their own self destiny. Now we want to give them that through the new treaties, and the other crowd says, “What? What about the new treaties? What will happen when we give them that? What about the cost?”

Three weeks ago the United Nations Economic Commission said we made \$12 billion in saved costs, economically, for the United States. So give them a billion. We left \$5 billion, I think, when we

pulled out of Saigon, in one day. I do not know how many billion in total it cost us, and 56,000 lives over a 12-year period, but at least \$5 billion that 1 day. What if it does add up to a billion bucks?

The Secretary of the Navy said, in 1976, that \$200 million was saved in his budget as a result of having that canal there.

There are untold benefits that the Panamanians have enjoyed and that the United States has enjoyed. But when it comes down to costs, when we are sitting around here, voting up next year's appropriations, and we hear we have been subsidizing them \$8 million for the previous 7 years, why worry now about the cost?

I am worried about the cost to us as a people, because what could we do, Senator from Alabama, under that present treaty? We would have to turn a friendly people into a hostile people. We would have to turn a commercial operation—really, I would like to go into some of these things; that is why I went there to visit. Going on down to the Navy there, I think there are about 600 communications personnel, the highest one of them holding the rank of captain. A line of communications, not of negotiation. And this is all offshore. This does not affect the ratification of these new treaties. We have got our defenses there.

We have our defenses there. We are not being taken there. They are not coming to the canal.

We have our Air Force, and I hope the Air Force around the canal is not fiddling around at Howard Field. I hope they are in Florida and Charleston, S.C. We will alert them long before they get to the canal. If we do not, then this country is in sad shape. About defending the canal? We will defend it from fields in Alabama, South Carolina, and Florida. We are going to defend that canal. Do not worry about it.

There is no navy. There is not a naval vessel down there, other than offshore gunboats, things to fish from, things like that. But there is the Air Force.

Let us go back to the present treaty. Now we have met, we have done what the Senator from Alabama has asked. We have refused to ratify, and they all are going to come up with all kinds of aid programs. I can see it now. We ought to give them a little more money, a little more handout.

Talk about arrogance. It was the Senator from Alabama who used that terminology, not the Senator from South Carolina, who injected the word "arrogance." I think that is arrogance, giving them a little more handout.

Then in the fifties and sixties, I remember one colleague who still serves said, "Now they have a refrigerator, a stove. Some of them want automobiles. What else do the blacks want?"

Arrogance?

Turn the treaties down and then come up with the aid programs, how they ought to get a better deal down there, and everything else, and then wonder why we have had to occupy a friendly country, why we cannot get a single country in the entire 151 nations of the United Nations to vote on our side, as the Senator from New York said.

They have proven that before the National Security Council. It is as if we have the options to fiddle around to the year 2000.

Mr. MOYNIHAN. Will the Senator yield?

Mr. HOLLINGS. I would be glad to yield.

Mr. MOYNIHAN. I would like to rise not to interrupt an extraordinarily important statement, but to say that I shall be speaking later in the day precisely to the point about the United Nations and to say that it is exactly as the Senator has described it. This treaty, far from being a retreat in American policy, has the potential to be come an extraordinary forward movement in our relations with the rest of the world. In the space of 10 years' time we may well reverse completely the understanding in the United Nations, for example, of what the United States stands for and what Cuba stands for.

A decade ago Cuba said it stood for resistance to imperialism, for resistance to militarism, for all those wonderful things. We were said to stand for armies, for occupation of other people's lands. But pass this treaty and we will be the people of the future, while the Cubans, murdering and killing and burning their way through Africa, will be the discredited militant imperialists, which in fact they are, and they will be completely rejected in Latin America. The turning point will be this treaty.

Mr. HOLLINGS. The distinguished Senator from New York has a grasp of the situation and certainly a better capability to articulate.

I visited South America as a Governor in 1960. We were on the tail end of an operation PanAmerican, under John Eisenhower, and then John Kennedy has his operation which I cannot pronounce. It is in Spanish. Will the Senator from New York help his colleague?

Mr. MOYNIHAN. The Senator will think it is the Alianza para El Progreso. It had a particular difficulty in Spanish because it can be translated equally as the alliance for or the alliance against progress.

Mr. HOLLINGS. Well, now, some 17 years later, it looks like an alliance against progress.

After World War II, where did we go? They had done everything. They had furnished supplies, they had helped us with the canal, they had helped us with the raw materials. Latin America made a tremendous sacrifice for freedom along with the United States, hand in glove.

Then what did we do? We said we had to go to Japan to rebuild; we had to go to Germany and rebuild. What did we do down under? Absolutely nothing.

We started to penalize them because of the depression. The gold and the silver money demeaned their dignity in the way they paid. They still had to use separate water fountains and everything else.

Here we were with the Marshall Plan and all, which we are all very proud of. What did we do down under? We turned it around the other way and had a bad neighbor policy.

Mr. MOYNIHAN. Will the Senator agree in recalling that the largest country in Latin America, Brazil, one of the largest countries in the world, joined us in the war against the Fascists, and the Nazis, and sent troops to Europe?

Mr. HOLLINGS. Yes, and one of their generals served under Gen. Mark Clark, of the 3d Army, in Italy. That general and others reminded me of that when I was in Brazil. Gen. Mark Clark, the

Army commander, who now lives in Charleston, is one of our most noted soldiers.

Mr. President, I have gone over my time slightly. The Senator from California has been waiting. I think I will yield at this moment and then come back and complete my thoughts. I yield the floor at this time.

The PRESIDING OFFICER. The Chair recognizes the Senator from California.

Mr. HAYAKAWA. I thank the Senator from South Carolina.

Mr. President, as I look back at the early stages of the public debate on the Panama treaties, it seems to me that I was among the first public figures who became actively involved in this issue. My remark, "We stole it fair and square—we should keep it," was good for a laugh and it made headlines. It was a witticism and generally understood as such. During the campaign it was, of course, not possible to go into the subject in depth. But I always made it clear that our policies toward Panama had to be examined in the general framework of our relations with the other countries of Latin America, as the distinguished Senator from South Carolina made so clear.

All through 1977, I have given a great deal of thought to the subject. My final conclusion was that I should vote for the treaties provided certain minimum requirements were met. They were enumerated in my testimony before the Subcommittee on Separation of Powers. In a few minutes, I will discuss the treaties in the light of my four conditions. However, before doing so, I think I should explain why, in principle, I decided in favor of ratification.

As I see it, the issue of ratification involves three considerations: First, the prevailing political and psychological climate; second, moral principles, and third, practical consequences.

As to the first consideration, I have to go back to the historical events of 1903 when Panama became an independent state. You will recall that prior to that date, there had been several abortive attempts by Panamanian nationalists to secede from Colombia. The 1903 revolution succeeded only because of the carefully timed arrival of American naval forces, who prevented Colombian troops from suppressing the uprising.

In some of our contemporary textbooks, this unilateral U.S. action and the subsequent treaty negotiations are usually condemned as an example of despicable imperialism. I object to this evaluation.

What the United States did in 1903 was nothing unusual or contrary to the public mores of those days. At the turn of the century, all great powers behaved similarly, and the speed with which the new Republic was recognized by all the Latin American governments, with the sole exception of Colombia, indicates that we simply acted in accordance with the "Zeitgeist," a term which Webster identifies as the spirit of the age.

Mr. President, I think everybody in this Chamber will agree that the spirit of 1977 is very different from the one which prevailed when we signed the treaty with Monsieur Bunau-Varilla, a Frenchman and an early big-time operator. Today, a very different spirit prevails, and it was the United States, which, in its foreign and domestic policies, did its level best to bring the changes about.

That change of climate is our own doing. This, of course, brings me to my second consideration, namely, the aspect of moral principles.

Mr. President, when the British departure from India came under discussion, it was the United States which was in the forefront of those who pressured for full independence. When the end of Dutch control of Indonesia was being negotiated, it was again the United States which suspended aid to the Netherlands East Indies, and followed this up with threats to cut off assistance to the Netherlands as well. Both steps were taken in order to coerce the Dutch Government into a more conciliatory attitude toward Indonesian nationalists.

The liquidation of the French and Belgian Empires in Africa was encouraged by American public opinion and the Government of the United States. Moreover, the new political climate was dramatically demonstrated by this country when it intervened in the Suez crisis. It was the United States which prevented the recapture of the Suez Canal by the British Army. It should be recalled that the American Secretary of the Treasury, George Humphrey, at that time gave the British Government a virtual ultimatum. Great Britain was given the simple choice of an immediate cease-fire or war on the pound. Not a dollar would be available for oil supplies. Unless the British advance toward the canal was promptly stopped, the United States would block access to dollars from the International Monetary Fund. It would block credit from the Export-Import Bank, and it would make no effort to align American bankers behind the pound. If the British persisted in trying to take back the Suez Canal, they would face a forced devaluation and gas rationing. Reluctantly, the British capitulated.

Mr. President, I have cited these excerpts from recent world history to remind this body of the crucial role the United States has played in promoting a new international morality. And I have to ask my colleagues today how could this country possibly have the effrontery to refuse to draw the consequences of its own actions? In the light of recent history, could there be anything more hypocritical than an insistence on the status quo in the Panama Canal.

Let me quote a paragraph or two from the columnist, Vermont Royster, in the Wall Street Journal. He served in the Panama Canal Zone in the earlier years of the Second World War. He says:

There we Americans, civilian and military, had our own housing, our own swimming pools, tennis courts, movie theaters and shops. The cost of all these things was nominal since they were tax-free and subsidized, which was very nice for a young man on an ensign's pay.

Things weren't quite so pleasant for a Panamanian. All these amenities were off-limits to the Panamanians, many of whom lived in near poverty. If a Panamanian did work for the Canal, he got lower wages than his American counterpart and had none of the privileges. He was also constantly reminded of his lower status by such things as separate toilets and separate drinking fountains, marked "gold" for Americans, "silver" for Panamanians.

So I have no trouble understanding the long years of resentment of the Panamanians at their second-class status in their own country and their years of agitation to get the status of the Canal changed.

Or, as Charles McCabe pointed out in the San Francisco Chronicle recently:

The Vietnam adventure also gave us some knowledge of how much the United States is truly disliked in much of the civilized world. In Panama, as an instance, this dislike is almost a part of the atmosphere of the Canal Zone.

My third consideration when reflecting on the issue, namely the practical consequences of rejection, can be quickly summarized. As I see it, rejection would impair all the good will we have in Latin America; it would poison our relations with most of the countries in the Western Hemisphere; it would give new force to the dangerous imagery of Yankee imperialism.

Mr. President, I shall turn now to the treaties which are before the Senate, and examine whether they satisfy the four conditions which I mentioned before. In my testimony, I stated the following:

(1) I would find it unacceptable if the executive branch through its actions preempted the issue and Congress could only rubberstamp a fait accompli.

(2) I would find equally unacceptable any agreements which would lead to the inefficient operation of the Canal and the imposition of an undue burden on American and world commerce by the operators of the Canal.

(3) I would find unacceptable any sudden and drastic changes of present operational and administrative procedures instead of a gradually evolving process.

(4) Finally, I would find it unacceptable if the executive branch negotiated an agreement which would not fully retain control of the military defense of the Canal and enable us to act promptly whenever there appears any challenge to such control.

Taking these up one by one, first, it is clear now that the Congress is not expected any longer to rubberstamp a fait accompli. The Byrd-Baker amendment which was prepared in close cooperation with the administration demonstrates that the objections of the Senate were heard. The effort to include the Senate in these historical deliberations came late—but it did not come too late.

Mr. MOYNIHAN. Will the Senator yield?

Mr. HAYAKAWA. I am glad to yield.

Mr. MOYNIHAN. It is with great hesitation that I interrupt a superbly organized and brilliantly succinct presentation. Although this is not the reason for which I rise, I should like to say to my dear friend and distinguished Senator that his recalling of the events at Suez was brilliant.

In 1956, this country would not accept the imperial powers of France and Britain returning to seize by force the Suez Canal, as they had planned to do. George Humphrey—not a man noted for visionary views, scarcely a member of the center of his own party, much less of the world in which it is my pleasure to live politically—George Humphrey knew you could not do that in 1956.

George Humphrey—of the M.A. Hanna Co., the very same Mark Hanna who helped put together the Panama Canal. George Humphrey—fundamentalist, Cleveland capitalist, banker, Republican Cabinet Member, Secretary of the Treasury, in 1956 in effect said to the British and French, "You can't do that, that day is over."

But I would like to congratulate the Senator for bringing up that issue, which he heard again in this Chamber.

But he asked about the proposal by the majority and minority leaders to amend the treaty to incorporate the statement of President Carter and General Torrijos. It happened that I was in Panama at the time with nine colleagues, a group led by Senators Cranston and Stafford, at the time this question arose.

We met with General Torrijos and his cabinet officers on these matters and we said, "Now, what would be the case if we amended the treaty to incorporate this language? Will that not require a new plebiscite in Panama according to your constitutional provisions with respect to the treaty?"

They were emphatic. They thought carefully. They took 24 hours to answer it. Their answer, when it came after a period of time, was the same as their initial response, "No, it will not." Because the general said, and his cabinet agreed, and there is no question of the fact, that the plebiscite took place after the Carter-Torrijos agreements was reached and was made public in Panama. The general went on TV in Panama to say in affect, "Now, when you decide to vote on this plebiscite, remember that the treaty comprehends the agreement, the agreement is simply an expression of our understanding of the treaty."

On this point, the Panamanians are quite clear as to their own constitutional procedures. I believe it is the case, I understand it to be the case in international law, that one looks to the procedures established by a nation to determine whether or not they have been followed. So I believe I can express to my colleague the feeling, the firm conviction, that no subsequent plebiscite will be needed. The treaty, as we have proposed to vote for it, has already been ratified by Panama.

Mr. HAYAKAWA. I thank the Senator from New York, my very good friend, for clarifying this issue.

Mr. HATCH. Will the Senator from California yield?

Mr. HAYAKAWA. I am happy to yield to the Senator from Utah.

Mr. HATCH. I appreciate my colleague's kindness. I have enjoyed the discussion between the two distinguished Senators from New York and California.

Assuming the distinguished Senator from New York is right, that there is no need for a plebiscite, and that the distinguished Senator from California is wrong, that there probably is, I still think there may be some other very interesting considerations with regard to the Carter-Torrijos agreement of understanding and the comparison between English and Spanish texts.

With regard to that, let me just give one illustration that might, I hope, be provocative and perhaps give us something to think about because, although the Spanish text is largely consistent with the English text with regard to the Carter-Torrijos statement of understanding, there is a discrepancy in the fourth paragraph of the document.

Part of the description given of "expeditious transit" is "with expedited treatment." That is in the English translation.

However, in the Spanish translation this particular language is translated as "contramitación simplificada."

The latter, however, means "with simplified procedures" with a strong connotation of "paperwork" rather than the expeditious transit and expedited treatment version of the English text.

I suggest that the distinguished Senator from California set forth some very interesting legal points here that really go beyond what my dear friend and colleague from New York has had to say about that and really mandate, in order to clarify these difficulties, probably a new plebiscite.

But even if we do not need a new plebiscite, we are going to see through the course of these debates all kinds of ambiguous differences and difficulties and different meanings between the English and Spanish translation, even to the extent of showing that there are whole paragraphs of the English translation left out of the Spanish translation in the Canal Treaty itself.

So I think the distinguished Senator from California, if I interpret him correctly and understand him even partially correctly, is doing the Senate a service by pointing out that perhaps this Carter-Torrijos statement is not the very best worded statement that has ever been made and the Spanish translation thereof really does not do the English translation justice, nor does it do the American people justice who have been led to believe that it means a lot more than it does.

Mr. MOYNIHAN. I know I interrupt the Senator from Utah who is speaking at the courtesy of the Senator from California, but I wonder if the Senator from California would allow me to respond to that point?

Mr. HAYAKAWA. I am glad to yield to the Senator.

Mr. MOYNIHAN. I thank the Senator. I would like to make this point:

In international law, depending upon the terms of a treaty, the language of either or both parties can be equally authoritative. With respect to this treaty, the language of both the Spanish- and the English-speaking text is authoritative.

I see the distinguished chairman of the subcommittee on the floor and I ask him, Is that not the case?

Mr. SARBANES. That is my understanding.

Mr. MOYNIHAN. Hence, with respect to the nature of translations, so far as the rights of the United States are concerned, and our rights to act under the treaty, we need only refer to the English text. Whatever it says in English, whatever rights are conferred in English, those rights obtain and we have the right to exercise them regardless of how badly the Spanish may have been translated regardless of whether there is a conflict between translations. What the treaty says in English is what we have a right to do. I offer that as a point of law.

Mr. HATCH. I appreciate that very lucid explanation of one principle of international law, and I do agree that these present treaties provide basic equality, that we can interpret it in an English way and they can interpret it in a Spanish way. That is precisely the problem I bring.

As I understand one of the arguments of the proponents for these treaties, it is that we want to prevent any further discord and difficulties and unfriendly approaches to our neighboring friends.

If I correctly understood the distinguished Senator from New York in his prior statement, he said that it is certainly going to be a wonderful thing for us to be able to show that we are not imperialists any more and to set a new tone in the U.N., and to turn around the definition of the various countries in the U.N. toward the United States, and allow Cuba to take our prior reprehensible position as the leading imperialist in the world. The Sena-

tor did not say that, and I hope he did not even mean to imply that, but I inferred it from what he said.

Mr. MOYNIHAN. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. MOYNIHAN. I know the Senator is a careful and fair man.

Mr. HATCH. I always try to be.

Mr. MOYNIHAN. One might have thought from the United Nations debates and votes that the United States had this position. Of course, at no time did it in fact do so.

Mr. HATCH. I agree with the Senator.

The natural implication that listening to this might have taken from the Senator's statement was that we somehow had a reprehensible reputation because of the overwhelming antagonism toward the United States in the United Nations, which is nothing new to anybody on this floor or anybody living in the United States of America.

Mr. SARBANES. Mr. President, will the Senator yield on that point?

Mr. HATCH. I am delighted to yield to the distinguished Senator from Maryland.

Mr. SARBANES. I know this is on the time of the Senator from California and I thank him for his courtesy.

I think it is important in fairness to the distinguished Senator from New York, because I was present earlier when he made the comments to which the Senator from Utah is referring.

Mr. HATCH. So was I.

Mr. SARBANES. The Senator from New York made it very clear that it is his position that the United States is not in any way legitimately subject to charges of imperialism. In fact, the Senator from New York, has been one of this Nation's outstanding spokesmen in eloquently rebutting such charges and such allegations—in the United Nations, when he served as our very distinguished ambassador; as a public speaker across this country; and more recently as a very effective and distinguished Member of this body. He has been one of the Nation's outstanding spokesmen in rebutting such charges made unfairly against the United States.

It is for that reason, among others, that I think his perceptions with respect to these treaties and his strong support of the treaties carry particular weight in our consideration of this matter.

Mr. HATCH. I thank the distinguished Senator from Maryland for his clarifying statement.

I join in saying that the distinguished Senator from New York, as ambassador to the U.N., was one of my favorite ambassadors to the United Nations and is one of my favorite Senators, and he is one of the most interesting legislators in this body.

On the other hand, I think that if we do not solve the problems of the difficulties and discordant future difficulties which may very well arise as a result of the differences in the two translations, and if we do not face those in the Senate at this time and provide for the protections that the United States deserves, we are going to wind up reaping the whirlwind on this treaty well into the future and well past the 20th century.

Again I compliment the distinguished Senator from California for this one point that he is making and for his lucid comments

with regard to the Panama Canal treaties. He has voted carefully and well on the floor of the Senate in many issues, so it is difficult for me ever to find fault with the distinguished Senator from California, although we do disagree on many of the issues with regard to the Panama Canal. I thank him for allowing me this time.

Mr. HAYAKAWA. I thank the Senator from New York, the Senator from Maryland, and especially the Senator from Utah for the clarifying statements, and I am grateful to the Senator from Utah for pointing out the ambiguities he finds in the treaty.

Mr. President, the Senator from California finds a different ambiguity in the Byrd-Baker amendment, and he would like to comment on it.

I am also concerned about the proposed new language which reads as follows:

Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity political independence of Panama.

Mr. President, in my judgment, this new language is questionable to say the least. It provides for a new ambiguity, and I actually wonder whether the original text, if left alone, would not serve our purpose better. As I see it, the added phrase can provide an unfriendly Panamanian Government with a useful rationale to challenge any American military intervention as encroaching on the territorial integrity and political independence of Panama. To be sure, our Department of Justice, when facing this question, declared "a legitimate exercise of rights under the neutrality treaty by the United States would not, either in intent or in fact, be directed against the territorial integrity or political independence of Panama."

In my judgment, Mr. President, the Department of Justice's declaration misses the main point. The crucial question is, what will be regarded as "legitimate" after the year 2000? Obviously, if the Governments of the United States and of Panama are in agreement as to what is a "legitimate exercise of rights," there will be no problem. Under these circumstances, actually no treaty would be needed. The problem will arise if there is disagreement.

I call attention to the contemporary methods of what might be called camouflaged aggression which should cause us grave concern. Senators will recall that it was the evil genius of Adolf Hitler that invented this new device. He used it first when he manipulated an invitation to occupy Austria. According to him, he was not an aggressor. He was accepting an invitation.

The occupation of Austria was an act of naked aggression, but technically it was made to appear as simply a response to an invitation. Hitler applied the same technique again when the German Army was "invited" to occupy Prague. Naturally, the Soviet Government was not slow in following suit. The Baltic countries were occupied in similar fashion. And when Brezhnev decided to send troops into Czechoslovakia, the Soviets attempted to solicit an "invitation." Because the Czechoslovakian Government refused to play ball, an invitation by Czechoslovakian workers' councils was eventually accepted in lieu of anything better.

Mr. President, I do not want to be overcritical, but I think the Senate should know precisely what it is doing. I believe the treaties ought to be ratified, and I will support the leadership in its efforts. I am still uncertain whether I shall vote for the Byrd-Baker amendment in its present form or whether I will abstain. In either case, I shall also introduce an understanding to be added to the resolution of ratification to read as follows.

This will be the resolution of ratification that we shall be working on in this body:

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the following understandings, which are to be made a part of the instrument of ratification, that—

"(1) the agreement 'to maintain the regime of neutrality established in this Treaty' in article IV of the Treaty means that either of the two Parties to the Treaty may, in accordance with its constitutional processes, take unilateral action to defend the Panama Canal against any threat, as determined by the Party taking such action. Nothing in this Treaty or in this Understanding may be construed as conferring upon the United States of America a right of intervention in the internal affairs of the Republic of Panama; and

"(2) the phrase 'transit the Canal expeditiously' in article VI of the Treaty assures the United States of America that, in case of need or emergency, its vessels of war and auxiliary vessels may go to the head of the line of vessels awaiting transit of the Panama Canal."

This additional text will make it crystal clear that the United States retains the right, in perpetuity, to come to the defense of the canal whenever it deems this necessary. By voting for an understanding rather than for an amendment, the Senate will follow a well established practice which has been effectively used on previous occasions. The convention for the pacific settlement of international disputes of April 7, 1906, the International Agreement at Algeiras of April 7, 1906, the London Treaty of 1930, the treaty with Mexico of November 8, 1945, and the treaty with Japan of February 21, 1911 are some of the precedents which come to mind. If the Senate's understanding is communicated to the Government of Panama, and is accepted or acquiesced in there is no issue, and the treaty need not be reopened, for discussion by the people of Panama.

Thank you, Mr. President.

Mr. Hatch and Mr. Moynihan addressed the Chair.

The PRESIDING OFFICER (Mr. Clark). The Chair recognizes the distinguished Senator from Utah.

Mr. HATCH. Mr. President, I want to compliment the distinguished Senator from California for many of his ideas.

I would like to take a few minutes, however, at this point in the debate to mention a few things that I think are quite important.

I particularly enjoyed the interesting, if not volatile, recitation of the distinguished Senator from South Carolina of some of the military interpretations that he has and his sterling defense of the present members of the Joint Chiefs of Staff. On the other hand, I have to be very concerned that the American people understand that there are, as I understand it, well over 300, as many as 379 retired generals and admirals who are totally against these treaties because they have read them and they have studied them. They understand the military and security implications of these treaties as well as the present leaders of the Joint Chiefs of Staff.

I do not think anybody really should impugn the members of the Joint Chiefs of Staff because I believe they believe what they have said. As a matter of fact, some of the things that most of them have said before the Senate Armed Services Committee come down to basically, "We wish we could stay in Panama, we wish we could keep the status quo, we wish we could maintain our 17 or more military bases and air force bases down there, our refueling facilities, and all of the other things that means so much to the defense of this country and to the security of all of this hemisphere."

But in this imperfect world some of them have said, I think, in those terms, this is about the best we can do. Their understanding is based upon information given to them from, I understand, the State Department, the Ambassadors, the administration, and others, and they have accepted these statements.

But I would like to call to the attention of the American people, Mr. President, and of course all of my distinguished colleagues here that four former Chiefs of Naval Operation, Admirals Carey, Anderson, Burke, and Admiral Moorer have all come out strongly opposed to these treaties.

Admiral Moorer is very significant because he was, as I think everybody knows, the Chairman of the Joint Chiefs of Staff prior to General Brown, from 1970 to 1974. He has made a number of eloquent statements before various Senate and House committees in this matter, and I think has laid bare many of the weaknesses and erroneous assumptions about these particular treaties.

On the Panama Canal's importance to the U.S. defense interest, Admiral Moorer stated:

There is no feasible war plan for the United States, taking into account our reduced forces and extended commitments, that does not assume that the Panama Canal will be available for full-time priority use. The only alternative that would permit the meeting of time scales of current war plans based on the threat in both the Atlantic and Pacific Oceans would be a major buildup of naval combat forces overall, together with a very large expansion of supply and communications storage facilities for both the Army and Air Force on both coasts. The utility of the canal has been demonstrated over and over again in times of emergency. World War I, World War II, the Korean War, the Cuba crisis, and the Vietnam war all placed heavy loads on the Panama Canal which were efficiently handled to the great benefit of the United States and her allies. I see no change whatever in the critical contribution of the canal to our military strength in the near future or in the out years far beyond the meaningless year of 2000.

Admiral Moorer was of the opinion that if the "Canal operation was slowed down or stopped, the timing of any war plan we have immediately collapses." In fact, that is a direct quote from Admiral Moorer.

Concerning the importance of U.S. presence in Panama, Adm. Thomas Moorer stated:

I believe a permanent U.S. presence in the Panama Canal Zone to be the only feasible and safe posture for all of the nations of this hemisphere.

He then added:

Do not be surprised if the treaty is ratified in its present form, to see a Soviet and/or Cuban presence quickly established in Panama. In any event, any confrontation over the neutrality of the canal then becomes a confrontation with the Soviet Union rather than with Panamanian guerrillas or terrorists.

In response to the question on the importance of the United States having base rights in Panama after the year 2000, Admiral Moorer responded:

I think it is mandatory that we maintain a presence through one kind of agreement or another.

With regard to global implications of the treaties, Admiral Moorer stated that:

The defense and use of the Panama Canal is wrapped inextricably with the overall global strategy of the United States and the security of the free world.

I submit that, if the United States opts to turn over full responsibility for the maintenance and operations of such an important waterway to a very small, resource poor and unstable country as Panama and then withdraws all U.S. presence, a vacuum will be created which will quickly be filled by proxy or directly by the Soviet Union as is their practice at every opportunity.

The admiral also noted that:

Anyone who has observed Soviet actions since World War II and studied their literature concerning maritime affairs soon learns that the Soviets fully understand the importance of the Panama Canal.

He added that:

The prime reasons that the Soviet Union accepts the burdensome support of Cuba is due to their desire to dominate the Caribbean, including the Panama Canal, as they greatly expand their maritime capabilities—both warship and merchant ships. We have here the development of a Torrijos-Castro-Moscow Axis.

He brought out some pretty important things on the internal threat to the canal on a variety of occasions, but let me skip that for now and talk about some of his comments concerning Panama's ability to operate and defend the canal.

Concerning Panama's capability to run the canal, Admiral Moorer stated:

The overall capability of Panama to maintain and operate the canal after the year 2000 when the United States is required to withdraw is a troublesome point.

He further noted that "the Panama Canal with its locks, pumps, and electrical controls is extremely more complex technically than the sea-level Suez Canal. Furthermore, Panama is a very small country with a population about the size of Atlanta, Ga., that is, 1.7 million. She is led by a military dictator with Marxist leanings," Admiral Moorer says. In fact he goes on to say, "political opponents have been exiled. Until recently all political activity has been outlawed. The press is controlled. The country is heavily in debt, and spending 40 percent of its income carrying its debt. Panama has no heavy industry worth the name and is woefully lacking in management skills as evidenced by the fact that several large-scale construction projects attempted recently have failed. It is very doubtful whether Panama will acquire the capability to maintain and efficiently operate an industrial complex the size of the Panama Canal, even long after the year 2000."

On Panama's ability to defend the canal, the Admiral stated: "One must consider the contribution of the Panamanian Armed Forces in the defense of the canal. What will happen when the United States leaves in the year 2000 under the terms of these proposed treaties? How long before the canal falls in unfriendly hands? With the second smallest population in Latin America, Panama's army consists of nothing more than 1,500 light infantry

with no modern equipment. In addition, there are about 6,000 of the Guardia Nacional who are assigned police duties, including making certain that Torrijos remains in power through removal of political opponents. It is apparent that some of the Guardia Nacional, such as Colonel Noriega, the Director of Intelligence, are hostile to the United States * * *. In any event, Panama's capability to defend the canal is practically nil."

William P. Clements, Jr., former Deputy Secretary of Defense, testified in opposition to the treaties. He stated the treaties "were far too complex," deploring the "multiplicity of instruments" and the "ambiguous" clauses. He favored a "complete overhaul" of the treaties and focused his opposition on three points—defense, economic considerations, and U.S. rights to build a new sea-level canal.

With regard to defense aspects, Secretary Clements found the security clause of the treaties "totally unacceptable." He revealed that in 1975 at the request of President Ford he went to Panama with Joint Chiefs' Chairman George Brown and negotiated with General Torrijos a security clause which was later agreed to by all U.S. parties, including the State Department and the National Security Council. Secretary Clements testified that Torrijos also approved this clause and it "was included in the then existing draft of the treaty" and remained intact "in the treaty as proposed until sometime after January 20, 1977." The agreement, as reported by Secretary Clements and printed in the committee record, was as follows:

In the event of any threat to the neutrality or security of the canal, the Parties shall consult concerning joint and individual efforts, to secure respect for the canal's neutrality and security through diplomacy, conciliation, mediation, arbitration, the International Court of Justice, or other peaceful means. If such efforts would be inadequate or have proved to be inadequate, each party shall take such other diplomatic, economic or military measures as it deems necessary in accordance with its constitutional process.

In other words, what Secretary Clements was saying is that they had worked out a neutrality agreement that better protected American security, that was agreed to by the Panamanians in 1975, and written into the body of the earlier treaty. This original language is far superior to what we have in these treaties today, because it would have given the United States greater protection, and would have solved some of the problems of international law which have been raised here.

That is very important, and it amazes me that our present ambassadors are trying to sell us a clause that does not come close to the guarantees of the original language.

First they try to sell us an ambiguous treaty without adequate neutrality provisions protecting the United States in any way. They argued that if we ever changed the treaties, my goodness gracious, Panama would have to have a new plebiscite. They even disagreed with my distinguished friend the Senator from New York (Mr. Moynihan) that international law would take of the problem.

So President Carter and Mr. Torrijos got together and orally agreed on this new statement of principle, which is not one-fifth as effective, as impressive, as legal, or as clear and straightforward under international law as what had formerly been agreed to by

both sides. All we have to do is agree to this wonderful new oral agreement, which they reduced to an unsigned document, which I would submit is not worth the paper that it was not signed on. And that if we would do that, there would not have to be a plebiscite.

Now, as a result of some of the forceful arguments that many of us have made all over this country, and the fears and concerns of the American people, the distinguished majority leader and the distinguished minority leader, have come forth with an amendment supported by 77 cosponsors and are going to try to amend the treaties now, something they said could not be done without a plebiscite. Or at least that is my understanding of it. Now they are willing to amend the treaties, and I understand the distinguished senior Senator from New York, my dear friend Mr. Javits, has said these amendments will not add anything to the prior treaty, that everything was implied in the prior treaty; but I understand he also is a cosponsor of these amendments.

What I am saying is this: To ignore better than 300 generals and admirals who have served this country patriotically and with distinction in favor of these supportive-to-the-administration statements of our present Chairman of the Joint Chiefs of Staff and other members of the Joint Chiefs, is tragic, and I think it is detrimental to this country—especially Admiral Moorer, who was recently Chairman of the Joint Chiefs of Staff, and incidentally knows every aspect of the canal. I do not mean to denigrate the Army or Air Force, but I have to admit the Navy really understands the operational aspects and importance of the canal, I think, much better than any other branch.

To ignore the other three former Chiefs of Naval Operations is equally tragic. To accept what the State Department has to say at face value, after all the appeasement we have gone through in the last 30 or 40 years, while this country has gone downhill in the eyes of almost everyone in this world, would be a serious error.

I do not want to reflect on the present Joint Chiefs, because I believe them all to be honorable men and good men. But I do think that they should have looked at the many years of appeasement that we have gone through, the many years of mistakes by the State Department—mistakes prophesied by many Senators who sit in this sacred body.

Secretary Clements testified that lawyers in the Defense and State Departments assured him the words in this clause, "as it deems necessary," gave the United States the "unilateral right" to intervene to assure the security of the canal.

Secretary Clements found the new clause—and remember, Secretary Clements is the former Deputy Secretary of Defense—he found the new clause, relating to the maintenance of the "regime of neutrality" "ambiguous" and expressed the opinion that if Torrijos agreed to the clause he had negotiated in 1975 then stronger words than those in the present treaties are and should be negotiable.

Secretary Clements also testified that in his opinion and that of international lawyers with whom he had talked neither article IV nor the Torrijos-Carter understanding gave the United States a clear right to intervene.

(Mr. Metzenbaum assumed the chair.)

Mr. HATCH. I would just mention for the record that what we are doing here is a very serious matter. I would like to join in supporting my good friend, the distinguished Senator from Alabama (Mr. Allen), who, in my opinion, is one of the greatest Senators sitting in the U.S. Senate, certainly one of the leading parliamentarians in the Senate, and perhaps the constitutional authority in the Senate. I would like to support him where he indicated that he hopes, and I hope likewise, that our distinguished colleagues in the Senate do not get so bound up in partisan support of the administration's desires that we abdicate our responsibility, or, should I say, responsibilities, to see that these treaties, if they have to be ratified in the end, or if we have to advise and consent to them, at least are protective of the United States of America; that they take our needs into consideration; that these treaties resolve these ambiguous problems; that they resolve the translation problems so that there is no question in the minds of our friends, the Panamanians, or any questions in our minds, as to the effect, legal or otherwise, of these treaties.

I think some pretty effective and important amendments are about to come forth on this floor. I have some amendments which I think are monumentally important, and which I hope my colleagues will consider in helping to make these treaties much better than they are right now.

I have made the comment that a second-year law student in one of the major institutions, and I do not mean a mental institution but a law institution, can do a better job writing these treaties than what has been done.

I cite the statement of Secretary Clements, who did an adequate job, if not the best job, with regard to the neutrality language that they had worked out with Mr. Torrijos earlier.

I believe it is important for us to realize that it is wonderful to have friendships and relationships with Panama. I do not think anything is really going to change that, because most of us want to continue a good, cordial relationship with our Panamanian neighbors. This has come about through years and years of working with them and years and years of experience with Panama. I think most of us love the Panamanian people. I do not think they would expect us to not protect the United States of America, since that is our primary job as U.S. Senators.

If these treaties, which I find to be reprehensible, poorly written, legally unsound, filled with ambiguities, filled with construction difficulties between the English and Spanish translations, are not corrected, then I have to admit I would not blame any citizen or the millions of citizens of this country if they hold it against us the rest of their lives.

The proposals should bring about some changes, which, in my opinion, are long overdue anyway, because of the last 40 or 41 years of control by one philosophy of the Congress, particularly in the Senate.

I think the people of this country, and I regret to say this but I think it is true, have inherited, the vast majority of them, more knowledge about these treaties than any of my protreaty colleagues have been willing to admit.

I think in spite of the polls, which still show that most of our people are overwhelmingly against these treaties, if the truth were really known 75 to 80 percent of the people in this country will not buy these treaties.

I think it is pretty important that we, as U.S. Senators, give every consideration to all amendments which will be proposed, especially those which tend to make these treaties more understandable, and especially those amendments which would tend to protect the Constitution.

Concerning our colleagues in the other House of this coequal branch of Government, and especially those amendments which pertain to solving the ambiguities of the treaties, especially those amendments which pertain to clarifying the need to have all appropriations bills originate in the House, in advance, rather than bringing them back after a fait accompli has been accomplished, I think if we ignore them, as the distinguished majority leader has said he is going to do—and I assume with his leadership majority are going to follow in a partisan way—if we ignore the House of Representatives in this matter, then I cannot blame them later if they refuse to grant anything that any administration would want with regard to the problems that are bound to arise as a result of our failure to do our job legally, internationally, and otherwise to resolve the problems of these treaties.

It is discouraging to me that there seems to be such a lack of understanding, a sense of uncertainty. There are certain protreaty Members who have made a great study of this matter, of course, of all matters involved here. Unfortunately, I do not believe that the majority of those who will vote for these treaties have really done everything they can to try to protect American interests.

I believe this is a pretty serious matter. I consider the Panama Canal treaties one of the most important issues to come before the Congress. I think there will be few other major important issues. Of course, what we do with agriculture, energy, and labor reform, are of significant. What we do on SALT II is even more important.

I believe this year is going to determine whether the United States of America continues to be the leader of the world, the leader of freedom in the world, the country to which the other nations point toward freedom and look up to.

I think if these treaties have to be ratified—and I have not given in to the belief that 67 Senators in the Senate are going to vote their consent to the ratification—I happen to believe that if they are going to be ratified my colleagues should be concerned about having ratified treaties which are worth while, which have unambiguous meanings for solving some of these very great problems which are being raised. If we have the treaties, let them be right.

I can say this: I have always been, from the beginning of the debate in this matter, in favor of reviewing the 1903 treaty.

I have always been for treating our Panamanian neighbors well and decently. I think there are many ways we could do that without these treaties. I still think there are many ways that we could have a cordial and decent relationship with Panama and still have the indiscriminate, inexpensive and, I think, expeditious management of the canal which the United States has rendered for so many years, for the benefit of everybody in the world, not just us. I

think many people are concerned about these treaties. I think our obligation is, if we have to have ratification, to make sure that we are not ratifying a pig in a poke. I suspect that if these treaties are ratified with only the amendments of our distinguished colleagues, the majority and minority leaders, then we are going to have troubles the rest of our lives that far transcend even some of the troubles that are being raised if these treaties are not ratified.

On the other hand, if we could have enough amendments to clarify and make these treaties the effective treaties they should be, beneficial to the United States, taking into consideration our needs as well as our Panamanian neighbors' and friends' needs, then I think there would be a great deal less hostility engendered in this country toward those who vote for the treaties and those who do so without very good consideration of the needs of our country, in the rapt desire to satisfy and pacify the Panamanian dictator and others, who I do not really believe are friends of the United States of America.

As a matter of fact, I do not think these treaties are going to create any friendship toward the United States of America. I think if anything showed up as the result of the private hearings, the secret hearings, on the drug issue, the thing that did show up is that we have some pretty sleazy people down there with which we are going to have to deal for many, many years, and that their interests are certainly not going to be those of the United States. Nor are they going to coincide with regularity with those of the United States of America.

So, I appeal to my distinguished colleagues to consider every good, substantive amendment to these treaties and maybe, in the process, there will be some support for the treaties that would otherwise never be expected. Maybe, in the process, we shall save ourselves untold embarrassment, difficulties, and entanglements which could hurt this country and many, many other free countries and people who rely on the United States to have some guts in this world and to stand up for its rights once in a while.

I think that there are many things on both sides of this issue that anybody can be for. I think there are good arguments on both sides. My personal belief is that, unless these treaties are seriously and significantly amended and modified to protect this country and to protect our interests, no reasonable Senator should vote and give his consent to the ratification of these treaties. Although this is not the time to get into a debate on the constitutional issue, and I shall not do that at this time, I believe that any Senator who fails to recognize the importance of 219 Members of the House of Representatives, some of whom are for these treaties, and their right to approve the transfer of \$10 billion of American properties—at least five different types of American property—is, I think, allowing an unconstitutional act to occur.

I am going to bring up an amendment which will get into that detail, and I am sure we can debate it at that time. But I think that my colleagues should consider, and consider well, just how important these treaties are, reject the partisan approaches that I sense on the floor of the Senate, and start working to have these treaties properly corrected. This is our duty, our solemn obligation, and our right. I think if we will, we shall have done the Senate a

great service. We shall have added to the prestige of, and respect for, the Senate. We shall have done the President a great service, because he is much less likely to suffer in the future in the eyes of the historians. And I think that it would create a lot of good will and good feeling all over this country among our American citizens and constituents, whom we all represent.

I might just add—does the distinguished Senator from New York wish me to yield?

Mr. MOYNIHAN. I rise to take the opportunity to state that I had hoped the Senator would speak longer. I have listened with great absorption to all the things he has said. My point cannot be made as a parliamentarian. I shall listen with further patience and sure addition to my meager stock of knowledge.

Mr. HATCH. I appreciate the statement of the distinguished Senator from New York. I do have some other things I wish to say, but I can see that he might have some points to make, so I yield at this time.

Mr. MOYNIHAN. I thank the Senator from Utah for his graciousness and for his learned, careful ways. He would know that there could have been few persons to come into the Chamber in recent years with as pronounced a sense of fairness and a concern about accuracy and a civility of manner. It was typically courteous of him to allow me to speak at this point. To begin, may I say what is not always easy to say, and not always the most useful thing to raise, in this Chamber. I have been struck by the pattern of the vote taken yesterday, an important vote, Mr. President, a vote in which it became clear that these treaties, products really of the past four Presidents, will be ratified. The Senate of the United States will advise and consent to their ratification. The vote yesterday clearly marked the moment in which the Senate was first on record as favoring these treaties.

What struck me was the geographical disparity as between those who voted to support the treaties and those who could not yet do so.

There are 23 American States which border on the high seas, whose shores are touched with saltwater, whose lives are much involved with navigation and commerce on the high seas.

I was struck how Senators from these States were so overwhelmingly in favor of these treaties; indeed my State of New York is nothing if not a commercial seagoing, outward bound State. I see that the junior Senator from Maryland is on the floor. I note that the Senators representing Baltimore, the Senators who represent San Francisco, Oakland, Seattle, and up and down and around the coast support these treaties. Altogether there were only 10 Senators, only 10 Senators of the 46 which represent the 23 seagoing States, who voted against these treaties.

Of those who did, overwhelmingly they were from another bloc of States that voted "no," which is from the States of the Old South. Thus, two groups of Senators voted "no." Those from the high plains and those from the Old South.

Since I have the respect which we all have for all of these Senators, it seemed to me to confirm a thought that has been in my mind, which is that there are not 10 Members of this body who truly do not support these treaties. But there are a number of

those who are legitimately concerned that the people in their own States do not.

It is the high plains and the Old South that find these treaties worrisome, that find the subject unfamiliar and threatening, and somehow fear that we will lose what we must hold onto if we approve the treaties.

These are proper and honorable concerns. I would wish to speak to them. I should wish to speak first to a point which is, perhaps, difficult to make, but it is necessary: That the times have changed, the world has changed, and for all the glory that the Panama Canal represented, for all the extraordinary ability that it stands, for the incomparable, palpable manifestation of American achievement that it is, that it should somehow end in fear and alarm in a world of separate drinking fountains, one gold, the other silver, separating people.

When I was in Panama in a delegation led by Senator Cranston and Senator Stafford, it happened that that day in the Miami Herald, a lieutenant commander, retired, U.S. Navy, wrote to the paper a letter which was published that day describing the events in 1964 when a riot occurred in the zone, and between the zone and Panama, when persons were killed, when President Johnson reacted to an emergency he had not expected, when the present sequence of negotiations began, involving four Presidents and culminating in this debate on the treaty. This U.S. naval commander—I noted that he was U.S. Navy, and he was not a Reserve commander, he was obviously a regular naval officer—described how painful it was to see, in which, a group of young Panamanian students who in accordance with the prior agreement came forward bearing a Panamanian flag which they were going to raise on the flagpole as agreed. Young Americans, egged on, as this letter said, by adults cheering and jeering at them, proceeded to beat up the Panamanians, to discredit their flag, to do the most awful things, things which we associate with the worst, the least agreeable and dishonorable aspects of a frightened colonialist mentality. How inappropriate to this Republic, how rare in our experience, and how squalid an episode in the aftermath of the glory of this canal.

Now, this is the point: We are not retreating by this move; we are advancing. If we advise and consent to the ratification of these treaties, we will see a transformation of the world scene as we have not seen in a generation.

At long last, the charge and the curse and the burden of imperialism, the greatest democracies of Europe, and the less consequential, but similar and real charge against the United States, will have been put into the past honorably, with courage, manfully. And what will remain in the world but the one last 19th century empire, not only undiminished in the 20th century, but expanded? The empire of the czars and the new czars, astride the Continent from the Pacific to the Atlantic, to the Bosphorus, now into the Red Sea, now into the Indian Ocean, now into the South Atlantic, with its Ghurkas from Havana, its Afrika Korps recruited to do the murdering and burning and killing. The Soviet Empire, finally, will emerge as what it is, an abomination, an anachronism, a

threat to the peace of the world against which the best loving and best needing nations of the world must combine.

Far from a retreat, ratification of these treaties will turn the world on its heel. The United States can go forward as it has not done since the great days of the Second World War when we stood almost alone in the defense of freedom.

The distinguished Senator from Utah speaks of this year as one in which it will be judged whether the United States remains a leader of freedom in the world. It will be, and it will be determined by whether or not we ratify these treaties.

I think it so important and I was so pleased by the statement, the reference of the distinguished junior Senator from California, who reminded us that there was a reality in the way we obtained the canal. It was not attractive, but it was characteristic of the time.

But we have ever since been the anti-imperialist, anticolonialist force in the world.

We are the nation that stated to the British they must get out of India. It was Franklin D. Roosevelt who started saying that to an unbelieving Churchill in 1943. It was the United States that said to the Dutch that they must leave Indonesia. We said to the French that they had no help in Algeria. We said the same thing to Spain and to Portugal. Incidentally, remember, in 1935, the United States said it would have an end to colonial rule in the Philippines. It happened that came in 1945 on schedule, in 10 years' time.

I see the distinguished Senator from Idaho rise.

MR. CHURCH. Will the Senator yield?

MR. MOYNIHAN. With great pleasure.

MR. CHURCH. First of all, I wish to commend the Senator for an extraordinarily brilliant and eloquent speech. Let me make the following observation.

In 1956, an attempt was made by British and French forces, in combination with Israeli forces, to repossess the Suez Canal, which had been seized by the Egyptian Government. As I recall, it was the United States that intervened at that time to say:

No. The repossession of the canal by British and French interests is an anachronism. The Egyptians are entitled to reclaim jurisdiction over their own territory.

We stood with Egypt in its right to repossess Suez.

How ironic if, having stood with Egypt in 1956, we now refuse to practice what we preached and applied a different standard in Panama.

The Senator from New York made a very telling point when he stressed the role of the United States in encouraging the dissolution of the empires of the 19th century, a process which began before the Second World War, but which greatly accelerated afterward. The United States was in the forefront, preaching our traditional values; namely, that foreign powers do not have a right to occupy other lands, to subjugate other people against their will. Even as we asserted our own right to independence 200 years ago against the British, so we recognized the right of other colonial people to claim independence in the years following the Second World War.

Now, having done that, our posture would be cynical indeed, if we refuse to relinquish our own control over virtually the last strip of land outside the United States, in a foreign country, that we are holding against the will of the inhabitants of that land.

Mr. MOYNIHAN. Precisely.

Mr. CHURCH. I think the Senator makes an irrefutable point, and I commend him for it.

Mr. MOYNIHAN. I thank the Senator from Idaho for bringing to mind and for providing an opportunity to present to this Chamber an irony that surely should be introduced to the minds of those who have not yet persuaded themselves to vote for this treaty—the events of Suez.

Those who have read the extraordinary and careful report of the Committee on Foreign Relations of the U.S. Senate, of which the Senator from Idaho is the second-ranking member, and will soon be the chairman, will note that on page 47 there is a short description of the not perhaps widely known but important fact that the canal probably would have been built in Nicaragua had it not been for the energy of Mr. Bunau-Varilla and a particularly active New York lawyer named William Nelson Cromwell, of the firm of Sullivan and Cromwell. Mr. Cromwell had the great coup of enlisting the support of Senator Mark Hanna of Ohio, who had helped elect President McKinley—previously Senator McKinley—and was a great force—and had been appointed to the Senate—and a great influence on this Nation; not perhaps a progressive one with respect to some social policies but certainly a forward-looking one with respect to the structure of the American economy. That was in 1903.

A mere 53 years passed, and the British and the French invaded the Suez with armies. The distinguished Senator spoke of our having preached against colonialism. Certainly, we spoke of it as a moral issue, and the word “preach” is altogether appropriate. We did more than preach. We acted.

In that October 1956, the Secretary of the Treasury said to the British Government:

If you persist, we will break the pound. You will have food rationing and unemployment and depression as you have never known. We will break the pound with the power of the dollar, because there is an issue of principle here.

Who was this man, the Secretary of the Treasury? He was Mr. George Humphrey. And what had he done in his life? In 1918, he had joined the M. A. Hanna Co. of Cleveland and had risen to be its president in 1952, when he joined the Eisenhower Cabinet. Was George Humphrey a radical? Was he a visionary? Was he a man given to soft and unsuspecting views of the world? No. Alas, no, he was not.

Did he think that the whole weight of American power should be put against the effort of the British and the French to regain control of the Suez? Yes; he did, because he knew in 1956—the president of the M. A. Hanna Co. knew in 1956—that you cannot do things like that any more. Yet, here we are in 1978 wondering whether what we absolutely forbade the British and French to do, we should somehow insist upon for ourselves.

I should like to speak to the extraordinary success of our negotiations and the fact that we have learned something from this histo-

ry, unlike the French, driven out of their possessions, and the British, in effect driven out of their position in the canal, going back in that squalid and doomed enterprise. Compare the dignity, the manfulness with which we leave—a measure of dignity, while retaining the full measure of our rights and responsibilities. One of the extraordinary and ominous facts of the world was the degree not 5 years ago to which the Panama Canal issue had been transformed from a bilateral problem between Panama and the United States into an international problem. Panama is not a major strategic issue in the world. It is not an area of any overriding geopolitical concern to the large powers. The nations that depend upon it for commerce are the liberal nations of northern South America, I think we can basically say. It has not engaged the military or economic concerns of the world.

However, in the beginning of the 1970's, it became a great symbolic issue, an issue of the ideological clash between North and South, between liberal societies and the totalitarian societies which would side with the South, and it was an issue on which we were hopelessly outnumbered, completely misunderstood, and at least partially in the wrong, by our own standards.

This perhaps will not any longer remain a secret. I hope I am not subject to censure for recalling that in our closed session the other day I raised the question of the meeting of the Security Council of the United Nations which took place in Panama City in March of 1973. I think it would be useful to go back to that not distant time, 5 years ago, and to recall the atmosphere and the events of that moment.

In 1972, for the first time, the Security Council met outside of New York, met in Addis Ababa, and shortly thereafter, the Panamanian Government proposed that the next meeting be in Panama City. For a moment, it looked as though there was a move to take the Security Council away from its headquarters in New York altogether and have it move around to colonial areas of the world where, as the General Assembly had already become, it would become a forum in which the judges sitting with the verdicts in their pockets would hear the indictment of the United States and of the liberal democracies still left in the world.

Sure enough, the meeting began in the spring, in March of 1973, and representatives of 40 nations spoke before the Security Council. One by one, as President Ford stated in his 1974 message to Congress reporting on the activities of the United States in the U.N. for the previous year, a majority of the independent nations of Latin America, and indeed a third of the membership of the U.N., rose to demand, one after the other—and I quote President Ford's message:

Most of these supported the Panamanian position that the 1903 U.S.-Panama Isthmian Canal Convention should be abrogated and Panama should be given effective sovereignty over the Panama Canal.

A draft resolution was voted on at the end of the meeting, on March 21, a resolution, cosponsored—and I shall give some of the cosponsors: Guinea, Peru, Sudan, Yugoslavia, tyrannical states, arrayed in their hostility to the United States, except when it comes time for the United States to give them military aid, as in the case

of Yugoslavia, which by the way then becomes temporarily more sweet.

In the end, the Security Council voted 13 to 1 against the United States, to condemn the United States, to disassociate itself from the United States. Our friends on the Council, and there were some like Britain, France, they also voted against us. We had to resort to the veto to save ourselves from the formal condemnation of the Security Council.

Mr. CHURCH. Mr. President, will the Senator yield?

Mr. MOYNIHAN. Happily.

Mr. CHURCH. The 13 to 1 vote represented, did it not, the unanimous decision of all other members of the Security Council, for the one vote cast against the decision was the veto cast by the United States; is that right?

Mr. MOYNIHAN. The veto, the kind of measure the United States said it would never use, the kind of measure that is associated with the Soviet tyranny. Here we were condemned and resorting to the veto, resorting to power, because persuasion and argument had failed.

Mr. CHURCH. I think that it would be instructive to include at this point in the Record, if the Senator will permit, a list of the members of the Security Council that cast their votes for the resolution which called for the abrogation of the 1903 treaty and the restoration of Panamanian control over the Canal Zone and the canal.

Those countries voting in favor of the resolution were Australia, Austria, China, France, Guinea, India, Indonesia, Kenya, Panama, Peru, Sudan, the Soviet Union, and Yugoslavia. Our oldest and closest ally the United Kingdom, did not vote with us but abstained.

Mr. MOYNIHAN. Every democracy on the Security Council either voted against us or abstained.

Mr. CHURCH. Yes. And among them some of our very best friends and closest allies, countries that have the closest ties with the United States, France, Australia, and the United Kingdom.

There could not be a more conclusive vote to demonstrate that the world is not with us. We cannot apply one standard to our own conduct and a different standard to the conduct of other governments. I agree wholeheartedly with the distinguished Senator from New York that nothing would be more helpful in rallying the free world behind us than to ratify these treaties.

Mr. MOYNIHAN. Mr. President, I observe that the distinguished Senator from Texas wishes recognition.

The PRESIDING OFFICER. If the Senator from New York will withhold a moment, I believe the Senator from Texas—

Mr. MOYNIHAN. The Senator from New York was about to note that the distinguished Senator from Texas has brought some associates into the Chamber and I am sure he would wish to speak at this moment.

The PRESIDING OFFICER. The Senator from Texas.

Mr. BENTSEN. I thank the Senator very much.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The Senate continued with the consideration of the Neutrality Treaty.

The PRESIDING OFFICER. The Senator from New York.

Mr. MOYNIHAN. Mr. President, I thank the Chair for its courtesy. This pleasant opportunity to meet with fellow parliamentarians from Mexico brings to my mind and brings me to that point in my remarks where I am going to speak to precisely the question of our relations with the other nations of this hemisphere.

I have suggested that the Security Council meeting in Panama 5 years ago showed the extent to which we had lost control of the terms of references of this discussion of the countries who participated in the Council's discussion. There were in addition 25 countries including such non-Western Hemisphere countries as Algeria, Mauritania, Zaire, and Zambia which participated, the point having been to establish first in Addis Ababa, then in Panama, the nature of a vast presumed American hegemony and threat to the independence of other nations. And of all these countries none sought to do so with more vehemence than the dictatorship of Cuba, and Cuba invariably sought to link the Canal Zone to Puerto Rico as an example of American imperialism.

Remember, Mr. President, Cuba is saying, "We will force the Yankees to leave Panama," where clearly we were there by right of treaty, and next, "We will force them to leave Puerto Rico," where we are present as part of a freely associated commonwealth relationship, a democratic relationship.

I would read from the report of the Security Council of that year:

The representative of Cuba stated that the hemisphere showed clearly the growing gap between development and underdevelopment in Latin America and the growing development of the United States which, usurping the rights of the native population, extracted the wealth of those countries, taken over their natural resources, forced labour conditions down, exploited investments, forced financial dependency upon them, broken off scientific exchange through the transmission of obsolete technology, and was engaged in ideological penetration and political domination, as well as diplomatic and military usurpation.

Let me say to those who have been wearied by debates in the Senate that I sat in the Security Council for many a long month and heard more and more of this. The same Security Council meeting adopted a resolution almost word for word, speaking about usurpation and profit. I see that the distinguished Senator from Nebraska has risen.

Mr. CURTIS. Mr. President, will the distinguished Senator yield for a few questions?

Mr. MOYNIHAN. Happily.

Mr. CURTIS. The distinguished Senator is a very careful student of history. I would like to ask him, is there any justifiable complaint against the United States over the manner in which they have operated the canal with respect to all of the commerce of the world, including the operations, the costs, and the charging of tolls?

Mr. MOYNIHAN. No, sir, in my view there is none.

Mr. CURTIS. Do I understand that one of your arguments in favor of the treaties is that to not ratify them smacks of colonialism, and to ratify them turns our backs on such an argument?

Mr. MOYNIHAN. Precisely. I believe it would be seen as such by the rest of the world.

Mr. CURTIS. Would that same argument apply to Guantanamo Bay in Cuba?

Mr. MOYNIHAN. The occupation of Guantanamo Bay in Cuba is by right of treaty which we obtained in association with the defense of Cuban citizens fighting the imperial and colonial control of Spain. These matters are wholly different. That was brought about in a full and free association with the Cuban State. That was not the nature of the Panama Canal Treaty.

And curiously enough, even Cuba does not raise that point. I have often wondered; they ask us to get out of New Jersey, but they do not raise a question about Guantanamo.

Mr. CURTIS. I believe equally good students of history may have a different interpretation on the Panamanian Treaty than my distinguished friend from New York.

Mr. MOYNIHAN. There is no doubt of that at all.

Mr. CURTIS. Now, what parallel or what similarity is there between the colonial situations of the past of Africa and Asia, before the colonial powers abandoned them, and the treatment of the people in the Panama Canal Zone?

Mr. MOYNIHAN. I say to the Senator from Nebraska, I would speak to this, and I would speak as someone who has been in the old colonial world. As the Senator knows, I served as U.S. Ambassador to India for a period, and I have traveled around there. If you have ever been in a colony—as you, of course, have been, sir—nothing is so obvious. You leave the stray pigs, the tin roofs, the battered Coca-Cola sign, the beer sign, and the mangy dog, and you turn the corner. The grass is green, the houses are painted white, the servants have white linen jackets, the ladies are in long linen and they have large hats, the verandas are screened, the drinks are iced, the husband is coming home from tennis. It is a different world, and it is so palpable and it is so real, and in Panama you can reach out across a street not much wider than my reach, and touch, on one side, those tin shacks, and of the other those filigreed verandas. And it is such a contrast, it is a contrast like saying, “one drinking fountain is for us and the other drinking fountain is for you.”

It is a contrast such that when young men, as I was speaking earlier of the events of 1964, when young men of Panama respectfully and civilly presented their own flag to be raised, by a prior agreement, to fly alongside the American flag in the middle of what is their own country, American boys tear down that flag, desecrate it, beat them up, and riots start in the night throughout the slums.

It is so achingly familiar and it is so awful, in some ways, because we are not that kind of people. We never got spoiled by colonialism; that spot never touched our lungs. We have always spoken for freedom in the world.

Mr. CURTIS. The argument of my distinguished friend is very powerful. My question was, What is similar and parallel in colonial operations to our treatment of people in the Canal Zone?

My question amounts to this: What did the United States do within the zone that was unjust to people other than U.S. citizens?

Mr. MOYNIHAN. The Senator raises a careful question, and he phrases it with the kind of thoughtfulness and care and concern for facts which is characteristic of him and has made him so highly regarded a Member of this body.

You ask what did the United States do that was unjust? It did not do anything that was unjust, Senator. It is just that the fact of our being somehow became intolerable.

How could the British in India, in the heat, when it rises to 120° in the summer, and the summer lasts 9 months, and it seems that there is no green thing left in the world, and life is an inferno—do you blame them for having fans, when they could not live without them? Do you blame them for having a lawn that they could play a little croquet on, and remember the green, wet island they came from? No. But, oh, what different worlds come up side by side.

No Panamanian, to my knowledge, was treated unjustly, but what a cosmic injustice it is to sit there in the heat of the tenelements on Fourth of July Avenue and look across the street and up the hill at those fine ladies on their filigreed porches, in their white linen hats, and their beautifully groomed servants serving iced drinks in the afternoon.

Mr. CURTIS. Well, now, I do not know what that has to do with these treaties, but I can cite the Senator a parallel circumstance. For almost half a century, the Republicans on this side of the aisle have looked over to a party that has had a monopoly on the legislative branch of this Government for half a century.

We have watched all the committee chairmen be of one political party, all the majority leaders, all the determinations of what the legislative program shall be, for a long half-century. An injustice? An unequal operation? There has never been a bill named after somebody on this side. [Laughter.] They are always named after the chairman, if they are good bills. [Laughter.]

That has nothing to do with the Panama Treaty. The fact that some people live on one side of the street and have ice in their drink and another has to drink out of the pond does not necessarily have any connection with this treaty.

My dear friend has said that there is no complaint the way we operated under the treaty. For the benefit of the world he has said there has been no mistreatment on the part of the Americans of the non-Americans in the Panama Canal Zone.

Now I want to ask this question: What authority or power of intrusion did the United States have in the Republic of Panama outside the zone to deprive them of their economic rights, political rights, or infringe upon them in any way?

Mr. MOYNIHAN. Once again I would like to respond to the Senator's question. To my knowledge, none. But I must hold the Senator a moment, because he has suggested the differences between the two sides of this Chamber. I would have to be more explicit. The Senator raised the proper question, but would he like to know what it could really be like? We could stage this. It might be instructive to some of the Members on the Senator's side. It would not help our side, I am sure. There are Members of the Senator's side who

are not yet for this treaty. It would be useful. We would have to get permission of the Rules Committee.

Does the Senator see the rug he is standing upon? Take that rug off. The Senator seems to have shoes on. Would he be kind enough to remove his shoes?

Mr. CURTIS. I have boots on.

Mr. MOYNIHAN. Boots? Boots are even more inappropriate to colonial people. The Senator has a handsome and characteristically sharp jacket on. Would the Senator mind taking that off and the necktie, too? That is a sign of a bourgeois status, and the Senator is not bourgeois.

The fine desk that Calhoun himself may have used, would the Senator take that away? We have some orange crates for the Senator. We have mahogany desks, of course, but the Senator should have orange crates.

The Senator appears to have electricity. That will not do. We will get him a kerosene lamp or candle so he can do the best he can. We will turn off the heat in the winter and the air conditioning in the summer and let him sit there for 60 years and see if he does not think we have it a little better on this side.

[Laughter.]

Mr. CURTIS. Does the Senator contend that if we do not have to take off our shoes and we can walk on the rug that we have equal political power here?

Not at all, not at all. We have had nothing to do with how the country is run. You have had all the votes. You have all the chairmen. You have all the leaders. You have had it for almost a half century. You have left this country with a debt that is staggering, with a deficit that is frightening, with wild inflation, overregulation sapping the energy of the country.

Now I want to ask another question. The Senator has stated that we have not imposed any of the colonial aspects of control upon either the non-Americans in the Panama Canal Zone or the citizens of the Republic of Panama outside the zone. What is it that is similar to colonialism in reference to the Panama Canal?

Mr. MOYNIHAN. What is it?

Mr. CURTIS. Yes.

Mr. MOYNIHAN. First, I must say a point of correction must be made. I observe the members of the Senate Finance Committee, of which you are the ranking minority member. Surely you do not mean to tell me, after a year of having watched it, that you do not have a say in the way the country is governed, and a good say, too.

Second, what does it have to do with it? It has to do with the fact that we in the Canal Zone are in the middle of their country. It has to do with the fact that it has become something—though, a century ago or two centuries ago some would not think it unusual. Remember, the world changes.

Remember after the failure of Queen Anne to produce a male heir in 1706, if I recall, the British people, a people as committed to liberty as the world has known, the people from whom our own liberties come, found themselves without a king. You have to have a king. They sent over to Germany to get one.

It is one of the theories of the British Parliament that the power of the Cabinet grew because for almost the whole of the 18th

century the Kings of England could not speak English, which is true. They could not. People ignorantly think that they spoke German. But at that time no self-respecting German would speak German. They spoke French. At that time a French-speaking German King ruling an English nation was natural.

But it would not be so today. Times have changed.

You cannot hold a canal in the middle of somebody else's country today.

Mr. CURTIS. But there is a big strip of land between the State of Washington and Alaska. Is that colonialism on somebody's part?

Mr. MOYNIHAN. The "colonialism" happened when we bought Alaska from the Russians, who had stolen it from the Indians. As for Canada, think of the difficulties which arise from the fact that one of the nation's Provinces predominantly speaks French. Many among them do not want to be any part of Canada any more.

This is an age of sensitivity about things which not long ago were not sensitive. There may be too much sensitivity, but it will not change reality.

Mr. CURTIS. Just because something is sensitive, does that mean it is right?

Mr. MOYNIHAN. It means if you do not take the pulse of that sensitivity, you can make a profound mistake. As far as the Panamanians are concerned, they are asking for rights which descend in direct lineal descent from the rights we asked from the British. They expect us to behave as we would expect others to behave who are not concerned.

Mr. CURTIS. How do you know what the Panamanians are asking? They have not had an election since 1968. Who is speaking for the Panamanian people? No one was ever elected. They have not had any elections since 1968.

Mr. MOYNIHAN. Sir, they certainly had a plebiscite and the result was overwhelming. It was 506,000 to 245,000.

Mr. CURTIS. A plebiscite on what?

Mr. MOYNIHAN. A plebiscite on this treaty.

Mr. CURTIS. No; the gentleman who says he is head of the Government, who was never elected, brought in some figures. But I ask, how do you know who is speaking for the Panamanians?

Mr. MOYNIHAN. That is why we cite the Hebrew. There is a phrase which says, "Ha-mavin yavin." It translates, "Those who understand, understand."

Mr. CURTIS. I will accept the Senator's translation.

Mr. MOYNIHAN. If you have any feeling for the future, and you know that you do, you know they hate that thing in the middle of their country. They just want us to say we stop owning it. They are quite prepared to have us operate it.

Mr. CURTIS. Well, you are confusing hating with coveting. When I see someone with a beautiful head of hair, I try not to hate them but I would like to have hair like them.

[Laughter.]

We cannot wipe out all of this desire of the have-nots to have everything that the haves have by ratifying a treaty that causes us to relinquish an operation where there is no complaint about the way we have operated it.

Mr. MOYNIHAN. No, sir, you cannot wipe out that desire, but you can wipe out the judgment of the world that we are in the wrong.

Sir, I do not care a little or a damn what the dictators of this world think, and I have said that before. But what Australia thinks and what the Netherlands thinks and what Canada thinks and what Costa Rica thinks, that matters to me, as it does to the Senator. And, sir, there is not one of them today that thinks we ought to persist in our present occupation. I cannot imagine there is one today. If there is, I shall be interested to learn of it.

I see the Senator from North Carolina is on his feet. Does he know of a democratic nation that thinks we should not ratify these treaties?

Mr. CURTIS. Yes, one: The United States.

Mr. MOYNIHAN. That is the issue that will be decided on this floor, as the Senator well knows, and there was a good indication yesterday.

Mr. CURTIS. The distinguished Senator just brushed aside the dictators, in which I thought he meant the people. The only country where the people are speaking on this that I know of is the United States. I do not think the people have spoken in many other countries.

Mr. MOYNIHAN. I believe, sir, that the latest polls show that a plurality of the American people favor these treaties. But the decision will be made by their representatives here, and it will be made carefully and fairly. I think the indication yesterday was encouraging; the votes are in this Chamber to advise and consent to the ratification of these treaties.

Mr. CURTIS. I thank my distinguished friend.

Mr. CHURCH. Will the Senator yield for a question?

Mr. MOYNIHAN. May the Senator from New York yield, as I believe I have the floor?

Mr. CHURCH. Will the Senator from New York yield in order that I may ask the distinguished Senator from Nebraska a question?

Mr. MOYNIHAN. Yes.

Mr. CHURCH. Before we reach final vote on these treaties, the polls should clearly indicate that what is now a plurality favoring the treaties has become a clear majority of the American people. Would the Senator from Nebraska then vote to ratify them?

Mr. CURTIS. Well, I have not that much faith in the polls. I do not base my statement that the American people are against this on the polls; never have, never will. But I have not been here four decades without learning how to keep in touch with the people back home. I have done this personally. And they are not for this treaty.

So far as the polls are concerned, anybody who has the money can hire a pollster. Election after election has proven that, usually, they are obsolete by the time they are printed, because they have to assemble things and world events take place, people change their minds. So the answer is, No, I would not be governed by a poll.

I thank my distinguished friend for his generosity in yielding time and time again.

Mr. MOYNIHAN. I thank him.

I see the Senator from Oklahoma rising.

Mr. BARTLETT. Will the Senator from New York yield?

Mr. MOYNIHAN. I shall yield for a question.

Mr. BARTLETT. Of course.

As I understand the discussion that took place between the Senator from New York and the Senator from Nebraska, the Senator from New York took the position that sovereignty over the canal by the United States was the source of the ill will and feelings of dispute and contention between this country and Panama. Is that more or less correct?

Mr. MOYNIHAN. Yes. I do not know that either of us used the term, "ill will," because I shall shortly speak to the point of the extraordinary degree to which the peoples of these countries have kept on good terms, which is the basis for our future relationship.

Mr. BARTLETT. Am I correct, too, that the Senator from New York believes that the sovereignty issue led to a different system of law and order in the Canal Zone as opposed to Panama itself, a different school system, different standard of living, and that all this helped develop the feelings of contention between Panama and this country?

Mr. MOYNIHAN. Yes, sir, it does.

Mr. BARTLETT. That is my opinion, also. I share that. However, I, take the position that it does not require giving up American operation of the canal to resolve the sovereignty issue. It would seem to me, and I am curious as to what the Senator from New York would think of this proposal, that the treaty could include a negotiation or include an agreement by which we would have a lease on the Canal Zone. This could be on a much smaller part than we have now, roughly a third of what we now have, and that we would agree, of course, to hire Panamanian nationals and so forth. But the basis of the treaty would be similar to what we have at Guantanamo Bay, a lease being renewable indefinitely, which was the original idea, as I understand it, between our country and Panama, and before that, Colombia.

Would the Senator think that this might resolve the difficulties that have developed between these two countries because of the sovereignty questions?

Mr. MOYNIHAN. I should like to say to the distinguished Senator that I recognize the sensitivity of his remarks, just as I would say the same about the Senator from Nebraska, of whom I did not have the opportunity to respond, when he said what he thinks when he sees a beautiful head of hair: He did once; he married her.

The point is that, the Senator from Oklahoma is addressing the question of sensibility here, and correctly so. My feeling is that the proposal he makes is no longer a real option for the United States. It is my feeling that we must advise and consent to the ratification of these treaties or face a calamitous period ahead.

Mr. BARTLETT. It seems to the Senator from Oklahoma, as he looks at the treaty, that he should judge it based on what he thinks the treaty should consist of. If those who have negotiated the treaty over a period of a number of years, as has been the case, have, in the opinion of the Senator from New York, lost the opportunity of such an option as a lease, I do not think this should impact on me or impact on the way that I think the treaty should be. I feel very strongly that the country that manages and protects and defends

the canal is very important and that, in this hemisphere, there is really only one country other than the United States—perhaps Canada, if they were interested, and I am sure they are not—having the capability, financially and otherwise, to do the job.

Other than that, I do not think there is such a country. Because of that, I feel that eliminating the sovereignty problem is a means of establishing a treaty and an agreement with Panama that would provide the mechanism by which this country can continue the management of the canal and also solve the basic problems that have led to what I think the Senator in general referred to as colonialism. There would not be the colonialism, any more than there is where we have Clark Field or where we have various bases in Spain which are leased. We have certain rights according to that lease. But we definitely do not have sovereignty, nor do we claim sovereignty, nor does anyone feel that we do.

I feel that getting rid of the canal—maybe that is a rather rough way to put it—turning the canal over to Panama is not the only solution to the sovereignty question; that the sovereignty question can be addressed in another way by our national leaders.

Mr. MOYNIHAN. I should like to say, and not for the first time, that I have learned a good deal from the Senator from Oklahoma. I say, as I conclude my remarks, he has given me great hope and has certainly given me a clear understanding that our task on the side of the supporters of the treaties—of course, on both sides of the aisle—is to persuade him that what he and we both wish to accomplish can best be, in the most practical way, accomplished by these treaties. As is so much the case here, and so happily the case, there is no bitterness in this room; there is no bigotry in this room. There are men and women seeking the best arrangement.

I would like to conclude my remarks by a short description on how good these arrangements really are, how extraordinarily well our negotiators have done, how wisely the four Presidents involved have held out for these terms.

I was speaking 2 hours ago, I believe, about the Security Council meeting in Panama City in 1973 and I was reading this passage from the report of the official document from the Council, a significant passage in which they are describing the position of Cuba. I would like to read those passages:

The main item on the agenda—in the view of the Cuban Ambassador—was the threat to international peace and security in the Hemisphere that lay in neo-colonial relations imposed on Panama by the United States under a treaty that infringed and violated the most elementary norms of international law, Cuba considered that the perpetuity of that neo-colonial agreement should be abrogated, and the concessions as well, because there have been no free consent. The will of the United States had been imposed without the approval of the Panamanian people.

And so it went on.

Then it came to the issue that must command our attention. It said:

The hour had already struck when all forms and manifestations of colonialism and neo-colonialism in Latin America must be wiped out, including the Associated Free State of Puerto Rico.

Now, shortly thereafter, 2 years later, in March 1975, the Bureau, as it is called, the Central Committee of the Nonaligned

met in Havana. I now speak to a matter that has been partially disclosed and partially not disclosed, and I will disclose it all.

The Bureau represented 117 countries in the world, and at the end of this meeting of the nonaligned—neutral as between the Communist nations and the free nations, but meeting in Communist Havana—a document was issued which began by stating the number, giving the names of the members of the nonaligned that were present. And then they said that present as observers were a number of countries, Argentina, Africa, Bolivia, countries like that. And then they listed the Socialist Party of Puerto Rico as an observer member government.

The Socialist Party of Puerto Rico. The Socialist Party of Puerto Rico, I hasten to be clear to the democratic socialists of this world and particularly this country, is the Communist Party in Puerto Rico. Yet, it was listed and recognized by three-quarters of the nations of the world already in a condition of a sovereign government.

Now, the Senator from Utah earlier today spoke of the greater success which Mr. Clements, the distinguished former Deputy Secretary of Defense, had had in the summer of 1975 in drafting a clause with respect to our relations with Panama which, unaccountably to me, the Senator from Utah thought superior.

Let us read this clause. It says:

In the event of any threat to the neutrality or security of the canal, the parties shall consult concerning joint and individual efforts to secure respect for the canal's neutrality and security through diplomacy, conciliation, mediation, arbitration, the International Court of Justice, or other peaceful means.

Now, in the summer of 1975, as to the Deputy Secretary of Defense, the most he could think to get was an agreement that we would consult with respect to conciliation and the International Court of Justice if the security of the canal was threatened. Three years later, can we not be struck by the strength of the treaty we have, indeed, far stronger than anything Mr. Clements could have envisaged?

It says that the two nations, that each of the two countries shall, in accordance with their respective constitutional processes, defend the canal against any threat to the regime of neutrality. Not seek conciliation, but defend with use of arms, and that is the right we proceed with and continue to maintain in this treaty, and it is a precious right.

I would like to make two points in conclusion. First, I began by saying that far from representing retreat in the world, these treaties mark the beginning of the era in which the Soviet empire will break, for it will be the last left in the world, and the sooner the better.

The day when we ratify this treaty that we sign the death warrant for Soviet Russian imperialism throughout the world. Mark if this is not the fact.

In stark contrast to the rest of the world, only the Soviet empire stands astride Asia, Europe, and now seeking to penetrate Africa, and acts as if it were still 1903, as if it could still send armed people anywhere and kill anybody and get away with it. They think they can, and have, because for the past 30 years the issue of

world debate has been the colonial legacy of the West, and not the colonial reality of the Soviet empire.

Now we hear the pleading of former Soviet satellites, such as Somalia, crying, "Help us, the Cubans are here, the Russians are here, help save us," they say.

In 1975, I cannot describe the contempt and hostility of the Somali Government toward any effort by the West, any effort by us, to say, "Your interests are in a world of free nations and independent nations; you have no interest in a world with union to the Russian imperialism."

They were contemptuous of us. Now, today, they are pleading for some help.

I shall take the liberty to return to take up that particular theme at a future time. I would sum up my statement and thank the Senator from Idaho by simply saying that those Americans who are consulting their fears in this matter should look to their hopes and summon their courage because this is not a moment of retreat.

This will be an event that will mark the moment when the world at last saw that, as against the dark night of tyranny that hangs over the Eurasian landmass called the Soviet Union, and the bright light of freedom that emanates from these shores living in that light of freedom is incomparable and that freedom will be the choice of the overwhelming majority of the nations of the world.

We shall look back with pride and a sense of honor that this Chamber commenced that process.

I thank the Senator.

Mr. GOLDWATER. Mr. President, I will not take the Senate's attention long. I want to talk about an aspect of this treaty and the voting on it that has not received the attention of the Senate but which has received the attention of the House. In fact, more than half the Members of the House have petitioned the Supreme Court to determine whether or not the Constitution requires both Houses of Congress to act in the transfer of U.S. territory.

Mr. President, I rise to discuss one of the fundamental and most important issues arising out of the Panama Canal Treaty, the role of the House of Representatives in the disposal of territory or property of the United States. The issue stems out of the Constitution itself, which in article IV specifically grants to Congress the power to dispose of territory or other property belonging to the United States.

The question is this: Does article IV require the consent of both Houses of Congress before American property in the Canal Zone can be transferred to Panama? Or can public land be given away by a "self-executing" treaty without the subsequent consent of Congress?

Mr. President, I am amazed that this issue has been treated so cavalierly by proponents of the treaty. Oh, the problem is mentioned in the committee report, but the committee stretches and strains to dismiss it.

A handful of precedents that are easily distinguished are given for the proposition that a treaty can be substituted for the will of both Houses of Congress.

Court cases which have nothing to do with ceding public property to a foreign nation absent implementing legislation are cited to uphold the give-away of the canal free of the added deliberation which would be required if both the House and the Senate had to act on the matter.

Yes, arguments have been made to defend cutting out the House from its constitutional role in the transfer of Federal land or property. But these arguments are no more than that—arguments. They do not hold up.

What we are given by the Attorney General and the State Department and the Foreign Relations Committee report are not facts, but assumptions. They argue in circles, assuming that the view they start out with is the correct one.

For example, the committee and the Attorney General rely heavily on a statement by the Supreme Court in the case of *Geofroy* against *Riggs*, which says that the treaty power extends "to all proper subjects of negotiations between our Government and the governments of other nations" but does not "authorize what the Constitution forbids." The committee uses this bare statement to assume that it knows what the Constitution forbids and does not forbid.

But the quotation does not answer that question. In fact, if the paragraph quoted from were read in full, it would be clear that the Court added a restriction on the treaty power which is directly relevant to the Panama Canal Treaty.

What the Court actually said is this:

It would seem to follow that a treaty which purported to exercise the power exclusively granted to Congress would require implementing legislation as is the case when the treaty requires appropriations.

On the basis of this sentence, I would contend that the Panama Canal Treaty requires implementing legislation, since it purports to exercise a power exclusively given to Congress, the power to dispose of property.

The way the treaty proponents read the quotation, the Court meant that nothing at all is forbidden to a treaty unless the Constitution expressly uses the word "forbidden" or the words "you shall not do this." Under this reasoning, the President and the Senate could levy taxes on the people by a treaty, since nothing in the Constitution expressly forbids a treaty from being used to raise taxes.

Article I, section 8, only provides that Congress shall have the power * * * To lay and collect taxes. * * * It does not say that Congress alone shall have the power. Nor does it say that Congress shall have the exclusive power. As the distinguished legal authority, Professor Berger, has asked in his critique of the administration position, what then is to distinguish the taxing power from the article IV power to dispose of property?

Mr. President, I think the question answers itself and exposes the error defenders of the treaty have fallen into when they rule out participation by the House in transferring the Panama Canal. If they are serious in their contention that the full Congress need not act to dispose of public territory, then the precedent they are asking us to take in advising and consenting to the treaty is more dangerous than anyone imagined. Very few of Congress powers

could not be usurped in a similar way by treaty, using the same reasoning that is used today to bypass the House in the Panama Canal Treaty.

Moreover, I am impressed by Professor Berger's analysis that the Geofroy case has nothing at all to do with the disposition of Government property because it actually involved private rights of inheritance in the District of Columbia. In fact, the case was decided in accordance with a preexisting statute of Congress, a far different situation from the present one where Congress is being cut out of the decision.

Mr. President, I am also surprised to see several cases listed as authorities for the Panama Canal Treaty which involve treaties with Indian tribes. As we all know, a trust relationship exists between the U.S. Government and Indian tribes. Many courts, including the Court headed by Chief Justice John Marshall, have referred to the Indians as being in a guardian-ward relationship with the United States. This is well documented in legal briefs prepared by the Library of Congress in July and August of last year.

Thus, to call Indian communities foreign nations in the sense of foreign countries, not within the limits of the United States, is stretching pretty far for a precedent.

Even if there were some kind of precedent in these treaties, they would no longer be valid because both Houses of Congress acted more than a century ago to repudiate the use of treaties in dealing with Indians. In the 1860's Congress thoroughly debated the practice of transferring public lands to Indians by treaties and emphatically decided that thereafter no soil of this country would be sold or given up without the approval of both Houses of Congress.

Congress did not simply express this policy in a sense of the Congress resolution, but it spelled it out plainly in two statutes enacted into law—the act of March 29, 1867, and the act of March 3, 1871. Thus, the Indian treaties and cases are not valid precedents to be relied upon today in determining the role of Congress in disposing of the Panama Canal.

In fact, Mr. President, I think we can discard case law as the basis for our decision of this question. I think both sides of the issue will agree that there is no Supreme Court case squarely deciding a contest between the House of Representatives and the treaty-making power. But that is exactly the situation we are facing today.

There are presently more than a majority of the Members of the House of Representatives—219, to be exact—who have joined in sponsoring a resolution declaring that any transfer of property in the Panama Canal Zone must receive the specific authorization of an act of Congress passed by both Houses.

In these circumstances, Mr. President, I believe we should do more than just argue from uncertain judicial and historical precedents that are not really on point. In my opinion, the answer to the question does not lie in court cases, but is to be found in the Constitution itself and in the intent of the framers.

On this basis, I am convinced the framers meant for both Houses of Congress to act before public land or territory could be transferred to a foreign country.

I believe the framers deliberately wrote article IV into the Constitution as one of the checks and balances of Government so that there must be consideration by both the Senate and the House of Representatives before Federal land or property can be conveyed to another power.

This is a matter that closely touches all the people. The transfer of the canal and Canal Zone assets, whose replacement value is nearly \$10 billion and whose operation is closely linked to the economy and security of our Nation, is a subject of the gravest importance. It is undoubtedly the kind of public action which the framers did not want taken until it had received the most extensive and thorough deliberation.

Mr. President, I am amazed that in this day and age, when everyone is worrying about what is called the Imperial Presidency, my colleagues do not refer back to the original purpose of the framers, who wanted to place a check on major actions of the Government that may harm the country.

The matter did come up in the State conventions on ratifying the Constitution. There was much concern expressed during the ratification process about the possibility of yielding, by a treaty, territory that might be valuable to the economy of a particular State or region. But this fear was specifically rebutted at the Virginia Convention.

Governor Randolph, who was a delegate both to the Federal and Virginia Conventions, took note of the objection when he remarked:

But it has been said that there is no restriction with respect to making treaties.

His answer was that the Constitution provided "the most express restriction" on sacrificing the property rights of the Nation in article IV, which empowers Congress to dispose of territory or property of the United States.

Randolph was not the only one who took this view. Francis Corbin added at the Virginia Convention that the people were protected against rash treaties by another provision of the Constitution. Corbin said that if property is sought to be transferred by an agreement in the nature of a commercial treaty—a description which clearly is applicable to a treaty relating to commerce through the Panama Canal—"the consent of the House of Representatives would be requisite, because of the correspondent alterations that must be made in the laws."

So I believe the framers definitely intended for any proposed transfer of property or territory, which may have an important bearing on the economy or security of any State or region in the country, to receive the consent of both Houses of Congress, acting together with the President, before it would be valid.

But it is not necessary to prove that Congress has the exclusive power to dispose of public property. George Leonard, a well known attorney with considerable experience in constitutional matters, testified before the Subcommittee on Separation of Powers last year, that in the case of the Panama Canal treaties, the true question is: Once Congress has legislated on the subject, can the canal and the zone be conveyed without the approval of Congress?

Here there is a special situation. Congress, as a joint body, has acted on the canal since at least 1902. In the Spooner Act of that year, Congress authorized the President to acquire property and "perpetual control of a strip of land" in the then territory of Colombia and to "perpetually maintain, operate, and protect thereon a canal" from the Caribbean Sea to the Pacific Ocean. It was pursuant to the will of Congress in the Spooner Act that the Panama Canal Treaty of 1903 was negotiated and concluded.

Since that time, Congress has established courts, enacted civil and criminal codes, provided for defense, and maintained, administered, and operated both the canal and the Canal Zone.

In the fact of this considerable activity by Congress concerning the Panama Canal, Mr. Leonard believes Congress has preempted any concurrent power which the President, together with the Senate, may have had to dispose of the canal and land in the zone by treaty.

In fact, we have always before used legislation passed by both Houses of Congress in order to cede property in the Canal Zone to Panama. In 1932, it took legislation to authorize the Secretary of State to modify the boundary line between Panama and the zone so that a new legation building could be built on foreign soil, that is Panamanian territory, instead of American territory.

In 1936, a treaty was signed relating to the disposal of certain property to Panama. This treaty was specifically qualified by the following words: "When the authority of the Congress of the United States shall have been obtained therefore, the Government of the United States will transfer to the Republic of Panama" the property in question. Thus the treaty itself openly required subsequent action by both Houses of Congress.

Then in 1943, a joint resolution was approved authorizing an executive agreement for the transfer of certain land in the Canal Zone to Panama. During Senate deliberation over this resolution, the chairman of the Senate Foreign Relations Committee, Senator Tom Connally, unequivocally took the position that under the Constitution "Congress alone can vest title to property which belongs to the United States." He added:

So, if we had a normal treaty before us and if it should be ratified, it would still be necessary for the Congress to pass an act vesting in the Republic of Panama the title to the particular tracts of land. * * *

Finally, in 1955, another treaty provided for the transfer of land to Panama. Three provisions of that treaty related to the disposal of territory and property. Although two of those three provisions did not expressly call for implementing legislation, Assistant Secretary of State Holland informed the Senate Foreign Relations Committee in writing that legislation would be needed to implement the transfer of all the territory and property covered by the treaty.

In order that there may not be any question about the meaning of the State Department position at the time, I will quote from the exact words of Assistant Secretary Holland's written statement. It says:

Legislation will be required to implement the following provisions of the treaty and memorandum of understandings reached:

Then, dropping down to paragraph (b), the State Department paper continues:

Articles V, VI and VII of the treaty and item 2 of the memorandum. Transfer of certain lands and improvements to Panama. Authorizing legislation is required.

That is about as clear as anyone could say it. Articles V, VI, and VII of the 1955 treaty were the sole provisions providing for the transfer of lands and the State Department specifically identified each of those articles as requiring authorizing legislation passed by Congress before the treaty would be effective.

This conclusively settles the matter as far as I am concerned. It is clear that past practice shows that territory transferred to Panama must have the approval of both Houses of Congress. This makes the situation far different from any of the so-called precedents set forth in the committee report, one of which is the 1955 treaty with Panama, which I have shown the State Department itself conceded required legislative authorization from the full Congress.

Finally, Mr. President, there is no question but that we own property in the Canal Zone.

First, we paid \$10 million for title to land originally held by the Panama Railroad, which according to a State Department fact sheet dated September 16, 1977, constitutes about one-third of the zone.

Second, we paid \$4 million to buy title to lands held by private owners in the zone, which according to the same State Department fact sheet, covers another one-third of the territory.

And, third, according to the 1903 treaty we have acquired all the rights, power and authority in perpetuity in the entire zone that were needed "for the construction, maintenance, operation, sanitation and protection" of the canal. This clearly gives us property rights, even if we do not have complete sovereignty over these lands.

In addition, we own the physical plant there and the defense facilities.

Indeed, the State Department fact sheet admits:

The facilities used in connection with the operation and defense of the Canal as well as facilities used by other agencies of the United States in the Zone are property belonging to the United States.

In summary, Mr. President, under Article IV of the Constitution, this means that the Panama Canal Treaty cannot become effective, even if it is given the advice and consent of two-thirds of the Senate, until the House of Representatives acts favorably on the issue.

Even if the Senate should approve these treaties—and that is a big "if"—we should not do so unless an amendment is attached requiring implementing legislation for the transfer of territory and property.

Mr. President, I might observe that back as far as October of last year this implementing legislation was recognized as being necessary by the Department of State and we were told that the implementing legislation would be on the Hill within a few days. To my knowledge this implementing legislation has not reached us as of yet and yet I think it is perfectly clear by precedent of the State

Department, Congress, and the Constitution that such legislation must be before us and must be passed before we attempt to give anything of value away from the country.

Mr. President, the Senator from Utah (Mr. Hatch) has introduced such an amendment and, when it is called up, I will have more to say on this subject.

I thank my colleagues very much for allowing me the time to discuss what I consider to be an important issue, and I yield the floor.

Mr. STENNIS. Mr. President, I shall not detain the Senate very long on the remarks that I am making this afternoon. I commend the Senator from Arizona for the timeliness and the content of his remarks, which raise a very serious legal question. He mentioned the implementation proposals that we felt a need for during our hearings in the Senate Armed Services Committee, but, of course, we could not wait.

Mr. President, I plan to make a more complete statement on the entire Panama Canal Treaty proposal at a later time. However, I feel that I have a responsibility to the Senate to present and summarize the information that the Armed Services Committee developed relating to the financial situation or potential financial situation as it would exist under the proposed treaty.

We held relatively brief hearings on this proposed treaty, Mr. President, in our Armed Services Committee. The primary jurisdiction—and there never was any dispute over that, of course, was with the Foreign Relations Committee, but we do have a certain jurisdiction and responsibility under the rules of the Senate with reference to the management or the rules regulating the Panama Canal, and also any matters, of course, that relate to the defense of the Nation. So it was with reference to preparedness, military preparedness, and the consequences of the lack of the canal or the uncertainty under this treaty, that we addressed ourselves to primarily.

On the financial side, we very deliberately went into this matter. We had time. We employed our own consultants in the financial field, capable people who were highly recommended. We had the benefit of the esteemed and valuable Director of our General Accounting Office, Mr. Elmer Staats, whose entire staff, or rather part of it, has been making quite a survey of the financial situation with reference to this proposed treaty and matters related thereto. And we had the benefit, too, of the testimony of a very exceptional, excellent man that I had not known until these hearings came about. He is the present so-called business manager—his actual title is Governor—of the canal, Governor Parfitt, who is a very competent, capable manager, on the merits and on the costs.

Mr. President, it is important that the Senate fully understand the financial situation that did exist and will probably exist under the Panama Canal Treaty if it is ratified.

First, the Senate and the American taxpayers should know in advance how much money it will cost to implement the treaty over the next 22 years. In fact, to put it briefly, we should not buy a "pig in a poke."

Second, because the financial elements are so important to the treaty, and one of the principal reasons for having a treaty at all,

there should be some assurance that the relations between Panama and the United States will not be endangered by 22 years of misunderstanding or uncertainty, or haggling over money matters. Both countries ought to have a common understanding of the financial provisions of these proposed treaties, and that is why we went into this matter financially, and went into the outer perimeters of some possibilities.

Our committee, as I have said, engaged a consultant and held hearings with expert witnesses, including the two I have recently mentioned, and then undertook a special staff study by competent members of our staff to summarize the key financial questions raised by the treaties.

Now, this was right at the conclusion of our hearings. We had to file the first report thereon—we were exceedingly anxious to, of course—before this matter was called up and the debate started. Some additional staff work was required on these figures—and that is the only reason for the delay—which I am now presenting to every Member of the Senate, the media, and the public at large. It is not in the nature of a supplemental report, but it is a summary of all the facts with reference to the financial matters.

During the February recess I sent a draft of the staff study to the Secretary of State, so that he could review it and have a chance to provide his comments. Later I shall request permission to have printed in the Record at the conclusion of my remarks the complete committee staff study, and, in a sense of fairness, the Secretary of State's comments thereon, together with brief additional comments on the State Department memorandum. This procedure was adopted in the interest of fairness and completeness on these summaries, before they went out to the Senate and the public.

I want to summarize, now, for my colleagues, where the debate on these financial issues stands.

WILL THE CANAL PAY FOR ITSELF?

First, will the canal pay for itself? First there is the question of whether or not revenues from canal operations will be sufficient to meet expenditures, including the payments to Panama under the treaty, during the life of the treaty.

If the canal operates at a net loss over the 22 years of the treaty, the U.S. Government would be called on to pay the loss, since the canal is to be turned over to Panama debt-free in the year A.D. 2000.

Governor Parfitt, to whom I have referred, who is sometimes called the business manager of the canal and actually is the Governor, and Mr. Staats, the Comptroller General, both warned, before the Armed Services Committee, that there was a substantial possibility that the canal would suffer operating losses beginning about 1983.

Now, I remind and caution that these are calculations, but some calculations have to be made. It is the only way we can really determine what are probably the facts.

Administration studies show there is a distinct possibility that the canal will not be self-sustaining. The State Department agrees that there is uncertainty, but asserts that "revenues will be suffi-

cient to meet expenditures." The State Department presents no evidence for this assertion beyond 1983, and makes no estimate of net profit or loss after the year 1983.

HOW MUCH CAN TOLLS BE RAISED?

The fact is that no one knows how much tolls can be raised in a very uncertain international transportation market. No one can be certain just what the traffic will bear. No one can make an actual money statement of facts. We do know that U.S. pipelines, U.S. railroads, and to some extent large tankers and cargo ships, are becoming more competitive with the canal.

Since the canal was opened in 1914, tolls have been raised only about 40 percent, all of that since 1974. Think of that. From 1914 to 1974, the tolls were not raised. Since those toll increases have taken effect, shipping through the canal has dropped about 6 percent per year. All experts and those who have dealt with this problem do agree that there is some limit to the amount the tolls can be increased without driving away traffic to the point of financial collapse. The question is, What level is too high? At what point do the financial burdens on the commission that drive tolls upward begin to result in net operating losses?

The administration cannot give us anything concrete to rely upon past 1983. The committee staff study shows that in the unlikely event tolls cannot be raised above current levels, the canal will suffer a \$3.5 to \$3.7 billion operating loss over the period of the treaty.

As I say, those are just figures which are not written in concrete. No one can be certain about them. They are, however, based on the unlikely event that tolls cannot be raised above current levels. I assume they can be raised some, and will be raised, but there is the starting point.

Assuming no loss of traffic due to toll increases, tolls would have to be increased 149 to 168 percent to offset this deficit.

That is the increase which would be required, to put it in another wording, to offset this prospective deficit to which I have referred.

The committee staff study shows if tolls can be increased only 75 percent above current levels by the year 2000, the canal would suffer an operating loss of about \$1 billion.

This is as near as we can get to a hard, rock-bottom calculation.

This is by way of illustration of what we might be facing as a downside risk of appropriations being required and the prospective amount.

APART FROM POSSIBLE OPERATING LOSSES, WHAT WILL THE TREATY COST?

The second question is whether or not, aside from possible operating losses, the U.S. Government will have to pay certain costs as a result of the treaty. The answer here is clearly "Yes." The committee staff study summarized testimony showing about \$1 billion of these costs over 22 years. The State Department has

acknowledged most of that. The one significant area in dispute is the possible \$220 million payment to Panama for the so-called contingent payment of \$10 million per year if earned. The State Department asserts the United States would not have to pay this payment if it has accumulated by 2000 A.D., but presents no hard evidence to support its position. The testimony showed that while the U.S. Government may feel this money will not have to be paid, many Panamanians expect that it will be paid.

It will be paid to them, or to their government, during the intervening time of these 22 years.

On that one single point of the \$10 million per year if earned, that would constitute only \$220 million of this estimated payment that would have to be made of around \$1 billion.

WILL THE TREATIES BRING ABOUT U.S.-PANAMANIAN DISCORD?

Finally, the committee staff study showed seven major areas of "potential financial controversy between the United States and Panama."

These seven areas have been very carefully examined, and they are believed to be a very reasonable estimate and a very reasonable area of operations in defense and all that will bring this about.

The study says:

The significance of these points of conflict is that serious and continuing disagreement over ambiguous financial issues may not bring about the period of friendly cooperation with Panama envisioned by the Administration.

In conclusion, Mr. President, I urge each Senator to read both the committee staff study and the State Department comments on the financial issues and reach his own conclusion as to how much these treaties will cost the United States. I, for one, think the U.S. taxpayer should be prepared for a bill which, if things go wrong, could total as much as \$2 billion. This figure does not count the roughly \$1 billion book value of facilities that will be turned over to Panama if these treaties are ratified.

That is not intended to charge anyone with bad faith. This is a reference to seven possible areas of disagreement, the lack of uniform interpretation, and the lack of some conclusions by the contracting parties—and this is a contract that concerns money matters. These seven areas are fully set forth in this study that I am going to ask to be printed in the Record.

Mr. President, I say again for emphasis that this study could not possibly be made between the time we had the hearing and when we thought we should file something with the Senate. The staff, a highly competent group, has worked on it day and night and have come up with these calculations. The enumeration of these seven matters and the reasons therefor are set forth, as I said, in the staff study that I have asked to be included in the Record.

Mr. President, in conclusion, I urge that each Senator read and study both the committee staff study and the State Department comments on the financial issues and then reach his own conclusions as to how much these treaties will cost the U.S. Treasury. I, for one, think the U.S. taxpayers will be charged a bill which, if things go wrong, could total as much as \$2 billion. That figure does

not count the roughly \$1 billion book value of facilities that will be turned over to Panama if these treaties are ratified.

The \$2 billion to which I refer is new money. That is a forthcoming event. It is going to have to be paid, according to our calculations, out of the Treasury.

The second item of the \$1 billion is the rough book value now after the writeoff of the cost of the canal and other facilities. There is still left facilities with a book value of \$1 billion which goes along with the treaty as part of the bargain. That would make a total of \$3 billion of money cost.

This last item of \$1 billion actually has a replacement value. If it were going to have to be built or replaced, today it would cost over \$9 billion. That shows what we are dealing with. It is something which cannot cavalierly be dismissed or taken for granted, or laughed about.

Somewhere, sometime, someone has to begin discussing more seriously the cost, not only of items of this kind, which are a continuing series, but all costs.

I also urge each of my colleagues make a judgment as to whether or not these financial questions will undermine, or have a tendency to undermine, United States-Panamanian relations in the future.

Certainly, that question is relevant. We are all concerned, to some degree, about these relations. Whatever we do, if we should adopt this treaty, let us not have a built-in situation which would lead to real controversies over and over again.

In my opinion, if we are not prepared with a blank check to underwrite both the potential operating losses and the current cost of these treaties we should reject the treaties rather than create 22 years of unknowns—unknown as to amounts and unknown as to possible costs—and discord and controversy with Panama.

It is another way of saying that a better job—I say that with all deference—could be done on this question. Ultimately, each Member must decide how important these disturbing financial questions are in arriving at a balanced judgment on the risks and benefits of the proposed treaty.

Mr. President, I ask unanimous consent that a copy of this study by the staff of the Senate Armed Services Committee, to which I have given my personal attention, together with their sheets of figures, and also a transmittal of this to the State Department and the State Department's statement in response, be printed in the record at this point. With all that done, then the public and the membership will have the complete story of what we found in the committee.

There being no objection, the material was ordered to be printed in the record, as follows:

COMMITTEE ON ARMED SERVICES STAFF STUDY ON PANAMA CANAL FINANCIAL DATA

At the request of the Chairman, the Committee staff prepared for the use of Committee Members this summary and analysis of the various financial data presented in testimony and developed by the Panama Canal Company. Without detailed implementing legislation or a full-cost analysis of the treaties by the Administration it is not possible to provide more than approximations of possible costs to the U.S. government.

A summary of these figures is included as Attachment A.

POTENTIAL PANAMA CANAL OPERATING LOSS

This is the single most difficult part of the financial analysis. The testimony of both Governor Parfitt and Mr. Staats indicated a substantial possibility that the Panama Canal Commission under the treaties would not be self-sustaining after the first few years—i.e., would suffer operating losses during the life of the treaty. The Canal Zone Governor testified that he thought such operating losses would become a liability of the U.S. government.

Can tolls be raised enough to cover increased costs?

The key judgment that must be made on whether there will be operating losses is how much tolls can be raised to cover Canal operating costs plus the payments to Panama required by the treaties.

There is a great deal of uncertainty on this point. The recent study prepared for the State Department and Panama Canal Company by International Research Associates, Inc. says:

"* * * unlike most other enterprises, the Canal Company has only limited economic freedom to pass through any cost increases which it experiences to its customers * * * there is evidence that in the past the cost of alternatives has often gone down while the cost of operating the Canal has increased. * * * The relationship of toll sensitivity to inflation would not be an important issue if the difference between current toll revenues and the cost of alternatives to users were large (200 or 300 percent) * * * the maximum attainable toll revenue, is only 40 percent greater than the revenue projected under current toll rates * * * the eventual elimination of this user surplus must be viewed as a distinct possibility. The practical consequence of such an event would be the termination of the economic life of the Panama Canal on a toll revenue supporting basis. * * *

* * * the maximum toll revenue currently attainable is some 40 percent greater than the revenue projected without a toll increase * * * attainment of the maximum revenue requires a toll rate increase of somewhere between 75 and 100 percent. * * *

The future sensitivity of traffic to toll increase will be determined largely by the relationship of future cost of Panama Canal transits to future cost alternatives. And that relationship will be influenced primarily by: (a) the force and direction of future inflation rates; and (b) the future value of the U.S. Dollar vs. other currencies. * * * a high rate of inflation even if combined with continued devaluation of the U.S. Dollar would, on balance, constitute a greater damage to the Canal's ability to raise sufficient tolls than low or moderate inflation. * * * a low to moderate area of inflation of around 3 percent per year should permit the stabilization of the cost of Canal operation. * * * Under such circumstances, the prospects for maintaining the Canal operating on a financially self-supporting basis would undoubtedly be better."

Similarly, the American Management Systems study prepared for the Armed Services Committee stated in regard to toll increases: "Only in recent years has the problem of forecasting Canal toll revenues become critical to the Canal's financial health. The Canal has almost always been able to break even—mostly because Canal traffic was increasing faster than the costs to operate and maintain the Canal. However, Canal traffic has now decreased by 6 percent per year in the last three years. * * * Since the Canal is now (even without the proposed treaty) operating in an economic environment wherein costs are inflating rapidly and traffic growth may have ceased, this problem of forecasting toll revenues is critical for the Canal's managers. * * * There is large uncertainty in the level of Canal toll revenues over the next two decades. * * * This large uncertainty in likely revenues is inherent and probably irreducible. * * * The level of Panama Canal traffic and toll revenues will depend upon a number of factors, most of which are unpredictable and outside the control of the Panama Canal Commission."

Can operating costs be reduced?

Another judgment that must be made in determining whether the Canal will be financially self-sustaining is whether the costs of running the Canal can be cut below the estimates of the Panama Canal Company. The American Management Systems study suggested it might be possible to cut Canal operating costs by \$30-40 million per year, largely through personnel cuts. This is about an 18 percent reduction from the Panama Canal Company's estimate of operating expenses. On this point Governor Parfitt testified,

"I find it very difficult indeed to see the savings that are contemplated here and still run an efficient and effective organization * * * I personally don't believe that there are that many savings that could be implemented with any degree of confidence and still have an efficiently running canal in the fashion we have now."

Mr. Staats testified:

"It sounds like a fairly sizable reduction considering all that has been done to try to cut the costs down there * * * we feel the Panama Canal is conservative, or too conservative, to be quite accurate about it, on their capital investment estimates."

Assumptions behind illustrative deficit estimates

In order to illustrate the magnitude of the potential deficit, the Panama Canal Company was requested to calculate the potential deficit assuming 6 percent inflation per year and assuming no increase in tolls above current levels. They were also asked to calculate the cumulative toll increases required to eliminate all deficits. As a middle case, they were asked to make the same calculations assuming arbitrarily that tolls could only be increased 75 percent cumulatively for the period of the treaties and that there was no reduction in traffic caused by the toll increases beyond the first 20 percent increase. Since there is a great uncertainty about how much North Slope oil will be shipped through the Canal, each case was calculated first with the current estimate of potential North Slope oil shipments through the Canal and then again with a 75 percent reduction of that estimate after 1980. All estimates include current Panama Canal Company estimates of operating costs.

It is important to note that none of the figures shown below include the \$10 million annual contingent payment to Panama, the \$20 million annual interest payment to the U.S. Treasury, possible recovery of U.S. capital investment in the Canal or other costs described in other sections of this study. If these costs were included in the figures shown below, they would add to the potential losses:

ILLUSTRATIONS OF POTENTIAL PANAMA CANAL OPERATING DEFICITS (CUMULATIVE THROUGH 1999 A.D.—ASSUMING 6 PERCENT ANNUAL INFLATION)

	(¹)	(²)
If tolls are not increased above current rates (loss)	\$3.57	\$3.75
If tolls are raised only 75 percent (the total currently available increase estimated to produce maximum revenue was 75-100 percent) (loss) .....	.99	1.16
Cumulative toll increase needed to fully offset deficits (assuming no toll-caused traffic loss after first 20 percent toll increase) (percent)	+149	+168

¹ With full North Slope oil (billions).

² 75 percent loss of North Slope oil after 1980 (billions).

Who pays for toll increases?

It is well to keep in mind that toll increases over the life of the Treaties will mean additional costs to be paid by shippers and consumers around the world. How large will such a burden be? In relative terms, as Mr. Staats pointed out in testimony, not large. But the amounts are still substantial in dollar terms. Using figures provided by the Panama Canal Company, and assuming 6% inflation, substantial North Slope oil traffic after 1980, and no surplus or interest payment, the additional toll revenue the Canal would have to bring in during the life of the treaty (assuming now that tolls could be raised by these levels) would be \$3.57 billion. If tolls could be increased that much, the Company estimates that approximately one-third of this increased charge would be borne by U.S. shippers and consumers in the form of higher costs. That amounts to an additional cost of \$1.2 billion.

ESTIMATED VALUE OF ASSETS TRANSFERRED TO PANAMA

One aspect of the costs of the Treaties is the value of the property given to Panama over the life of the treaty. The testimony and other information provided by the executive branch indicates two types of estimates of this value. Governor Parfitt, Mr. Staats and the Defense Department put the net book value of all assets in the Canal Zone at \$920 million. Mr. Staats suggested that the Congress consider whether some of the book value of these assets should be recovered through accelerated depreciation charges against Canal operations over the life of the treaty.

The witnesses also presented estimates of the current value or replacement cost of the assets in the Canal Zone—though it is not a very precise figure. The State Department's composite estimate of replacement value is \$9.8 billion, including the Canal itself, the Company, and military assets.

POTENTIAL COST TO U.S. FOR ITEMS NOT COVERED BY TOLLS

A second aspect of the cost of the treaties is the total cost to be paid directly by the U.S. as a result of the treaty and over the life of the treaty. These items are not

now costs of the Panama Canal Commission, and therefore would not be recovered through higher tolls. Any effort to recover them through higher tolls would, of course, increase the estimates of deficits outlined in the first section of this study.

1. **Military Plant Relocation Cost**—General McAuliffe testified that the various transfers and changes in facilities necessitated by the Treaties would involve substantial costs for relocating military units and building new quarters as needed. He estimated these costs at \$43 million.

2. **Civil Service Early Retirement**—Mr. Staats and AMS concluded that the additional early retirement costs for Panama Canal Commission employees given the opportunity to retire early under the treaty would total between \$7.5 million and \$8.4 million per year. Mr. Staats estimated the total cost to the Civil Service Commission at \$135 million over the 22 years.

3. **Incremental Cost for DoD Schools and Hospitals**—The Treaty prohibits the Commission from running schools or hospitals as is done now by the Panama Canal Company. These functions will be transferred to the Department of Defense. Reimbursement for these costs by users is not presently on a full-cost basis in the Department of Defense and additional costs for the transferred personnel might also be incurred. AMS estimated the costs at about \$5 million per year, or \$110 million over the life of the treaty, though they could be higher.

4. **Foregone Interest Payment to the Treasury**—The Panama Canal Code now requires the Company to pay interest to the U.S. Treasury on the net interest-bearing investment of the United States in the Canal. The Administration proposes to omit the payment (currently \$20 million per year) under the Treaties. Since the interest rate will rise over the years, the total loss to the Treasury was estimated by Mr. Staats at \$505 million over the life of the treaty.

5. **Contingent Payment to Panama**—The treaty contains a \$10 million annual payment to Panama that is incurred only to the extent that a surplus is earned. Governor Parfitt testified that the payment will not be included in the base of costs used to determine tolls, and that therefore it is unlikely that it will ever be earned. The Treaty provides that the payment, if not paid in a given year, carries over to succeeding years. It also provides that the U.S. must turn over the Canal free of liens and debts. Both Governor Parfitt and Mr. Staats pointed out that the Treaty is silent as to whether any accumulated amounts existing on December 31, 1999, must be paid out of the U.S. Treasury. Governor Parfitt testified that the Panamanians apparently feel it will be paid by the U.S. while the Administration asserts that it is simply extinguished in the year 2000 because the surplus was never earned. If the annual payment is never made during the life of the Treaty and must be paid at the end of the treaty, it could amount to a liability of \$220 million in the year 2000.

6. **Foregone Payment Due From Panama**—Panama presently owes the Company some \$8 million for past services, primarily utilities. If that payment is foregone, there is an additional cost of \$8 million.

7. **Cost of Inventory and Evaluation of Assets**—Mr. Staats testified that it will be necessary to do a complete inventory of the assets owned by the U.S. in the Canal Zone in preparation for implementation of the Treaties. He estimated that this complex process will cost \$2 million.

8. **Other Costs**—Mr. Staats also identified possible costs in the payment of accrued leave to employees separated under the Treaties, though he could not estimate the amount. AMS identified possible additional costs in greater training efforts than those presently planned by the Commission, but could not quantify them. There may also be undiscovered costs borne by other agencies of the Government in implementing the Treaties.

OTHER POSSIBLE LIABILITIES OUTSIDE THE TREATIES

The United States and Panama also have exchanged notes regarding a military and civilian aid package to Panama which is related to the Treaties but not technically dependent upon them. These consist of Foreign Military Assistance Credits, Agency for International Development Housing Guarantees, Export-Import Bank Credits, and an Overseas Private Investment Corporation loan guarantee. Should Panama, which already pays 37 percent of its total income to service large foreign debts, fail to repay these amounts, totaling \$345 million, the United States could become liable to make good these losses.

POTENTIAL AREAS FOR U.S.-PANAMANIAN FINANCIAL CONTROVERSY

During the hearings, and in the analysis made by AMS, a number of potentially serious ambiguities in treaty language, problems in implementing various treaty provisions, or instances where the interests of the U.S. and Panama on financial

questions would be diametrically opposed, were pointed out. These are summarized below.

1. \$.30 per ton payment to Panama—Gives Panama a motive to keep tolls low to keep traffic high. To avoid deficits, U.S. canal managers would be motivated to do just the opposite.

2. \$.30 per ton and fixed \$10 million payments—Not clear what kind of priority they have in deficit year. In the event of a deficit, would Panama not be paid or would U.S. pay these treaty costs?

3. \$10 million surplus payment—Not clear how it should be calculated. Not clear how to handle deficit from a past year. Disagreement as to whether the total carryover obligation must be paid by the United States in 2000. Disagreement as to whether this should be included in the toll base.

4. Interest payment to the Treaty—Panama may oppose because it increases Commission's costs, sending tolls up and making profit less likely. But Congress may insist on it.

5. \$10 million for services—Panama will want to see it increased for inflation. U.S. will want to see it decreased because of lower Panamanian labor costs. In addition, many of these services will be provided to U.S. employees (fire, police, etc.) but there is not agreement on standards for the quality of service.

6. Depreciation—If Commission tries to increase depreciation expense or create new reserve for capital improvements, Panama will object because it will increase costs, push up tolls, and make it less likely that they will get the surplus \$10 million.

7. Toll Setting—Panama may want to keep tolls as low as possible to keep traffic high, since their annuity payment is based largely on traffic, not revenues. The U.S. may be under pressures to increase tolls regularly to avoid deficits.

The significance of these points of conflict is that serious and continuing disagreement over ambiguous financial issues may not bring about the period of friendly cooperation with Panama envisioned by the Administration. Continual disagreements about whether there has been a surplus, whether depreciation is unreasonably high, or whether tolls should be raised a given amount, have the potential for souring the relationship between the parties. This is particularly true when one considers the evenly divided Committees set up by the Treaties that will advise on policy, and the fact that the Commission's Board has a slim 5-4 American majority. Many of these potential points of friction could be removed by clear written understandings between the parties prior to ratification, as recommended in testimony by Governor Parfitt.

ATTACHMENT A—*Estimated potential cost of Panama Canal treaties and related matters*

I. Illustrative potential Panama Canal operating deficit until 2000 A.D.:

	(¹)	(²)
If tolls are not increased above current rates (loss)	\$3.57	\$3.75
If tolls are raised only 75 percent (the total currently available increase estimated to produce maximum revenue was 75-100 percent (loss) .....	.99	1.16
Cumulative toll increase needed to fully offset deficits (assuming no toll caused traffic loss after first 20 percent toll increase) (percent)	+ 149	+ 168

¹ With full North Slope oil (billions).

² 75 percent loss of North Slope oil after 1980 (billions).

II. Estimated value of assets transferred to Panama by 2000 A.D.:

	Replacement cost (billions)	Book value (millions)
Panama Canal	\$310	\$5.0
Panama Canal Zone	257	3.6
Military plant	353	1.2
Total	920	9.8

III. Potential cost to United States for items not covered by Panama Canal tolls until 2000 A.D.:

	<i>Millions</i>
Military relocation construction cost.....	\$43
Civil service early retirement.....	135
Incremental cost for DOD schools/hospitals.....	110
Foregone interest payment to U.S. Treasury.....	505
Contingent payment to Panama (\$10 M/yr.).....	220
Foregone payment for past services to Panama.....	8
Cost of inventory/evaluation of assets.....	2
Payment of employee accrued leave.....	?
Increased training for PCC employees.....	?
Total	1,023+

	<i>Millions</i>
IV. Other possible liabilities of U.S. Government:	
Military assistance (FMS credits).....	\$50
AID housing guarantees.....	75
Export-Import Bank credits.....	200
Overseas Private Investment Corporation loan guarantee.....	20
Total	\$345

THE SECRETARY OF STATE,
Washington, D.C.

HON. JOHN C. STENNIS,
Chairman, Committee on Armed Services,
U.S. Senate.

DEAR MR. CHAIRMAN: Thank you for your letter of February 9 and for the opportunity to comment on the "Staff Study on Panama Canal Financial Data." I am pleased to provide the enclosed memorandum setting forth the Department's comments, with which the Department of Defense concurs, on each of the five sections of the study.

I am also enclosing a series of questions and answers on the economic implications of the Treaties which was sent to the Senate on February 10 by Secretary Brown, Secretary Alexander and me.

Sincerely,

CYRUS VANCE.

MEMORANDUM COMMENTING ON "STAFF STUDY ON PANAMA CANAL FINANCIAL DATA"

OPERATING LOSS

Based on all available studies, we believe revenues will be sufficient to meet expenditures, including the payments to be made to Panama under the new treaties.

The best available information on Panama Canal revenue shows that a 25 percent toll increase would yield \$243 million in FY 1980 and \$248 million in FY 1983. A 30 percent rate increase would yield \$250 million and \$254 million for those two years respectively. Meanwhile, Canal cash requirements, which include payments to Panama and the effects of inflation, would range between \$238 million to \$247 million in 1980 and between \$237 million and \$262 million in 1983. (The American Management Services study prepared for your Committee suggests that larger cost reductions than those envisioned by the Panama Canal Company could be made under the new Treaty, thereby reducing cash requirements. The Panama Canal Company will evaluate the recommendations of the AMS Study to determine the feasibility of the proposed reductions and will continue to search for ways to reduce cost while maintaining the highest level of efficiency). Our studies indicate that even larger toll increases could be applied if necessary, to produce additional revenues. While the range of uncertainty increases for the later years of the Treaty period, we believe it is reasonable to expect that the Canal enterprise can continue to meet all its operating costs, including payments to Panama required by the Treaty. The Committee's staff study converts uncertainties about the future into a precise numerical projection of "potential losses" whereas these uncertainties could also end up being beneficial to the Canal.

With regard to the effect of inflation on increased toll rates, the staff study quotes a recent analysis prepared by International Research Associates as follows: "The

maximum attainable revenue was approximately 40 percent greater than the projected revenue without a toll increase . . . and . . . the attainment of that revenue would require a toll increase in the range between 75 percent to 100 percent." The staff study then applies an inflation rate of 6 percent per annum to Canal expenditures to the year 2000 and concludes that a substantial deficit could result. However, a 6 percent rate of inflation would affect the price of competitive transportation systems as well, thus permitting further canal toll increases in the future. When the staff study assumes that the maximum toll revenue available during the life of the treaty is 40 percent above current rates, it distorts the conclusion of the IRA study which indicates that the maximum attainable revenue, as calculated, is based on the *current* relationship of transit costs and the costs of alternatives. The IRA analysis *does not* imply that a 75 percent to 100 percent toll rate increase, producing a 40 percent increase in toll revenue, is all that can be derived for the rest of the century.

According to a January 1978 study by Arthur Anderson & Co., a one-time toll increase of 19-27 percent at the beginning of the initial five-year period would cover all costs of operation, including payments to Panama and inflation in operating costs for that period. The Panama Canal Company has estimated that a cumulative increase of 29 percent would be necessary for the period through 1983 under the treaty, and that a cumulative increase of 20 percent for the period 1981-1984 would be necessary even without a new treaty to offset inflation. The impact of the initial toll increase on U.S. consumers and shippers should not exceed \$15 million per year; it would involve a transportation cost increase of less than 1 percent, and its overall effect on our \$2 trillion economy would be negligible.

ESTIMATED VALUE OF ASSETS TRANSFERRED TO PANAMA

The net book value of existing Canal Company and Canal Zone Government property to be transferred to Panama by the terms of the Canal Treaty is \$194 million. Panama would also receive capital improvements to the Canal and its facilities made during the Treaty's lifetime which the Canal Company, based on planned capital improvements, currently estimates at \$454 million. The approximate total acquisition and improvement cost of military facilities as of FY 1978 to be turned over to Panama by the end of the treaty is estimated to be \$352.9 million. However, the true value of the Canal and its related assets cannot be measured in terms of financial investments which would be worthless to us if we could not continue to use the Canal. The true value to the United States is best measured in terms of both past benefits and our ability to continue to use the waterway which the new treaties guarantee.

POTENTIAL COST FOR ITEMS NOT COVERED BY TOLLS

Payments to *Panama* under the Panama Canal Treaties will be made from Canal revenues, *not tax dollars*. Moreover, all operating expenses of the new entity will be paid from Canal revenues. This would include for example, the cost of conducting inventories of the Panama Canal enterprise as a result of the treaty. The staff study incorrectly concludes that the costs of such inventories would be drawn from the general fund of the Treasury.

Administration spokesmen have testified on several occasions before Congressional Committees that the transition from our present role to our proposed role under the new Treaties would entail some costs in the U.S. budget. One major cost would be relocation of Defense installations, estimated at \$43 million for the first three years. Another would be an early retirement program for Canal enterprise and certain other employees. The Treaty provides for an optional early retirement program as an employee security assurance for Canal enterprise employees. The design of the program, however, will be at U.S. discretion. The programs which have been considered within the Administration range in cost up to \$150 million (current value). There will be additional DOD costs resulting from a merger of the Canal Company and DOD activities, and assumption of any non-reimbursable costs for health, education and other support functions. In the letter to Senators from Secretaries Vance, Brown and Alexander of February 10th it was noted the total appropriations impact over 21 years based on present information is unlikely to be much more than \$350 million. The Executive Branch is now developing detailed estimated costs for these functions. None of the appropriated funds for these costs would be for the benefit of the Government of Panama.

In any event, the items in this portion of the staff study will be subject to review by the Armed Services Committee, and precise estimates must await Congressional action on enabling legislation. Few, if any, of the other costs cited by Mr. Staats on page 8 of the staff study will be funded out of appropriated funds. Payment of

accrued leave, for example, to separated PCC/CZG employees will be borne by the Commission as would any increased training costs. Only the few DOD employees who may be separated as a result of the treaty will receive payment of accrued leave from DOD. In addition, DOD will be responsible for future payments of accrued leave for those PCC/CZG employees who transfer to DOD. Possible other costs which cannot now be identified will depend in large measure on the outcome of the implementing legislation and its requirements.

OTHER POSSIBLE LIABILITIES OUTSIDE THE TREATIES

A separate economic and military cooperation package of \$345 million—all in repayable loans, credits or guarantees—is planned. This package depends on development of programs to meet existing Congressionally established criteria. Only about \$5 million in appropriated funds would be required to support repayment guarantees for the military credit program as a reserve fund; none would be paid to Panama. The staff study incorrectly assumes that debts currently owed the Panama Canal enterprise will be foregone by the United States. The treaty does not affect in any way the status of any liability owed the United States by Panama. Under the proposed legislation, we would expect that the Panama Canal Commission would succeed to all accounts receivable of the current enterprise, including amounts owed it by Panama. We intend to settle these debts with Panama as expeditiously as possible.

Although not required by the Treaty, the Administration will recommend that the Treasury cease collecting annual interest payments from the Canal Company which have been paid since 1951 and which are currently averaging \$18–\$20 million. It will be up to Congress to decide whether to accept the Administration's recommendation.

AREAS OF POLITICAL CONTROVERSY

The staff study alludes to some areas of the new treaties which it suggests might result in controversy between the United States and Panama. The study suggests that the major item of controversy would be the contingent payment to Panama under Article XIII (4)(c) of the new treaty. The contingent payment will not be figured in the calculation of the toll base. This contingent payment is payable only if operating revenues produce a surplus over expenditures, which include among others the variable annuity due Panama of \$.30 per Canal ton and the fixed annuity of \$10 million.

If the surplus is insufficient to cover the entire payment of the contingent annuity, the shortfall is carried over to succeeding years. Since payment is contingent on available surpluses, the United States is not obligated to pay off on any accumulated unpaid balance in the year 2000. Panama's negotiators have acknowledged this fact.

As for depreciation, there does not appear to be a reasonable basis for the staff study observation that Panama may object should the Commission decide either to increase depreciation costs or create a new reserve for capital improvements on the ground that such actions would make it less likely that Panama would get the contingent \$10 million.

It is clearly understood that capital improvement and replacement costs, whether accounted for by depreciation, a capital reserve fund, or another proper accounting formula, would constitute expenditures of the Commission. These expenditures would be deducted from revenues prior to determining the amount of any surplus for purposes of the \$10 million contingent payment.

In addition to the foregoing comments on specific issues raised by the staff study, we would like to offer our overall judgment that:

Canal operating revenues under the new Panama Canal Treaty are expected to meet all Canal operating expenditures.

Payments to Panama can and will be made from Canal revenues, not tax dollars. The likely toll increases associated with the new Treaty will have a minimal impact on our trade and economy.

Insofar as can presently be determined, the costs of the new Treaty to be funded by the Treasury are unlikely to be much more than \$350 million, as previously indicated in the letter to the Senate from Secretaries Vance, Brown and Alexander of February 10. The Executive Branch is now developing detailed budget estimates for the non-reimbursable functions which DOD will assume under the Treaty.

COMMITTEE ON ARMED SERVICES—STAFF STUDY ON PANAMA CANAL FINANCIAL DATA, ADDITIONAL COMMENTS ON STATE DEPARTMENT MEMORANDUM

1. Potential Panama Canal Operating Loss—The key question is whether or not revenues will be sufficient to meet expenditures, including the payments to be made to Panama under the treaty. If the Canal operates at a net loss over the 22 years of the treaty, the State Department comments do not deny that the U.S. Government would have to pay the loss in order to turn the Canal over to Panama debt-free in 2000 A.D.

Witnesses testified that the Canal's financial prospects are uncertain and that there was a substantial possibility that the Canal would suffer operating losses during the life of the treaty beginning about 1983-84. The State Department/Panama Canal Company study of possible toll increases shows that there is a distinct downside risk that the Canal will not be self-sustaining. The Committee staff study merely illustrates the potential magnitude of that downside risk, depending on how much one believes tolls could be increased.

The State Department comments on the Committee staff study agree on the uncertainty, but assert that "revenues will be sufficient to meet expenditures". There is no evidence for this assertion beyond 1983. The staff study estimates potential losses that might occur after that time while the State Department makes no estimates after 1983. The figures used in the State Department comments are consistent with the figures used in the Committee staff study through 1983.

The State Department's assertion that a 19-27 percent initial toll increase would be sufficient assumes that no additional costs—such as the interest payment to the U.S. and the contingent payment to Panama—will be imposed. If these two items were included, the initial toll increase required would be 40 percent, according to testimony.

There is one factual error in the State comments—that the maximum toll revenue assumed by the Committee staff study was 40 percent above current rates and that this was a distortion. The staff study used in the Committee staff study illustrates the potential deficit if toll rates could be increased 75 percent above current rates over the treaty period; revenues were assumed to increase at about the same rate.

2. Estimated Value of Assets Transferred to Panama—The State Department comments used a future book value of \$1001 million for assets to be transferred to Panama. This compares to a current book value of \$920 million shown in the Committee staff study from testimony.

3. Potential Cost to U.S. for Items Not Covered by Tolls—The memorandum seems generally to confirm the Committee staff study figures. It estimates the total of early retirement, DoD construction and other DoD costs at about \$350 million, \$62 million more than shown in the staff study. The memorandum concedes that the Treasury would lose \$20 million per year in interest payments if its recommendations are approved, but does not include that figure in its point on "costs" at the end of page 6. It asserts that Panama does not expect to be paid in the year 2000 for unpaid surplus payments but offers no evidence to support the assertion.

4. Other Possible Liabilities Outside the Treaties—The State memorandum does not dispute the point that the loans and guarantees would become liabilities of the United States if Panama fails to repay them.

5. Areas of Potential Controversy—The State memorandum discusses only parts of two of the seven major areas of potential controversy outlined on page 9 of the Committee staff study. It does not dispute the fundamental point that there are financial aspects of the treaties that could lead to U.S.-Panamanian controversy.

Mr. HARRY F. BYRD, JR. Will the Senator yield?

Mr. STENNIS. Yes, I am glad to yield to the distinguished Senator from Virginia.

Mr. HARRY F. BYRD, JR. I commend the distinguished chairman of the Senate Committee on Armed Services for his statement today. I feel that the Senator from Mississippi (Mr. Stennis) has rendered a very important service to the Members of the Senate and to the American people. The facts which the Senator from Mississippi has presented to the Senate today, dealing with the costs of the proposed treaties, are facts that the American people need to carefully ponder. We are dealing with huge sums of money. This money must come from the pockets of the American working

people. The Senator from Mississippi brought out that the depreciated book value of the U.S.-owned property in Panama equals almost \$1 billion and that the replacement value of the property proposed to be given to Panama exceeds \$9 billion. That \$9 billion of replacement cost is property that is owned collectively, at the present time, by the American people. If these treaties are approved, that property will be given to the Republic of Panama.

Maybe that is what the country wants done. The property belongs to the people of our country, and if the people of our country wish to give that property away, the people have the right to do so. But I think that, before doing that, it is important that the public know just how many dollars are involved in the transaction.

Another vitally important point which the Senator from Mississippi pointed out deals with the question of tolls. I must say that I was surprised at some of the figures developed by the able Senator from Mississippi. As he mentioned, there ultimately will be some limit as to how much the tolls can be raised and still attract adequate business to finance the operation of the Panama Canal. In that connection, Ambassador Linowitz already has admitted that, as a beginning, the tolls must be increased some 25 to 30 percent.

Mr. STENNIS. Right.

Mr. HARRY F. BYRD, JR. The able Senator from Mississippi pointed out that, under certain conditions, it would be necessary to increase the tolls by a figure of some 148 to 163 percent, if I remember the figures correctly, which is a tremendous increase in tolls.

Who will pay for that? The American consumer, for the most part, will pay that huge increase in tolls.

The Senator from Mississippi also mentioned the implementing legislation which will be required, but which has not yet been sent to Congress. On September 29, 1977, Mr. Herbert J. Hansell, legal advisor to the Department of State, testified before the Senate Committee on Foreign Relations. I want to quote just a paragraph or two from Mr. Hansell's testimony. Bearing in mind that Mr. Hansell is the legal advisor to the State Department, he told the Foreign Relations Committee this:

Finally, Mr. Chairman, I am pleased to have this opportunity to report to this committee on the proposed legislation to implement these treaties that is being prepared for submission to Congress in the near future. That legislation, of course, will be an essential component of the overall program of implementation of the treaties.

For emphasis, I repeat Mr. Hansell's statement to the Senate Committee on Foreign Relations:

That legislation, of course—

Namely, the implementing legislation—

will be an essential component of the overall program of implementation of the treaties.

Yet I say to the Senate that that essential component has not yet been submitted to Congress. The treaties have been debated for—this is the second week the treaties have been debated. Yet that legislation has not yet been submitted to Congress so that Congress

might be in a position to consider what will be required if the treaties are ratified.

Mr. LEAHY. Mr. President, will the Senator yield for a question?

Mr. HARRY F. BYRD, JR. In just a moment.

Mr. Hansell, on that same day before the Foreign Relations Committee, said this:

We hope to have a complete draft available for submission to both Houses of Congress within several weeks. We have been at work on it for some period of time. Certainly well before the end of October, we expect to have it to you.

But October has come and gone; November has come and gone; December has come and gone; January has come and gone; February has come and, by next week, will be gone. Let that implementing legislation, which the legal advisor to the State Department says is an essential component, has not yet been presented to the Congress.

I yield.

Mr. LEAHY. Mr. President, I ask the distinguished Senator from Virginia, my good friend, if, perhaps, we are going into an area that really does not affect the ratification of the treaties. The question of implementing legislation, whatever is needed, would that not be a separate matter for consideration of both the House and the Senate?

Mr. HARRY F. BYRD, JR. It will be considered separately, of course, from the treaties.

Mr. LEAHY. And would be considered by both bodies, unlike the treaty, which is considered only by the Senate?

Mr. HARRY F. BYRD, JR. That is correct. But the legal advisor to the State Department says that that legislation is an essential component to the implementation of the treaties. He also promised to have that information available to Congress last October.

Mr. LEAHY. But with all due respect to the legal advisers at the State Department, is the question not what is essential nature, or its applicability, one that will be decided within the Senate, within the other body, and not by the State Department or anybody at the executive level?

Mr. HARRY F. BYRD, JR. Partially, what the Senator says is correct. But the executive level plans to submit the implementing legislation to the Congress, and I do not think anyone denies, certainly the State Department does not, that it is a very important consideration in regard to the treaties and, certainly, that information should be available.

Mr. LEAHY. But is it not a fact that the implementing legislation should be looked at by the House of Representatives and then if it requires any kind of appropriation it would have to begin in the House of Representatives and is something that can be worked on, amended, changed, accepted or rejected in the wisdom of a majority number of Members of either body?

Mr. HARRY F. BYRD, JR. That is the only way it can be done.

Mr. LEAHY. Yes.

Is that not really an entirely different situation than the treaty which is going to require 50 percent plus one for amendment and two-thirds for ratification within this body alone?

Is it not really stretching the situation somewhat to even suggest that our consideration of the ratification of these treaties is contin-

gent upon consideration of implementing legislation insofar as we can either accept, reject, modify, change, or do anything we want with any implementing legislation, whether it originates from the executive branch of the Government, whether it originates from any Members of the Congress?

Mr. HARRY F. BYRD, JR. I agree with the State Department. I think it is a very essential part of the basic problem if these treaties are ratified without knowing what will be required in the way of implementing legislation. Then I can foresee what the Congress will be faced with.

The Congress will be faced with those who favor the treaties saying, "Oh, well, Congress must approve these pieces of implementing legislation because you have already approved the treaties. If the treaties haven't been approved, this is what is required."

So as the able Senator from Mississippi began his remarks, the Congress and the Senate would be buying a pig in a poke by approving these treaties without knowing what will be required in the way of implementing legislation.

Mr. LEAHY. But if I could pursue this a bit further with the distinguished Senator, and I realize that I stand to ask questions of not only two good friends in the Senate, but two gentlemen with far greater seniority and who have considered such matters in far greater depth, but, notwithstanding, it is my understanding that the treaties rise or fall on their own merits and implementing legislation would not be acted upon by the Congress, in any event, unless and until the treaties were ratified, and would also rise or fall on its own merit.

Would the distinguished Senator from Virginia feel that he was bound, assuming that these treaties are ratified, was therefore bound to vote lock, stock, and barrel for any implementing legislation that might come up from the State Department or from the White House?

Mr. HARRY F. BYRD, JR. The Senator from Virginia certainly would not be bound, but the Senator from Virginia is a little more independent than the State Department and some of the——

Mr. LEAHY. I think my own voting record will show I have been independent of the State Department and the executive branch on numerous occasions.

Certainly, the Senator from Vermont already announced his support for these treaties and would not feel in any way bound, having voted for them, assuming they are ratified, if that is the only way implementing legislation will ever come before the House or the Senate, but assuming they are ratified and assuming implementing legislation which must rise or fall on its own merits, separate from the treaties, assuming it comes here, as it may, would not feel bound one way or the other on such implementing legislation.

Mr. HARRY F. BYRD, JR. I commend the Senator.

Mr. LEAHY. And I suspect that will be the feeling of the vast majority of the Senators in this body, that no matter whether he voted for or against ratification of the treaties, that we still have to exercise our independent judgment, just as the House of Representatives has to exercise its independent judgment on implementing legislation.

Considering that factor and considering, second, that the implementing legislation only can be before Congress unless and until the treaties are ratified, I would hope that my colleagues in the Senate would not feel that they must delay from consideration of the merits of these treaties, whatever amendments might be offered, because of lack of any implementing legislation.

Mr. STENNIS. Mr. President, I hate to intervene. May I ask who has the floor?

Mr. LEAHY. I have made my point.

Mr. HARRY F. BYRD, JR. The Senator from Mississippi has the floor.

The PRESIDING OFFICER. The Senator from Mississippi has the floor.

Mr. STENNIS. We enjoy the debate here of these gentlemen, but I am under an obligation to get into another matter shortly.

Mr. LEAHY. I thank the distinguished Senator for giving me the time.

Mr. STENNIS. That is all right. I listened to every word that was said.

Had the Senator from Virginia concluded?

Mr. HARRY F. BYRD, JR. Yes. I thank the Senator.

Mr. STENNIS. I thank the Senator very much for his remarks and for his help in planning these hearings and his consultation over the period of years.

Mr. HARRY F. BYRD, JR. Will the Senator yield for half a minute?

Mr. STENNIS. Yes.

Mr. HARRY F. BYRD, JR. I want to emphasize in regard to this implementing legislation that the State Department considered it very important last September and promised the Congress, promised the Foreign Relations Committee, to make this legislation available to the Congress not later than October of last year.

So I think it is a vitally important consideration that must be taken, a matter that must be taken, into consideration in dealing with these treaties.

I thank the Senator.

Mr. STENNIS. The Senator from Virginia is correct on that point, I think.

True, they are separate matters and passed as separate pieces of legislation. True, the House also passes on them. A revelation of them now would be very revealing, particularly with regard to the unknowns about this proposed treaty. It would be a guideline. It would be an identification mark. It would be like a tag on a piece of baggage. You can tell where it is going by its own marks.

I am glad to yield to the Senator from Nevada.

Mr. LAXALT. May I join with the Senator from Virginia (Mr. Harry F. Byrd, Jr.) in commending the Senator from Mississippi (Mr. Stennis) for the contribution he made here.

I have been on this floor countless hours as one of the managers in opposition. What the Senator has offered here in the last several minutes has been very meaningful insofar as the debate is concerned from two standpoints.

It has been represented here on the floor and throughout the country by those in support of this treaty that this is not going to cost the taxpayers any money. It is clear from the inquiry made by

the Senator's committee that that simply is not the case. It is going to cost us a substantial amount of taxpayers' money, ranging up to \$2 billion, and until the Senator's committee saw fit to inquire into these matters, these were matters that were known only to a few and not even to many of us who have been working on this for the last several months.

I would say that alone is a tremendous contribution to the debate.

Second, the Senator indicated that the financial misunderstandings which may arise from the terms of the present treaty may be substantial, as much as seven major areas.

That is terribly important for our consideration here. There has been reference again, time after time, to a festering sore in Panama which must be healed and, apparently, this treaty would heal all and we would enter into a period of relationship which would be all roses and honey.

It is our contention that this treaty may open up other sores, other festering sores, which, rather than help the situation, may harm it.

So, Mr. President, we are indebted to the Senator for this contribution.

I might point out this. I am looking forward to his further presentation in connection with the security implications, which is a prime function of the Armed Services Committee, on which he serves in such a distinguished fashion and has for so many years.

Mr. STENNIS. I certainly thank the Senator very much for his remarks and for his work on this same subject matter.

I especially thank all members of our Armed Services Committee. Those that may wind up supporting the treaty were concerned and anxious and cooperated on these matters. All members of our committee really worked hard on this matter. I thank the staff, also, for what I consider some excellent work.

Mr. BARTLETT. Mr. President, I listened with great interest to the discussion about the implementing legislation, and I certainly agree with the Senator from Mississippi and the Senator from Virginia as to the importance of having that legislation prior to the final consideration of these treaties.

I point out to the Senator from Vermont that the reason for the long delay—the delay, incidentally, has taken place on the side of the State Department—is that there is not agreement on what should be in the implementing legislation. It is this difference of agreement and concern about what is in it that adds to its importance.

I believe that it is very vital that the implementing legislation be available to this body so that the Senate knows just what the administration's approach is to implementing the treaty, before the treaty is finally considered.

Mr. LEAHY. Mr. President, I should like to answer that, if the Senator will yield for that purpose.

Mr. BARTLETT. I yield for that purpose.

Mr. LEAHY. I understand what the Senator from Oklahoma is saying. However, it is still the position of the Senator from Vermont that the implementing legislation has to rise or fall on its own merits, No. 1.

No. 2, it does not even come before Congress unless or until the treaties are ratified.

No. 3, it falls into an entirely different kind of category. It has to go to both the House of Representatives and the Senate. Then, if it carries any kind of appropriation—and that has been discussed back and forth—it must originate in the House of Representatives.

I cannot believe, and I doubt if any Member of the Senate can believe, that in whatever form implementing legislation might come up, it is going to come here, to the U.S. Senate, in absolute pristine form, precisely as it might leave the State Department. If it has to go through the House of Representatives first, I just cannot imagine that it is going to come here with every word the same, every line the same, the crossing of every "t," the dotting of every "i." As it comes through the House, I suspect that its virtue might be somewhat tarnished, and I suspect that it might be changed as the representatives of the American people have a chance to work on it. Then, when it gets here, it has to go first before the appropriate committees, and those include the Foreign Relations Committee, the Appropriations Committee—if appropriations are involved—and still has to come to the floor.

So, with all due respect to the Senators who have raised this point—I do not question their concern in raising it—it appears to the Senator from Vermont to be a bit of a red herring; because, first, the implementing legislation is not considered unless we ratify and, second, it goes before both Houses and it is treated by different standards.

Mr. BARTLETT. I think the Senator from Vermont is repeating himself now.

What we are talking about here is what the Senator from Virginia described as "buying a pig in a poke."

We received testimony before the Armed Services Committee that the implementing legislation is very important, and there could be in it some provisions that might resolve some of the differences of opinion that exist over the economics involved in the canal, over the method of payments and the timing of those payments and the obligation of those payments. So the provisions that could be in it could be very vital for one's consideration of the treaties, favorably or unfavorably. We do not know what it is. So how can we fairly apprise ourselves and then appraise the value of the treaties? I do not think we can, because we do not know what is in it. We have been given the idea and we have been given the impression that what would be in it could be very vital and very important to the treaties themselves.

Mr. LEAHY. Does the Senator from Oklahoma feel that he would be constrained to vote one way or the other on the implementing legislation if it were brought up subsequent to ratification of the treaty? Or, to put it another way, does the Senator from Oklahoma feel that however we vote on the question of ratification forestalls his rights as a U.S. Senator to aid in the molding of that implementing legislation?

Mr. BARTLETT. Let me respond by saying that I do think very strongly that the implementing language could be agreed to, reluctantly, by those who supported the treaty, because they had sup-

ported the treaty and the administration wanted to implement the treaty in a certain way.

To answer the Senator's question directly, I do not think it would affect my position unless it led to a change in the treaty. If the treaties were changed, my position could change.

I yield to the Senator from North Carolina.

Mr. HELMS. Mr. President, I pose a question as an analogy. Would the Senator from Oklahoma buy a house, sign a commitment to purchase it, without knowing what it would cost him?

Mr. BARTLETT. No, sir.

Mr. HELMS. I do not think any other Senator in his right mind would do that.

Maybe the difference is, I say to the Senator from Oklahoma, that Congress spends other people's money, not our own money. It is mighty easy to spend the taxpayers' money, as has been demonstrated day after day, year after year, in the Congress of the United States. That is the difference.

Mr. LEAHY. Mr. President, will the Senator yield for one quick, corollary question?

Mr. HELMS. The Senator from Oklahoma has the floor.

Mr. BARTLETT. I think the Members of the Senate should be much more careful about how the money is spent, whether or not the implementing legislation does involve the spending of money, which the Senator from Vermont implies, since he seems to think that the legislation will originate in the House, which would be required if it were an appropriation.

Mr. LEAHY. May I follow up one question with the Senator from North Carolina?

Mr. HELMS. Certainly.

Mr. LEAHY. Would the Senator buy a house he might have wanted to buy if he were told, "We won't tell you what the price is now, but we'll let you, having determined to buy it, say what the price will be"? I might be willing to take a deal such as that, being in the market for a new house myself. But I probably should not say it, the way realtors move around this area. If I could buy a house to my design and I could decide subsequently what, if anything, I want to pay for it, I would not think that was a bad deal.

Mr. HELMS. That is not the question.

Mr. LEAHY. It really is, if we are going to follow the analogy of the distinguished Senator from North Carolina; because, if any money is involved in this—and I do not know whether there is—the Senate and the House have a right to put the money in or not to put a cent in.

Mr. HELMS. If the Senator believes that, he will believe anything.

Mr. BARTLETT. Mr. President, I yield to the Senator from Virginia for a question.

The PRESIDING OFFICER. The Chair recognizes again the Senator from Oklahoma.

Mr. BARTLETT. Mr. President, for a question I yield to the Senator from Virginia.

Mr. HARRY F. BYRD, JR. I thank the Senator from Oklahoma.

Mr. President, of course each Member of the Senate must decide for himself whether he feels it is important to have available all of the information before voting on the treaties. I happen to feel it is

important. Others may feel differently, and I have no quarrel with that.

When Elmer Staats, Comptroller General of the United States, came before the Armed Services Committee and was queried on this matter, he told the Armed Services Committee that if he were a Senator he would want to have available the implementing legislation before voting on the treaties. Maybe many Senators do not need that and do not want that. But that is Mr. Staats' view.

Maj Gen. H. R. Parfitt, the Governor of the Canal Zone, told the Armed Services Committee that in his judgment knowledge of the implementing legislation would be very helpful to the Senate.

Let me quote from Mr. Staats, the Comptroller General of the United States. He says this:

That the treaty implementing legislation is the key determinant of the financial viability of the proposed Panama Canal Commission.

I suspect that is the reason that the State Department has not been willing to submit to Congress the implementing legislation. I want to read again what the Comptroller General of the United States says:

That the treaty implementing legislation is the key determinant of the financial viability of the proposed Panama Canal Commission.

That is a very significant statement.

Let me read one other thing. May I invite the attention of the Senate to page S2013 of yesterday's Congressional Record on the desk of every Senator and at the bottom of that page the Senator from Massachusetts is speaking, Senator Brooke, and he says:

I also refer to the Foreign Relations Committee report, supplemental and minority views, where the head of the Congressional Budget Office informed the Committee: "Clearly, because the implementing legislation has not been submitted, the complete estimate of the budget impact of the treaties is impracticable at this time."

The head of the Congressional Budget Office has informed the Foreign Relations Committee and through it the Senate and through it Congress that without this implementing legislation the budget impact of the treaties is impracticable to judge at this time.

So how can we judge what it is going to cost the taxpayers until we have all the facts before us and the legislation which will implement the new treaties, assuming that they are ratified.

I thank the Senator from Oklahoma (Mr. Bartlett) for yielding.

Mr. BARTLETT. I thank the distinguished Senator from Virginia for adding this very informative information, and I would add just a small footnote to it by saying that by the very virtue of the State Department saying, originally, that they would have the implementing legislation ready in October of last year, they were assuring Congress that it would be ready prior to the consideration of the treaties, they considered it important, apparently, to the consideration of the treaties because of having it available at that early date. Apparently, it is because they cannot agree upon what should be included in the implementing legislation that it is not now ready. Because of that difference of opinion, I think it is all the more important that this body know what the final version will be. So I think it is important that we do receive that legislation prior to the final vote on ratification of the treaties.

I understand that the Senator from Alaska would like me to yield.

Mr. LAXALT. Mr. President, will the Senator yield for one observation?

Mr. BARTLETT. Yes, for an observation.

Mr. LAXALT. To bring home again the point of the need for the implementing legislation, I can remember just 3 weeks ago, or certainly no longer than a month ago, when the version of these treaties was around this town to the effect that it was not going to cost a nickel of taxpayers' money. The Senator from Oklahoma remembers that; does he not?

Mr. BARTLETT. I remember hearing that very definitely.

Mr. LAXALT. And yet it is clear now by reason of the work that was done by the Armed Services Committee that rather than not having it cost a nickel it could cost in excess of \$2 billion.

Mr. BARTLETT. That is correct.

Mr. LAXALT. And that to me is proof positive of the fact that the administration simply has not been telling us all the facts.

Mr. BARTLETT. That is correct, and it will cost \$2 billion to give away, virtually overnight, an asset worth almost \$10 billion.

Mr. LAXALT. I do not know that we have seen the whole picture yet. If we are able to see implementing legislation up here and have it processed by the money committees, then we would have an even more accurate handle about what these treaties are going to cost. It may well be it is in excess of \$2 or \$3 billion, and I personally think for us to think in terms of incurring this kind of financial obligation without on the same track considering the implementing legislation is bad procedure.

I agree totally with what the Senator from Virginia and the Senator from Oklahoma have been saying in this regard.

Mr. BARTLETT. Mr. President, I thank the distinguished Senator very much.

Mr. STEVENS. Mr. President, will the Senator from Oklahoma yield?

Mr. BARTLETT. Yes, without losing my right to the floor, I yield to the Senator from Alaska.

Mr. STEVENS. I want to state to the Senator from Oklahoma and others who have participated in this debate so far that there are some aspects of this treaty that I think really cannot be weighed without first knowing the terms of this legislation.

Take, for instance, the meeting that Senators Eagleton, Wallop, and I held in Panama with the civil servants now working for the Panama Canal Company. This treaty presumes that these civil servants will stay in Panama and train their replacements. The statement that has been made is that we will receive legislation which will offer them incentives to do so.

So far, I have seen no inclination from the administration to squarely face the question as to what inducements are necessary to encourage an American citizen, say, of mid-career level to undertake to train a Panamanian to replace him or her without knowing whether he is going to be able to relocate to somewhere in the United States, whether he is going to be retrained for a different job, under what conditions he is going to be allowed to continue to live where he is, or whether he is going to pay additional costs to

the Panamanian Government in order to live in the places that he or she is living in now. The whole relationship of these employees to the Panama Canal during this transitional period proposed by the treaties is dependent upon the terms and conditions of the plan which will give them the proper incentives to do so.

Having served on the Post Office and Civil Service Committee and now on the subcommittee of the Governmental Affairs Committee that has jurisdiction over this subject, I was sought out by representative of some of the government employee unions in Panama. They were very frank with me and the other Senators present that they are very unhappy over the situation and that we should be on notice that many employees will not stay in Panama. They informed us that they will have a choice to make soon and the choice is either to go somewhere else now and seek outside employment while they are still young enough to do so, or to stay on for 5, 10, or 15 years and continue to serve their Government. They are willing to aid their Government, but they need to see under what conditions they can stay.

I had to tell them that we did not know the terms of that legislation. And to my knowledge the administration has not yet informed Congress of what is to be their proposal to those who are employed in the canal now and those who might be needed to replace some that would leave just by attrition of their own decisions. What is the Government going to offer those Americans we are asking to stay in Panama to carry out the policies of our country throughout this transitional period?

The Senator from Vermont says we could vote against the proposal. It is not a question of voting against the subsequent legislation, rather it involves the question of whether we ought to be voting on these treaties now, before we even know what the terms are. How can this arrangement work? While in Panama I talked to people, including tugboat operators, some of whom incidentally had worked in Alaskan waters, and I knew their families. I talked to people working along the locks. I talked to people working in almost every capacity. Senator Eagleton and I heard representatives of almost every union operating in the Panama Canal Zone, and they told us their people have to know if this is going to work, and what the terms and conditions for continued employment of American citizens in the Panama Canal will be during this transitional period. This treaty makes no mention of these important matters.

The legislation involving these issues was supposed to be forthcoming last fall. We have not even seen it yet, but still we are being asked to vote on it. I think those of us who have a primary responsibility to the Senate in the area of civil service laws and the review of the rights, privileges, and obligations of such employees ought to know. Yet the Senator is asking why some of us would question voting for these treaties without first seeing this legislation.

It is not all implementing legislation in the sense of carrying out the authorization to pay money. There is legislation that must be enforced if we are to believe the administration is willing to keep its commitment to make the treaties work. We cannot be hassling 2, 3, or 4 years from now over the terms of this legislation. This is

not a partisan comment, because, as the Senator from Oklahoma knows, I have been trying to get fairness for the people who work for the BIA for about 6 years now.

These were employees affected by the Supreme Court decision which, in midcareer, terminated their promotion possibilities. President Ford vetoed that legislation, and we do not know what President Carter will do with it, but it involves the very same considerations. Every administration to date, whether Republican or Democratic, has refused to deal with the problem of giving people career incentives or retraining opportunities, or some other sort of lateral transfer rights and guarantees. They have refused to wrestle with the problem of what to do with people whose midcareer promotion opportunities have been terminated by legislative action. I think this is just as important an issue as that raised in connection with the BIA.

Mr. BARTLETT. I thank the distinguished Senator from Alaska. I think he is giving attention to one area where this country has an obligation: those faithful employees of the Canal Company who want to know what their future is, and who want to know about the machinery to develop the boards and commissions that would be utilized in the transition period. We do not know what that is. We do not know that what is proposed would work. We do not know whether we can reach agreement. We think we could, on implementing legislation, if we had a chance, but nonetheless this should come ahead of consideration of the treaties themselves, because the implementing legislation will be a very important consideration with respect to the treaties.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. BARTLETT. Yes, I yield to the Senator from Maryland.

Mr. SARBANES. Is it not correct that whatever legislation is needed to implement the treaties, if we advise and consent to the treaties. Aren't the treaties molded and shaped by the Congress of the United States?

Mr. BARTLETT. I say this to the Senator from Maryland: It is very obvious that there is, according to testimony from the State Department, sharp disagreement there on what should be in the implementing legislation; yet they are aware, and have been for a long time, of the provisions in the treaties.

So there apparently are differences of approach, differences of degree.

Mr. SARBANES. But it is the Congress that will shape the legislation and decide on it. We, in effect, will determine that. It seems to me we have the treaty provisions before us, and one has to judge them on their face and in terms of their implications. I disagree very strongly with the assertion that has been made on the floor of the Senate—that one cannot, by analyzing the treaty provisions, arrive at some judgment of what the economic consequences of these treaties are.

I think it is very clear that one can do that. We can get into disagreements here on the floor of the Senate as to the consequences, depending on certain assumptions about the impact on traffic patterns of economic developments, and how certain provisions will work out; but the treaty provisions, upon analysis, will

reveal what the economic consequences are, and Members will be in a position to make that judgment.

Mr. BARTLETT. I would say to the Senator from Maryland that he certainly is entitled to his opinion, but the Comptroller General of the United States, Mr. Staats, did testify before our committee that in his opinion it would be impossible to know what the full economic impact of the treaties would be without knowing what was in the implementing legislation.

Mr. SARBANES. Of course, Senator Culver, who is also a member of your committee, directed specific inquiries to the Secretary of State has a consequence of some of the questions raised. He received responses that indicated, with respect to certain issues that had been raised and upon which there was disagreement within the committee, the approach which the administration was planning to take.

Now, that approach is not one that the Congress need necessarily adopt when the matter is before us; and the approach we take when the matter is before us will determine what the economic consequences are.

So, in analyzing the treaties, you are in a position to base your argument on one assumption or the other, but the treaty provision and its economic consequences are before us, and we are in a position to make that judgment.

Mr. BARTLETT. I think it is fairly clear that the State Department itself felt it was important that we have the implementing legislation prior to the consideration of the treaties, because they advised the Senate that we would have it in October. There have been delays since that period. Why there has been no explanation as to the reason the State Department cannot resolve its difficulties, or why they cannot come up with a precise single version of the implementing legislation, I do not know. But it would appear to me that either the differences are very sharp and the consequences are very important, or the State Department is just delaying for the purpose that we will not have that information prior to the consideration of the treaties.

Mr. SARBANES. But the proposals made by the Department are not written in concrete. We will shape them. They may make some sort of proposal to implement these treaties which I may disagree with and want to have shaped differently. It is not written in concrete. We will shape that legislation, and we are in a position, therefore, to change it at the time according to what we think are the appropriate considerations. In judging the treaties which have now been negotiated between two sovereign powers, we have simply to make the calculation in terms of what the consequences are going to be.

Mr. BARTLETT. I think, as the Senator from Virginia said, and perhaps the Senator from Minnesota, we are put in the position of "buying a pig in a poke."

Mr. SARBANES. I do not agree with that. That is the point I want to make. We are in a position of analyzing the treaty terms, and analyzing them in terms of what their consequences will be. You can make a worst case assumption, a best case assumption, or something in between, depending on what constitutes reasonable assumptions to make. Any legislation to implement the treaties

will have to carry out, and would be consistent with, the terms of the treaties; and therefore that analysis puts us in a position to make the judgment.

Mr. BARTLETT. Let me ask the Senator from Maryland a question. If you had a choice, would you like to see the implementing legislation now or after we have considered and ratified the treaties?

Mr. SARBANES. I think that the question is not an essential one, because what I have to judge are the terms of the treaties, and we will have the opportunity to shape the implementing legislation.

Mr. BARTLETT. You are not answering the question.

Mr. SARBANES. And the State Department's version of the implementing legislation does not bind me in any way.

Mr. BARTLETT. This may not be the best question in the world, but would the Senator desire to answer it?

Mr. SARBANES. As I have indicated, I do not think it is essential to my consideration of the treaties. What I have to do is take the terms of the treaties and analyze them.

Mr. BARTLETT. But would you not like to see the implementing legislation? I think the Senator would.

Mr. SARBANES. As I have indicated, I do not think the implementing legislation is going to affect the treaty terms. The implementing legislation will have to be consistent with the treaty terms. What we have to do is analyze those terms, and know what the consequences of those terms are going to be. In that sense, the question of the economic consequences is a legitimate matter which we will have to discuss on the floor of the Senate; but the economic consequences of the treaties are contained in the terms of the treaties.

Mr. BARTLETT. Well, there could very well be some obligations made by the State Department, as the Senator knows, obligating this Nation to certain provisions which could be in the implementing legislation. I am not saying that that is the case; I do not know, because I do not know what is in the implementing legislation. But I do know that in the long negotiations, there were plenty of opportunities for this Nation to commit itself one way or another to a number of different things. For us to know the final economic obligations that have been made, I think we need to see the implementing legislation.

I grant that this body and the House would consider these items in the proper legal way. But, nevertheless, what is presented by the administration which was responsible for the negotiations of the treaties themselves to us will have some impact. I do not think we can just disregard that information and say that it is not important that we see it in advance. I feel certain the Senator from Maryland would like to see it. I know that the State Department made every effort, or indicated that they made every effort, to have this available to us in October. But they have not done it. Certainly, they have had ample time since October to work on this and to present it.

Mr. SARBANES. The obligations to be assumed, as I said, are contained in the treaty and require the analysis. The State Department cannot undertake an obligation for the Nation unless it is done pursuant to our constitutional process. That involves in the

first instance, treaties, and, subsequently, if necessary, legislation. Both the treaties and the legislation are subject to congressional action, in the first instance on the part of the Senate, with a majority of two-thirds required to approve the treaty, and, of course, with respect to legislation, by enactment by the Congress of the United States. We are in a position, of course, to make those findings and determinations, which we are trying to do now with respect to the terms of the treaty.

[Mr. Kennedy assumed the chair.]

Mr. BARTLETT. Mr. President, recently we began one of the most historic debates in the annals of the U.S. Senate. In the long and arduous days ahead, 100 individuals, representing the 50 very different States of our Nation, will decide the future of the Panama Canal—one of the great man-made wonders of the world—an American-made engineering feat of great benefit to all mankind. Although Great Britain had expressed an interest in building a canal in the Isthmus of Panama, and France, under Count Ferdinand de Lesseps of Suez fame, actually attempted to build a canal in Panama, it was the United States which possessed the diverse technologies necessary to build the canal and it was the United States which did the job. Using powerful steam shovels the Americans literally moved mountains, and using modern medical science, Americans conquered malaria, yellow fever, and cholera, in order to complete the magnificent set of locks which now permit gigantic ships to save 15,748 miles in traveling between Los Angeles and New York. Today, that is about 40 days, much energy and many dollars.

The future of all of that achievement, with all of its value, will be decided by the 100 individuals in this Chamber. With so much at stake, we should not be surprised that Americans are watching each day's events very closely in order to insure that the issues which must be faced are dealt with in a straightforward manner. It was in this spirit that the Senate Armed Services Committee held its hearings on the proposed Panama Canal Treaty and the proposed Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

Under rule XXV(C) of the Standing Rules of the Senate, the Armed Services Committee is referred all legislation, messages, petitions, and the like related to our country's Armed Forces and national security, and "maintenance and operation of the Panama Canal, including the administration, sanitation, and government of the Canal Zone". Our committee has never taken this canal oversight responsibility lightly in the past, and it has continued this fine tradition in its recent hearings on the proposed transfer of control of the Canal Zone to the Government of Panama. We called only the most professional of witnesses, both advocates and opponents of the proposed treaties.

The list of witnesses testifying on the military and economic aspects of the proposed treaties speaks for itself:

The following witnesses appeared and testified: Adm. James L. Holloway III, Chief of Naval Operations; Gen. Louis H. Wilson, Commandant, U.S. Marine Corps; Lt. Gen. Dennis P. McAuliffe, Commander-in-Chief, U.S. Southern Command; Adm. Thomas H. Moorer, USN (retired), former Chairman of the Joint Chiefs of Staff; Hon. William P. Clements, Jr., former Deputy Secretary of Defense; Gen. Maxwell D. Taylor, USA (retired), former Chairman of the Joint Chiefs of Staff; Herbert J.

Hansell, Legal Adviser, Department of State; Lt. Gen. Gordon Sumner, Jr., USA, Chairman, Inter-American Defense Board; Maj. Gen. George L. Mabry, USA (retired), former commander of the U.S. Army Forces, Southern Command; H. R. Parfitt, Governor of the Panama Canal Zone and President of the Panama Canal Company; Elmer B. Staats, Comptroller General of the United States; Frank A. Nicholai, executive vice president, American Management Systems, Inc.

These military leaders and economists produced an impressive hearing record whose message is quite clear.

Both advocates of the proposed treaties and their opponents agreed that the Panama Canal is a chokepoint crucial to the economic and military interests of the United States and the rest of the Western Hemisphere. In the words of Adm. Thomas H. Moorer, the very distinguished former Chairman of the Joint Chiefs of Staff:

A maritime link between the Atlantic and the Pacific is vital to the security of the United States and will always be so.

The military significance of the canal is quite clear. For 5,300 combat ships and approximately 8,500 military transport ships used the Panama Canal in World War II. During the 3 years of the Korean War, military use of the canal grew 2½ times. During the Cuban missile crisis, a task force of 22 American Navy vessels transited from the Pacific to the Atlantic through the canal on the 2 days of November 5 and 6, 1962, in order to take part in the quarantine of Cuba. The task force returned to the Pacific in December. During the 6 months surrounding that crisis, use of the canal doubled. From 1964, when regular formations of U.S. ground troops entered Vietnam, to the height of the war in 1968, annual transits of U.S. warships grew from 86 to 147. During the same period transits by U.S. Government vessels increased from 285 to 1,504 a year. During fiscal year 1968, 69 percent of U.S. Government cargo destined for Vietnam went through the Panama Canal. This last year, about an average peacetime year, U.S. Navy transits through the canal were about 20, that is, about what they were before the Cuban missile crisis.

Gen. Louis H. Wilson the present Commandant of the Marine Corps, added another reason for the military importance of the Panama Canal. Speaking as a marine he noted the "very real requirement to move the Navy's amphibious ships from ocean to ocean in the shortest possible time." Testimony before the Senate Armed Services Committee, confirmed by my recent visit to the Pacific, indicates that the Navy and Marine Corps suffer from a shortage in amphibious lift capability. That shortage in amphibious capability would be made far worse if the United States were deprived of unencumbered use of the Panama Canal. A recent study by the Library of Congress indicates that without the Panama Canal, it would take 60 days, rather than 45 days, to assemble a full-scale Marine amphibious force which might be required in Europe.

The Panama Canal Zone is of great military value for reasons other than the use of the canal. American military bases in Panama provide an advanced base for operations in the Western Hemisphere, in the Caribbean, and in the South Pacific. American facilities in the Canal Zone also provide an American military presence in Latin America of great political significance and pro-

vide training grounds for our forces and those of our hemispheric allies.

The extensive American base system in Panama includes the naval facilities at Cristobal on the Atlantic and Balboa on the Pacific, the Air Force facilities at Howard Air Force Base and Albrook Air Force Station, and numerous Army installations, including the Jungle Warfare Center and the School of the Americas.

The economic importance of inexpensive and unrestricted use of the Panama Canal to the United States and its Latin American trading partners is also very great. The United States has opened the canal to all nations and has operated it without profit. Actual loss of the use of the Panama Canal would result in major expenses to people everywhere because of the need to purchase additional shipping tonnage and the increased fuel costs.

The Maritime Administration of the U.S. Department of Commerce estimated in 1974 that closure of the canal would add \$964 million each year to the cost of our trade between the east coast of the United States and Asia. Trade between the west coast of the United States and Europe would cost \$100 million more each year, with comparable costs involved in trade between North and South America and with U.S. intercoastal trade. Changes in the structure of international trade make it difficult to predict the future economic value of the Panama Canal. Who would have predicted the massive economic rise of Japan and its importance to the east coast of the United States? And who would have predicted the importance of oil from the North Slope of Alaska to the east coast of the United States? Again, none of the witnesses before our committee, whether for or against the proposed treaties, dismissed the military and economic importance of the Panama Canal.

Nevertheless, military witnesses including Lt. Gen. Dennis McAuliffe, the Commander of the U.S. Southern Command, agree that the security of this strategic canal is being transferred to one of the smallest and weakest nations in Latin America, a nation with a history of unstable governments. Panama has a population of 1.7 million people, which aside from the Caribbean Island states, makes it the third smallest nation in Latin America. General McAuliffe testified that the "Guardia Nacional" has 8,000 men, 75 percent of whom handle police functions.

The remaining 25 percent consists of 1,500 light infantry troops, several rifle companies, and 6 platoons equipped with 16 armored cars. Panama has no artillery, no tanks, no missiles, and no combat aircraft other than helicopters. The Panamanian Navy consists of two 103-foot patrol craft with 20mm guns and a medium landing ship. The Central Intelligence Agency estimates that, under a total mobilization, Panama could provide a maximum of 270,000 males between the ages of 17 and 49 fit for military service.

The authoritative publication of the International Institute of Strategic Studies, entitled "The Military Balance," which details the military force structure of the nations of the world, dismisses Panama in a footnote, citing simply the existence of a paramilitary force—the Panamanian National Guard. By way of contrast, Cuba has 189,000 regular forces along with 13,000 paramilitary forces and a "People's Militia" of 100,000 people. Cuba's Air Force alone (20,000) is twice the size of Panama's entire military force. Colom-

bia, which formerly owned the Isthmus of Panama, has regular forces totaling 56,500, with a combined navy and air force larger than the total forces of Panama. Panama's inability to defend itself and the canal militarily is made worse by its own political and economic instability. In its first 70 years, Panama had 59 governments, and the present military dictatorship itself came to power through a military coup.

Economically, Panama is also in trouble. According to the Senate Foreign Relations Committee, "Panama's total disbursed external debt was \$1.1 billion," an amount approximately half of Panama's annual gross national product.

Panama's historic instability should be of great concern to all who believe that control of the vital Canal Zone should be turned over to the Government of Panama. Testimony before the Armed Services Committee indicates that the Government of Panama itself poses the most real threat to continued unencumbered use of the canal, either through its own actions or by its acquiescence in the actions of others. For example, in open testimony General McAuliffe revealed that it was the National Guard of Panama which was involved in the 1976 bombings in the Canal Zone and that it was the inaction of that same National Guard which permitted anti-American riots to continue for several days in 1964. It is powerful and politically active elements of this same National Guard which maintains close ties with Castro's secret police. Yet, this is the force which would be called upon, under the proposed treaties, to protect American citizens and property using the canal. Worse, through separate agreements outside the treaties, the United States must provide arms and military assistance to this paramilitary group, sections of which pose the most immediate threat to American interests in Panama.

Therefore, it is not surprising that the Armed Services Committee hearings also underline the degree to which Panama's not-so-veiled threat to initiate or condone violence against the canal, if Panama is not granted control of that waterway, constitutes the fundamental argument for the new treaties. It was this political justification which was cited by Admiral Holloway and General Taylor to explain their support for the proposed treaties despite their dissatisfaction with many of the military provisions in those treaties.

Given these concerns over the security of the canal, it is not surprising that Latin American leaders have expressed their lack of confidence in the ability of Panama to secure the canal and manage it effectively. Heads of state and cabinet ministers throughout Latin America have informed many visiting Americans, including Members of the Senate, that their own economic and security interests may be threatened by General Torrijos and his abuse or mismanagement of the canal. Many, maybe even most, have expressed their wishes that the United States retain control of the canal and continue to operate it efficiently and fairly. In fact, according to Lt. Gen. Gordon Sumner, Jr., Chairman of the Inter-American Defense Board, many military leaders in Central and South America would prefer an international approach to operating and securing the canal.

Each of the defense experts appearing before our committee, including such proponents of the new treaties as Admiral Holloway, the present Chief of Naval Operations, and General Wilson, the present Commandant of the Marine Corps, agreed that an American military presence in Panama until 1999, and after 1999, is highly desirable, even though such an American military presence would be prohibited after 1999 by the proposed Treaty of Neutrality. Given the military and economic value of the canal to the United States, the almost universal agreement of military leaders throughout the United States on this issue is understandable.

Advocates of the proposed treaties were greatly disappointed that testimony before the Armed Services Committee did not provide evidence that made clear the right of the United States to reintroduce military forces into Panama to maintain the neutrality of the canal. On the contrary, testimony indicated that language in the Treaty of Neutrality which is alleged to give the United States that right is extremely ambiguous and would be even more so in those times of crisis and confusion when the United States might actually need to intervene in the area around the Panama Canal. While proponents continue to argue that this vague language in article IV of the Treaty of Neutrality gives the United States the right to intervene in Panama when our Government believes the neutrality of the canal is threatened, Panamanian Government officials consistently maintain that the right of the United States to defend the canal does not include defending its neutrality against Panama and goes into effect only when the Government of Panama requests American intervention.

Even after signing the October 13 joint statement with President Carter, which is claimed by some to clarify the U.S. right to intervene, Torrijos has maintained that the role of the United States is to protect the canal against foreign aggression, not against Panamanian violations of the neutrality of the canal. In the words of General Torrijos, Panamanians "push the button, the bell rings, and the United States is obliged to come to our defense." This interpretation of the joint statement finds support from the American Law Division of the Library of Congress which has concluded:

It is not altogether clear that the statement would permit the United States to intervene in the event that the aggression or threat should result from Panamanian action.

Language which permits such diverse interpretations obviously grants the United States no greater right than that of raw force to intervene in Panama. William P. Clements, former Deputy Secretary of Defense and also a former supporter of the treaties, testified that he was shocked by changes in this language from what he had originally approved before leaving the Defense Department in early 1977. According to Clements, the original language read:

In the event of any threat to the neutrality or security of the Canal, the Parties shall consult concerning joint and individual efforts to secure respect for the Canal's neutrality and security through diplomacy, conciliation, mediation, arbitration, the International Court of Justice, or other peaceful means. If such efforts would be inadequate or have proved to be inadequate, each party shall take such other diplomatic, economic or military measures as it deems necessary in accordance with its constitutional processes.

This language, which Secretary Clements approved, gives the United States the right to determine when the neutrality of the canal has been violated. The changes that were made deprive the United States of an absolutely clear right to intervene to protect the neutrality of the canal. Obviously, the new, ambiguous language protects the Government of Panama from legal American intervention if Panama should itself threaten international use of the canal.

In addressing the issue of the right of the United States to defend the canal under the new treaties, General Wilson said:

Presumably we have the right to go in and it is in the treaty, I have been assured, and if it is not in the treaty then it ought to get into the treaty. That is the only reason I will be for it.

Since the right to defend the canal was stated clearly in the language above quoted by Secretary Clements, any language less emphatically clear than that language cannot be acceptable.

Perhaps the most earth-shaking testimony received by the Armed Services Committee involved the value of the Canal Zone property and the cost of its transfer to the Government of Panama. According to the Panama Canal Company, the original cost value of the Panama Canal enterprise was over \$993 million, as follows:

A. Original cost value of the Panama Canal enterprise (April 1977)

	<i>Million</i>
Lands, titles and treaty rights	\$14.7
Interest during original construction	50.9
Canal excavation, fills and embankments, dry dock excavation.....	324.9
Canal structures and equipment	203.5
Other marine facilities	29.6
Supporting and general facilities	176.7
Plant additions in progress.....	25.1
Schools, hospitals, and other facilities.....	111.9
Other.....	55.8
Total	993.1

*Includes \$10 million paid to Panama under the 1903 treaty.

SOURCE. Panama Canal Company.

Some accountants, prefer to look at the book value of the Panama Canal and the Canal Zone, which has been estimated at over \$560 million, as shown by this table:

B. Book Value of the Panama Canal enterprise (plant and equipment, June 30, 1975)

	<i>Million</i>
Panama Canal Company.....	\$501.8
Canal Zone Government	59.6
Total	561.4

SOURCE. Panama Canal Company.

The Department of Defense has indicated that the approximate acquisition and improvement costs as of fiscal year 1978 for military facilities to be turned over to Panama are nearly \$353 million, as follows:

C. Acquisition and improvement costs of military facilities to be turned over to Panama (fiscal year 1978)

	Million
Treaty starting day	\$27.5
Other facilities to be turned over sometime during the treaty term	33.5
On termination of the treaty	291.9
Total cost of military facilities	352.9

SOURCE. Department of Defense.

However, I believe that a more real estimate of value in today's terms is the replacement cost of the Panama Canal, the Canal Zone, and the military facilities there, which exceeds \$9.8 billion, as follows:

D. Replacement value of canal operations (including Armed Forces)

	Billion
Property, plant, and equipment	\$3.573
The Panama Canal	5.000
Military, naval, and air plant	1.245
Total	9.818

SOURCE. Panama Canal Company.

But the value of the property transferred to Panama, or whose use is lost to the United States, is not the only expense involved. The very act of transferring American property in the Canal Zone to the Government of Panama entails direct costs to the United States, certainly over \$750 million, but possibly far higher because the Panama Canal Treaty requires that the United States turn the canal over to Panama free of liens and debts. For example, differences of opinion appear to exist in Panama and Washington as to whether the \$10 million a year contingency payment promised to Panama out of revenue surplus, which is cumulative, constitutes a debt of the Panama Canal Commission in 1999. At that time, other debts of the Commission may also exist.

The following itemizes some of these direct costs to the United States:

E. Possible direct cost to United States

	Million
Military relocation	\$43
Civil service early retirement, approximate	150
DOD schools/hospitals	110
Foregone interest payment	440
Foregone payment for past services to Panama	9
Inventory of assets	2
Total	784

The State Department has also indicated that Panama will receive \$345 million in economic and military assistance outside the treaties.

In addition, during the life of the proposed Panama Canal Treaty, Panama expects to receive over \$1½ billion which will be paid out of toll increases. The following itemizes these costs:

F. Payments to Panama out of toll increases:

	<i>Million</i>
0.30 canal-ton—\$40 million per year, probably more.....	\$880
\$10 million per year—annuity.....	220
\$10 million per year for services, renegotiable.....	220
\$10 million out of surplus.....	220
Total	1,540

These toll increases will mean higher prices for both producers and consumers throughout the world. Since well over half the trade going through the Panama Canal either originates or terminates in American ports, the people of the United States will pay a major part of the cost of this toll increase. In summary, the replacement cost of the Panama Canal Zone and facilities there is nearly \$10 billion, and it is going to cost the world, mainly the United States, well over \$2 billion to give that property away. Having given it away, under the threat of violence, there is still no guarantee that we have the right to protect the canal after 1999, and we have no guarantee that the Government of Panama can afford, financially, to keep it open in the future.

Elmer Staats, the Comptroller General of the United States, testified that the economic viability of the proposed Panama Canal Commission was in doubt. Governor Parfitt, of the Canal Zone, added his own warning when he said, "I believe you should be alert to the possibility that the canal operation may not be self-sustaining in the out years." Governor Parfitt, Mr. Staats, and Mr. Frank A. Nicolai, an economic consultant to the committee, agreed that the financial success of the Canal Commission under the treaties depends greatly upon implementing legislation which has not been presented to the Congress, although implementing legislation was promised to the Senate in October of last year.

While the State Department Legal Adviser, Mr. Herbert Hansell, insisted that this delay was not a stratagem designed by the administration to deprive the Senate of information detrimental to approval of the treaties, he admitted that the delay results from difficulty in drafting controversial provisions including those dealing with labor relations. Thus, no one testified that Panama, which has a very weak economy and whose government is in grave debt, could afford to maintain the canal without outside help during times of economic difficulty. Further, the governor of the Canal Zone and the Comptroller General of the United States testified that because of heavy payments to Panama of \$60 to \$70 million per year, the canal might be a money losing proposition under the terms of the proposed Panama Canal Treaty, even during that period when the United States retained control. And what if, after 1999, the canal turns out to be an economic white elephant?

Although the new treaties are proposed as a means to improve relations with Panama, the enormous impact of divergent interpretations of the economic provisions of the treaty could lead to irreconcilable tensions and disputes. Governor Parfitt and Mr. Staats both suggested that ambiguous provisions of the treaties be clarified with Panama as soon as possible so that there will be no misunderstandings. Comptroller General Staats singled out, in particular, the provisions of the new Canal Treaty providing for a \$10

million contingency payment to Panama out of any surplus achieved each year by the new Canal Commission. If no surplus is achieved in any one year, the obligation is carried over until the next year. Staats expressed concern that lack of agreement on how this surplus was to be determined and how any accrued debt would be handled after 1999 could irreparably injure United States-Panamanian relations.

Because payments to Panama by the Canal Commission out of tolls alone during the next 22 years will equal approximately 70 percent of Panama's current annual GNP, significant issues are involved as the following exchange with Governor Parfitt illustrates:

Senator BARTLETT. I believe you told Senator McIntyre that the Canal Commission would expect to set its toll revenue to meet its cost and that if this contingent payment was not included in the plan for setting tolls, there would be little surplus to pay the Panamanians since the Commission is not a profitmaking organization.

Governor PARFITT. That is correct, sir.

Senator BARTLETT. So what we would have here is a situation in which we have promised to pay the Panamanians out of any surplus which the Commission earns but the Commission is not expected to have any surplus.

Governor PARFITT. Under a situation which we now forecast, which is one of ever-increasing demand for additional tolls, we would not be generating surpluses, at least in very significant amounts.

Senator BARTLETT. And if we include the contingency payment in the estimate of operating costs, we increase the chance of the Canal Commission running into debt, and we have said to the Panamanians that we will turn the canal over to them free of debt.

Governor PARFITT. That is correct, sir.

Senator BARTLETT. Given the large sums of money involved and the ambiguities in the treaty, which could cost either the United States or Panama large sums of money, depending upon how the disputes are resolved, could you, Governor Parfitt, tell me how the two nations are going to avoid disputes and conflicts over the interpretation? In other words, the same question I asked Mr. Staats.

Governor PARFITT. Obviously there are built in some difficulties and we hope that these can be ironed out through the various committees that have been established in effect to try to resolve these problems. Certainly the problem related to the contingency payment seems to be one that cannot be resolved in that fashion in view of the conflicting views of both parties right now.

Senator BARTLETT. I would assume that the Congress would want to see that these differences are resolved, and how would you suggest the Congress do that?

Governor PARFITT. We had hoped most of them at least can be resolved through the implementing legislation that the Administration is now trying to develop.

Senator BARTLETT. But if the implementing legislation expresses a Congressional point of view or even an Administration point of view, and if that is not the point of view of the Panamanians, then there would still be the controversy.

Governor PARFITT. That is correct, if this does not represent really the agreement of Panama and the United States the implementing legislation will not resolve that conflict.

Senator BARTLETT. Unless the Panamanians reach some agreement with the United States executed by President Torrijos or someone from Panama?

Governor PARFITT. Or unless they in fact agree with the interpretation of the Administration as it is implemented in the legislation. There seems to be a little difference of opinion as to what the Panamanians agree to and do not agree to. I have not had that direct an association with them so I do not know directly what their position is.

Senator BARTLETT. That would require a signed instrument, would it not?

Governor PARFITT. It would appear to involve some kind of a signed instrument or some kind of a reservation or amendment to the basic documents.

Upon reflection, this particular testimony makes clear the need for amendments to the economic provisions of the proposed Panama Canal Treaty. These economic amendments are no less necessary than are the military amendments to the proposed

Treaty of Neutrality which seem clearly required in light of the testimony of former Deputy Defense Secretary Clements cited above.

The entire testimony received by the Senate Armed Services Committee points toward one inescapable conclusion—failure to make major revisions in the proposed Panama Canal treaties could result in great loss to the United States and great tensions with Panama. And clearly, if these changes are to have any real meaning, the treaties must be returned to Panama for consideration by their government and then they must be ratified by a plebiscite of the people of Panama as required by their constitution.

Mr. President, a treaty is an agreement between two parties arrived at through negotiation. Most Americans are not familiar with treaties per se, but they are familiar with the procedures used to arrive at the final terms of the treaty, and the final ratification.

A treaty, in very simplified terms, is merely a contract, and therefore, it is generally agreed that procedures similar to contract negotiation are used in its final ratification. The American public does have a general and fundamental knowledge of this procedure which recognizes the rules by which a treaty is validly ratified by both parties.

It is likely that there will be amendments adopted to this treaty, and once we have adopted these amendments, we have changed the terms of the treaty. As in common contract law, the treaty then represents a new offer to the country of Panama, which then must be reratified. Further, the ratification must come in the same form as that used on the first treaty or offer.

An attempt to ratify the treaty in a different way would produce an invalid treaty with no binding effect. Although both countries could immediately support the treaties, either country could later claim the treaty or treaties to be invalid and hence not binding. Such a loophole could eventually work strongly in Panama's favor.

We are all consumers, and we all negotiate and enter into contracts. It is commonly understood that an illegally adopted contract can be broken and, therefore, an illegally ratified treaty is subject to being broken for the same reason.

Some may question the constitutional operation of the Panamanian Government, but the fact remains that article 274 of their constitution requires a plebiscite to ratify a treaty dealing with the Panama Canal. To make the treaty binding, it must be adopted in this manner.

If the U.S. Senate makes the amendments that are expected, or other amendments, a Panamanian plebiscite should result, and we should not accept a treaty that has been adopted in any other manner.

There are two questions that I would ask my colleagues. Do you believe that Panama would accept a treaty that had not been ratified by the U.S. Senate? Could you, as an elected representative, allow a treaty additionally amended by Panama to be accepted by the United States without additional consideration in the Senate, and a formal ratification as provided by our Constitution?

Many of the issues involved in this treaty may be glossed over, both by the executive branch and Members of the Senate, but this one question and procedure cannot. We cannot "whitewash" the

issue of proper ratification. Nor, can we, as a world leader propounding a philosophy of equal treatment among nations and human rights, allow a treaty to be ratified without the proper participation by the people of Panama who are enfranchised under their own constitution.

Mr. HANSEN. Mr. President, I wish at this time to restate some of my earlier concerns with regard to the two Panama Canal treaties and to speak briefly about some new concerns which have come to light. I have always maintained I would oppose any treaty under which the United States relinquishes absolute control of the Canal Zone and its defense positions. I have not altered my position. But at the same time, I am by no means suggesting a new treaty is not necessary. In light of several years of ongoing political turmoil and economic hardships, surely a better understanding should be reached on the operation of the canal and the Canal Zone. A reevaluation of the present situation and the existing treaties, in the interests of cooperation between the two countries, is certainly warranted.

However, I am very concerned about the treaties we are being asked to consider. As they stand, I am convinced they are not in the best interests of the United States, Panama, or Latin America. In my statement to the Senate Foreign Relations Committee in October of last year, I enumerated some of my strongest concerns. At that time, I had cosponsored several amendments of Senator Dole, which addressed some of the major weaknesses of the treaties.

Article IV of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, I believe, is the weakest article of both treaties. There is nothing in article IV which assures that the United States can unilaterally intervene militarily in the defense of the canal.

Since July of 1977, the exact interpretation of the defense provisions of article IV have been widely debated and an agreement has still not been reached. The Joint Statement of Understanding which was made on October 14, 1977, for the very purpose of clearing up this misunderstanding, remains unsigned, and is itself misinterpreted still.

Amendment No. 20 which was introduced early this month, and which I cosponsored, is an attempt to clarify the defense provision. While the amendment, which embodies the language of the Carter-Torrijos Joint Statement of Understanding, would greatly improve the Neutrality Treaty, I believe it remains insufficient.

According to the American Law Division of the Library of Congress:

The Carter-Torrijos statement, while guaranteeing each party the right to act against threats directed at the Canal, also specifies that the United States may not intervene in the internal affairs of Panama. It is not altogether clear that the statement would permit the United States to intervene in the event that the aggression or threat should result from Panamanian action.

Mr. President, I believe amendment No. 5 of Senator Dole, which I cosponsored in September, more adequately addresses the problem of defense of the Panama Canal. This amendment states:

Nothing in this Treaty may be construed to prevent the United States of America, in accordance with its Constitutional processes, from intervening militarily to main-

tain such regime of neutrality when determined to be seriously threatened by the President of the United States of America, or, through the adoption of a concurrent resolution, by the Congress of the United States of America.

This amendment clearly gives the United States the right to determine and act unilaterally to insure the neutrality of the canal. I believe it should be given serious consideration by the Senate.

I sincerely hope my colleagues will act positively on an amendment to assure that the United States can respond quickly and effectively in defense of the Panama Canal.

The exact definition of "expeditious passage" through the canal has also been open to varying degrees of interpretation over the past several months. Article VI of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal includes a provision which grants to the United States the right of "expeditious passage" through the canal in times of crisis. The Joint Statement in October was also intended to clarify this point, but has failed to do so.

Amendment number 21 which was introduced by both the distinguished majority and minority leaders, and which I again cosponsored, embodies the language of the joint understanding which was an attempt to explain the definition of expeditious passage. I support the effort as a step in the right direction, but I find the language is still open to misunderstanding. Panamanian negotiators and leaders continue to interpret the understanding differently than we are.

I cosponsored an amendment in September which Senator Dole had the foresight to introduce which addresses the problem of expeditious passage. Article VI of the Neutrality Treaty states that vessels of war and auxiliary vessels of the United States and the Republic of Panama will be entitled to transit the canal expeditiously. Amendment number 6 would add to that provision the words, "except that the Republic of Panama shall, upon request, afford privileged passage through the canal to such vessels of the United States of America during any period in which the United States of America is at war."

The rights of American ships to go to the head of the line in times of crisis must be clearly recognized and understood.

While the right of privileged passage and the question of U.S. defense of the canal are the two most important questions to resolve, I believe the treaties contain several other points which deserve consideration.

Article 12 of the Panama Canal Treaty contains a provision which would allow the United States to build a second canal, if we should ever wish to do so, only in the country of Panama. At the same time the treaty contains no firm commitment on the part of Panama to agree to permit us to construct that canal, should we decide to do so.

This provision is totally unacceptable. Why we would agree to build a second canal only in the country which has insisted on control of our first canal is totally incomprehensible. I cannot believe our negotiators accepted such a provision, knowing full well its restrictive implications. I have cosponsored an amendment which would have the effect of striking this provision from the

treaty completely. I would hope serious consideration is given to this point in the days ahead.

Article 11 of the Panama Canal Treaty provides for the "orderly transition" of jurisdiction over the Canal Zone. The administration has been emphasizing a 22-year period in which this will occur. In fact, as soon as the treaty enters into force, the Republic of Panama will gain full jurisdiction over the Canal Zone. A complete transfer of U.S. judicial, administrative, and regulatory authority will be accomplished within 30 months.

In my opinion, this does not constitute an orderly transition. I believe there are very few American citizens who will remain in the Canal Zone, knowing they will be under the jurisdiction of the Republic of Panama. Large numbers may return to the United States leaving a void in the manpower support of the operations of the canal.

To that end, I would suggest serious consideration of an amendment which would allow the Panama Canal consultative committee to study the situation after the treaties take effect and make a recommendation as to when the period of transition should actually end. However, I would suggest January 1, 1990, should be the earliest time at which that would take place. Any treaty which subjects our U.S. citizens to Panamanian law and civil and criminal justice within 30 months after the treaty enters into force is totally impractical. Transfer of the administration of the Panama Canal Commission from United States to Panamanian leadership takes place on January 1, 1990, and it is only logical the two dates be coordinated.

Recently, additional testimony was given before the Senate Armed Services Committee which has only added to my initial concerns with regard to the wisdom of ratifying the new treaties without specific revisions.

I was particularly interested in testimony before that committee during the week of January 24 through February 1. Unfortunately, a great deal of this testimony was given very little attention in the press, initially, but the substance of the statements is well worth noticing.

Over the past several months we have heard a great deal from the Chiefs of Staff and other ranking officers, both active duty and retired, and I do value their opinions. There were differences of opinion as to the strengths and weaknesses of the pending treaties, and several constructive suggestions have been offered.

However, Lt. Gen. Gordon Sumner, Jr. of the U.S. Army, and currently chairman of the Inter-American Defense Board, testified on January 31. I believe his testimony is especially revealing. The Inter-American Defense Board, as I am sure my colleagues know, consists of those 19 countries which are the signatories of the Rio Treaty. The organization was created in 1942 and it is the oldest multilateral military planning organization in the free world, including NATO. The Board is specifically charged with defense of the Western Hemisphere and the global strategic situation. As General Sumner pointed out, the Board does not normally become involved in bilateral issues because to do so would violate the very nature of the Board. The Board much prefers to, and does in fact, deal on the multilateral approach in solving the problems of the

Western Hemisphere. As he noted, this is a hemisphere of peace, largely because all the countries have traditionally solved their individual problems on a multilateral basis. As the General noted, their record on this matter is very good and one of which they are rightly proud. It has been part of their heritage.

This brings me to an important point with which I do not think we have adequately dealt, and that is the concern of all of Latin America for the continued, efficient operation of the Panama Canal. Unfortunately, the Inter-American Defense Board has not been involved in any way in the canal negotiations. Those who would have us believe all of Latin America wholeheartedly approves of the new Panama Canal treaties and is anxious to see the United States turn over complete control to the Republic of Panama of so vital a waterway to each one of them, are misleading.

General Sumner pointed out that the Latin American countries consider the Panama Canal as the "Canal of the Americas" and it is vitally important to all the countries. The country of Ecuador alone passes 50 percent of all their exports through the canal. Contrary to those statements to the effect that our entire relationships with the Latin American countries depends on ratification of the treaties as they are written, almost all of the countries emphasized that their bilateral relations with the United States are too important to have them rise or fall on the Panama Canal treaties.

Rather than winning greater support and cooperation from the Latin American countries by relinquishing complete control of the canal to the Republic of Panama, I believe we will lose their support in the long run for failing to take into account and protect their best interests at this time.

Retired Maj. Gen. George L. Mabry, Jr., of the U.S. Army also testified before the Senate Armed Services Committee that day. General Mabry's testimony is, I believe, highly significant in light of his past service record. During his 35 years of active duty in the U.S. Army, he was stationed in the Canal Zone for a total of 10 years. His second tour of duty in the Canal Zone lasted from July 1962 through July of 1965. He served as Plans and Operations Officer of the Unified Command Headquarters located in the Canal Zone. He was charged with developing and maintaining up-to-date plans to protect and defend the canal. He was the first officer to arrive on the scene during the 1964 riots and directed the employment of U.S. troops. In this regard, I feel General Mabry is exceptionally qualified to speak to some of the, as yet, unanswered questions with regard to the Panama Canal treaties. General Mabry raised one very significant point which I wish to quote at this point. He said:

I do not understand and therefore am suspicious of why Panama insists that after the year 2000 no U.S. military forces can be stationed anywhere on Panamanian soil, even under a status of forces agreement. This is especially puzzling to me since we, the United States, have forces stationed in former enemy countries such as West Germany and Japan, and apparently are getting along very well. Why then, are the Panamanians, who claim they are going to be such great friends of the United States after the year 2000, so reluctant to accept the stationing of any U.S. military elements on Panamanian soil under a status of forces agreement? I cannot answer the question; maybe others can.

This is one Senator who cannot answer that question. I would hope someone can during the next few days of discussion.

Mr. President, in light of other recent testimony, given before the Senate Armed Services Committee, I am afraid we have been misled to some extent by the administration. When the Secretary of State testified before the Senate Foreign Relations Committee he stated:

The treaties require no new appropriations, nor do they add to the burden of the American taxpayer.

This is clearly not the case.

A recent letter from the Secretary of State with regard to implementing legislation which we do not yet have, confirms that the canal would not be liable for interest payments to the U.S. Treasury. Those interest payments alone could cost our Government a minimum of \$440 million by the year 2000.

There are other costs which will have to be covered through appropriated funds unless they are charged to the Canal Commission. It is estimated that the cost of relocating U.S. military bases may be close to \$43 million. For those U.S. employees who opt for early retirement, costs could run as high as \$165 million over the next 22 years.

Under the terms of the treaties, the United States has made various loan commitments to the Republic of Panama. These loan commitments include up to \$200 million in Export-Import Bank credits, up to \$75 million in Agency for International Development housing guarantees, \$200 million in Overseas Private Investment Corporation loan guarantees, and \$50 million in foreign military sale credits.

Under the terms of the treaties, total costs incurred over the next 22 years could be close to \$2.3 billion. According to Major General Parfitt, Governor of the Canal Zone, these payments may have to be financed in large part, by higher tolls. The American taxpayer is certainly bound to feel the effects of the increased tolls, as about 70 percent of the canal traffic either originates or terminates in the United States.

Governor Parfitt further pointed out that under the treaties the United States is obligated to relinquish control of the canal to the Republic of Panama, free of any liens or debts, by the year 1999. If, during the next 22 years, the Canal Commission has not managed to operate in the black through the levying of increased tolls, the U.S. Government may be liable to pay off any deficit.

Mr. President, these are only a few of the many concerns I still have about these treaties. Not only have we failed to strengthen some of the most obvious weaknesses of the treaties which were initially noted, but each week over the past several months seems to have produced a new set of problems and unanswered questions. The ambiguities remain unresolved. We have already seen the friction which has developed between the two nations over the wording of only two issues. To leave so many key points still hanging in the wind and subject to individual interpretation in the future, only invites trouble. Each point of contention, however small, could escalate into a major dispute if not handled carefully and thoughtfully at this stage.

Mr. President, I am well aware of the arguments being made by those who wish to avoid a second plebescite. There is concern that should the U.S. Senate greatly amend the treaties, it would open up the possibility of further changes demanded by the Panamanians. I do not believe those are sound arguments in favor of acting quickly and perhaps carelessly on one of the most significant foreign policy matters with which we may ever be faced.

I strongly suggest, as my distinguished colleague Senator Dole has already noted, the Senate must advise on this matter before it grants consent through ratification of these treaties. Failing to do so, we would be remiss in our constitutional duties as Members of this body. We would fail in our responsibility to the President, and we would fail in our responsibility to the American people.

Mr. President, I suggest the absence of a quorum.

Mr. ALLEN. Mr. President, will the Senator withhold that suggestion?

Mr. HANSEN. I withdraw it.

The PRESIDING OFFICER (Mr. Matsunaga). The Chair recognizes the Senator from Alabama (Mr. Allen).

AMENDMENT NO. 40

Mr. ALLEN. Mr. President, I call up my amendment No. 40 and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

The Senator from Alabama (Mr. Allen) proposes an amendment numbered 40: Strike article I, and insert in lieu thereof the following:

ARTICLE I

The Republic of Panama declares that the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty. The same regime of neutrality shall apply to any other international waterway that may be built either partially or wholly in the territory of the Republic of Panama: *Provided*, That the military presence of the United States in what was the Panama Canal Zone on September 7, 1977, shall be continued beyond December 31, 1999, if the President of the United States deems it necessary for the defense of the Canal or the maintenance of the neutrality thereof and shall prior to December 31, 1999, so certify to the Government of Panama.

Mr. ALLEN. Mr. President, I have on occasion, here on this floor, discussed the need for this amendment, and have anticipated that there will be a vote on the amendment this week. I have been assured by the Senate majority leader that debate may proceed on the amendment for today and tomorrow, and that no effort will be made to table the amendment in that time.

As I have stated, I have felt that the logical procedure on consideration of these treaties was to consider first the Panama Canal Treaty, that is, the treaty that provides for transfer of the Panama Canal to Panama, and which states conditions under which it is to be transferred. By a vote of the Senate on yesterday, the Senate approved the procedure recommended by the joint leadership, that is, that we consider first, the Neutrality Treaty.

I thought it would be more logical, and apparently 29 or 39 other Senators felt the same, that we first ought to decide whether we were going to give the canal away before we determined the condi-

tions under which in the year 2000 we will maintain the neutrality of the canal.

There is a larger issue involved here. That is that the leadership is supporting what the Government has referred to as the leadership amendment, which does amend, or which seeks to amend, articles IV and VI of the Neutrality Treaty. It would seem to the Senator from Alabama that the strategy of the administration and of the leadership is going to be that on the approval of the leadership amendment, it will be pointed out that this is the only amendment which is necessary; that this protects the national interest, and, therefore, these other matters are matters of detail and we ought to very quickly come to a final resolution of the issue of these treaties.

The Senator from Alabama felt, and he felt so strongly that he did offer the motion on yesterday, cosponsored by some 15 Senators, that we ought to put the horse before the cart, so to speak, and we ought to consider first whether we are going to give the canal away before we worry about defending it in the year 2000.

The Senator from Alabama is one of the cosponsors of the leadership amendment. He, and all other Senators, I assume, was invited to cosponsor the leadership amendment.

I cosponsored because I felt that it offered some slight—and I say slight—improvement of the treaty.

I call the attention of Senators to the great similarity between article IV of the Panama Canal Treaty and the leadership amendment on the matter of the defense of the canal and the maintenance of its neutrality.

That would mean that the leadership amendment is deficient in at least the three areas:

The first area is the most important area. That is that the authors of the amendment apparently overlook an important fact. At the time it comes into full and complete operation, even though it becomes effective at the same time as the Panama Canal Treaty does it really takes effect on January 1, 2000, because the Panama Canal Treaty provides for defense of the canal by the United States up to the year 2000. It overlooks—and I am surprised that this was done as it was based, I am told, on the memorandum agreed to between President Carter and Dictator Torrijos and, in effect, embodies those provisions—it overlooks the fact that at the time it goes into operation all of the troops of the United States will have been withdrawn from the Canal Zone under the treaty. How are we going to defend the canal if there are no troops there?

The leadership amendment gives the right to defend, to maintain neutrality, but in a moment I will point out that Dictator Torrijos has a different interpretation of that. How are we going to defend the canal if we do not have any troops there, unless we bring in some troops?

How are we going to bring in some troops except by invasion of that tiny country?

I feel free to criticize this amendment inasmuch as I am a cosponsor of the amendment, and, naturally, being a cosponsor of the amendment I want to examine it and I want to confess as to its shortcomings. I pointed out one of the shortcomings.

The second shortcoming is that it provides that in no event, as we seek to defend the canal to maintain its neutrality, are we going to interfere with the internal affairs of Panama, either under the present regime or a successor regime, which might be a Communist regime, or a Cuban-backed regime, even though that regime may be the very regime that is blocking our access to the canal.

We cannot do anything, under the leadership amendment, which would interfere with the internal affairs of Panama.

Well, that is the second deficiency.

There is a third deficiency, and these are three deficiencies which occur to me off the top, so to speak. I am sure if we examine the amendment further we can note other shortcomings.

The highly vaunted provision that in an emergency our warships can go to the head of the line is the third deficiency. That is highly deficient in that it does not describe, or does not define, what an emergency is, and who decides that there is an emergency. What might be an emergency to us in our country might not be an emergency to Panama. Panama is going to be in control of the canal. I would think that Panama would determine whether there was an emergency.

What will we do, radio to Panama and say, "Look, we have an emergency here and we want to move our ships to the head of the line," with the Panamanians replying, "Well, we don't feel that there is an emergency. What are you talking about, an emergency? You stay where you are, at the rear of the line, and wait your turn."

What would we be able to do to counter that?

I feel at the proper time an amendment needs to be offered to the leadership amendment saying that what constitutes an emergency will lie in the sole judgment of the United States.

Getting back to the amendment which the Senator from Alabama has offered, and which is made necessary, Mr. President, by the deficiencies in the leadership amendment in that there is a hiatus on defense created by the departure of our troops prior to the year 2000 and the start up of the defense rights given under the leadership amendment starting with the year 2000, again I say, when I have made that statement in the past the distinguished proponents of the treaties have pointed out that this goes into effect at the same time as the other treaty, but it is certainly an overlapping situation because the United States, even under the Panama Canal Treaty, would have the right to defend the canal.

One of the arguments the proponents of the Neutrality Treaty made about insisting on considering first the Neutrality Treaty was that they could not vote for the Panama Canal Treaty before the neutrality provision had been agreed to. Well, that is an excuse rather than a valid reason, because, with 78 sponsors of the leadership amendment, the proponents of the treaties know full well that if the Panama Canal Treaty were up for consideration, it would be a very simple thing to insert a provision that the Panama Canal Treaty would not become effective until the Neutrality Treaty had been agreed to. There is no great hurry, you know, because, as I say, the Neutrality Treaty really does not go into effect for 22 years. So we would have 22 years to work on it.

Is the Neutrality Treaty in danger of being defeated? I think not, when 78 Senators, apparently, support it. I would feel that it is in no danger whatsoever.

And the leadership amendment is in no danger whatsoever. I shall vote for the leadership amendment when it comes to an up or down vote on it. It is my obligation, I feel, to do so as long as I am a cosponsor. If I ever decide that I cannot vote for it, and I do not see how that situation could arise, I would ask that my name be removed as a cosponsor of the leadership amendment. I believe we can improve on it.

Following the same line of reasoning as the proponents of the treaties, that they cannot vote for the Panama Canal Treaty until the Neutrality Treaty has been agreed to, I think, then, that we need to establish the fact that we can maintain a military presence in the Panama Canal Zone after the year 2000 if the President certifies that maintaining that presence, or continuing that presence, is necessary for the defense of the canal or maintaining its neutrality.

So, let us establish that right off the bat. Let us not wait on the leadership amendment. Let us supply that deficiency right now.

Why should Senators refuse to agree to this amendment? I do not know that they will. I hope they will not. I do not see why the Senate will not be in favor of adding security to the defense of the canal, providing a way for us to defend it. That ought to be something that would meet the approval of both sides, that the United States might be allowed to continue its military presence in what was and what is now the Panama Canal Zone.

Why would they object to it? Well, they would not object to it, Mr. President, except for the reason—and this point is going to be made time and time again here, on the floor—they would not object to it, and the only reason that the amendment will be turned down in the Senate, if it is turned down, is that Dictator Torrijos would not want it. There again, Mr. President, I think that, in time, the American people are going to realize that the strategy of the proponents of the treaties is to adopt their ineffectual defense amendment and stonewall as to other substantial amendments.

Why? Not because they are not in the best interests of the United States, but because Dictator Torrijos says no.

Now, Mr. President, it is the function of the U.S. Senate to give its advice and consent to the President with respect to treaties. But I fear—and subsequently events are going to see if the fears of the Senator from Alabama are well founded—I fear that we are going to be concerned primarily with whether the amendment meets the approval of Mr. Torrijos. Already, the Foreign Relations Committee has done a flip-flop at the behest of the State Department to the feared objections by Panamanians, when they reversed the action they had already taken on the leadership amendments, having put these amendments in the form of a new article or articles. The State Department advised the Foreign Relations Committee—and this information was brought before the Senate by the distinguished Senator from Michigan (Mr. Griffin), a member of the committee—the State Department advised the Foreign Relations Committee, “You must not handle this amendment or these amendments in this fashion. The Panamanians won’t like it. You

must not have a separate article. You have got to amend existing articles. That is the only way they will take it. They won't like it."

So, what did the Foreign Relations Committee do? Why, they got in line and danced to the tune that was played for them.

They reconsidered their earlier action and then prepared amendments to articles IV and VI.

I suppose the reason that the Panamanians did not like it as a separate article was that they feared they might cause the calling of another plebiscite.

I am advised, and I am no Spanish authority, but I am advised that the word "amendment" in English translated over into Spanish comes up "emmienda" which is a minor change, whereas the addition of a new article would be "reforma" which is a major change, even though the language might be the same, but put in one as an amendment and one as new articles.

So the Foreign Relations Committee did reverse what had been done and handled it as the State Department said would be more pleasing to the Panamanians.

I am a little bit tired, Mr. President, of wondering what Mr. Torrijos will think about amendments being considered here in the U.S. Senate rather than worrying about whether they are for the best interest of the United States and her people.

I have asked and obtained unanimous consent that all Senators who do care to cosponsor the amendment will be allowed to add their names at the desk as if they were on the amendment at the time of its introduction.

What it does is to supply an omission that the leadership has, that is, it does retain to the United States the option of continuing the military presence of the United States in the Panama Canal Zone beyond December 31, 1999, if the President deems that it is necessary for the defense of the canal or for maintaining its neutrality, and if he so certifies to the Panamanian Government prior to December 31, 1999.

Statements have been made here on the floor that the last, at least four Presidents, I believe, I am not sure they said five, but certainly they have said the last four Presidents have favored the Panama Canal treaties.

That being so, is there any reason to believe that the President of the United States in the year 1999 would not look with as much favor on the change in the setup regarding the operation or defense of the Panama Canal, that that President, the President in 1999, would not deem it necessary to continue military presence there unless there was a real need to do so in order to defend the canal or to maintain its neutrality?

Because, Mr. President, we do not know what condition, the governmental condition, the human rights situation, the state of belligerency or hostility to the United States, might exist in Panama on December 31, 1999.

This amendment would give the President the option of continuing our military presence.

The distinguished Senator from Idaho (Mr. Church) on Monday said:

Well, this amendment is not necessary. It is superfluous. It is already covered in the leadership amendment.

Well, it is not covered in the leadership amendment. All we have to do is read the leadership amendment to see that it is not, read the leadership amendment in the light of any provisions of the Panama Canal Treaty.

He said on the floor that the President would be authorized to retain troops in Panama, in the Panama Canal Zone, under the leadership amendment. But I do not believe that is maintained in the record itself.

I believe he was claiming too much for the provisions of the leadership amendment on the floor and, possibly, on reflection realized that that provision was not there.

But if it is provided in the leadership amendment, what is wrong with underscoring that fact?

Could we not tell Mr. Torrijos, "Well, it's already in what you have agreed to, we just felt like it was a good idea to nail it down."

Mr. President, another reason the leadership amendment is inadequate is the memorandum between the President of the United States and Dictator Torrijos, not signed, agreed to by them in October, I believe, when there was a hue and cry for changing the treaties to give us better defense rights, and the distinguished Senator from Idaho (Mr. Church) to his eternal credit, was one of the Senators who said that the original treaties did not give us adequate defense rights. He said that it had to be changed and his objection and objections of other Senators caused the President and Dictator Torrijos to enter into this unsigned memorandum.

But what did Dictator Torrijos say that the memorandum, unsigned agreement between him and President Carter, would do? He said that it would give the United States the duty, but not the right, to come into Panama to defend the canal, that they have no right to come in unless he calls for them and that if he called for them, they had the duty to come and defend it. Not the right.

What about all this talk about unilateral right? That is not the way Dictator Torrijos interprets it. The leadership amendment is based largely on this memorandum. Maybe he said that his mind has been changed by negotiation with the U.S. negotiators, but I have not seen any retraction. Maybe it has been there; and if it has, I am sure that information will be supplied, where Torrijos has backed up on his assessment of the effect of the memorandum between him and President Carter. So if an amendment is susceptible of two radically different constructions, there is something wrong with the amendment.

That is another reason why we need to spell out the fact that if the President deems it necessary to continue our military presence in Panama beyond the 31st of December, 1999, he can continue that military presence, provided he so certifies to the Panamanian Government. Why should we not have that right?

The big hue and cry by the proponents of the amendment was that the treaties did not give adequate right to defend the canal at the end of this century. I think it is quite obvious that the leadership amendment is deficient at that point, because it sets up a regime under which all of our troops have to be withdrawn from the Canal Zone, and we would have to invade Panama in order to defend the canal. While invading Panama, even though Panama were the culprit, we could not do anything to interfere with their

internal affairs. In other words, we could not cause the deposing of a dictator or anything of that sort. We have to leave that regime unscathed, under the leadership amendment. Leave Panama alone. Leave the dictatorship alone. Do not tamper with that. We are agreeing to that, under the leadership amendment.

Mr. President, all we are trying to do with this amendment is to provide for a better defense of the Panama Canal, starting with the year 2000, only if the President of the United States says that continuing that military presence is necessary in order to defend the canal or to preserve its neutrality.

Very few I have talked to have voiced disagreement with the logic of this amendment or the fact that it does fill a hiatus that is contained or not contained in the leadership amendment. This is the logical place to put this provision. It does not bother article I at all, in that, while it is stricken, it is brought back in, word for word with this proviso, giving the President this power.

The amendment does not make it mandatory that we maintain a military presence there. It is not at all certain that we will. But who could object to allowing the President to continue that military presence if it is necessary to defend the canal or to maintain its neutrality?

Mr. President, I will close my remarks at this time. I probably will have other remarks to make prior to a final vote on the amendment.

As I have stated, the leadership has assured me that no effort will be made to table the amendment this week and that such effort would not be made until next week, after an opportunity has been given to the Senate to fully debate this issue.

Is it to the best interests of the United States, in its desire to defend the Panama Canal? How could anyone question it? Is it needed? The leadership amendment does not cover it. Why, then should there be any doubt about the Senate agreeing to the amendment? Mr. Torrijos might not like it. It might cause the calling of another plebiscite.

Mr. President, I believe that we in the U.S. Senate should be more concerned with preserving and protecting the security of the United States and the Panama Canal than we should be concerned with the wishes of Mr. Torrijos or whether or not he has to call another plebiscite. Who knows whether he is going to call another plebiscite? He is a one-man government down there. He might say that the people have no right to act on this thing again. I do not know. Would we say to him, "You have to call a plebiscite," if he says one is not necessary? What control do we have over it?

One U.S. Senator told me, when I asked him if he would support a constructive, substantive amendment, that he would support no amendment that would cause plebiscite in Panama.

Mr. President, I believe we should add all amendments that are necessary to protect the interests of the United States and add a provision to these treaties that, in order to become effective, they have to be approved by a plebiscite in Panama. Do not wonder about whether Torrijos is going to call one or not, because he will not call it unless he wants to, and he says it is not necessary. Would we take issue? We would not. Torrijos says that it is not necessary to call a plebiscite.

We should write in the treaty itself—and I assure Senators that before these treaties are agreed to, such an amendment will be offered—we should add an amendment that these treaties become effective only when approved by the people of Panama in another plebiscite called for that purpose.

I have had suggestions by people throughout the country who are opposed to the Panama Canal treaties, who have pointed out that Panama is a dictatorship.

The people of Panama were given the opportunity to express themselves on the matter of agreeing to these treaties. Yet the United States, the world's greatest democracy, has no such provision. And it has been suggested to me that an amendment ought to be offered providing that the treaties not become effective until they have been approved in a referendum submitted to the qualified voters of the United States.

I have rejected every such suggestion and I would not support such an amendment, because the Members of the U.S. Senate in our representative form of government represent the people of the United States in this Chamber. And it is our duty and our responsibility to act in this matter. This is not something that we need to send back to the people in a referendum even though I know within reason that the people would turn down the Panama Canal Treaty. And with its fall naturally the Neutrality Treaty would fall. But I do not believe that is the proper approach. I do wish Senators would listen a little more to their constituents in making their decision on whether to give advice and consent to the President for the approval of these treaties. I believe if they did that we would have a pretty heavy vote in the Senate against these treaties, because I am convinced the people are opposed to them. But I recognize the right of Senators to use their own independent judgment in deciding these matters.

Fortunately, in my own particular case I made my considered judgment in this matter and I announced my position in a newsletter to some of my constituents back home in October 1971, my opposition to giving the Panama Canal away. So my position in this matter was reached after careful consideration, study, and reflection long before it became an issue among the people of Alabama. So I am in the happy position, Mr. President, of being opposed to the treaties on an independent judgment backed by public opinion in my State, and backed by public opinion throughout the Nation, in my judgment.

So, I do not look with favor on a referendum on this subject submitted to the qualified voters of the United States.

But in Panama that is the procedure that they seemed to have established under their constitution. Therefore, Mr. President, I feel since it is in Panama the established procedure under their "constitution"—I put that in quotes—that the people will be allowed to decide this question, so what you might call the court of last resort in Panama on this question is the people, just as the court of last resort with regard to the treaties here in the United States is the Senate of the United States unless the President will follow the provisions of article IV, section 3, paragraph 2 of the Constitution, that would require that any measure or provision

disposing of property of the United States must be enacted by both Houses of Congress and not just the Senate.

But as regards the treaty itself, leaving out the question of disposition of property in which the House of Representatives properly should join, the Senate is the court of last resort regarding the treaties. So we are not going to vote, Mr. President, on this issue until all the amendments have been made, if the majority opinion in the Senate will allow us to have amendments, and we are going to determine in the next few days how interested the majority thought here in the Senate is in amending these treaties in a constructive fashion to give better protection to the interests of the United States. So it is only right, proper, and fair that another plebiscite be held down there. Why did Torrijos jump the gun by calling the plebiscite before the U.S. Senate had determined what the provisions of the treaty would be?

The people cannot give advance approval to something that is not even in existence, that is, the completed treaty. They should not have been called on to act on the treaty until it had gone through this deliberative process in the U.S. Senate wherein we give our advice, Mr. President, as well as our consent.

So these are some of my reasons for feeling that the leadership amendment is defective and right at the start as we consider this Neutrality Treaty, which embodies as well the defense of the canal, right at the start so we can feel some security as we go forward with the amendment process, right at the start we are going to know that the President of the United States can, if he deems it necessary for the defense of the canal or for maintaining its neutrality, keep such military presence that we have or as we feel that we need in the Panama Canal Zone. So it is with these thoughts, Mr. President, that I leave to the Senate its decision with respect to the need for this amendment.

I yield the floor at this time.

THE PRESIDING OFFICER. The Senator from Idaho (Mr. Church).

MR. CHURCH. Mr. President, the amendment now offered by the able Senator from Alabama would provide for a continued American military presence in Panama after the year 2000, if the President of the United States deemed it necessary for the defense of the canal or the maintenance of the neutrality thereof.

I said earlier that I felt this amendment is superfluous and unnecessary, because under the leadership amendment, recommended to the Senate by the Foreign Relations Committee, the United States retains the right in perpetuity to unilaterally use its military forces to safeguard the canal and preserve its neutrality.

That being the case, I see no reason to add to the text of the treaty the amendment offered by the able Senator. As a matter of fact, if the Senate were to adopt such an amendment, it would, in my opinion, wreck the treaty.

The American military occupation of a strip of land 10 miles wide and 50 miles long dividing the tiny Republic of Panama into two parts has been the central point of discontent of the Panamanian people for generations. Our agreement to a fixed date, December 31, 1999, for ending our military presence in Panama, was the key point which allowed us to gain the many advantages in these

treaties that assure us of a canal that is open, neutral, and efficiently run for our use, indefinitely.

As long ago as 1936, President Franklin Roosevelt recognized that the Panama Canal is more secure with a friendly relationship with Panama—something far more important to the security of the canal than our insistence on maintaining an armed camp of American soldiers in the canal zone.

Mr. President, opponents of these treaties like to compare the Panama Canal, or the zone, and our military presence in it with our naval base in Guantanamo, Cuba. I think it is worth comparing.

In Guantanamo, where we preserve our military presence in a hostile environment, we must maintain constant military patrols around the clock, gun emplacements, and high fences around the few miles that separate the base from Castro's Cuba. To have to do that in the Canal Zone, and to maintain such concentrated military forces along a strip of land which stretches 50 miles through jungle terrain across the Isthmus, would be an enormous burden.

Moreover, as our own generals have testified, such an effort could not guarantee a secure canal. We are far better off with a friendly Panama cooperating with us in the canal's defense.

Mr. President, we have a friendly government and a friendly people in Panama today, which is ironic considering how passionately they feel about their right to have jurisdiction over their own land. But that good will exists in large part because we agree in principle, in 1965, to a fixed date for the termination of our military presence in Panama. We did that when Presidents Johnson and Robles agreed to negotiate a new treaty. The consistent acceptance of this principle through four administrations in the United States has inspired the hope and sustained the good will of the Panamanian people toward us. It is their expectation that we will fulfill those commitments which preserve their good will toward us today.

The adoption by the Senate of the amendment offered by the distinguished Senator from Alabama would dash that hope. It would undermine and destroy the basis on which the Panamanian people expect to have their dignity restored. If that happens, then I believe with all of my conviction the attitude toward us in Panama will change radically and overnight, and we will have destroyed, by our own act, the spirit of cooperation and friendly partnership which still exists in Panama.

To maintain the canal, having destroyed that spirit of friendship and cooperation, would present grave difficulties; indeed, it would mean that we would have to convert the Canal Zone into the kind of armed camp that we now maintain in Guantanamo.

In my judgment, Mr. President, this would be a foolish thing to do; not simply unnecessary and undesirable, but foolish. It would create a problem for us that does not now exist, and for what reason? The leadership amendment makes it abundantly plain that if at any time in the future an actual threat to the canal materializes, whether it comes from internal forces or external forces, the United States shall have the right to take such military action as may be necessary to meet that threat. So the real security interests of the United States are preserved by the leadership's amendment.

There is no good reason to undermine and destroy the friendship and good will which presently exists in Panama, by reneging on our commitment and restore Panama to the Panamanians.

Furthermore, there is no reason to believe we will need military bases in Panama in the next century. Consequently, to now impose this proposition on the people of Panama would destroy this moment which has long eluded us, to put our interests in the canal on the firm footing of a cooperative, friendly relationship with the country where it is located.

That is the promise offered by these treaties. We must not jeopardize that promise by adopting amendments of the kind offered today by the distinguished Senator from Alabama. I hope the Senate will reject the amendment.

Now, Mr. President, I have nothing further to say this evening. If there is no objection, I would like to have a call for a quorum in order that the majority leader may come for whatever concluding remarks he may have.

Mr. LAXALT. If I may, I would like to make a concluding remark or two to recap the day.

Mr. CHURCH. Very well. I am happy to yield to the Senator from Nevada.

Mr. LAXALT. I thank the Senator from Idaho. I think we have had a rather productive day today on the part of the U.S. Senate. We have inquired into many interesting aspects of this treaty.

Senator Goldwater spoke at length about the constitutional ramifications, including the second house rule.

Senator Allen has eloquently related to the Senate the reasons why we should support his amendment. I concur in his amendment.

The thrust of Senator Church's remarks, for the proponents, have been consistently along this line, that the so-called leadership amendments do the job. As has been pointed out, they lead the way but they do not actually give us the means to accomplish our ends in the event we have difficulty with the Panamanians.

This has all been premised on the fact that somehow, by signing these treaties, we are going to end up in having a completely tranquil and peaceful relationship with the Panamanians for the next 23 years, and beyond. Yet there is every chance—and I hope this will not be the case—that our experience under these treaties will lead to further difficulties.

Senator Stennis indicated today in his very edifying report that not only will this treaty cost us money, but it could cost up to \$2 billion of American taxpayer funds.

Of more importance than that, he cited fears that the enactment of these treaties under the present provisions could open up as many as seven serious areas of financial difficulty. Any one of those could be a continuing festering sore of the type which has been referred to constantly on the Senate floor.

No one of us on this floor today can reasonably speculate as to what the military situation is going to be on December 31, 1999, not one of us. No one of us has that kind of looking glass. I wish we did.

The Allen amendment does not make a military presence automatic. Many of us would prefer that it be automatic, because many

of us agree with the testimony of the former Joint Chiefs, and other eminent military people, who tell us that continuing to control and manage the Panama Canal is of vital strategic importance to the Hemisphere and to this country itself.

Under the terms of this amendment, it seems to me, if reasonably applied—and it would be because it requires a certification and a finding on the part of the President that our continuing military presence is necessary to our national security—it is perfectly consistent with the posture and obligation that we have under the leadership amendment to protect the canal and guard the neutrality. I see nothing inconsistent in it.

Surely, the Panamanians would probably dearly love to have us out of there, some of them, but I know many thinking Panamanians who, if they are confronted with difficulty, would dearly love to have us there, and not in an outsider position. As a practical matter, if we leave Panama at the end of 1999 and go into a total withdrawal situation, and if an occasion arises where there is hostility, we are going to be required to invade the country of Panama. That would be an ugly situation from every standpoint. That would be in order to fulfill our obligations under the leadership amendment.

It is my judgment that if we could continue to maintain a reasonable military presence within the country of Panama it will not only safeguard our obligations under this treaty, but it will safeguard our security and, in addition, safeguard the interests of the Panamanians. After all, they simply do not have the wherewithal, nor will they reasonably have it, to properly protect that facility without our help and assistance. They will not.

It would seem to me if I were in a position of leadership in Panama it would not be an affront to me at all to have the President of this country, an invaluable ally, make a finding and a certification that our continued presence would be required there, and if that finding were made then we would have a reasonable military presence.

It is my judgment, Mr. President, that this amendment is vital, it is proper, and it may be absolutely necessary in order to safeguard the implementation of the provisions of the leadership amendment. It is my judgment that it is entirely reasonable. I would hope when we take a vote on this the first of the week my colleagues would find it appropriate to support Senator Allen's amendment.

I ask unanimous consent at this time that I be included as a cosponsor of the amendment.

THE PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LAXALT. I thank my colleague for yielding the time.

Mr. CHURCH. Mr. President, I suggest the absence of a quorum.

THE PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. CHURCH. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

THE PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHURCH. Mr. President, I ask unanimous consent to have printed in the Record at this point a compilation of certain statements on these treaties by U.S. military leaders, primarily taken

from testimony before the Senate Foreign Relations Committee and the Senate Armed Services Committee.

There being no objection, the compilation was ordered to be printed in the Record, as follows:

RESIDUAL BASE REQUIREMENTS

Admiral James L. Holloway III, USN, Chief of Naval Operations: "From the briefings and information presented to the Joint Chiefs of Staff during our discussions of the Panama Canal Treaties, I concluded that Panama would not accept a treaty without the provision that all U.S. armed forces would be withdrawn after a certain date, about the year 2000. It was my personal view that although a post-2000 presence was desirable, there was a greater net gain to be achieved by having the Treaties as they are today than no treaties at all. Although a U.S. military presence after the year 2000 is excluded, it is more important to have the Panamanians sharing in the defense of the Canal, cooperating in the operation of the waterway, and working to create a favorable environment for the defense of the Canal than not having new Treaties, which almost certainly would have been the case had our side insisted on an indefinite U.S. military presence." (Opening Statement before the SASC, 24 Jan 78)

General Louis H. Wilson, USMC, Commandant of the Marine Corps: "Now, I must be frank with you. I agree that it would be easier and less costly to meet threats after 1999 if the U.S. were to maintain forces in Panama beyond that time. I do not believe, however, that successful defense of the Canal is dependent upon continued U.S. military presence in Panama. With the capability of the Navy and Marine Corps to provide an amphibious task force—to steam within a few miles of either end of the Canal, a meaningful U.S. presence—for all practical purposes—is assured." (Opening Statement before the SASC, 24 Jan 78)

Adm. James L. Holloway III, USN, Chief of Naval Operations: "The change in position on post year 2000 base rights was an evolutionary process and not a last minute decision. Because of the realization that the question of a post-2000 US military presence was not acceptable to Panama, the formula for the Neutrality Treaty with no expiration date and a U.S.-Panamanian commitment to protect and defend the canal and assure its permanent neutrality was devised." (SASC Hearings, 24 Jan 78, pg. 119, Response to a question from Senator Thurmond)

"I became convinced over a period of several years' discussions that there was no chance of arriving at any kind of a treaty with Panama on the Canal, if the U.S. were to insist upon a presence in Panama into the indefinite future."

"I decided that if we were to have a treaty there had to be a specific date prescribed at which U.S. presence would be withdrawn." (SASC Hearings, 24 Jan 78, pg. 29, Response to a question from Chairman Stennis)

Gen. George S. Brown, USAF, Chairman, Joint Chiefs of Staff: "• • • that obviously in purely military terms it would be far simpler and less costly to discharge any defense responsibilities that we might exercise under the neutrality treaty to retain a base of operations in Panama, probably Howard Air Force Base as a minimum, but that does not say that without that base or any base there that we are incapable of doing what conceivably we might have to do at any point in the future."

"We have the knowledge, the techniques, the equipment to put a force into any place where we don't have a base. It is just more costly and more difficult." (SFRC Hearings, 27 Sep 77, pg. 128, in response to a question from Senator Case)

Adm. Robert L. J. Long, USN, Vice Chief of Naval Operations: "Subsequent to the year 2000, we believe that there is sufficient authority in the treaty for the United States to act in any way that it deems necessary to assure continued neutrality and use of the canal." (SFRC Hearings, 27 Sep 77, pg. 128, in response to a question from Senator Case)

Gen. Maxwell D. Taylor, USA (ret), former Chairman, Joint Chiefs of Staff: "This Hemisphere and its approaches constitute our home base. If we can't control all military aircraft and vessels approaching our vital areas, there is something wrong with our Armed Forces." (SFRC Hearings, 10 Oct 77, Pg. 69 (Part 3), in response to a question from Senator Percy regarding ability of the US to defend the approaches to the canal by positioning forces outside the neutrality area).

Adm. James L. Holloway III, USN, Chief of Naval Operations: "As I said, my initial position is, I would like to see the United States stay in Panama in perpetuity, both to defend and operate the canal and having the Panamanians want us

there. That is not the real life situation that prevails. The Panamanians don't want us there.

I believe that the best we can do is to have the Panama Canal Treaty and Neutrality Treaty which provide us with a presence to the year 2000, and subsequent to that time to have the right of taking whatever action necessary to permit our use of the canal. The price we pay for that, I believe, is to give up our bases." (SASC Hearings, 24 Jan 78, Pg. 84, in response to a question from Senator Nunn).

Adm. James L. Holloway III, USN, Chief of Naval Operations: "As I have indicated in testimony, a residual US presence was always considered preferable in order to facilitate reinforcement for the protection of the Panama Canal and to provide a logistics base for other contingencies. Because it was recognized that this was unacceptable to Panama, the formulation of the Neutrality Treaty was devised in order to permanently protect U.S. defense interests." (SASC Hearings, 24 Jan 78, Pg. 118, in response to a question from Senator Thurmond).

Adm. James L. Holloway III, USN, Chief of Naval Operations. (Continued): "Yes, that would be my initial military objective because we are better off with a base in that part of the world than without a base. However, I thought it was more important to have these two treaties than it was to have a base in perpetuity in Panama." (SASC Hearing, 24 Jan 78, Pg. 118, in response to a question from Chairman Stennis).

CANAL DEFENSE

Gen. George S. Brown, USAF, Chairman, Joint Chiefs of Staff: "Our capability to defend the Panama Canal will be enhanced through cooperation with the Government of Panama. The new treaty provides a basis for such cooperation between the United States and Panama. The alliance relationship should develop and strengthen during the life of the Panama Canal Treaty, and be further enhanced by the neutrality treaty." (Opening Statement, SFRC Hearings, 27 Sep 77, Page 99)

Lt. Gen. D. P. McAuliffe, USA, CINC, United States Southern Command: "The Panama Canal Treaty establishes a concept of defense which includes United States and Panamanian forces operating cooperatively to defend the canal. Indeed, the most effective defense of the canal can be obtained in conjunction with a friendly Panama.

"We expect that the Panamanian armed forces: that is, the Guardia Nacional, will contribute military units to canal defense, and that they will train with our forces in appropriate canal defense tasks. The concept for combined defense which I have recommended to the Joint Chiefs of Staff envisions the continued presence of American forces in the vicinity of the canal for the term of U.S. control of canal operations, not only to assist in defense of the canal, but also to provide protection of U.S. lives and property. Under this concept, certain types of military facilities are essential to support the U.S. forces committed to canal defense. These include the major airfield, cantonment areas for stationing of forces in close proximity to the canal, training areas, communications facilities, piers and docks, logistic support facilities, and family housing. These essential facilities are provided for in the Panama Canal Treaty and its implementing agreements.

"It is apparent that the Panama Canal Treaty will require the relocation of a few U. S. military units from their present locations in the Canal Zone to other locations within selected U. S. military defense sites in Panama. These consolidations will not adversely affect our capability to defend the canal and in fact in many ways contribute to a more efficient operation.

"The Primary defense responsibility and the presence of U. S. military forces in Panama together with the provisions of the neutrality guarantee adequately protect the security interests of the United States. When these factors are combined with a cooperative defense effort by the Government of Panama and its armed forces, they even more adequately provide for the security interests of the United States." (Opening Statement, SFRC Hearings, 27 Sep 77, Page 103)

Gen. George S. Brown, USAF Chairman, Joint Chiefs of Staff: "I mentioned that in the absolute worst case in a typical school solution such as at Fort Leavenworth, Command and General Staff College, it probably would come out to about one corps or three divisions plus supporting units or about 100,000 troops. The second statement went to a consideration of, could we prevent an act of sabotage against the canal, and I have said no. I thought a well-trained, highly determined person or small team bent on sabotage could disrupt the operation of the canal, but I thought for a short period of time. For instance, I don't think such a team could destroy the dam and loose the waters which would take, after the dam was rebuilt, 2 years to fill the reservoirs, because that is a major undertaking—to destroy a dam of that size—but to disrupt the operation of a lock, to cause a landslide, these types of

things could happen." (SFRC Hearings, 27 Sep 77, Page 132, in response to a question from Senator Church regarding Canal security assurances)

Lt. Gen. D. P. McAuliffe, USA, CINC, United States Southern Command: "In my judgment our capability to keep the canal open and in use for our country and for the countries of the free world will be enhanced, considerably enhanced, by the provisions of the treaty. I say that because of the factors that I enumerated in my prepared statement. The heart of it is really having a friendly environment around the canal in which to operate, and we can do all of our defense tasks better in a friendly rather than hostile environment." (SFRC Hearings, 27 Sep 77, Pages 132-133, in response to a question from Senator Church regarding impact of treaties on Canal defense)

Hon. Harold Brown, Secretary of Defense: "The present canal arrangements include a treaty between the United States and Britain, the Hay-Pauncefote Treaty, in which we undertake a regime of neutrality—but, in fact, now and under the future canal treaty—under these canal treaties, belligerents are permitted to send their ships through the canal. I found out yesterday for the first time that there is an arrangement by which they are not allowed through simultaneously in opposite or the same direction, but it is a fact, I think, that the United States attempt to prevent ships of a nation belligerent to us, at war with us, from transiting the canal would be made outside the canal. We would depend upon our military power in the approaches to the canal and further out to do what we had to do.

"The last place we want to sink a ship—ours or anyone else's—is in the canal, and we will therefore depend upon our military power outside of the canal to serve our interests. The new treaties do guarantee passage through the canal. They don't guarantee passage to the canal, to us or to anyone else." (SFRC Hearings, 27 Sep 77, Page 137, in response to a question from Senator Percy on ship transits under the neutrality treaty)

Gen. George S. Brown, USAF, Chairman, Joint Chiefs of Staff: "On the sabotage, then, the way we could handle it is with a very heavy investment of troops and with an acceptance of some rather extensive offensive operations to trace these people down. Now my statement was that this still would not guarantee that there would not be temporary interruptions or disruptions throughout the canal. But I think that we could still put ships through there. We have the right to inspect ships except naval and auxiliary vessels which may be surveyed to assure safe and sanitary transit. I think we could do it.

"I feel that if this country is willing to make the sacrifice and to become involved in that sort of business, we certainly have the means to do it. Investment would be heavy, but I think the investment in the sort of things we sought to shake off from our experience in Vietnam could come right back to us. But I would hate to see it." (SFRC Hearings, 27 Sep 77, Pages 178-179, in response to a question from Senator Clark concerning defensibility of the Canal)

DIFFICULTY OF DEFENDING CANAL

Lt. Gen. D. P. McAuliffe, USA, CINC, United States Southern Command: "The forces presently available to me to carry out the mission of canal defense are well trained and capable of implementing a wide range of defense tasks to protect the canal and also to protect U.S. lives and property. They are not capable without reinforcement from the United States of protecting the canal from a major external threat. Although we could not insure the uninterrupted operation of the canal in such a hostile environment, it is my firm conviction that under the most likely threats we can limit such interruptions to ones of short duration." (Opening Statement before the SASC, 24 Jan. 78, Page 23)

Adm. James L. Holloway III, USN, Chief of Naval Operations: " * * * In a nuclear war, defense of the Canal would be virtually impossible, in that it can be targeted by ballistic missiles against which there is no effective defense."

" * * * However, the defense of the Canal in a non-nuclear war would depend largely on the Navy's ability to control its sea approaches." " * * * Therefore, U.S. Navy capabilities to defend the approaches of the Canal are adequate to provide me with reasonable confidence that its defense against an external conventional threat is practical."

"The second threat to our continued use of the Canal is the internal danger of either local guerrilla activities or the opposition of regular Panamanian forces. Defending successfully against such threats in the formidable jungle terrain of the Canal area would be extremely difficult, particularly in view of the vulnerability of the lock system. Relatively minor damage to critical mechanical components could easily disrupt Canal operations. Defense against a persistent and determined inter-

nal opponent would be especially difficult, and uninterrupted operation of the Canal could not be guaranteed. Therefore, the cooperation of the local populations, the Panamanians and Central Americans, reduces the probability of active dissidence and greatly enhances the defense of the Canal. These treaties, which make the Panamanians our direct partners in the defense of the Canal, will contribute substantially to friendly and cooperative relations with all of our Latin American neighbors, and further improve the defensibility of the Canal." (Opening Statement before the SASC, 24 Jan. 78, Pages 12-14)

Adm. James L. Holloway III, USN, Chief of Naval Operations: "• • • the Panamanians resent our presence and I am convinced that it is going to be difficult to defend the Canal against disruption—note I say defend the Canal from disruption, vice defend the Canal from destruction on seizure—it is going to be extremely difficult to defend the Canal from disruption with a hostile population and with the Canal being as vulnerable as it is to minor acts of sabotage." (Statement, SASC Hearings, 24 Jan 78, Page 19)

Lt. Gen. D. P. McAuliffe, USA, CINC, United States Southern Command: "However, even with the sizable force, or a larger one, I would say that unless extraordinary measures are permitted, such as moving across the national boundaries, there is no way that I could prevent the interruption of that canal, and the reason I say that, if I may use an illustration, the Canal Zone boundary is only 5 miles from the center line of canal. The exceptions are in the lake area. One can easily visualize, again, if there is a hostile Panama, visualize the use of standoff weapons only 5 miles away, and they wouldn't have to hit very much in the canal or in the Canal Zone, but they would terrorize the employees and probably stop commercial shipping, and that is whether they sink a ship or not.

"So these are the kinds of things I say could not be prevented regardless of the size of the force that is there now." (SASC Hearings, 24 Jan. 78, Page 37, in response to a question from Senator McIntyre concerning number of troops required to defend the Canal.)

"The other thing I think to reiterate is that these forces are designed, in my judgment, to protect the Canal, that is, to keep it from being destroyed; but, again, I could not give a high assurance that the Canal operation would remain uninterrupted even with those kinds of force augmentations." (SASC Hearings, 24 Jan. 78, Page 49, in response to a question from Senator Anderson concerning the size of augmentation forces required to defend the Canal.)

"• • • I think I could assure that the Canal is not destroyed, that is, rendered useless, where you couldn't do anything with it; but I think that it would be virtually impossible to keep transiting ships from being stopped or harassed or at least ship transits interrupted." (SASC Hearings, 24 Jan. 78, Page 82, in response to a question from Senator Nunn regarding force augmentation sufficiency.)

"The duration of such an augmentation is difficult to come to. I would say, however, that if you are looking at a hostile Panama with guerrilla forces, insurgency-type operations present, it won't go away in a year, maybe a couple of years. So I would say a minimum of a year and perhaps extendable year by year, so to speak.

"It would cost something like \$17 million to deploy a force of the magnitude I have been indicating. In other words, 40,000 or 50,000 troops, and it would take about \$22 million or so per annum, per year, there just to maintain them in an offshore area, namely, in a place like Panama. So then you would be looking at some \$20 million per year thereafter to maintain the additional force.

"The deployment, of course, would be one time there and then you would face the cost of bringing them back." (SASC Hearings, 24 Jan. 78, Page 55, in response to a question from Senator Hart regarding the size/cost of augmentation forces to meet a major internal threat.)

Adm. James L. Holloway, III, U.S. Navy, Chief of Naval Operations: "I do think that there is a possibility that civil unrest could develop to the point where we would be essentially unable to keep the people under control. I think the point has been made that it is very difficult to handle mobs of students and unarmed citizens with soldiers with helmets and bayonets. I don't think that it is impossible to hold on to the canal. I think that the circumstances could be such that the United States simply wouldn't have the stomach for it, and that we would make hasty arrangements under great duress and pressure in those circumstances and get out under less favorable conditions than if we plan now to leave in the year 2000 with the right of protecting our interests there in the future." (SASC Hearings, 24 Jan. 78, Page 76, in response to a question from Senator Cannon regarding possibility that civil unrest would force the U.S. to withdraw prematurely before year 2000.)

Lt. Gen. D. P. McAuliffe, USA, CINC, United States Southern Command: "In the main, Senator, you are correct. All of those points that you have made as to the strength and durability of that canal are absolutely correct.

"When you get down to what kind of damage can be done by someone with a grenade or similarly a small explosive force, you have to wonder where he would place it. If he were trying to do some damage to the major locks, or to one of the major dams, or even to one of the so-called saddle dams, the answer is, very little damage at all, in fact, almost negligible.

"But if you are talking about some of the more sensitive control mechanisms on back a way from the canal and some of the power stations and communications points, then you could do damage and what that would do is not necessarily close down the canal but could limit its operation for maybe several hours or even several days. So you could disrupt operations to some extent." (SASC Hearings, 24 Jan 78, Page 116, in response to a question from Senator Garn regarding size of operation required to disable the canal)

Gen. Maxwell D. Taylor, USA (ret), former Chairman, Joint Chiefs of Staff: "Well, we had examples of popular demonstrations against the canal in the past. I would fear any place in Latin America that becomes or where there is a pool of resentment and discontent which gives of our troublemaking friends in the Kremlin an opportunity to look for the troubled waters in which to fish. It is so easy even if there were a majority in the Panamanian people favorable to our presence to have a dissatisfied minority of sufficient proportions to provide the background within which these subversive activities could take place possibly by commandos fed in small groups from the outside at any time."

"As I conceive the ease of stopping traffic, just imagine the effect of a half dozen determined riflemen who occasionally fire a few shots from the bank at a few ships going by, Lloyds would stop the insurance coverage on every ship going through. The snipers could then go back and wait for a week and then come back. It is the simplest thing in the world to cause that kind of problem. This is not a big military operation but it is certainly enough to impede the operation of the canal intermittently." (SASC Hearings, 24 Jan 78, Page 215, in response to a question from Senator McIntyre regarding likelihood of a Panamanian-inspired terrorism)

DEFENSE RIGHTS—NEUTRALITY TREATY

Adm. James L. Holloway III, USN, Chief of Naval Operations: "The right of the United States to militarily defend our use of the Panama Canal after the year 2000 is premised on the Treaty of Neutrality which guarantees the U.S. the use of the Canal after the year 2000, including the right of expeditious transit, without any restriction as to type of ship, cargo carried, armament, internal operation, or means of propulsion. If access to the Canal is either denied or restricted, the United States, in my view, is not precluded from taking necessary action to ensure continued unrestricted access on an expedited basis. This interpretation of the Treaty of Neutrality was reaffirmed and clarified in the October 14, 1977, Carter-Torrijos Understanding." (Opening Statement before the SASC, 24 Jan 78)

Gen. Maxwell D. Taylor, USA (ret), former Chairman, Joint Chiefs of Staff: " * * * In case Panama failed to protect the Canal or to keep it in operation, the treaties give the United States the continuing right to take whatever steps it deems necessary, to include military action, even after the year 2000 to restore order and maintain operations by unilateral action. This right will be recognized by the nations signatory to the Treaty protocol—thus assuring that henceforth the United States will not stand alone in any future dispute over the operation or defense of the Canal." (Opening Statement before the SASC, 31 Jan 78)

Adm. James L. Holloway III, USN, Chief of Naval Operations: "I was satisfied with the language that provided for expeditious passage of U.S. men-of-war. I felt it satisfied our requirement adequately. In the case of reentry, even before the understanding which was developed in October, it was my judgment that the provisions of the Neutrality treaty clearly provided for reentry of U.S. forces, operating in a manner we should determine, if the regime of neutrality were violated. Violations of the regime of neutrality could be failure of our ships to have unimpeded passage or our warships to have expeditious passage, or if any foreign government introduced military facilities, bases or troops into Panama. I was satisfied that if this country had the will to go back in after the year 2000, that legal provisions were there in the treaty for us to do it." (SASC Hearings, 24 Jan 78, Page 39, in response to a question from Senator Thurmond)

Hon. Harold Brown, Secretary of Defense: "When the Panama Canal Treaty expires, as the year 2000 dawns, the neutrality treaty provides that the United States and Panama are to maintain jointly the permanent neutrality of the canal,

and that no troops other than Panamanian may be stationed in Panama. The United States is also made a guarantor of the neutrality of the canal. In that capacity, we have the right to take appropriate measures to enforce this guarantee. In my judgment, these provisions insure that the U.S. ability and unilateral right to defend the canal against any external threat remain unimpaired." (Opening Statement before the SFRG, 27 Sep 77, Page 97)

Gen. Maxwell D. Taylor, USA (ret), former Chairman, Joint Chiefs of Staff: "I don't find the treaty language obscure or even ambiguous. It says that when a threat to neutrality occurs, Panama and the United States will sit down together and try to work out a joint way of meeting it. If not, the United States will do whatever it deems necessary. I could not ask for greater authority than that." (SFRC Hearings, 10 Oct 77, Page 67 (Part 3), in response to a question from Senator Percy)

DEFENSE RIGHTS—CANAL TREATY

Adm. Elmo Zumwalt, USN, former Chief of Naval Operations: "The cooperation of a favorably disposed government in Panama is needed to provide a reasonable prospect of defending the Canal from an internal threat."

Adm. James L. Holloway, III, USN, Chief of Naval Operations: "The specific provisions of the Panama Canal Treaty which provide for the defense of the Canal by the United States until the year 2000, and of the Treaty of Neutrality which will guarantee our use of the Canal after the turn of the century, are considered to be adequate to protect national security interests." (Opening Statement before the SASC, 24 Jan 78)

Adm. James L. Holloway, III, USN, Chief of Naval Operations: "The provisions of the Panama Canal Treaty permitting the basing, reinforcing, and maneuvering of U.S. forces in Panama until the year 2000 will facilitate the support of both U.S. forces which remain in Panama and any additional forces which may be reintroduced if required to defend the Canal. These bases provide and will continue to provide important support for naval forces which will defend the approaches to the Canal." (Opening Statement before the SASC, 24 Jan 78)

Hon. Harold Brown, Secretary of Defense: "The treaty goes even further, however. It states unequivocally that during the life of the treaty, the U.S. armed forces shall enjoy the right and the primary responsibility to defend the canal itself. It further provides that during that period the United States may station, train, and support units of our armed forces in Panama, and that the United States will decide unilaterally, whether and how to modify the force levels we maintain there. All key military bases and training areas which we now operate in the Canal Zone will remain under U.S. control." (Opening Statement before the SFRC, 27 Sep 77, Page 97)

TREATY ENHANCES GENERAL CANAL SECURITY

Adm. James L. Holloway III, USN, Chief of Naval Operations: "Defense against a persistent and determined internal opponent would be especially difficult, and uninterrupted operation of the Canal could not be guaranteed. Therefore, the cooperation of the local populations, the Panamanians and Central Americans, reduces the probability of active dissidence and greatly enhances the defense of the Canal. These treaties, which make the Panamanians our direct partners in the defense of the Canal, will contribute substantially to friendly and cooperative relations with all of our Latin American neighbors, and further improve the defensibility of the Canal." (Opening Statement before the SASC, 24 Jan 78)

Adm. James L. Holloway III, USN, Chief of Naval Operations: " * * * I am convinced that the continuing use of the Panama Canal for national security purposes is best assured through the provisions of the new treaties." (Opening Statement before the SASC, 24 Jan 78)

Gen. Louis H. Wilson, USMC, Commandant of the Marine Corps: "The proposed treaties adequately provide for the unimpeded use of the Canal by U.S. vessels as well as for the Canal's continued neutrality and security." (Opening Statement before the SASC, 24 Jan 78)

Gen. Louis H. Wilson, USMC, Commandant of the Marine Corps: "Defense of the Canal through 1999, accomplished in a combined and cooperative atmosphere with the Panamanian government, would in my opinion be more effective than under present treaty arrangements, given the attitudes of Panama towards the present treaty and the antagonisms which would very likely develop if those arrangements were to continue." (Opening Statement before the SASC, 24 Jan 78)

Adm. E. R. Zumwalt, Jr., USN (ret.): " * * * in my judgment, the ratification of the Panama Canal Treaty by the Senate would enhance, and nonratification by the Senate would harm US security interests." (Letter to the Senate, dated 6 Sep 77)

Gen. M. B. Ridgway, USA (ret), former Commander-in-Chief, Caribbean, and Chief of Staff, U.S. Army: " * * * I am convinced that ratification of these documents is a major, if not a vital U.S. strategic interest." (Letter to SecState, dated 17 Aug 77)

Lt. Gen. D.P. McAuliffe, USA, CINC, United States Southern Command: " * * * Let me say that it is my professional and personal opinion that the proposed treaties adequately provide for the defense of the Canal and the rights of the members of the Armed Forces out to the year 2000; in addition they provide the legal basis for the United States to take such actions as would be necessary to insure Canal neutrality beyond that year." (Opening Statement before the SASC, 24 Jan 78)

EXPEDITIOUS PASSAGE

Hon. Harold Brown, Secretary of Defense: "The neutrality treaty, more formally, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, provides that the canal shall be open permanently to all vessels of all nations. Moreover, it contains an important additional provision. The United States is given a preferred position with respect to use of the canal, a position which no other country except Panama will enjoy: U.S. vessels of war, and the U.S. auxiliary fleet—important examples of which are oilers and supply ships—are guaranteed rapid transit through the canal. This is so irrespective of the cargo they carry. These provisions assure us that the United States will remain able to use the canal in timely fashion whenever military necessity dictates, just as we can today." (Opening Statement before the SFRC Hearings, 27 Sept. 77, Page 97)

Gen. George S. Brown, USAF, Chairman, Joint Chiefs of Staff: "We had, very frankly, no concern in the Joint Chiefs of Staff for priority passage for Panamanian naval vessels. We were concerned with U.S. naval vessels. The price we had to pay to get the priority or the expeditious passage of U.S. naval vessels was to accept expeditious passage of Panamanian naval vessels." (SFRC Hearings, 27 Sep 77, Page 129, in response to a question from Senator Case)

Adm. Robert L. J. Long, USN, Vice Chief of Naval Operations: "It is our understanding, Senator Glenn, that 'expeditious transit' means priority transit." (SFRC Hearings, 27 Sep 77, Page 163, in response to a question from Senator Glenn)

STRATEGIC VALUE OF PANAMA CANAL

Hon. Harold Brown, Secretary of Defense: "Free use of the Canal is essential to assure optimum ability to shift our forces and materiel rapidly between the Atlantic and Pacific Oceans. That capability enhances our defense posture in both the European and Pacific regions." (Opening Statement before the SFRC Hearings, 27 Sep 77, Pages 96-97)

Gen. George S. Brown, USAF, Chairman, Joint Chiefs of Staff: "The Joint Chiefs of Staff recognize the Panama Canal as a major defense asset, the use of which enhance U.S. capability for timely reinforcement of U.S. forces. The strategic military value of the canal is reflected in our ability to accelerate the shift of military forces and logistic support by sea between the Atlantic and the Pacific Oceans.

"The strategic value of the canal is not expected to change substantially throughout the life of the new Panama Canal Treaty and beyond, so long as the canal provides the sole means of transiting ships across the American continent." (Opening Statement before the SFRC Hearings, 27 Sep 77, Pages 98-99)

Adm. Robert L. J. Long, USN, Vice Chief of Naval Operations: "The Panama Canal is and will remain of major importance to the United States. Its use is a key factor in the Navy's ability to accomplish its responsibilities in connection with essential war plans and other contingencies involving our national security. While I cannot state that loss of the canal would result in the failure of these plans or in the inability of the Navy to carry out these responsibilities, it would certainly make these tasks enormously more difficult. We would be much better off with the use of the canal than without it.

"The importance of the canal to the Navy for defense purposes lies in its assured use, not in its ownership." (Opening Statement before the SFRC Hearings, 27 Sep 77, Pages 100-101)

CREDIBILITY OF JCS

Gen. George S. Brown, Chairman, Joint Chiefs of Staff: "Our capability to defend the Panama Canal will be enhanced through cooperation with the Government of

Panama. I have personally worked very diligently for four years to achieve these treaties. We have worked hard for these treaties because we feel they are right."

Gen. George S. Brown, USAF, Chairman, Joint Chiefs of Staff: "Senator, I just turned to Secretary Brown to ask if he would mind if I made an unsolicited statement at some point to get this on the record. I thank you for your question. The rules are quite clear and I think understood by all of us that nobody, no senior officer in uniform will remain on active duty and publicly be critical of a Presidential decision. I, in my role as chairman, and other members of the Joint Chiefs of Staff will articulate as forcefully and as logically as we can the view the Joint Chiefs of Staff hold on issues of national security, but if the judgment goes against us as it does in many cases, there is nothing in the law that says the President has to accept our advice, but we have to give it.

"We don't go public without leaving active duty first, in doing so. However, the rules are also quite clear that in response to interrogation before a congressional committee that we answer fully and factually. The public record is quite clear where we have been in opposition to a Presidential decision. I can cite two cases. One, and I am sure this come as no surprise, was the B-1. The second was in January, the Joint Chiefs of Staff urged that the President not plan to withdraw the 2nd U.S. Division from Korea unless three things were made part of that program. One was that the drawdown be done in such a manner that the military balance on the peninsula not be disturbed. Second, that we make public a pledge of our continued support of the Mutual Security Treaty with the Republic of Korea, and third, that we remain a Pacific power. Those three conditions the President accepted, and it became part of his program, at which point the Joint Chiefs of Staff endorsed the program."

"So, it is wrong to say that in the case of the Panama Canal we are doing this only because a decision has been made. I have personally worked very diligently for 4 years to achieve these treaties with Ambassador Bunker and subsequently with Ambassador Linowitz also, and as we have testified, the key point that finally found its expression in a treaty of neutrality was conceived within the Defense Department. We have worked hard for this treaty because we feel it is right." (SFRH Hearings, 27 Sep 77, Pages 155-156, in response to a question from Senator Clark)

Lt. Gen. D. P. McAuliffe, USA, CINC, United States Southern Command: "Senator, my own personal view is completely consistent with my professional view. Let me say that somewhat similarly to General Brown. Over the past 2 years during which I have been the commander of the Southern Command and stationed in the Panama Canal Zone, I have worked with the Joint Chiefs of Staff, and, of course, with our negotiating team, for a new treaty, and in order to assure that our defense requirements, as best I could assess them, now and in the future, were adequately and sufficiently taken care of. I can assure you that this is how I come down on this issue." (SFRH Hearings, 27 Sep 77, Page 156, in response to a question from Senator Clark)

LATIN RELATIONS

Matthew B. Ridgway, general, U.S. Army (ret), former chief of Latin American Section of the War Plans Division of the Army General's Staff; former Chief of the Inter-American Defense Board; and former Commander-in-Chief, Caribbean: "A major obstacle to ratification today has been, in my opinion, failure to recognize and to evaluate the importance of our Latin American relations, particularly now that there is practically unanimous support by the governments of the other 20 republics for the position of Panama. The restoration of our Latin American relations to a level approaching that achieved and maintained through World War II and the decade immediately following, is a major, if not vital U.S. strategic interest."

Adm. James L. Holloway, III, USN, Chief of Naval Operations: "... our adherence to these Treaties, which make the Panamanians our direct partners in the defense of the Canal, will substantially contribute to a friendly and cooperative attitude among all Latin Americans toward the United States on the Panama Canal issue. This favorable effect, which I believe the Treaties will have on the attitudes of the Panamanians and Central Americans toward our continued use of the Canal as an essential link between our Atlantic and Pacific sea lines of communication will, in my opinion, substantially assist the United States to defend the Canal against the internal threat." (Opening Statement before the SASC, 24 Jan 78)

Gen. Maxwell D. Taylor, USA (ret), former Chairman, Joint Chiefs of Staff: "When asked why I support the Panama Canal Treaties, my reply is that they offer the best prospect for assuring the efficient and unimpeded operation of the Canal and the improvement of Latin American relations in the very difficult period ahead." (Opening Statement before the SASC, 31 Jan 78)

TREATY REJECTION

Gen. Maxwell Taylor, former Chairman of the Joint Chiefs of Staff: “* * * let us hope we do not give the Kremlin chiefs the occasion to rejoice, which our rejection of these treaties would undoubtedly afford.”

Gen. W. C. Westmoreland, USA (ret), former Chief of Staff, U.S. Army: “In my opinion, the treaties in combination are not optimum since they are excessively generous and entail some risks. Nevertheless I recommend their ratification by the U.S. Senate since our basic interests seem to be protected and the costs and risks are small relative to the immediate and potential liabilities that would probably emerge if the treaty is rejected.

“My judgement follows an initial skepticism, and is derived from a careful analysis of the overall matter.” (Letter to the President, dated 23 Sep 77)

Gen. Maxwell D. Taylor, USA, former Chairman, Joint Chiefs of Staff: “* * * Senate ratification of these treaties will avoid the serious consequences of rejection after 14 years of patient discussion and negotiations with Panama—indeed most of the Third World—would view rejection as a breach of faith and as evidence of residual colonial bias in the United States. As a repudiation of the President, his negotiations, and his principal military advisors, the Joint Chiefs of Staff it, it would raise serious doubt as to the ability of the President to speak for the country and the worth of future agreements reached with his representative. Moscow would hail it as further evidence of American disunity and domestic weakness and as an invitation to press us harder in future tests of will and strength.” (Opening Statement before the SASC, 31 Jan 78)

PANAMA CANAL TREATIES, EX. N, 95-1

AMENDMENT NO. 42

(Ordered to be printed and to lie on the table.)

Mr. Hatch submitted an amendment intended to be proposed by him to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, Ex. N, 95-1.

AMENDMENT NO. 43

(Ordered to be printed and to lie on the table.)

Mr. Bartlett submitted an amendment intended to be proposed by him to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, Ex. N, 95-1.

Mr. BARTLETT. Mr. President, with respect to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, no provision is more important than the one simple, but unfortunately, very vague, sentence which constitutes article IV and which is the fundamental source of all rights the United States retains to defend the Panama Canal after the year 1999. That article reads as follows:

The United States of America and the Republic of Panama agree to maintain the regime of neutrality established in this Treaty, which shall be maintained in order that the Canal shall remain permanently neutral, notwithstanding the termination of any other treaties entered into by the two Contracting Parties.

By now, every Member of the Senate is aware of the ambiguities inherent in this language and all are aware of the disputed interpretations which exist among the Members of this body, among officials of the Governments of Panama and the United States, and possibly, between the Governments of Panama and the United States.

Key issues to be resolved include:

Does the United States have the right to determine on its own, without necessarily obtaining the agreement of the Government of

Panama, when and how the United States should act to protect the neutrality of the Panama Canal?

Does the United States have the right to enter Panamanian territory and waters to protect the canal?

Does the United States have the right to protect the neutrality of the canal against actions taken by the Government of Panama which infringe upon the neutrality of the canal?

In protecting the neutrality of the canal, what limits exist upon measures which could be taken by the United States to protect the neutrality of the canal?

These are fundamental issues which remain unresolved after extensive hearings by the Senate Committee on Armed Services and the Committee on Foreign Relations. The inadequacy of the language existing in the treaty is made clear by the fact that over three-fourths of the Members of this body have agreed to cosponsor the amendment (No. 20) which would add the October 14, 1977, joint statement by President Carter and General Torrijos to the article IV of the Neutrality Treaty, in an effort to provide greater clarification to those provisions. I am myself a cosponsor of this amendment which reads as follows:

At the end of Article IV, insert the following:

"A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

"This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

Unfortunately, the language in the joint statement does not satisfactorily address the questions I have raised above. Where does it make clear the right of the United States to act without the invitation of the Government of Panama? Where does it make clear the right of the United States to conduct military operations on the territory and waters of Panama to protect the canal? Where does it provide for action by the United States to protect the canal's neutrality against infringements by the Government of Panama?

The American Law Division of the Library of Congress underscored this problem when it concluded:

[The Carter-Torrijos statement, while guaranteeing each party the right to act against threats directed at the Canal, also specifies that the U.S. may not intervene in the internal affairs of Panama. It is not altogether clear that the statement would permit the United States to intervene in the event that the aggression or threat should result from Panamanian action.

These doubts are reinforced by statements such as that made by General Torrijos on the 20th of October 1977, in which he said:

[It is necessary for the United States to be committed so that when we ring the bell here, when we push the button, a bell rings over there, and the United States comes in defense of the Panama Canal. * * *

I repeat, we push the button, the bell rings, and the United States is obligated to come to our defense.

The continued existence after the October 14 Joint Statement, of confusing and divergent interpretations of the provisions of article IV by citizens, public and private, in Panama and the United States, underlines the fundamental inadequacy of the language which already exists in that article. Clearly, the addition of the language of the Joint Statement as provided by amendment No. 20 makes some fundamental changes in the treaty, changes which I believe will require that the Neutrality Treaty be resubmitted by the Government of Panama to the people of Panama in accordance with article 274 of their Constitution. But these changes alone are not sufficient to justify consent to ratification of the Neutrality Treaty if it retains the language now in article IV. It is that language which must be changed.

Fortunately for the Members of the Senate, language exists which would correct the weaknesses now in article IV—language which is consistent with the joint statement of October. This is the language which was revealed in testimony before the Senate Armed Services Committee by the Honorable William P. Clements, Jr., former Deputy Secretary of Defense. Mr. Clements was intimately involved in determining our Panama Canal negotiating policy and would have been a supporter of these treaties had he not discovered that key provisions of article IV had been changed during negotiations. The original language read:

In the event of any threat to the neutrality or security of the Canal, the Parties shall consult concerning joint and individual efforts to secure respect for the neutrality and security of the Canal through diplomacy, conciliation, mediation, arbitration, the International Court of Justice, or other peaceful means. If such efforts would be inadequate or have proved to be inadequate, each Party shall take such other diplomatic, economic or military measures as such Party deems necessary in accordance with its constitutional processes.

Mr. President, I send to the desk for printing an amendment which would substitute this language for article IV as it now exists. The advantage of this language is that it answers the questions that I have raised without undermining the position of the United States or the Government of Panama and is, I believe, consistent with and compatible with the joint statement of October 14, 1977, issued by President Carter and General Torrijos. It also has the advantage of having been approved, according to Secretary Clements, by representatives of the Government of Panama and the United States. This amendment is consistent with the highest objectives of this treaty and will prevent dangerous and painful confusion and confrontation with the Government of Panama in the future.

ADDITIONAL COSPONSORS—EX. N, 95-1

AMENDMENTS NOS. 10 AND 11

At the request of Mr. Dole, the Senator from Texas (Mr. Tower) was added as a cosponsor of amendment No. 10 and amendment No. 11 intended to be proposed to the Panama Canal Treaty.

AMENDMENT NO. 12

At the request of Mr. Dole, the Senator from Texas, (Mr. Tower) and the Senator from Utah (Mr. Garn) were added as cosponsors of amendment No. 12 intended to be proposed to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

AMENDMENT NO. 16

At the request of Mr. Hatch, the Senator from Arizona (Mr. Goldwater) and the Senator from Virginia (Mr. Scott) were added as cosponsors of amendment No. 16 intended to be proposed to the Panama Canal Treaty.

RESERVATIONS SUBMITTED FOR PRINTING

PANAMA CANAL TREATIES—EX. N, 95-1

RESERVATION NO. 3

(Ordered to be printed and to lie on the table.)

Mr. Bartlett submitted an understanding to be proposed by him to the resolution of ratification of the Panama Canal Treaty, Executive N, 95-1.

RESERVATION NO. 4

(Ordered to be printed and to lie on the table.)

Mr. Bartlett submitted an understanding to be proposed by him to the resolution of ratification of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, Executive N, 95-1.

Mr. BARTLETT. Mr. President, for some time, the Senate has been involved in extended debate over the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. The length of the debate reflects not only the importance of the Panama Canal to the United States, Panama, and the world, but also concern over divergent interpretations of its provisions. Clearly, there is major dissatisfaction in the Senate with the treaties as they were negotiated. The Senate will inevitably make changes and add reservations to these treaties in order to secure the neutral and efficient operation of the Panama Canal and to maximize the possibility of good relations with Panama and the world.

Over three-fourths of the Members of the Senate have joined with the majority and minority leaders in support of two amend-

ments to the Treaty of Neutrality. Given the testimony received by the Armed Services Committee concerning ambiguous and inadequate economic provisions of the Panama Canal Treaty, it is likely that both treaties will contain altered language prior to the Senate's consent to ratification. Although the process of making these changes is consistent with American constitutional procedures, the resulting treaty documents will be different from the documents recently subjected to approval by a plebiscite of the people of Panama.

I would remind my colleagues in the Senate that the fate of the Panama Canal is as important to the people of Panama as it is to the people of the United States. For that reason, article 274 of the Constitution of Panama provides very specifically for exceptionally careful ratification procedures for any treaty dealing with the Panama Canal. Article 274 reads as follows:

Treaties which may be signed by the Executive Organ with respect to the Panama Canal, its adjacent zone, and the protection of the said Canal, and for the construction of a new Canal at sea level or of a third set of locks, shall be submitted to a national plebiscite.

Many Panamanians have expressed their view that the original 1903 Panama Canal Treaty was negotiated in a less-than-straight-forward manner, and this unusually specific provision for ratification of treaties dealing with the Panama Canal was undoubtedly designed to allay fears that a new treaty might also be negotiated in a cloud of confusion. This is not an unreasonable fear.

Mr. President, the citizens of Panama, like the citizens of the United States, are aware that a treaty is an agreement which is, in many ways, like a business contract. They understand that each side puts forth offers which are either accepted or rejected by the other side. The agreement is consummated when both parties agree to the same terms and express that agreement in language acceptable to both. Essentially, the same procedure applies to treaties.

By altering the treaty language as originally negotiated and as approved in Panama by plebiscite, the Senate is, in effect, rejecting an offer from Panama while at the same time countering with an offer of its own. Were the Government of Panama not to resubmit the treaties as amended to a plebiscite of the people of Panama, its action would seemingly constitute a rejection of the new offer from the United States.

Clearly, to give the proposed Panama Canal Treaties their maximum legitimacy, they must be submitted along with all changes to the people of Panama in accordance with article 274 of the Panamanian Constitution of 1972. Failure to take this step would leave the treaties vulnerable to refutation by subsequent governments of Panama, or for that matter the United States, and might reduce the binding effects of the treaties under international law. In my opinion, such a loophole could work to the advantage of Panama in the future.

Although the Government of Panama is undoubtedly a dictatorship, the rule of law has not completely ceased in Panama. Article 274 of their constitution clearly requires a plebiscite prior to ratification of any treaty dealing with the Panama Canal and the present Government of Panama has already acted once in accordance with that provision. Certainly, when confronted with a changed

document, the right of the present Government to rule would be seriously called into question if the new language were not submitted to a plebescite.

I believe that the seriousness of this issue can be illustrated by two questions. Do you believe that Panama would accept a treaty that had not been ratified by the U.S. Senate in accordance with our Constitution, when such ratification is required by the language of the treaty itself? And would you, as an elected representative of the American people, give your consent to ratification of a treaty whose language had been changed subsequent to first consideration of the document? I think that the answer to both of those questions is no.

It would be a crime and an injustice to the people of the United States if the Senate were to ignore its treaty responsibilities, and it would be an injustice to the people of Panama, about whose human rights and democracy we have been greatly concerned, not to expect that the treaties as amended would be resubmitted to a plebescite of the people of Panama.

Mr. President, in order to strengthen respect for international law and the constitutional procedures of Panama and the United States, I am sending to the desk one reservation to the Panama Canal Treaty and one reservation to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. I ask unanimous consent that they be printed in the Record.

There being no objection, the reservations were ordered to be printed in the Record, as follows:

RESERVATION No. 3

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation that before the date of the exchange of the instruments of ratification the President shall have determined that the Republic of Panama has ratified the Treaty, as amended, in accordance with its constitutional processes, including the process required by the provisions of Article 274 of the Constitution of the Republic of Panama".

RESERVATION No. 4

Before the period at the end of the resolution of ratification, insert a comma and the following: "subject to the reservation that before the date of the exchange of the instruments of ratification the President shall have determined that the Republic of Panama has ratified the Treaty, as amended, in accordance with its constitutional processes, including the process required by the provisions of Article 274 of the Constitution of the Republic of Panama".

PANAMANIAN POLICE UNDER PROPOSED PANAMA CANAL TREATY

Mr. CASE. Mr. President, the State Department recently responded to some questions which have arisen regarding the authority of United States and Panamanian police under the proposed Panama Canal Treaty.

The State Department's letter brings out a number of important points and I ask unanimous consent that the text of the letter be printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF STATE,
Washington, D.C., February 8, 1978.

Hon. CLIFFORD P. CASE,
U.S. Senate.

DEAR SENATOR CASE: We understand that you have requested further information concerning certain aspects of the police authority of the United States under the proposed Panama Canal Treaty.

Under the new Treaty and its related implementing agreements, Panama would assume general police responsibility in the former Canal Zone, but the U.S. would retain significant enforcement responsibility.

For the duration of the Treaty, the U.S. military forces will control access to and exercise police functions within all U.S. defense sites. They would have full power to arrest persons subject to the jurisdiction of the United States who are suspected of violating U.S. law. Moreover, they would be empowered to detain persons not subject to U.S. jurisdiction who are suspected of committing offenses against applicable laws or regulations, pending their formal arrest. Formal arrests of such persons would be made by Panamanian police authorities, and it is contemplated that Panamanian police liaison officers will be assigned to the U.S. military police headquarters on defense sites to facilitate such cooperation. A similar system will apply within military areas of coordination, although in these areas joint U.S.-Panamanian police patrols will in general be used, which will further facilitate the prompt, formal arrest of suspected offenders. Such joint patrols may also be utilized in other areas by mutual agreement.

Within the Canal operating areas, housing areas, and the Ports of Balboa and Cristobal, the U.S. will retain police authority for a period of 30 months from the entry into force of the Treaty. Joint patrols will be utilized in these areas, and a system of detention and arrest similar to that applicable on military areas of coordination will obtain.

After the 30-month period, Panama will assume police functions in these areas, but the U.S. will retain authority to use armed watchmen to guard all important installations related to the management, operation and maintenance of the Canal. These watchmen will have authority to detain suspects pending their formal arrest by the Panamanian police. It should be noted that all installations owned or used by United States Government agencies, including the Panama Canal Commission, will be inviolable, and therefore Panama's police may not function within them without the consent of the United States authorities.

We understand that you have also inquired concerning the procedures for apprehending persons present in Panama who have been indicted in U.S. courts for serious crimes against U.S. law. Under the present treaty arrangements, such persons found in the Canal Zone may be apprehended by the U.S. authorities; the Canal Zone is treated as an organized territory under U.S. law for purposes of extradition to United States State courts. Such persons found in Panama are subject to arrest and extradition by the Panamanian authorities pursuant to the United States-Panama Extradition Treaty of May 25, 1904. Under the new Treaty, U.S. general jurisdiction over the Canal Zone would terminate, but the treaty procedures for extradition now applicable in the rest of Panama would continue to apply throughout that country.

I hope the foregoing information will be of use to you. We would be pleased to provide any further information you may desire.

Sincerely,

HERBERT J. HANSELL,
Legal Adviser.

THE PANAMA BUG-OUT

Mr. GOLDWATER. Mr. President, every day we hear more opinions from more people about the Panama Canal. Most of these come from people who regard themselves as experts but who have never seen the canal nor read the proposed treaties which would give it away at a huge cost to the American taxpayer. I suggest that what is important is what the treaties say rather than what self-styled experts say about them. Recently Mr. Jenkin Lloyd Jones wrote a highly edifying article for the Los Angeles Times syndicate con-

cerning the content of the treaties. He says that what they say is "outrageous in terms of the security and dignity of the United States and justice to American taxpayers."

Mr. Jones urges his readers and all Americans to get copies of the treaties and read them with a view to finding out exactly what they say. I endorse Mr. Jones' recommendation wholeheartedly. Mr. President, I ask unanimous consent that Mr. Jones' article entitled "The Panama Bug-Out" be printed in the Record.

There being no objection, the article was ordered to be printed in the Record, as follows:

THE PANAMA BUG-OUT

(By Jenkin Lloyd Jones)

Among the millions of Americans who have expressed opinions pro and con concerning the proposed cession of the Panama Canal, it's a safe bet that not one percent have read it.

The basic issue is not what somebody says about the treaty but what the treaty says.

And (if I may tip my hand this early) what the treaty says is outrageous in terms of the security and dignity of the United States and justice to American taxpayers. Read it.

The gist of the document is that the Americans must pay the Panamanians heavy indemnity for having had the effrontery to build the canal in the first place.

We would turn over to Panama free of charge a facility that had cost in 1904-1914 \$993 million with a present unrecovered investment of \$750 million. The canal could not be presently duplicated for \$2 billion, in spite of vastly improved earth-moving techniques.

In addition, Panama would take over the Zone, with all the improvements thrown in.

Between the time the treaty would be ratified and its expiration date at the end of 1999, the canal would be run by an American-controlled commission. The commission would owe the Panamanians:

1—\$10 million a year for police and fire protection, street maintenance, etc. (Article 3, Section 5). This would escalate, according to inflation.

2—Thirty cents per ton of freight transiting the canal. (Art. 13, Sec. 4a). Currently, about 120 million tons are passing through each year. That would net the Panamanians \$36 million. Again, this 30-cents figure would increase if the index of prices of U.S. manufactured goods should rise.

3—A fixed annuity of \$10 million. (Art. 13, Sec. 4b).

4—An additional payment of up to \$10 million annually out of canal profits. (Art. 13, Sec. 4c). If the profits didn't amount to \$10 million, the shortfall would be charged against future surpluses.

Outside the treaty, the U.S. government has also agreed to hand Panama loans, grants and credits amounting to about \$300 million in the next five years.

The United States would have the right to defend the canal for the next 22 years only. But how much defense, even in that short time?

In the amazing sub-treaty on the permanent neutrality of the canal it is provided (Art. 2) that in time of war the canal may be peacefully transited by vessels of all nations. Art. 3, Sec. 1e says specifically that "vessels of war of all nations shall at all times be entitled to transit the canal."

This means, in the event of war between America and Russia, for example, that even between now and 1999 while the United States would retain the theoretical right to defend the canal, we couldn't prevent the passage of Russian ships and submarines as long as they went through peacefully.

Article 5 reads in its entirety: "After the termination of the Panama Canal Treaty, only the Republic of Panama shall operate the canal and maintain military forces, defense sites and military installations within its national territory."

The idea that this gigantic and specifically worded giveaway of America's most strategic strong point can be cured by clarifying memoranda between Panama strong man Omar Torrijos and President Carter overwhelms credulity. What would the next Panama strong man say?

Now, about the poor Panamanians. Our chief negotiators, Ambassador Ellsworth Bunker and Sol Linowitz, seemed as guilt-ridden over the injury we had allegedly done to the Panamanians as they were casual about American money.

What is the fact?

Among the 21 nations between the Rio Grande and the southern tip of South America, Panama's per capita income of \$1,147 (1975) was exceeded by only two—Argentina and Venezuela. It was more than double that of the average for the five other Central American republics.

How can one account for this except by the existence of the canal? We built the canal. Do we owe hundreds of millions in conscience money for doing it?

In his recent State of the Union message, President Carter said that America's cession of the canal would greatly strengthen our nation by cooling a point of irritation with our Latin neighbors.

If the President thinks that the cries of "Yanqui imperialism" will be muted when we surrender the canal he is as naive as those college presidents, during the wild '60s, who kept backing up before the SDS in an effort to find peace. Damning Yankee imperialism is an absolute necessity in Latin politics, and the more fouled-up and corrupt the politician the more he needs it.

If our collapse in Panama is going to be so good for America how does it happen that Havana, Moscow and every Communist-lining outfit in this country and abroad are demanding that we get out?

What we need to do is fire the striped pants and get a couple of riverboat poker players to renegotiate this sorry, sorry thing.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The PRESIDING OFFICER. Under the previous order, the Senate will now resume the consideration of Executive N, 95th Congress, 1st session, which the clerk will report.

The second assistant legislative clerk read as follows:

Executive N, 95th Congress, 1st session, treaty concerning the permanent neutrality and operation of the Panama Canal.

The Senate resumed the consideration of the neutrality treaty.

The PRESIDING OFFICER. The pending question is on amendment No. 40 by the Senator from Alabama (Mr. Allen).

The Chair, with pleasure, recognizes the distinguished Senator from Minnesota (Mrs. Humphrey).

THE PANAMA CANAL TREATIES—LAUNCHING AN ERA OF PARTNERSHIP

Mrs. HUMPHREY. Mr. President, it is not a small coincidence that my maiden speech as a U.S. Senator should be addressed to the issue of the new Panama Canal treaties. It is not because this emotion-charged issue just happens to be the business of the Senate at this particular time. I say this because my interest in Panama and Latin America dates back to 1961 when I traveled with Hubert on an extensive study mission to our neighbors in that region.

The dispute with Panama over modernizing our treaty relationship for the operation of the Panama Canal has been the United States longest running argument with our hemispheric neighbors. Even as my husband and I arrived in Panama 17 years ago, then Panamanian President Roberto Chiari was calling for new negotiations on the 1903 treaty. In fact, President Chiari formally advised President Kennedy, on September 11, 1961, of his government's desire to negotiate a new canal treaty. The festering concern over this issue was readily apparent in the body politics of Panama.

But basically, there was a spirit of optimism which Hubert and I sensed throughout our trip. It was a new era in United States-Latin American relationships. It was a time of the launching of the Alliance for Progress. It was a time, or at least the nations of Latin America believed it was the time, that the United States would truly enter into a more mature relationship with our traditional friends and allies. We were moving from a past which had been characterized by U.S. colonialism, interventionism and paternalism. We were moving into an era of equality among nations.

Yet, something happened during the course of these intervening 17 years. The Alliance for Progress lies in ruin. Our preoccupation with Vietnam, the Middle East, and superpower politics pushed Latin America and other regions of the developing world onto the back burner of our foreign policy considerations.

And that one symbol of the willingness of the United States to enter into a more mature relationship with our friends throughout Latin America—the Panama Canal—has become more than just a festering concern. It has reached crisis dimensions in our relations throughout Latin America.

Will the United States finally rise to the challenge? After 17 years, will our Latin American friends finally come to believe that they are coequal partners with the United States?

This is the essential question which is now before the U.S. Senate. The Panama Canal treaties symbolize the pivotal point in U.S. policy toward Latin America and the nations of the developing world.

I can recall my own deep concern and shock over the riots in Panama. Three U.S. soldiers and 21 Panamanians were killed in the 1964 riots. These riots presented President Lyndon Johnson with his first foreign policy crisis. And it became urgently clear that there was a need for a new basic agreement on the status of the Panama Canal. Yet, public and congressional pressure foredoomed prospects for ratification of any new agreement that might be negotiated with the Republic of Panama at that time.

In all too many national capitals of Latin America, the issue of the future status of the Panama Canal Zone has been raised to the level of an all or nothing confrontation with the United States. We are not being candid with ourselves or the American people if we do not face up to this reasoning. It should be readily apparent to us that the nations of Latin America have grown increasingly independent of the United States in the determination of their foreign policy positions. They are united in opposition to the United States continuing to exercise the role which it assumed in the Panama Canal Zone under the 1903 treaty.

Yet, we have to understand, and appreciate, the roots of this concern throughout Latin America. For these nations, the Panama Canal Zone, under the 1903 treaty, represents a vestige of a period of humiliating weakness and servitude in inter-American affairs. The Canal Zone is a violation of a deeply held Latin American concern for sovereignty and nonintervention that has long historical roots. Sensitivity over the sovereignty issue easily generates common cause with the Afro-Asian nations of the Third World who have confronted similar issues in their move away from European colonial domination.

We emerged from World War II, as the world's most powerful democracy. We were perceived as the champions of equality, decency, and human compassion. It was at our urging that the European powers began divesting themselves of their colonies in Asia and Africa. Yet, in the mid-1970's, when the last of the traditional colonial empires—that of Portugal—dissolved under nationalist and world pressures, the United States continued to maintain what commonly has been perceived as a colonial enclave in Panama. In essence, while we have been telling other industrialized powers that colonialism could no longer be tolerated in a diverse community of nations, we have until now refused to address that same charge of colonialism directed against our privileged status, as if sovereign, in the Panama Canal Zone.

Those who are opposed to the ratifications of the new Panama Canal treaties argue that we are engaged in a headlong retreat globally. This march backwards, they allege, began with Vietnam. It is continuing with Panama. They ask: Where do we draw the line? They contend that we cannot allow ourselves to be perceived as caving-in to a "little banana Republic."

True, the United States is a great and powerful nation. But let us be mindful of the fact that our greatness depends as much on our tradition of dedication to justice and fairness, the Founding Fathers' ideals and dreams of liberty, and our healthy political and economic base at home, as upon military power.

A great power which aspires to be an arbiter of stability and orderly change accepts certain responsibilities. In this economically and politically interdependent world of today, we must insure that our friends derive enough out of their relationship with us that they remain our friends. If a great power does not take care to keep its friends, it will inevitably stand alone against its enemies.

We are a world power. But do we have to prove it by flexing our muscles against little Panama? I think this would be the most preposterous position in which we could place ourselves.

We must also be honest with ourselves in evaluating who would benefit, should the Senate reject these treaties. The prime beneficiaries would be the Communist parties of Latin America. The Communists exploit this issue as being an example of "Yankee imperialism." They use the Panama Canal issue as concrete evidence that the United States never was, and never will be, a true and good neighbor.

In our preoccupation with the differences over the canal, Americans tend to overlook the many positive elements in our long association with Panama. The United States and Panama have been working together for 75 years now. There certainly is not another nation with which Panama maintains a closer relationship than the United States.

Although this relationship has centered on the canal, it has not been limited exclusively to this vital waterway. Important ties of trade and investment link our two countries. For 30 years we have been allies under a mutual defense treaty—the Rio Pact. And on a personal level, thousands of Panamanians have attended schools and universities in the United States. And Gen. Omar Torrijos is in charge of one of Latin America's most capitalist economies.

We have to admit that the Panamanians have been extremely patient. Would we have exhibited this same patience had we been forced to wait 75 years for change?

We justifiably are growing concerned over the decline of democracy globally, and in particular throughout the developing world. Yet, as the world's leading democracy, we often have not fulfilled the ideals of our Founding Fathers. The concepts of justice and equality should not stop at our Nations' shores. They should be reflected in our relationship with other countries. The only effective way to combat the tyranny of communism and the totalitarianism of the right is to battle for human and economic rights and democratic values. This concept is just as applicable to our relations with other nations, as it is to our concern for the individual in those nations.

The Panama Canal treaties offer the United States an opportunity to demonstrate that we have the capacity to meet changed international conditions constructively and to move ahead toward more cooperative and more mutually beneficial relations with the developing world.

One of the most relevant observations concerning these treaties was delivered by Bill Moyers on CBS Reports, which was aired November 1, 1977. Mr. Moyers stated:

As this debate continues, you wonder if the United States Senate will finally be voting on a pair of treaties or a symbol. For many people, the Panama issue has ceased to be the Canal itself. It is, instead, a choice between conflicting emotional beliefs about America's role in the world; rival views of American patriotism. The voices against ratification echo a time when the clearest act of patriotism was to oppose any change on the world scene that the Communists might exploit. Given a chance now to send a message of American resolve to a world that has steadily frustrated our national will, these people say no to the treaties. There are times when a great power whose ideal is freedom had to draw a line and say to hostile forces, this far and no further. What the Senate must consider is whether Panama is the place to draw it.

Americans who favor ratification of the treaties say it is not, that Panama is actually the place to show we can protect our self-interest best by helping a small country achieve its own nationalist dreams.

To be sure, you cannot listen to the Panamanians without believing that they have heard the voices of our own ancestors—those who wrote the Declaration of Independence, and helped to rid our country of foreign powers. Enough of them are determined to imitate us that the talk of a long war of independence if we don't leave gracefully becomes neither a bluff nor blackmail, but a lesson drawn straight from our own experience and from the Panamanian's own conviction of their national destiny. They have their patriots, too. The Canal is equally a symbol to them.

In the end, the Senate faces a pragmatic choice: whether the best way to keep the Canal open is through negotiation or confrontation. If the issue remains more than that, the Senate will also have to determine what price we're willing to pay for a symbol.

Mr. President, it has been 17 years since my trip to Panama, and 17 years is much too long a time for a great power and a great democracy to resist change, particularly when that change is in our vital national interest. It is time for us to move into the era of partnership and equality, and that is why I strongly support the Senate giving its advice and consent to ratification of these treaties.

I yield the floor.

Mr. ROBERT C. BYRD. Mr. President, will the distinguished Senator from Minnesota yield?

Mrs. HUMPHREY. Yes.

Mr. ROBERT C. BYRD. Mr. President, I rise to congratulate Senator Humphrey on the first speech that she has made to the Senate.

It is a speech that reflects judicious vision, realism, and compassion. She has briefly touched upon the history of the treaties and of our relations with our small neighbor to the south. She has rightly pointed to the fact that our policy toward the country of Panama with respect to the treaties is one that is being watched in other Latin American countries; and, as she has so accurately predicted, the outcome of what we do here in respect of these treaties will have a far-reaching impact on our relations not only, as she has pointed out, with all of the Latin American countries of this hemisphere, but also the developing Third World countries of Asia and Africa.

She has pointed to the canal treaty of 1903, as amended in 1938 and 1955, and to our presence in Panama, as a continuing yestige of colonialism—a concept of which we have been highly critical in other countries and on other continents. As she has stated, Latin

American countries, particularly the country of Panama, have common cause with Asian and African third world nations.

As the Senator from Minnesota has said, we have spoken with a forked tongue. We have derided and castigated and criticized colonialism where it has existed in Asia and Africa, but we are reluctant to recognize the injustice that we would bring to bear upon the country of Panama were we to reject these treaties. We would be saying, as it were, "This is the voice of Esau," when actually, in that context, it would be the voice of Jacob with the hairy hand of Esau. We criticize colonialism elsewhere and hold onto it ourselves.

She has pointed accurately and decisively to the fact that a great nation has been done an injustice, not only within the confines of its own borders but in its dealings with other nations.

She has pointed to the impact that our decision here has upon this country's future.

I commend her also for pointing out, as has been pointed out before, that to reject these treaties would be to invite Communist exploitation of this issue in Panama, in other Latin American countries, and elsewhere.

I hope the American people will ponder upon that statement by the Senator from Minnesota. We must not act in a way that will encourage Communist exploitation of an issue against the United States of America.

Finally, she asks the rhetorical question, would we have exhibited the same patience the people of Panama have shown now for over a period of three-quarters of a century? Would we have exhibited the same patience?

Would the people of the State of Minnesota, would the people of the State of West Virginia, would the people of the State of Maryland, of Nevada, of Alabama have exhibited that same patience were a foreign power after 75 years still exercising its right to sovereignty to maintain a military presence over a strip of land and water 10 miles wide and 50 miles long across any one of these States I have named, or any of the other States of this great Nation?

So let us live and let live. Let us act in accordance with the admonition, advice, and counsel that have been given to the Senate today by the very distinguished Senator from Minnesota (Mrs. Humphrey). Again I commend her and salute her for her statements.

Mr. ALLEN. Will the Senator yield?

Mr. SARBANES. Will the Senator yield?

Mrs. HUMPHREY. I yield to the Senator from Alabama.

Mr. ALLEN. I thank the able, distinguished, gracious and charming Senator from Minnesota for her very fine, her very eloquent points, on this important issue. I am delighted that she has chosen this issue of the Senate advising and consent on the Panama Canal treaties for her maiden speech here on the Senate floor.

As she was speaking, I could not help but recall to mind her late, great, distinguished husband, our long-time colleague, the eloquent Senator from Minnesota, Hubert Humphrey, and how pleased and proud he would be if he could have known of the wonderful way that she is carrying on the fight that he would have carried on in the Senate Chamber on this very issue.

We had looked to Senator Hubert Humphrey for his advice, for his eloquence in discussing this issue, and we looked to him to be one of the leaders of the forces seeking ratification of the treaties, the approval by the Senate of the treaties.

I am very much pleased for having had the opportunity of being 3 or 4 feet away from the present Senator Humphrey as she delivered her maiden speech.

It so happens that we adopt different position in regard to this issue. That does not lessen in the least my admiration for her and for her statement of reasons for supporting the treaties.

I am certainly not able to refer to my other colleagues as I did the charming and gracious Senator from Minnesota because I do not know any of my other colleagues who would qualify for that expression. But certainly she is all that I have said about her.

I might say that I am reminded of Paul's appearance before King Agrippa. Paul had spoken so eloquently before King Agrippa in urging him to accept the presentation that he should follow the advice of Paul. King Agrippa said, "Almost thou persuadest me."

I will say to the distinguished Senator from Minnesota, almost thou persuadest me on this issue. But not quite, I will say to the distinguished Senator from Minnesota.

Again, I commend the Senator for her very fine and most gracious remarks on this subject.

Mrs. HUMPHREY. I wish to thank the distinguished majority leader and the distinguished Senator from Alabama for their very kind words. I am especially appreciative of the words of our majority leader.

Mr. SARBANES. Will the Senator yield?

Mrs. HUMPHREY. I yield.

Mr. SARBANES. I join with the other Senators in thanking Senator Humphrey for stating in a very lucid and thoughtful way a powerful case for supporting these treaties. I thought she brought to the discussion of this vital issue the same qualities of understanding, of thought, of concern, of vision that have always marked her approach to the serious problems which face this country. She has been in her own right a strong and powerful leader in this Nation to bring forth the best in the American character.

I join in thanking her for undertaking, as her maiden speech, to enter into this issue, which is so important to measuring up to the best that is in America; and in particular, to thank her for speaking so eloquently with vision, with a deep perception of a better future. By the nature of things, we have to engage in what one would call a worst-case analysis, as we seek to make our judgment with respect to approving these treaties. It is refreshing and very helpful, once in a while, for someone to come along and, in a very clear and strong voice, point out that these treaties offer a positive opportunity to this country; an opportunity to build a close and healthy partnership.

As the distinguished Senator from Minnesota pointed out, we have worked together with the Panamanian people over the years. Panamanians have come to this country by the droves to obtain their education. They look to the United States for economic cooperation, for political cooperation. And I, for one, thank the able Senator from Minnesota for speaking in this debate in terms of the

opportunities these treaties offer to America, in terms of a vision of the relationship that can be developed between the people of the United States and the people of Panama, between our two countries. I know how sensitive the Senator from Minnesota has always been to these considerations.

Mr. President, I support her completely in her view that we have an opportunity to build a relationship which will be one of close partnership with the Panamanians; to build a relationship which we can hold up to the rest of the world as a classic example of how a superpower and a small country can work together to their own mutual benefit.

I again commend and thank the distinguished Senator from Minnesota for her extraordinarily fine statement.

Mrs. HUMPHREY. I want to thank the distinguished Senator from Maryland for his remarks. He made me feel very good.

Mr. LAXALT. Will the Senator from Minnesota yield for a short statement from the Senator from Nevada?

The PRESIDING OFFICER. The Senator from Nevada.

Mr. LAXALT. Mrs. Humphrey, may I join in commending you for an excellent statement? I have not been around here long enough not to remember how intimidating an experience for a new U.S. Senator it is on this floor. I thought you did marvelously well. You brought, once again, to this floor, a badly needed Humphrey presence.

I do not know of anybody on this floor whom I valued in terms of advice and counsel more than Senator Hubert Humphrey. We are of totally opposite philosophical persuasions, but the thing that struck me all the time was that he was a totally honest liberal, believing with complete conviction in what he felt was in the best interests of this country. It is good to have that presence once again with us.

Mrs. HUMPHREY. Thank you.

The PRESIDING OFFICER. Under the previous order, the Chair recognizes the Senator from Rhode Island (Mr. Chafee).

Mr. CHAFEE. I thank the Chair. Mr. President, I also would like to join in the praise of the Senator from Minnesota for the excellent statement that she gave on this subject.

Mr. President, few issues have divided Members of the Senate and the American people to the extent that the proposed Panama Canal treaties have. As is true with many differences, this one transcends partisan and ideological lines. My own party, the Republican Party, has respected leaders on both sides of this issue and, of course, this is true of the Democratic Party as well. Rather than being based on partisan identity, it seems to me that the debate over the proposed Panama Canal treaties centers around a fundamental issue. That is, how we look at the world around us.

The building of the Panama Canal in the early days of this century was an enormous engineering feat. It stands as an extraordinary national accomplishment in that we conquered what seemed to be unconquerable. In addition to the tremendous engineering expertise that was required, the medical skill, and the sheer human determination on the part of those associated with the project, the successful completion of the Panama Canal was made possible by the bursting self-confidence of the American people.

The American people had a vision to look and to plan well into the future.

America, at the turn of the century, as you will recall, was a strong and confident nation and, in building the Panama Canal, we saw an opportunity to take a leadership role in a world in which we were hardly dominant. All Americans, all across this Nation, can indeed be proud of what our countrymen did in building and operating the path between the seas.

Just as the building of the Panama Canal demonstrated our world outlook at the beginning of this century, America's action on these proposed treaties will demonstrate how we see the world today. It seems to me, Mr. President, that the kind of American spirit that led to the building of the canal now moves us to approve these treaties.

The world is constantly changing; we all know that. It behooves a great nation such as ours not only to keep pace, but to be a leader in setting the direction for our changing world. I do not think we should be immobilized by fear that things in the future will be different than they were in the past. We should be confident that this country of ours can adapt her role as needed to assert a strong leadership position in the future. The winds of change have swept away colonialism. Now these winds of change move us to reassess our relationship with Panama. The time has come for the United States to achieve a new arrangement with Panama, a new arrangement that will provide for the protection and the respect of the interests of both countries.

To understand present circumstances, it is important that we briefly highlight a few significant historical facts. These have been touched on by prior speakers, but they do seem to me to be extremely important in deciding where we go now.

It would be an understatement to say that the 1903 treaty was slanted in favor of the United States. And, of course, the very man who negotiated that treaty, Secretary of State John Hay, writing in 1903 to Senator Spooner, said:

The new treaty was very satisfactory, vastly advantageous to the United States and, we must confess with what face we can muster, not so advantageous to Panama. You and I know too well how many points there are in this treaty to which a Panamanian patriot could object.

Now, lopsided as it was in favor of the United States, the 1903 treaty did not convey sovereignty over the zone to the United States. We obtained the right to act as if sovereign, but actual sovereignty has resided in Panama. I do not think that it has been pointed out yet that in the 1936 United States-Panama Treaty of Friendship and Cooperation, which we negotiated with Panama, we referred to the Canal Zone as "territory of the Republic of Panama under the jurisdiction of the United States."

The issue of the Americanized Canal Zone, complete with an American Governor there, cutting Panama in two, has been a particular sore point ever since the 1903 treaty was enacted. Recently, I had the pleasure, as so many other Senators did, of being in Panama. There, one could not help but be struck by the depth of the feeling of the Panamanian people regarding this issue. I must say there is no single issue that unites the people of Panama more than the irritation that their nation is divided by a foreign power. I

am sure that we, too, would be resentful if there were a 10-mile wide strip, occupied by a foreign power, cutting through our State—Rhode Island, Nevada, Alabama, wherever it might be—or cutting our country in half. Every Member of this body would be rightfully outraged at such an affront.

Now, why concluding these treaties with Panama is the right thing to do goes far beyond the fact that these treaties pass muster simply on the basis of being in the best interests of the United States. The principle American interest in the canal is to insure that the canal remains open, efficient, and secure. The other issues are subordinate to that principle objective.

These treaties assure that goal, and this is the significant point, it seems to me, because the Panamanians become partners in this arrangement with a substantial stake in the success of the canal. It is in their self-interest.

While the United States will have the primary responsibility to operate and defend the canal for the next 23 years, the Panamanians each year will assume greater responsibility in achieving these objectives.

There is no question but there has to be the closest cooperation between the United States and Panama during this period.

Everything is not perfect in these arrangements, and I must say that I think it behooves the United States and the Panamanians to proceed immediately with this increased cooperation.

During the recent trip, which I mentioned we had to Panama with Senators Garn, and Baker, we were astonished when we met with Gov. Harold Parfitt of the zone and asked him how his relationships were with General Torrijos. He replied that he never met General Torrijos, even though he had been there as Governor for some 7 or 5 years.

Mr. LAXALT. Will the Senator yield?

Mr. CHAFEE. Yes.

Mr. LAXALT. Is that not rather troublesome?

Mr. CHAFEE. That was troublesome, and it seems to me we have to understand the arrangements that exist there now and immediately take the steps necessary to insure this cooperation between the Governor and General Torrijos.

Mr. LAXALT. Many of us are troubled by the fact that we do not think that by consenting to these treaties we are going to be dealing with a credible partner. It has nothing to do with the Panamanians.

Many of us feel we are dealing with a dictator and, apparently, that is the case.

I had the same information, and I was there myself, that the general has maintained at least a hands off posture with our own representatives in the zone. How well does that speak in these coming 23 years as a foundation upon which to base a workable agreement?

Mr. CHAFEE. The very next day after we met with Governor Parfitt, we met with General Torrijos, and we raised precisely this point. "Why, General, have you personally not met with Governor Parfitt?"

The answer was:

My people have met with his people, firemen have met with the firemen, the police chiefs with the police chiefs in the zone. There is that level of cooperation.

But here, it seemed to me, was the most significant point, significant to those who constantly say that General Torrijos is a dictator, and in a dictator the term implies he is above all, he is supreme.

Mr. LAXALT. Does the Senator have any doubts about that?

Mr. CHAFEE. If the Senator will just listen to this next point, that he is supreme and he can act regardless of the feelings of the people not at all.

We asked General Torrijos, "Why don't you meet with Governor Parfitt?"

General Torrijos' reply was, and that was substantiated by the views of others:

It would be impossible for me to have my picture taken with Governor Parfitt because the people of Panama would say I had sold out, I have given way to the Yankees.

So, therefore, while we can have this cooperation at the present time on the lower level, until the treaties are approved, until we have a definite arrangement, he has to keep an arms' length distance or his people will react in the very manner I pointed out earlier, demonstrating their feelings of outrage over this zone that goes right through the middle of their country.

So it seems to me that we have got a lot to do when we enact the treaties, as the Senator knows, then during the next 23 years about everything remains the same except the zone is abolished and the Panamanians take over the responsibility for the fire, the police, the general maintenance in the area of what we now call the zone.

Furthermore, the Panamanians will take an increasing responsibility in the operation and the maintenance of the canal. However, the full responsibility, the major part of the responsibility, the 5-to-4 vote on the commission, remains with the Americans as they ever bring in the Panamanians to positions of increased responsibility in the zone regarding the canal.

Mr. LAXALT. Will the Senator yield for a question?

Mr. CHAFEE. Yes.

Mr. LAXALT. I value the Senator's observations in this regard, because he is a former Governor. Of course, he was Secretary of the Navy. I know that he must share with many of us great concern about where we are securitywise.

It is true, is it not, that during this 23-year period, in addition to gradually moving away in the so-called civil functions toward the Panamanian people, we will also drastically reduce our defense establishment in the zone?

Mr. CHAFEE. Not required.

As a matter of fact, we talked with the American general, General McAuliffe, who is in charge, the senior American military officer in the zone.

The reduction in the size of our bases from what they are now is minimal and of no concern to him. I mean, it does not reduce his military effectiveness whatsoever.

Mr. LAXALT. Well, is it not true that during the course of this 23-year period that the present 14 establishments we have are going to be reduced to three or four.

Mr. CHAFEE. What we define as an establishment is open to debate, as the Senator knows. A little small encampment, is that an establishment or is it not?

Mr. LAXALT. I am talking about in terms of fixed bases within the Canal Zone.

It has been our understanding during the course of the debate, and Senator Allen perhaps could shed some light on this, that one of the troublesome features of this treaty is that during this next 23-year period our military presence is going to be drastically reduced and in the year 2000 it is gone. We will have no military presence there.

That, of course, is the thrust of the Allen amendment.

Mr. ALLEN. That certainly is true. Immediately, we will reduce our bases from 14 down to 4.

Also, it is provided in the signed agreements, which I pointed out are three times as voluminous as the treaties, that every 2 years the two governments have a right to review this defense status and, conceivably, we could be completely out of there in 2 more years under this signed agreement that we are not able to reach by amendment.

The PRESIDING OFFICER. The Chair would remind Senators that the Senator from Rhode Island has control of the floor and has to agree to yielding to the Senators.

Mr. CHAFEE. I am always glad to yield for the observations of my distinguished colleagues.

Mr. ALLEN. I thank the distinguished Senator from Rhode Island.

Mr. CHAFEE. If the Senator from Alabama has further points to make, I would be glad to yield, and the same goes for the Senator from Nevada.

But I would like to touch on a point the Senator from Alabama raised. I quote now the testimony of Lieutenant General McAuliffe, who, as we know, is our senior military commander on the spot, and this is his testimony before the Senate Armed Services Committee:

On several occasions, as an example, I have seen and heard statements to the effect that there are now 14 U.S. bases in the Zone, but that there will be only four left under the 1977 treaties. I know of no good foundation for either one of those figures—neither is correct. By actual count, there are 22 identifiable U.S. military reservations in the Canal Zone, most of them in active use, some inactive. However, they are administratively grouped in the Code of Federal Regulations into four; one per military service and one for my joint headquarters.

In my judgment, the number of bases is far less important than their adequacy to support our forces and missions. I invite your attention to the first map on which is indicated the extent of the military reservations in the Canal Zone today. To compare it to the base areas provided under the 1977 treaty agreements, I refer you to the second map on which (again in red), is indicated the extent of the defense sites available to the U.S. forces until the year 2000. One can see from the two maps that the size of the base areas in red would be somewhat reduced under the new treaties.

As Senators will recall, I mentioned that. General McAuliffe said:

As the military commander, I can assure you that the reduction is not significant in terms of supporting U.S. forces and our mission accomplishment.

It seems to me that that is the word from the man who is in charge.

Mr. LAXALT. Mr. President, will the Senator yield for a question?

Mr. CHAFEE. I yield.

Mr. LAXALT. Was he not making these observations to indicate also complete military capability to defend the canal without having to send in additional forces?

Mr. CHAFEE. I would have to refer later to his testimony, to see if that is true.

Mr. LAXALT. I do not know if that is the context of the testimony.

I do know that General McAuliffe, in interviews with the Washington Star and the Miami Herald in May of last year, indicated, in opposition to the statement that we needed 50,000 or 100,000 additional troops to defend the canal, that with our present forces there we could adequately protect it and defend it. I wonder if the comments the Senator from Rhode Island attributed to him during the hearing were not directed to that particular point.

Mr. CHAFEE. I believe not. What he was doing here was referring to the areas available for defense purposes.

This keeps coming up. The distinguished Senator from Alabama discussed the number of bases, and I believe the Senator from Nevada mentioned it in his remarks here today: Is it 22, is it 14?

However, I believe the important point is the one that General McAuliffe makes. He concludes:

In my judgment, the number of bases is far less important than their adequacy to support our forces and missions * * * I can assure you that the reduction is not significant in terms of supporting U.S. forces and our mission accomplishment.

He also mentions, as I mentioned earlier, that between now and the year 2000, the reductions in our military bases there will not be significant. I have difficulty understanding why it constantly comes up that that is not so. Here we have the comments of the man in charge, which I think is the only source we can turn to.

I do not think that those who have seen it can come away without being impressed by the mammoth ongoing dredging effort that is required, which has removed 1½ times as much dirt from the canal as was removed in the original construction.

Mr. LAXALT. Mr. President, will the Senator yield?

Mr. CHAFEE. I yield.

Mr. LAXALT. If the Senator would prefer, I will defer questioning until the conclusion of his statement. However, I think it makes more sense to discuss these points as they are raised, if that is all right.

Mr. CHAFEE. Fine.

Mr. LAXALT. The Senator from Rhode Island has raised the point of maintenance. I think our colleagues should know and the American people should know that for this year the maintenance budget—and I will stand corrected by the Senator—is \$65 million, is it not?

Mr. CHAFEE. No. That maintenance budget, as it was explained to us by Governor Parfitt, applies to all the activities conducted within the zone. By that we mean schools, housing, fire departments, police stations, the Governor's residence, and all that. It does not apply to the maintenance for the canal itself.

Mr. LAXALT. It was our recollection—and I will stand corrected on this—that this was devoted purely and simply to maintenance of the canal facilities per se. Does the Senator have the figure as to the canal?

Mr. CHAFEE. I will try to get that. Perhaps we can set that point aside, if the Senator wishes to bring up another one.

Mr. LAXALT. The other day, Senator Garn spoke on the floor. He traveled with the Senator from Rhode Island on this trip. In the debate on the floor, he expressed strong reservations, as a former executive—as is the Senator from Rhode Island—about pressures being brought to bear on General Torrijos or whoever is going to be in charge of the canal government, to properly take the money and set it aside for maintenance of this facility, in view of the pressures that will be brought to bear to use it for social and other causes. Does the Senator from Rhode Island share that?

Mr. CHAFEE. As the Senator from Nevada knows, as the former Governor of a State, setting aside money for maintenance, particularly preventive maintenance, is one of the most difficult things a Governor or any other executive has to do, because the money is there and it is up for grabs. Let us postpone that new boiler for another year. We do not want more trucks. We will get them next year.

There is always this thrust to take money and use it now for schools or health or whatever it might be. There is no question that that temptation exists, and that pressure will be on any executive who is running the canal. There is no question about that.

Mr. LAXALT. That presents a rather serious problem in connection with eventually handing over a facility of this size to the Panamanian Government, in all fairness, does it not?

Mr. CHAFEE. It presents the kind of concern that caused me to raise it with the Panamanians. I pointed out to them that this canal is dependent upon not just operation, because once operation stops and the ships do not go through, everybody objects. There is also this preventive maintenance question that the Senator raises. That is why I was particularly interested in getting to know personally the top people in the Panamanian Government. As I am sure the Senator from Nevada noted when he was there, the top officials in the Panamanian Government are not military leaders. They are extremely well educated, extremely well motivated, intelligent, competent civilians. I was impressed by their realization of this and their dedication to the principle that this canal has to be maintained if they are going to get the revenue from it that they are looking forward to in the future.

Mr. LAXALT. Does the Senator from Rhode Island think that under the existing provisions of the treaties there would be adequate safeguards built in so that money is set aside, so that we do not have to worry about maintenance of this facility, or is it left wholly to the whim of the Panamanian Government?

Mr. CHAFEE. I would quarrel with the Senator's phraseology.

Mr. LAXALT. Only to the discretion, then, if that is a more sensitive word.

Mr. CHAFEE. I think the canal is left, come the year 2000, to the Panamanians. We have to have some confidence in them, as we always have to have confidence in any kind of dealing, in their national pride, their sense of self-interest. After all, this canal is not the only way to transport goods between the seas, as we know.

There are alternate ways. If this canal is not kept in operational and proper maintenance, then shippers will use alternate methods.

Mr. LAXALT. Is the Senator not a little concerned about the fiscal track record of the present regime in Panama, regardless of their good intentions? And I do not challenge that. Is it not a fact that they have gone from a public debt of around \$187 million 10 years ago to a \$2 billion level presently? It is eating up deferral of debt service, some 39 percent of their gross national product. Does it not concern the Senator that these people, well intentioned though they might be, do not have the financial and fiscal know-how to administer the type of facility?

Mr. CHAFEE. It is a little hard for us, who are currently running a \$60 billion debt, and perhaps more next year, to lecture other countries on fiscal responsibility.

Mr. LAXALT. I do not intend to do that. We do a lot of it around here, too. I think that perhaps one of the problems in the situation is that they have profited from our bad example and bad fiscal management.

Mr. CHAFEE. It would be my hope that the United States, Panama, and a few other countries in the world would pay more attention to fiscal responsibility.

But back to the maintenance that we were touching on before, as the Senator from Nevada knows, being a former distinguished Governor, this maintenance problem is a constant difficulty. But I think in the canal situation there is one point that perhaps makes it different than the experiences we had in our own States where we could defer this or that, defer new painting at the institutions, defer the maintenance of our heating systems. There if we failed the results were not so severe. But in the canal I think everybody appreciates that failure to do the proper dredging, failure to do the proper detection of potential landslides can result in such mammoth results that it would be catastrophic. A landslide coming into the canal is incredibly expensive to remove, and I think those who have been associated with the canal, including the Panamanians, are cognizant of this. So this alone I believe will create a great incentive for them to keep that canal in top condition.

I would refer once again to the capabilities of the civilian ministers of the government which I believe the Senator was impressed with, as was I. We can only also mention that many of them received their education in the United States. This does not make them perfect, but at least it makes them think in the same terms as many Americans do.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. CHAFEE. I certainly will.

Mr. SARBANES. I think the point the Senator made with respect to the Panamanians is a very important point. One of the things these treaties do is give the Panamanians a very strong interest in an open, efficient canal that will maximize its business and, in fact, the payments to Panama will be geared to the amount of traffic that moves through the canal; therefore, there is a very strong incentive to maximize the amount of traffic that moves through the canal by operating an efficient canal.

It is clear that for the next 22 years the decision on the maintenance budget of the Panama Canal will be made by the Panama

Canal Commission Board of nine members, all nine of them appointed by the United States, five of them Americans and four Panamanians, but all nine appointed by the United States.

I think the point the Senator makes that the Panamanians do have, and will have, even more, a strong interest in a viable canal is a very good one. They have a direct interest in making this canal work, and there is no reason in the world to think that they will not want to do that; in fact, there is every reason to believe that they will want, in the most compelling way, to make the canal work well. They would only be hurting themselves if they, in fact, did not do that.

It does not take a particularly unique perception of self-interest to see that a strong viable canal serves their purposes as well as everybody else's purposes.

Mr. CHAFEE. I think the point the Senator makes is an extraordinarily good one. It would seem to me that those who are so dedicated to the free enterprise system, such as the distinguished Senator from Nevada, would realize that there is nothing stronger to create an incentive to keep something going successfully than a self-interest. The Panamanians will get a significant amount of their prospective budget in the future from the successful operation of the canal. No canal; no income. And so what greater incentive could we give any country than that?

Mr. LAXALT. Mr. President, will the Senator yield for an observation?

Mr. CHAFEE. I certainly will.

Mr. LAXALT. I do not for the moment attempt to minimize the importance of motivation and incentive, and it is here. But we have thousands of businesses all around this country that go broke every year with people who have all kinds of incentive and motivation but lack one important ingredient in making a business work, and that is know-how. That is the concern the Senator from Nevada has, because the track record from the last 10 years down there of this particular government in business enterprises has not been too good.

I have information which indicates that these major projects started by Torrijos' government have failed financially: Three sugar mills, a hydroelectric project, a new airport, public transportation system, the Cantadora resort island, agricultural development programs, and exploration of natural resources.

Mr. GRAVEL. Mr. President, will the Senator yield on that point?

Mr. LAXALT. Let me conclude, if I may, to make a reservation.

The PRESIDING OFFICER. The Senator from Rhode Island has the floor.

Mr. CHAFEE. I think I have the time, and let us take them one at a time. I say to the Senator from Nevada I am interested in his views.

Mr. LAXALT. Without getting into details and without using a blanket indictment here I do not intend to do that. All I indicate is that there are serious questions on the part of this little government. We have 1,300,000 people in this small country. There are serious questions, irrespective of their motivation, irrespective of their initiative, in the area of financial know-how to operate and manage a gigantic facility. That is the reservation the Senator

from Nevada has and I think it is shared by many of my colleagues.

Mr. GRAVEL. Mr. President, will the Senator yield to me briefly?

Mr. CHAFEE. Why do we not hear from the Senator from Alaska and then the Senator from Idaho?

Mr. GRAVEL. I have a brief observation. We are not talking about some high technology endeavor. We are talking about something that requires average manual dexterity and probably not too much more than that. You open and close the gates. I mean, we are not talking about moving into some space-age technology. You need somebody to stand at the switch and when somebody says "Ready open the gates" you let the water in, and then when somebody says "Ready" again you close the gates. This is preposterous. I have seen things in Panama on two trips that are considerably more sophisticated in the private sector than operating the Panama Canal will ever be. So, I would hope there would be no Member of the Senate who would come before this body and insult the intelligence of colleagues by trying to imply that operating the Panama Canal takes some special technology that only we Americans possess. You are operating tugs, which are operated around the world. You are operating valves and not little valves, big valves—there is not a little valve in the Panama Canal—these big things you turn around and you pull levers, stuff that was designed 70 years ago. And so to turn around and say that the Panamanians cannot operate that is not only an insult to the Panamanians. It is also an insult to the Members of this Senate to suggest that they might entertain such a thought.

So I thank my colleague from Rhode Island for yielding to me. I think the main qualifications are average intelligence and average manual dexterity, and you can do an excellent job keeping the canal area clean and greasing these big, big valves that have to operate.

I thank my colleague.

Mr. CHAFEE. Also, I think the point should be made that it is not tomorrow when they start running that canal, and by the way they are running 70 to 80 percent of the jobs anyway there. But let us hear from the Senator from Idaho who has some views.

Mr. CHURCH. I thank my able friend from Rhode Island for yielding. He has just made the observation I had intended to make. The latest figures show that about 75 percent of the employees presently engaged in operating the canal are Panamanians, and we have 22 years under this treaty to train other Panamanians to take over the remaining jobs.

Mr. GRAVEL. To give them manual dexterity.

Mr. CHURCH. Well, whatever may be required.

But I can hardly believe that anyone would seriously contend that Panamanians are inferior to the point where they cannot learn how to handle the rest of these jobs, despite a training period that will last for 22 years. As I recall, it was also said that the Egyptians could not operate the Suez Canal.

Mr. CHAFEE. How well I remember that. I remember the article in Life magazine about the pilots. No one could run that Suez Canal, because of pilots and the pilots were all foreigners, and those Egyptians could not pilot through that Suez Canal. We all

fell for that. Life magazine told us. It was not true. They took over that canal and they put more tonnage through that canal than was ever put through before.

I agree with the Senator's point as to the view that somehow the Americans, the Northern industrial races, are so much better at operating anything than other countries.

Mr. CHURCH. When the Russians were arming the Egyptians, they trained the Egyptians to use advanced SAM missiles in 6 months. Now there is a really technical job, requiring a very high level of competency. The notion that the Panamanians are inferior, incompetent, and not up to the task of running the Panama Canal is, on its face, absurd.

But may I say to the Senator one other thing. The distinguished Senator from Nevada (Mr. Laxalt) began to list a series of other alleged failures, in order to portray the Government of Panama as so incompetent that it cannot manage anything, not just first base, but second base, third base, the infield, and the outfield.

Among the examples that Senator Laxalt gave us were two I jotted down, of perhaps four or five he mentioned. One was the international airport, its abysmal failure.

Well, I was in Panama in January. The new international airport there does not even open for 6 months. It is not scheduled to be in operation until sometime this coming summer. Senator Laxalt's claim that airport is already a failure is a trifle premature.

The other example he gave was that of Cantadora Island. It just happens that members of the Foreign Relations Committee met with Omar Torrijos at the Cantadora Island resort. Now, that resort was originally built by a private company, not the Government of Panama. It was the private company that went bankrupt. The Government of Panama has tried to pick up the pieces, and when I was at Cantadora Island resort, I must say this: If it is now a failure, would that we had more failures of that sort in this country.

It was booked up until the end of April. It is an exceedingly popular resort, and the prospects for it have improved remarkably since the Panamanian Government took charge.

So, you know, these examples of alleged failure are not backed up by the facts, once you begin to examine them. I think it is not only demeaning to the people of Panama, but it is hardly a credit to the intelligence of the U.S. Senators, to propound objections of this kind to these treaties.

Mr. SARBANES. Mr. President, will the Senator yield?

Mr. CHAFEE. Yes.

Mr. SARBANES. I just wanted to add one further point, because I agree that it is sheer arrogance to contend that the Panamanian people do not have the competence to carry forward this endeavor.

The fact of the matter is that the next 22 years—that is a long, long transition period—will be spent with the United States still operating the canal and effecting the transition over to the Panamanians. And, of course, the same thing is true with respect to military cooperation.

Now, if by the end of the century Panama and its people are not prepared to assume this responsibility, if for a moment one were even to accept the thrust of the argument by the opponents of the

treaties, if, by the end of the century, in 22 years' time, they are not then in a position to take over, that is an indictment of our capacity, the American capacity to accomplish that transition.

In other words, we have an opportunity there, given the way these treaties are phrased, to develop a partnership and to insure results. We have the opportunity to initiate the necessary training programs.

Almost 80 percent of the existing work force with respect to the Panama Canal is Panamanian, and I think we can clearly accomplish that transition. The Panamanians, I think, have the capacity to accomplish that transition, and the real question, then, is whether the Americans are prepared, in carrying forward their role over the next 22 years, to accomplish the transition. I think we can do it.

Mr. CHAFEE. I thank the Senator.

Mr. GRIFFIN. Mr. President, will the Senator yield briefly for a followup observation?

Mr. CHAFEE. Yes.

Mr. GRAVEL. When this great nation of ours wanted to advance in technology in space rocketry, what we did was bring over a German by the name of Wernher von Braun. So often, when we have made technological advances in our society, we did not hesitate to go hire a Dutchman, or whatever expert we needed. It is a common practice in the operations of both business and Government. So, if the Panamanians were tomorrow to get control of the canal, they would naturally go out and hire technicians to do the job properly; that is no big deal.

When I was there, I went to Cantadora, and I have been to Panama twice. I would ask anybody who has been to Panama and traveled around the world, have you noticed anything different in Panama than in any other place in the world? My observation is no, there is no difference, no better and no worse than any other place in the world.

I think when Members of the U.S. Senate stand here with sick Yankee arrogance, and that is really all I can term it, and look down our noses at other people as inferior, I think we demean the Senate and the great American people. We have been a melting pot; we bring in people from all over the world and absorb them, and make them a part of our great nation. These people are involved in all the spectrums of human activity. I think that kind of argument demeans us, and does us no service anywhere in the world.

I thank the Senator for being so generous with his time.

Mr. ALLEN. Mr. President, will the Senator from Rhode Island yield to me for a question?

Mr. CHAFEE. I will say to the Senator from Alabama that I have a few more remarks to make that I think might persuade him, but if perhaps—

Mr. ALLEN. It would possibly be best, then, to let me ask you now, before I am persuaded.

Mr. CHAFEE. I was thinking of that, but also that if you spoke now, you might leave me speechless.

Mr. ALLEN. I do not want to overburden the Senator, if he does not wish to yield at this time.

Mr. CHAFEE. I certainly will yield, yes.

Mr. ALLEN. The Senator mentioned a few moments ago that General McAuliffe, who is the commander of our Southern Command position there, called attention to the fact that it is being stated—he is not quite able to identify the source of the statements—that we are going to cut our military bases in the Canal Zone from 14 down to 4, and he states that neither figure is correct. The Senator quoted from his testimony.

Well, of course, if there are 22 bases there instead of 14, reducing them down to 4 or some other number would be a greater reduction than is being stated as to the 14 bases that are to be cut down to a lower figure.

But as to the four bases that we are to be confined to for full control—there are some installations where we will have joint control, but, as I pointed out, there are side agreements three times as prolix as the treaties themselves, because they occupy over 60 pages, whereas the treaties occupy some 23 or 24 pages. If the Senator would refer—I am sure he has this booklet—if he would refer to page 29 of the side agreements, and I call them that because that is what they are—we do not have the right, according to the ruling of the Vice President, to amend these agreements—it is pointed out, near the bottom of page 29, in the first column, that the U.S. forces may use the different sites listed in paragraph (2) of annex A of this agreement.

When we turn over to paragraph (2) of annex A, there you find listed (a), (b), (c), (d), and (e), the five military installations, only four of them, however, on the mainland of the Canal Zone: Howard Air Force Base, Fort Clayton, Fort William D. Davis Military Reservation, Fort Sherman Military Reservation, and then the fifth military installation is on Galeta Island. So there, the Senator may surmise, is where the figure of four comes from.

But, going beyond that, we also find—to show how curious our defense position there is—for a period of 2 years our Government and the Panamanian Government examined the matter to determine whether four bases were not too many, to see if we could not give up some of those. With the trend toward giving away our very substance in this country to foreign nations, I have no doubt that there is a good chance that we will waive our right to one or more of these four bases. It is possible that we would have suicidal tendencies to pull out of all bases during the life of the first treaty.

Mr. CHAFEE. When the Senator describes the United States having suicidal tendencies, we have the capacity for those suicidal tendencies now. There is nothing written in stone that says we have to keep the bases we have in the zone now.

Mr. ALLEN. No; I think that is wrong. We are charged with the obligation, under the treaty, of defending the canal. I think everyone would agree that we would need troops to defend the canal.

Mr. CHAFEE. But we still have that obligation. I cannot follow why the Senator ascribes this greater suicidal tendency under these treaties.

Mr. ALLEN. I do not quite follow the Senator's line of argument. Here we are giving the canal away and we are making it less possible for us to defend the canal. Even under the leadership amendments, which we have discussed from time to time, which

are before the Senate and determined to be necessary, it is provided in the leadership amendments that we will pull out all of our forces during this century. Where we would have the right to take steps to defend neutrality of the canal under the leadership amendments, it would be a far cry from being able to defend when all of our troops have been withdrawn. That is the difficulty of the leadership amendment which made it necessary for me to offer an amendment, which would require that the President, if he deems it necessary for the defense of the canal, to keep our military presence there beyond December 31, 1999, by so certifying that need to Panama prior to December 31, 1999.

Mr. GRAVEL. Will the Senator from Rhode Island yield for a moment?

Mr. CHAFEE. I would like to see if the Senator from Alabama has completed first.

Mr. ALLEN. Will the Senator speak a little louder?

Mr. CHAFEE. The Senator from Alaska wanted to make a point but I did not want to interrupt the thought of the Senator from Alabama.

Mr. ALLEN. I will yield the floor.

Mr. CHAFEE. I will yield to the Senator from Alaska.

Mr. GRAVEL. The Senator from Rhode Island (Mr. Chafee) is correct. We still have our obligation to defend this canal not only during the treaty but in perpetuity. That is what the treaty is all about. The Senator from Alabama I believe is in error. I believe Senator Chafee has pointed out the proper interpretation. The language is very clear.

With respect to the point just made by the Senator from Alabama that the President would decrease the troops, he can do that right now. There is no point that the Senator has not just stated which cannot happen to us right this minute without this treaty. So I do not think that is a valid point to be made against the Senator from Rhode Island in the explanation he has so ably put forward.

Mr. ALLEN. But the point is that where the leadership amendment gives us the right to defend in perpetuity it deprives us of the means with which to defend because we will withdraw from the Canal Zone. The only way we could defend the canal would be to have an amphibious landing or send in paratroops.

The amendment which is before the Senate now would give the President that right. The Senator says the President could withdraw, and that is true, but I do not believe he would do that. There would be a hue and cry against it.

Mr. GRAVEL. May I say to my distinguished friend from Alabama (Mr. Allen), for whom I have great respect, I think we both might take umbrage under more qualified military perceptions than he and I might have.

I merely want to quote the opening statement of General Wilson, the Commandant of the Marine Corps. He has probably had a few experiences running up a beach in the past. I will quote:

I do not believe, however, that successful defense of the canal is dependent upon continued U.S. military presence in Panama.

If my colleague is trying to make a case that this is a bad treaty because these options are left open, they obviously should be left open.

Of course, this was a statement by the general before the Armed Services Committee.

My colleague from Rhode Island has demonstrated too much patience with us and I again thank him for his generosity.

Mr. CHAFEE. I thank the Senator.

I might say we will go into these points more deeply when we discuss the amendment of the Senator from Alabama.

Politically, these treaties will be for our benefit in other areas of the world besides Panama. By approving these treaties, the United States strengthens our friends throughout the world while proving wrong those who are hostile to us and claim that we are a bullying imperialist power.

Approval of these treaties eliminates that argument of those disruptive forces in the hemisphere who see the Panama Canal issue as fertile grounds for cultivating seeds of anti-Americanism.

Given the national security aspects of Panama, and we discussed these briefly a minute ago, our military leaders have participated right from the beginning in the negotiations of these treaties, in order to insure that our military interests are protected. Therefore, when the provisions of these treaties were made public, the Joint Chiefs of Staff were unanimous—every single one of those generals—in supporting the treaties.

I have been particularly impressed with the force and sincerity of the arguments supporting the treaties by the Chairman of the Joint Chiefs of Staff, General Brown.

Those who are familiar with General Brown know that he is not in the remotest sense of the word what we would call a "political" general. Therefore, we have to respect his word when he declares that in his personal opinion these treaties are in the best defense interests of the United States.

That is the only issue he addressed, the defense interests of the United States.

Like every Member of the Senate, I have been struck by the depth of feeling throughout our States, throughout the Nation, regarding these treaties.

I must say I do not think there has been a single issue which has come before the Senate in a good many years on which everybody in the United States seems to have a view. I suppose it comes from the fact that all of us in chapter 4 of our history books read about the Panama Canal.

Polls have disagreed on just what this public sentiment is, but it is clear, unquestionably, that these treaties are controversial, intensely controversial.

When the voters send a Representative to the House or a Senator to the Senate, that person is faced with a difficult philosophical dilemma. The question is simply, does he vote as public sentiment wishes, or, in those cases where there is public sentiment in conflict with his judgment, with his experience, does he vote as he thinks best in the interests of his State and his Nation?

Now, voting one's conscience sometimes places a public servant at loggerheads with a large number of his constituents. This obvi-

ously involves political risks and these political risks are not inconsequential. They can take the ultimate form of the politician being defeated. John F. Kennedy, in his book, "Profiles in Courage," addressed this subject, when he said:

Perhaps if the American people more fully comprehended the terrible pressures which discourage acts of political courage, which drive a Senator to abandon or subdue his conscience, then they might be less critical of those who take the easier road—and more appreciative of those still able to follow the path of courage.

Now, trying to vote strictly according to the wishes of the people, while politically popular, also has its hazards. It is pretty hard to define exactly what is public opinion, because it is a changing, fluid element. So, what do we do? Do we vote in accordance to the total amount of mail or the total number of telephone calls? Should every new issue be subject to some survey, just like Presidential campaigns seem to be?

It does not seem to me that any of these options is the best way for a public official to make up his mind. Rather, it seems to me incumbent on each of us to bring all our individual experience and our judgment, our analytical abilities, whatever they might be, to bear on studying the issue. It would be irresponsible to make ourselves hostage to what we perceive to be "public opinion."

Mr. LAXALT. Will the Senator yield?

Mr. CHAFEE. Could I just finish this one thought? Then I shall be delighted to yield to my companion.

Mr. LAXALT. Yes.

Mr. CHAFEE. The Panama Canal issue is an example of the perils of relying upon existing casts of public opinion. I do not know what others find. My own mail count has fluctuated from being almost totally against the treaties in some weeks to where it has been, by a small margin, in favor of the treaties, then back to opposing the treaties. The national polls have differed on this subject, as you know. The polls have shown, that, at large, the people are against the treaties; but then, if you take that group who has taken the trouble to study them or understand them, those polls have shown that the people are more in favor of them, not overwhelmingly, but are in favor of them.

So my colleagues who oppose the treaty could easily produce evidence to show that the American people oppose them. But, frankly, I do not think this is the way we ought to make our decisions.

I am glad to yield.

Mr. LAXALT. I wish only to make this observation: I do not think a public opinion survey on the matter of where the constituency is going is conclusive. But I do think it should be highly persuasive. There have been statements made by our colleagues on the floor to the effect that they are going to turn their back on their constituencies and call their own shots. I suggest that that is one of the problems that we have here in Washington. I suggest that is one of the great problems we have in terms of the integrity and credibility of the Congress. There are millions of Americans who feel that we do not listen to them.

In my own case, we had a recent survey indicating that, even with the leadership amendment, 81 percent of the people of my State are strongly opposed to these treaties. Would I not be terribly

derelict if that were not highly persuasive in my consideration of the vote of these treaties, I as the Senator?

Mr. CHAFEE. When the Senator says highly persuasive, I am not sure what he means by that, because these treaties affect the Nation. It really is a very serious national issue.

Mr. LAXALT. I am aware of that.

Mr. CHAFEE. It seems to me that each of us wears several hats. The hats we wear are not totally those of the Senator from Rhode Island or Nevada or North Carolina, or wherever it might be. We have an obligation to do what is best for our Nation as well.

Mr. LAXALT. I am aware of that. We have a dual responsibility, of course we do. But, in my own judgment, I do not feel that the national interest has to be completely dominating of our local constituencies and our local responsibilities.

Nor am I saying that it should be conclusive, because there are times, I suppose, that the winds of public opinion can be fanned into an improper result, or conclusion. I am aware of all that. Yet, in all the years I have been in this business, I have never seen more interest in an issue.

I might say I have never seen more knowledge exhibited by the public generally throughout this country in an issue. The quality of the mail I have, aside from the organized, postcard type mailing, is of high quality, exceedingly high quality. It seems to me that this is one of those rare issues where we must pay heed in great part to what the American people are telling us. I am afraid that, as far as many of our colleagues on the floor are concerned, we are not listening closely enough on this issue.

Mr. CHAFEE. I would hope that all Senators, obviously, would give heed, read their mail, and understand the views of their constituents. But I think we have an obligation to go further: that is, to study these issues in considerable depth, to recognize the views of our military leaders, those who are actively on the job, to give consideration to the thoughts of those who are in positions of responsibility regarding our foreign policy, our Secretary of State and others; to give consideration to what this holds for the future—not just this year or next year, but also, what are the alternatives: What is going to happen in the event that the treaties are not approved?

I do not think we should be subject to blackmail, or anything, that there are possibilities of turbulence. But, obviously, all of these things have to go into our equation. Based on these, we have to make our judgment.

Frequently—I am sure the Senator found this when he was Governor. I cannot believe that there were not occasions, and here he was dealing solely with a State issue principally—I suppose it came up in budgetary matters—where he had to take a position that was extremely unpopular, that the bulk of the people in his State were opposed to a position he took.

I had a similar situation dealing with a State income tax. Overwhelmingly, the people in our State were against it. As a matter of fact, I got voted out of office because of it. But it was a thing that had to be done. Subsequently, it was done, to preserve the financial integrity of our State.

So we cannot respond solely to the whims of the constituents, because their views change. And we come here with a considerable responsibility to think, it seems to me, not just of now but of the long range and the future, particularly as it involves the welfare of our Nation.

I think Senator Byrd, the majority leader, put this rather well in his opening comments when he said that a Senator is meant to reach a judgment not simply on the basis of mail count. If that were so, we could have a computer or we could have some organized pollster setup, and that is all we would need. Then he gave that really, I think, magnificent quote from Edmund Burke, where Burke said:

Your representative owes you not only his industry but also his judgment, and he betrays rather than serves you if he sacrifices it to your opinion.

As we consider these treaties, I hope that, in looking at the world and America's role in it, we will act with confidence and with a vision to the future.

We are a great nation. There is no doubt about that.

We are a great nation because we are strong enough to do what we feel is right because it is right—not, like an adolescent youth, because we think we have to prove our might.

We are a great nation because we are confident enough to exert leadership and adjust in a growing world rather than cringe at the prospect of change and seek the reassuring shelter of bygone eras.

We are a great nation because we have the vision to look ahead and chart our course toward long-term stability of our best interests, because we realize that efforts in partnership are more secure than confrontations out of frustration.

Mr. President, we are a great nation because we seek to have our Government's decisions, in the words of Theodore Roosevelt—the builder of the canal—“laid on the foundations of righteousness and of decency.”

So, let us use those as our guidelines as we vote in these treaties and show what a great nation we are.

Mr. LAXALT. Will the Senator yield for a question or two?

Mr. CHAFEE. Yes.

Mr. LAXALT. I commend the Senator for a statement that I know he believes in completely.

I ask the Senator this: Since the pending business is the amendment of the treaties proposed by Senator Allen and others, and recognizing that the Senator from Rhode Island, by reason of his general background and having been Secretary of the Navy, must have as a high priority the security interests of this country and of the capital—I know that is a high priority.

Mr. CHAFEE. No question about it.

Mr. LAXALT. And weighty consideration in his deliberations upon all these matters.

I have been concerned about this scenario and I think it is a realistic one. Under the terms of the treaties, we are going to have a gradual lessening of military power within the canal. I do not think it is disputable that come the year 2000, as far as the military presence in the Canal Zone is concerned, it is gone.

Mr. CHAFEE. It could be. I think the Senator's point is valid, although I do think we have got to keep in mind that we have entered all over this world into negotiations and agreements with foreign powers to provide for American forces there.

For example, Subic Bay in the Philippines, a magnificent, mammoth naval installation which we have got out in the Philippines.

Look at Forrejon, a base in Spain, and Rota, a base in Spain, where American naval forces are today.

It is all worked out with independent countries, just as I anticipate we will work out some kind of arrangement with Panama.

Mr. LAXALT. That is precisely what I am talking about. Under the terms of these agreements, at this point, when this country has the greatest leverage, that type agreement has not been worked out.

Under the terms of this agreement, in the year 2000 we have no military presence, per se, within the zone.

I find it terribly hard to believe why there would be any resistance to the type amendment Senator Allen has presently pending before the Senate which would provide, not automatically, but a bona fide certification by the President of the United States that our military presence was required within the Canal Zone, that that military presence be maintained, if we take that in the context of statements from our retired Joint Chiefs of Staff, I think a vast majority of the retired flag officers in this country oppose these treaties on the basis it is a vital strategic asset and we better protect it.

It seems to me the so-called leadership amendment, while giving us a legal right for prior passage, while giving us a right to protect our neutrality, is a naked legal right only as a practical matter. If we enter into difficulties with the Panamanians, we are going to be left in the position of having to fight either by sending in paratroopers or an amphibious landing.

This amendment presently under discussion, it seems to me, would greatly minimize that kind of risk because we already have a military presence there to protect our interests as well as the Panamanians.

I would like the Senator's comments and suggestions concerning the pending amendment in this context.

Mr. CHAFEE. Again, the pending amendment, as I understand it, the Senator can correct me, gives the United States a unilateral right to make this decision. That is the very thing that has proved so irritating to the Panamanians and would prove irritating to us.

If France had the unilateral right to reestablish bases in Florida, or the Soviets had a unilateral right to put a base in Alaska—they once owned it, should they not have that right—it would irk us more.

I do not think we would find a single American that would support that proposition.

This is the same kind of arrangement suggested here that we cram down the Panamanians' throats.

Mr. GRAVEL. Will the Senator yield for an observation?

Mr. CHAFEE. Yes.

Mr. GRAVEL. The Senator from Rhode Island (Mr. Chafee) is totally correct.

What this Allen amendment does is establish in perpetuity the right of the U.S. Government under the President of the United States to have troops in Panama as long as we ever want.

If my colleague from Nevada is so intent on an accommodation, what he ought to do is come in here with an amendment that talks about our willingness to pay for these things. We pay every place else in the world. Why would we have such an attitude that in Panama we are not going to make that kind of consideration?

This amendment is preposterous, truly preposterous.

Because of the Panama Canal and because we have got some minor economic interest—and I submit that by the year 2000 that will be not minor, but miniscule—why would we want to foist upon a legitimate sovereign nation—a legitimate sovereign nation—our ability to put troops on their soil.

That is what we had the revolution in this country over. Why would we want to insist upon that?

I just cannot understand this amendment. Now, that is not talking to the fact that this amendment is in the wrong place. I will not make a germaneness argument over that.

Mr. CHAFEE. I do not think we want to get into side arguments.

Mr. LAXALT. Mr. President, who has the floor? I assume it is the Senator from Rhode Island.

The PRESIDING OFFICER. The Senator from Rhode Island has the floor.

The Senator from Rhode Island.

Mr. CHAFEE. I would be delighted to yield for some more comments.

Mr. LAXALT. Only this comment, in response to the Senator from Alaska (Mr. Gravel).

The reason why we feel we have to have his right, it necessarily must be unilateral. I am trying to guard against that contingency when the year 2000 comes that Panamanians are not going to be all that happy with us. It has been developed during the course of these debates that there are many areas of potential friction. I put that in the context, and as I indicated, you can disagree with it if you want, I do not choose to, that this is a vital strategic asset to the interests of this country and to the interests of the hemisphere and, certainly, to the interests of the Panamanians.

Now, constantly, when we think about rights of this type during the debate on this floor, we are being cast in the position of being a spoiler, a bad guy, whose interests are inimical to the Panamanian interests.

I do not understand that because if I were a leader in Panama I would welcome this kind of provision being in the agreement, recognizing that our military presence there will protect the canal and the Panamanian interests.

Mr. Gravel addressed the Chair.

Mr. LAXALT. If that is a preposterous approach——

Mr. GRAVEL. It is.

Mr. LAXALT. I suggest that the treaties are preposterous.

Mr. GRAVEL. Will my colleague say, if he thinks the leadership of Panama ought to accept in perpetuity U.S. troops, if he would be prepared to accept British or French troops in perpetuity in any part of the United States?

Mr. LAXALT. Of course not.

Mr. GRAVEL. But why would my colleague hold a different standard for the national sovereignty of the people of Panama than he would for a U.S. citizen?

Mr. LAXALT. Because it is our canal.

Mr. GRAVEL. Who says it is our canal?

Mr. LAXALT. I do, and so do millions of Americans.

Mr. GRAVEL. It is not our canal. We went into the history of how we got that canal.

But why should we threaten these people?

I ask my colleague from Nevada, does he have any guess as to how economically important the Panama Canal will be in the year 2000? Could he enlighten us?

Mr. LAXALT. No. I think it is a matter of speculation.

Mr. GRAVEL. Well——

Mr. LAXALT. Just a minute.

Mr. GRAVEL. I am sorry.

Mr. LAXALT. I think anybody would concede that the economic situation in 2000 is necessarily speculative. We can hear from both sides. Some would denigrate its economic importance, others maximize it.

I do not know. I am not as concerned about that as I am where we will be from a security standpoint in the year 2000.

I cannot predict that. The Senator cannot predict that. Nobody can predict that. So that is the situation.

Mr. CHAFEE. Mr. President, I think I have the floor.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. LAXALT. May I pursue this for a moment?

Mr. CHAFEE. I would prefer to pursue the security point, if we could stay on that.

Mr. LAXALT. I would like to stay on that. We can talk economics forever and already have.

To get to the security point, recognizing that no one of us can foresee what the situation is going to be in 2000, I do not care how we define the opinion between existing Joint Chiefs and those who oppose it, feelings of the Joint Chiefs, I do not care how.

The least we can say is that there is divided opinion among the military experts about the strategic value of the canal.

So it seems to me if that is going to be the case in the year 2000, why not build in a safeguard in this treaty so that the President of the United States in terms of national interest can make a finding upon a certification and thereby continue a military presence?

I fail for the life of me to see how anybody thinking in terms of the national interests of this country can oppose this kind of amendment.

Mr. CHAFEE. It seems to me that we have a very fundamental difference of opinion here, and the difference is on this point: Do we want the Panamanians enthusiastic partners with us in this enterprise?

Mr. LAXALT. Surely, we do.

Mr. CHAFEE. Or do we want the Panamanians to be subordinates, to have their situation really remain not greatly changed?

If we want them on our team, we have to respect them and respect their nation. For us to have worked out a provision that

gives us unilaterally the right to go back in there if in our opinion the neutrality of that canal is threatened is an extraordinary thing. I do not think any of us would ever accept such a term in a treaty.

Now the Senator from Nevada is trying to press it one step more and to say that we can keep troops in there at our own volition, unilaterally. That is going just too far. I do not think the Senator can expect any self-respecting Panamanian to go for such an arrangement.

Mr. LAXALT. Certainly, the Senator is not going to place the feelings of the Panamanians ahead of the national interests and security of this country. I hope that is not his judgment.

Mr. CHAFEE. No. My objective is to keep the canal open and operating.

Mr. LAXALT. I think we are both proceeding along the same path.

Let us assume that in 2000 we are out of there, no military presence, and that we have difficulties with the Panamanians. I hope that is not the case. Let us assume they are serious difficulties. Under the terms of this treaty, we cannot intervene to protect neutrality or prior passage, if it involves invasion of their internal affairs. In that type of situation, if we have that type of difficulty, I ask the Senator, as a former naval person, how in the world are we going to reinforce those rights properly, in the absence of dropping paratroops in there or making an amphibious invasion of Panama?

Mr. CHAFEE. We would have to do it; no question about that.

Mr. LAXALT. Is not that prospect far more onerous, in terms of our future relationships with Panama, rather than having a military presence there to begin with, in order to obviate that kind of problem?

Mr. CHAFEE. I do not agree with the Senator. It seems to me that we have a treaty here. A good deal, in my judgment, is something both sides want. We have gone a long way in asserting our views in this treaty. There is no question about it.

The provision that permits us to go in unilaterally, as I mentioned previously, is something that must be pretty tough for the Panamanian patriots to swallow.

Mr. LAXALT. All I hear on this floor is the feelings of the Panamanians, the Panamanians' aspirations, and the Panamanian patriots. I think part of our consideration should be the feelings of the American people and the feelings of the American patriots. They feel rather strongly about this issue, too. We seem constantly to shunt that aside, beating our breasts in some form of artificial guilt, in my opinion, and in the process—and this concerns me more than anything else—perhaps jeopardizing the national security of this country.

Mr. CHAFEE. It seems to me, following the Senator's argument to its logical extent, that we would have no treaty whatsoever.

Mr. LAXALT. That would be perfectly all right with me.

Mr. CHAFEE. In the Senator's judgment, no treaty.

Mr. LAXALT. No new treaty.

Mr. CHAFEE. If our objective is to keep the canal open and to maintain the status quo so far as the operation and maintenance of the canal are concerned, does the Senator suggest that the absence of any treaty, to remain the way we are now, with the zone and the

governor, would promote the open, efficient use of the canal for the future?

Mr. LAXALT. Yes, I believe so. I am satisfied, from talking to the people there, that we have the military capability to easily protect that canal.

I am not being placed in the posture that we should not make other types of concessions. We want to protect the operational facility with U.S. military capability. That does not mean we cannot think in terms of making economic concessions of various kinds to the Panamanians—release of additional Canal Zone ground. What we are talking about is the fundamental consideration, basically, of preserving that asset.

Mr. CHAFEE. It is the judgment of the proponents of the treaties, of which I am one, that the best way to preserve the independence of the canal, to maintain it, to have it serve its purposes for the remainder of this century and into the next one, is to agree to these treaties, to have the Panamanians part of the cooperative effort.

Mr. LAXALT. I say to the Senator from Rhode Island that that, really, is the essence of our disagreement. Those of us who oppose these treaties feel that to enter in this kind of partnership can only harm the security interests of this country.

Mr. GRAVEL. Mr. President, will the Senator yield?

Mr. CHAFEE. I yield.

Mr. GRAVEL. There is one item that was mentioned which I think is very serious. It occurred when the Senator from Nevada was trying to keep on the subject raised by the Senator from Rhode Island, and I thought it was a very good colloquy that took place, in view of the expertise of the Senator from Rhode Island, who has been Secretary of the Navy and knows something about maritime matters and defensive matters. I have personal affection for my colleague from Nevada, and sometimes I am distraught by the fact that he beats me so resoundingly at tennis.

I am disturbed about one point—the cavalier way in which we put aside the economic arguments. To stand on this floor and ask for the power to infringe upon the sovereignty of the Panamanian nation for perpetuity—I hope there is some sound economic logic behind that. Otherwise, what is the point of stationing troops abroad? It must be to defend something that is valuable to us. I think the crux, the touchstone, of any argument has to be the economic basis.

When I asked my colleague from Nevada if he had given thought as to what the economic importance of the Panama Canal would be in the year 2000, he said he could not speculate. I would like to propound a question to my colleague, if he would have any doubt as to the economic importance of the canal today; and I would inquire about the economic importance not only to the United States, but I also would ask him what percentage of the world's maritime fleet presently can go through the canal, to get some barometer of the importance of this canal economically today. Maybe upon that basis, we could speculate for the future.

Mr. LAXALT. I am not familiar with the precise tonnage, except that I know I do know—and I can secure the figures—that there is substantial commercial use of the canal. It has tremendous eco-

conomic benefit to the people of this country, principally the mining and the agricultural interests. It has tremendous economic value to our allies throughout Latin America and South America.

I know there has been an effort on the part of the proponents of this treaty to denigrate the economic value of the canal. I submit that there is still substantial economic value in the Panama Canal. In terms of specifics, I can provide that to the Senator from Alaska (Mr. Gravel) and make it part of the record.

Mr. GRAVEL. I thank my colleague. I would like him to cause his staff to research this area and bring forth these statistics, because I think it will be very revealing to the American people.

I will give the Senator a statistic that I picked up in research houses from Norway to London to Washington, D.C. Presently, 57 percent of the world tonnage of the world's maritime fleet cannot go through the Panama Canal. Fifty-seven percent. It is a very shocking figure.

If you project out the next 22 years, to the year 2000, and if you extrapolate the growth that took place in the last 15 years, not at an equal rate or even at one-half of that rate, but if you extrapolate at only one-third of the previous rate to the year 2000, you get a figure in excess of 90 percent of the tonnage of the world's maritime fleet that will not be able to go through the Panama Canal.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. GRAVEL. I yield.

Mr. HELMS. Where did the Senator get these amazing figures?

Mr. GRAVEL. From the research outfits that do the research for the shipowners of the world.

Mr. HELMS. Who is the president of it—Mr. Omar Torrijos? [Laughter]

Mr. GRAVEL. Oh, no. It is a company in Oslo, Norway, which has very little contact with Mr. Torrijos. It is a company in London called Drury. It is companies in the United States. It is the Maritime Administration.

I will go into it at great length, showing charts that will cover the rear of this Chamber with the research data. If my colleague quarrels with it, or can find error with these figures, this research data, I will stand here on the floor and apologize to my colleague.

Mr. HELMS. Then the Senator better get ready to apologize, because 95 percent of the vessels afloat in the world today can go through the Panama Canal.

Mr. GRAVEL. Say that again.

Mr. HELMS. Ninety-five percent of the vessels afloat in the world today can go through the Panama Canal.

Mr. GRAVEL. What about the tonnage?

Mr. HELMS. The Senator was talking about—

Mr. GRAVEL. It does not do us any economic good to count the little pleasure crafts or little bitty rust buckets that go through the canal. Let us talk tonnage. The numbers of vessels do not matter. What matters is how much oil can you move through the canal, how much coal, that my colleague from Nevada talks about, how much coal you can move through the canal. Is my colleague aware that 76 percent of all the oil tonnage in the world cannot go through the canal?

Mr. HELMS. I do not think anybody is aware of that. It is simply not so.

Mr. GRAVEL. He can line up 6,000 rust buckets that can carry three drops of oil apiece, and they can all go through the canal. Big deal. One supertanker will take through 1 million times more than that.

Mr. HELMS. The Senator can shout me.

Mr. GRAVEL. I yield to my colleague to make his statement.

Mr. HELMS. I thank the Senator.

Mr. GRAVEL. I have great respect for the Senator from North Carolina. I apologize if my voice has been raised in harshness. It was not any indication of any disaffection for my colleague. Quite the contrary. It is because of the zeal that I have over these important figures which I think are so illuminating.

I will be happy to yield.

The PRESIDING OFFICER. The Senator from Rhode Island has the floor.

Mr. GRAVEL. Unfortunately I do not have that power. It is the Senator from Rhode Island who has that power.

Mr. CHAFEE. Mr. President, I wonder if we could get in order who is next because I have completed my remarks, and it was my understanding that the Senator from Alaska was next. I am willing to do whatever Senators want to do here. What is the situation?

The PRESIDING OFFICER (Mr. DeConcini). After the Senator from Rhode Island is finished, the floor is open. There is no order for recognition.

The Senator from Rhode Island.

Mr. CHAFEE. Thank you, Mr. President.

Does the Senator from New York have comments?

Mr. JAVITS. No; I understand Senator Gravel is going to follow the Senator; is that right?

Mr. CHAFEE. We are waiting for Senator Gravel. Meanwhile, the Senator from North Carolina.

Mr. HELMS. I have some statistical information on the way to the Senate Chamber. I suggest that we have a brief quorum call.

Mr. JAVITS. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. GRAVEL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. GRAVEL. Mr. President, I would like to continue my initial presentation, the presentation that I began before we went into recess last week.

I tried to cover some elements of the history that found us in the situation that we are in today. Now I would like to continue on, and focus on the operations of the canal.

Mr. HATCH. Will the distinguished Senator from Alaska yield for a question?

Mr. GRAVEL. I would be happy to yield for a question.

Mr. HATCH. It is my understanding that my friend from Alaska is contending that the tonnage going through the canal is not really very heavy.

Mr. GRAVEL. I did say that the tonnage was not heavy.

Mr. HATCH. In other words, what is the significance of the canal to the Americans?

Mr. GRAVEL. I think Americans are not aware as to the present economic significance of the canal or its projected economic significance.

Mr. HATCH. Am I correct in my assumption that one of the reasons that the Senator feels the canal is not so significant concerns the fact that the supertankers cannot go through the canal?

Mr. GRAVEL. The statement I made earlier was that 76 percent of the tonnage of the world tanker shipping cannot use the canal today. Forty-four percent of the bulk cargo tonnage in the world today cannot use the Panama Canal. Those two are the two most significant areas of the world maritime fleet. But when we average the total maritime fleet, 57 percent of all the maritime tonnage in the world today cannot go through the Panama Canal.

Mr. HATCH. That, I assume, is because of the supertankers, the few ships in the world which cannot go through the Panama Canal. But I might add they cannot dock in most of the world's ports.

Mr. GRAVEL. I cannot hear the Senator.

Mr. HATCH. They are so large they cannot dock in most of the ports of the world is that not true?

Mr. GRAVEL. That is not so.

Mr. HATCH. Yes; it is.

Mr. GRAVEL. The vessels which carry oil from Alaska are on the order of 120,000 tons.

Mr. HATCH. But they cannot——

Mr. GRAVEL. Excuse me. They cannot go through the Panama Canal today but they can be handled on the east coast of the United States. If my colleague is trying to make the inference that the figure I am giving with respect to obsolescence of the canal is also relative to the obsolescence of the port facilities, that is not accurate. If my colleague wants to make that argument, what he ought to do is to dispatch some of his staff to research the obsolescence of the ports in relationship to the world maritime tonnage.

Mr. HATCH. Will the Senator yield again?

Mr. GRAVEL. Yes.

Mr. HATCH. We have already done our research. But what the Senator referred to is not my argument. I think the port facilities in the United States of America are fairly adequate. In fact, I believe we have great port facilities. It is my understanding that many critics raise the fact that the supertankers cannot go through the canal, and, therefore, the canal is not quite as significant as we would think. I just want to point out that the new supertankers were designed so that they could go through the canal, so that they would not have to travel the longer way. Also, the largest supertankers cannot dock in most of the ports in this world.

Mr. GRAVEL. May I ask my colleague what he calls a supertanker? Can he give the size?

Mr. HATCH. We are talking about the huge supertankers being built in Japan at this time.

Mr. GRAVEL. What is the size of the vessels that can go through the Panama Canal?

Mr. HATCH. As I understand it, 95 percent of all the world's shipping can go through the canal.

Mr. GRAVEL. That is not what I asked. I asked my colleague what is the size of a vessel that can go through the Panama Canal right now?

Mr. HATCH. The Senator has asked me a question and I would be happy to answer it. As I understand it, all of our military vessels, except for the 13 largest carriers, can go through the Panama Canal.

Mr. GRAVEL. That is not what I asked the Senator.

Mr. HATCH. I hope the Senator will wait a moment.

That is 98 percent of the military vessels.

Mr. GRAVEL. Excuse me, but I yielded the floor for a question and my colleague is engaging in a colloquy. I am happy to answer his question directly.

I am asking a specific question: How wide a vessel, what is the draft? Is it 30,000 deadweight tons that can go through the canal, 100,000 deadweight tons? That is what this is all about.

Mr. HATCH. Let me answer that. No. 1, 98 percent of all military vessels. Only 13 of the largest carriers cannot go through the canal.

No. 2, 95 percent of the world's fleet can go through the canal. No. 3—

Mr. GRAVEL. I must not remain silent when my colleague says 95 percent of the world's fleet can go through the canal. That is not accurate. Is the Senator counting vessels or tonnage?

Mr. HATCH. I am counting vessels.

Mr. GRAVEL. Is not tonnage more important than vessels? You may have 100 small vessels and one big vessel that can carry as much as 100 smaller vessels. That is a ridiculous argument.

I ask my colleague if the 95 percent is based on tonnage. What is the tonnage that can go through the canal?

Mr. HATCH. Basically, 95 percent of all the tonnage in the world could go through the canal.

Mr. GRAVEL. I cannot yield to that point. I will not accept that because it is not true. I went to great length to show the figures, to show what the facts are—they are simple—all the tonnage, not the number of vessels.

So the public can understand the Senator, he is saying that 95 percent of all the vessels in the world can go through the Panama Canal. My answer is that is, "Big deal." There can be a whole lot of midget vessels going through the canal. The question is how much tonnage can go through the canal? I will give the figure. The figure is 57 percent of the world tonnage cannot go through the canal today.

Mr. HATCH. So the Senator thinks 43 percent can go through the canal?

Mr. GRAVEL. That is right.

Mr. HATCH. That is pretty substantial.

Let me answer the question asked before. As we know, vessels transiting the Panama Canal are limited to 40 feet in depth, 950 feet in length and with a 106 foot beam. Ships larger than that cannot go through the canal. That includes 13 of our largest carriers, some of the supertankers, and some other ships that are larger.

Mr. GRAVEL. Not all the supertankers.

Mr. HATCH. I said some of the supertankers.

Mr. GRAVEL. Is an 80,000-ton tanker covered by your statement?

Mr. HATCH. No.

Mr. GRAVEL. So we have a lot of vessels that cannot go through the canal but that can dock at Hampton Roads, at New York, and New Orleans.

Mr. HATCH. I understand what the distinguished Senator is saying.

Let me ask this: Of the oil coming out of the north slope of Alaska, how much of that oil is going through the canal?

Mr. GRAVEL. Well, if we had full capacity—it would be somewhere between 400,000 and 500,000 barrels per day.

Mr. HATCH. And what percentage is it now?

Mr. GRAVEL. The Alaskan pipeline capacity is 1.2 million.

Mr. HATCH. The Senator is asking—

Mr. GRAVEL. Between 30 and 40 percent of the capacity of the Alaskan pipeline will be going through the Panama Canal.

Mr. HATCH. That is not my question. My question is, How much of the total Alaskan oil coming out of the pipeline is going through the canal as of right now?

Mr. GRAVEL. I would say of the capacity of the line—

Mr. HATCH. Not the capacity. Does the Senator mean present capacity?

Mr. GRAVEL. Thirty or forty percent, thereabouts.

Mr. HATCH. That is present capacity?

Mr. GRAVEL. No, no.

Mr. HATCH. I was asking about present capacity. How much of the present capacity goes through the Panama Canal?

Mr. GRAVEL. I do not have that figure. I would say somewhere around 100,000 or less.

Mr. HATCH. Is it virtually 100 percent of the oil that comes to the east coast from Alaska?

Mr. GRAVEL. Oh, no.

Mr. HATCH. It is not?

Mr. GRAVEL. Did the Senator say 100 percent?

Mr. HATCH. Yes.

Mr. GRAVEL. Preposterous.

The only oil going through the Panama Canal from Alaska right now is that oil that is declared surplus to the west coast. That surplus will not be great until the full capacity of the line comes in.

Right now, it is—I might enlighten my colleagues:

What it does is come down from Valdez Harbor into Balboa Bay in tankers of about 100,000 to 120,000 deadweight tons. It is transferred into the very, very large supertankers, on the order of about 250,000 deadweight tons. Then vessels of 65,000 deadweight tons or less come in, take the oil out of the tanker, then truck on through the canal and on up to the ports of the gulf coast in the United States and some minor ones on the east coast.

Mr. HATCH. I think the Senator is correct. I apologize for not phrasing my question correctly.

That question is this: Other than that oil that stays on the west coast of the United States—remember, I am talking about the oil that goes to the gulf coast and the east coast of the United States.

Mr. GRAVEL. I am sorry, I did not hear the question.

Mr. HATCH. The oil that comes from Alaska and goes to the gulf coast refineries and east coast refineries, where most of the refineries of the United States are, how much of that oil goes through the canal, from Alaska?

Mr. GRAVEL. Right now?

Mr. HATCH. Right now.

Mr. GRAVEL. I would think less than 100,000 barrels a day.

Mr. HATCH. That oil that does not go to oil refineries on the west coast or is not used otherwise on the west coast.

Mr. GRAVEL. Very little, until—you see, there is no surplus on the west coast. There are refineries on the west coast that can handle the oil. What we are talking about essentially is the oil that Sohio has. That is the reason they have an application to move it from Long Beach, to move it to Texas by pipeline. For the time being, that is why we are going to have to move it through the canal in this very inefficient process.

Mr. HATCH. I understand. So the oil that does come through, that is not utilized on the west coast, because of the limited delivery of oil right now through the Alyeska pipeline—the oil that does come to the east coast goes through the canal. That is all I am asking, if that is true.

All the oil from Alaska which is refined on the gulf coast and on the east coast of the United States, where the principal refineries in this country are, comes through the Panama Canal at the present time.

Mr. GRAVEL. If there is any oil going through, it goes through the Panama Canal. I would be happy to make that stipulation. I just do not understand how the Senator is coming at it from that direction, because there is no oil that I know of that is coming out of California or the west coast of the United States and purposely going through the Panama Canal to get to the gulf coast and the east coast. That just is not happening, not projected to happen. What we have is oil that will come down from Alaska that will be surplus to the refinery capacity of the west coast and, therefore, will have to go through the Panama Canal or go around Cape Horn.

Mr. HATCH. That is what I am talking about.

Mr. GRAVEL. I would have been happy to state that if he had asked it straightaway.

Mr. HATCH. That oil is going to increase to the total capacity of the Alyeska pipeline of about 1.2 million barrels a day.

Mr. GRAVEL. The oil that will then go through the Panama Canal would probably be somewhere between 400,000 and 500,000 barrels a day when we get the capacity of the pipeline up to 1,200,000.

Mr. HATCH. That would be the 30 to 40 percent the Senator talked about earlier?

Mr. GRAVEL. Yes, of the present capacity.

Mr. HATCH. I think the disagreement we have had on the floor is because of the way I asked my questions and the way the Senator interpreted them. Let me ask the question in a different way.

If the Panama Canal is shut down, for whatever reason, assuming the pipeline is at full capacity, how could that affect Alaska and the Gulf Coast and east coast refineries, which will be depend-

ent on Alaskan oil to help reduce some of the energy prices we have in this country?

Mr. GRAVEL. I do not think I understood the question.

Is the point the Senator is trying to make that the canal is important to the transshipment—

Mr. HATCH. I think even the distinguished Senator from Alaska would admit that it is extremely important, even though it does not take care of all the world's tonnage, even though it takes care, in the opinion of the Senator from Alaska, of only 40 or 45 percent of the world's tonnage, or at least can. My question is: What economic effect will there be to Alaska if the pipeline reaches its limit or capacity of 1 million 2 barrels a day? Will not the cost of oil coming through the canal increase under these treaties because of the higher tolls? Will not the cost to consumers in America go up accordingly? And if the canal is shut down, will not we have even more of an energy crunch and difficulty than we have today in America?

Mr. GRAVEL. Not at all.

Mr. HATCH. I would be most interested in hearing the explanation of that.

Mr. GRAVEL. Let me give the figures.

First of all, if Sohio can get the permit to move oil through Long Beach, from Long Beach Harbor, they have to build a short pipe up to the Redlands in California. Then they go from the Redlands into Midland, Tex. There are two gas lines already in place that are underutilized. Therefore, the Sohio Co. purchased from El Paso, the gas line company, these lines. If they get approval to move the oil, the oil will move from Valdez to Midland, Tex., into a system that can get into Chicago and the entire United States. It will cost \$2.06 per barrel to do that.

Mr. HATCH. What if we are unable to do that because of the Environmental Protection Agency and all the other difficulties, the overregulation of Government and all these problems that exist with regard to anything having to do with oil, energy, transportation, and other facilities? As the Senator knows, the pipeline in Alaska was held up for years, to the cost of billions of dollars, by environmental and other problems.

Mr. GRAVEL. If we are unintelligent and unable, as a nation, to make intelligent decisions, I would hope we would not blame it on the Panamanians or the Panama Canal. If we are dumb, I hope we will be able to stand up to a mirror and say, "We are dumb."

Mr. HATCH. We should do that every day.

Mr. GRAVEL. Let me give the Senator the figures to show how ignorant we can be.

I just showed where we have two pipelines in existence that are underutilized. There is a company prepared to utilize them. They have spent a lot of money on the engineering.

Mr. HATCH. They do not own them?

Mr. GRAVEL. It will cost \$2.06 a barrel to go through that to Houston. If it goes through the Panama Canal, it costs \$2.46. We are now paying \$2.46 a barrel—more than it would cost us if we went ahead and built the pipeline.

The Senator is saying that this canal is real important to us, because if we lose it, we will not be able to move the oil. We have

the facility. The problem is we are not doing it, and shame on us, because we are not smart enough to move it the cheapest way possible.

If you want to take the next step, even more efficient than that, we do not have to look at the canal. We could export our oil to Japan and swap with them, because it is cheaper, time and distance-wise, to move that oil to Japan. You take the savings involved, and tell the Japanese, "We will split even-stein with you. We will take 50 cents"—it is about \$1 saving—"You keep 50 cents," and we will decrease the cost of oil coming into Houston or New York by 50 cents a barrel by the amount we swap.

There are a lot of intelligent things that we could do that are not immediately germane to this argument.

What was the point my colleague wanted to make?

Mr. HATCH. I have to admit that the Senator has given us some very interesting alternatives, none of which is presently in fruition, none of which is presently even possible. The pipeline is run by a private company. Sohio does not have the access to them, if we are to accept his particular assertions. He is assuming that the pipeline people would not charge one extra penny to bring oil in if they were to have a virtual monopoly if the Panama Canal is shut down.

Mr. GRAVEL. Maybe my colleague is not aware of the fact that we control the rates of return of pipelines. They have to file their tariffs. In fact, we have litigation right now in Alaska as to what that tariff is. The companies think it ought to be one thing, the Federal Government and the States think it ought to be another.

The inference that the Senator is trying to give to the American public listening to him is that the pipelines can hold people up without the Government doing anything. We have a ton of law that deals with that subject. My colleague is a little bit on weak ice.

Mr. HATCH. I would have to say that my colleague is a little bit on weak ice, because in order to put his scheme together, he would have to override private interests, which our country has not done thus far. He would also have to interfere with the orderly transmission of natural gas. He is assuming all of this can be done in an orderly, efficient manner, when we have seen, year after year, the Alaska pipeline held up by the Federal Government, even when we need it because we are 50 percent dependent on foreign oil, gas, and supplies. So that is how much force that has in this regard.

Mr. GRAVEL. I thank my colleague for that compliment.

Mr. HATCH. I think the Senator's suggestion is excellent.

Mr. GRAVEL. Construction of the Alaska pipeline is the only thing that has been done, appreciably, to solve the energy crisis in this country.

I thank my colleague for bringing that event to the attention of the public.

Mr. HATCH. I am glad to be able to do so.

I thank the people of Alaska for the efforts they put forth trying to alleviate our country's energy crisis.

Mr. GRAVEL. I think we ought to thank the Lord, because the Lord put our oil there. We are very blessed and proud of it, but I

do not think we claim any intellectual prowess over the fact that we stand on top of oil.

Mr. HATCH. I guess the Senator does not know the same Alaskans I know, then.

Mr. GRAVEL. Most Alaskans I know are intellectual, intelligent, bright, strong, courageous, forthright people.

Mr. HATCH. Well, they must all be like the people out there in Utah.

As a matter of fact, the ones I know, with very few exceptions, I would have to agree with the Senator on those comments.

Mr. GRAVEL. But I do not know of any Alaskan that claims we are responsible for the oil. I think we accept it as blessing. We are very happy with the blessing because we are a high-cost area and have suffered great poverties in the past. This affords us an opportunity to get up to the table. We do not have to pick up crumbs any more. We are not any better off than anybody else.

Mr. HATCH. I commend the Senator and I agree with him on that. I am proud of the Alaskans and we will fight alongside Senator Stevens to try to protect Alaska from the ravages of the Federal Government, which we do very little of here in the Senate.

I would like to say this. I think the Senator brought some interesting things to light today. He testified before our committee and I was interested in his comments then. The only problem is he has made some very big assumptions which, personally, I wish could come to fruition because it would be beneficial to America if they could, but I do not believe they will.

My assumption is that if we lose the Panama Canal, we are going to have an energy crunch and an energy crisis in this country that is even compounding that which we have right now.

Mr. GRAVEL. How are we going to lose the Panama Canal? What this whole exercise is about, the reason why four Presidents, why we have been negotiating for 13 years and come forward with this treaty is so we can guarantee access, to ourselves and to other maritime countries, to the Panama Canal.

Why does the Senator stand there and say that we are going to lose the Panama Canal? Nobody is going to lose the Panama Canal, even in the year 2000, unless it is obsolete.

Now, if there are no vessels going through the Panama Canal, I think the best thing to do is close it, put a plaque on the front of the Miraflores Lock and sell tourist tickets. That is probably the only money they will make off it.

But we are assuming that if it has economic viability, that viability is more important to the people of Panama than any other group of people in the world.

So why stand there and tell us we are losing the canal, because if that viability is real, we will be able to use it. If we do not use it, they do not make any money.

What is the inference here that we stand up and say the Panamanian people are so dumb, we will give them an asset and they will promptly destroy it. Why say that?

Mr. HATCH. Would the Senator yield for an answer to that?

Mr. GRAVEL. Why did the Senator insist on reference to these Panamanian people as inferior when——

Mr. HATCH. I did nothing——

Mr. GRAVEL. They are——

Mr. HATCH. I respect my colleague from Alaska, but I resent his inference from what I have said because I never called the Panamanian people inferior. In fact, I said that I loved them.

Mr. GRAVEL. My colleague said the canal would be closed.

Mr. HATCH. That is not the point. It had nothing to do with the Senator's inference that the Panamanian people may be inferior.

What I was saying was this: The very same people who argued that Cuba could never do without American commerce and the American industry, and the purchase of sugar or cigars, made the same arguments then that Cuba was so dependent economically upon the United States and upon what we did for them that it was very unlikely that Cuba would ever drop relationships with the United States.

But they did, and why? Because Russia poured billions of dollars down that sewer every year, and why would it not be equally as wise for Russia——

Mr. GRAVEL. Does my colleague think the whole Russian fleet will circle South America, going through the Panama Canal, to raise revenues for the Panamanian people?

Mr. HATCH. I yielded to the Senator to answer, if he will extend me the same courtesy.

Mr. GRAVEL. I apologize.

Mr. HATCH. No need to. We are friends, I have great respect for the Senator.

The fact of the matter is that I think it would be a pretty smart thing for the Russians if they want a crunch on our supplies, our military security and transferability of agricultural supplies and commodities, and put hundreds of billions of dollars of extra cost on Americans, for them to give the Panamanians \$1.5 billion, which is a lot more than the \$250 million they may be able to get out of the canal, or, as a matter of fact, as \$70 million a year. And if they did shut it down, I am suggesting Alaska will suffer, this country will suffer. And if they do not shut it down, it is going to cost us more for Alaskan oil as a result of higher tolls, because your scheme cannot be put into effect immediately. I wish it could—especially in the expeditious, indiscriminate, and inexpensive manner in which the United States has always operated the canal.

Mr. GRAVEL. Well, if I could respond to the question of my colleague from Utah and the analogy he makes with Cuba, I think they are very faulty.

First, I do not recall anybody standing around on the Senate floor yelling about this situation, that situation, before Cuba parted ways with us economically.

We had a trade relationship with Cuba, from some point of view; when they ruptured that relationship they had to find other people to trade with.

That is not the way with Panama.

It is a physical asset there. The bridge. The pass between the seas is there. You cannot pick that up and sell it in another part of the world. We use one-third of the canal because we have a lot of traffic from the east coast of the United States to the west coast of the United States.

I cannot conceive that the Panamanian leadership would say, "Boy, we are in a brouhaha with the United States, we will get mad and not let the United States go through the canal. We will let everybody else, but we will cut out one-third of the revenue capriciously because we are mad at the United States."

Can you see the scenario?

Now, we have the specter of somebody else coming in like the Russians did in buying Cuban sugar. We are going to see the Russians come in and help the Panamanians. So what we will see is a decision made in the politburo of the Soviet Union to tell the people on the east coast, in the Baltic Sea, and all of the eastern part of the Soviet Union, that they will load up all the Russian commercial vessels and send them through the Panama Canal to get to Vladivostok just so the Soviet Union can cause some earnings to take place for the benefit of Panama. I cannot think of a more ridiculous comparison.

Mr. HATCH. Mr. President, will the Senator yield?

Mr. GRAVEL. Let me finish. I tried to be patient as I could with my colleague when he was posing the question and making the analogy.

I think we can appreciate our mutual zeal. I want to make this point, and it is important.

People say this is like Cuba and the Communists and all that. That is a lot of rot. The comparison the Senator from Utah just made is invalid. He is talking about sugar and I am talking about a physical piece of real estate, and the reason that real estate is successful is that we use it to the tune of a third of the entire operation.

That is where the inference was made that seemed to me an insult to the Panamanian people. The Panamanian people are just as smart as we are. They want to make some money and have some revenue. Why would they not keep the canal open? Why would they intentionally tell their largest customer, their largest source of revenue, "You can't use the canal?"

Forget the Alaskan oil, forget the wheat, forget the coal. A person would have to be really dumb, and that is what we are really saying: "You people are not very smart, because the first thing you are going to do when we give you the canal is tell us we cannot use it and cut off your revenue."

I assume that if somebody is going to have a capital resource which would make him money, that person would want to make some money. I cannot conceive that somebody would want to throw money away. It happens. I have seen it happen in this country, and it may well happen in Panama someday, because they are just like us. They are capable of making mistakes.

But it strikes me as odd, the scenario that my colleague is building up and that the radical conservatives in this country are building up, that these Panamanian people are so inferior that they will not be intelligent enough to make a buck.

Mr. HATCH. I think I made it clear before that I have never said the Panamanian people were inferior, and the inference is not well founded.

Mr. GRAVEL. If I can clarify that, because I do not want to attribute anything to my colleague that is not accurate——

Mr. HATCH. I would not think so.

Mr. GRAVEL. I have come to the conclusion that you are insulting the people of Panama when you are telling them they are not intelligent enough to make money like we are.

Mr. HATCH. Let me answer that.

I understand, also, that a part of the argument of the Senator from Alaska has been that the Panamanian people, irrespective of how equal they are to any other nation in the world in intelligence, and so forth, and I suggest that they are——

Mr. GRAVEL. That they are?

Mr. HATCH. That they are just as capable as anybody else.

Mr. GRAVEL. I appreciate that, for the record, and I will rest upon that.

Mr. HATCH. I think it is important to dispel another problem that the Senator from Alaska brought up.

However, before I get to that, the Senator acts like there is no Russian interest in Panama at all. The Senator is aware that the Russians were there right before these treaties were written?

Mr. GRAVEL. Were what?

Mr. HATCH. They were in Panama.

Mr. GRAVEL. Doing what?

Mr. HATCH. From July 11 through July 30.

Mr. GRAVEL. Oh, the Russians.

Mr. HATCH. The "trade delegation."

Mr. GRAVEL. I did not realize that. Was that the same delegation that was in the Senate here, in room 208, where we had meetings with them for 2 days? Was that the same Russian delegation negotiating with you and me?

Mr. HATCH. No.

Mr. GRAVEL. Oh, it is a different Russian delegation.

Mr. HATCH. You do not know that the Russians were there? Everybody else does. I wonder why you do not.

Mr. GRAVEL. I do not follow everybody's itinerary.

Mr. HATCH. Do you understand why they were there?

Mr. GRAVEL. I was a little confused that it might be the same delegation that was negotiating with us.

Mr. HATCH. Not at all. But do you know why they were there?

Mr. GRAVEL. No. Why were they there?

Mr. HATCH. You do not know?

Mr. GRAVEL. No.

Mr. HATCH. And you are arguing that there is no Russian interest in Panama?

Mr. GRAVEL. I did not say that.

Mr. HATCH. I hope you did not say that.

Mr. GRAVEL. And I would hope the Russians would be smart enough to want to continue using the canal.

Mr. HATCH. They were there for six basic reasons.

Mr. GRAVEL. What were they?

Mr. HATCH. No. 1, to negotiate to build a heavy-duty equipment plant.

Mr. GRAVEL. Would that not be a good thing for Panama?

Mr. HATCH. It may or may not be. No. 2——

Mr. GRAVEL. You say, "may or may not be?"

Mr. HATCH. Has it been a good thing for them to do that in Europe?

Mr. GRAVEL. If it is economically advantageous to the Panamanians, would you have any objection to the Russians doing that?

Mr. HATCH. Yes.

Mr. GRAVEL. Why?

Mr. HATCH. Because of the Monroe Doctrine.

Mr. GRAVEL. They build Caterpillar trucks.

Mr. HATCH. Just like the Comar River plant, where they built the mobile missile which was financed by American dollars, under the guise that they were going to build Caterpillar tractors and trucks.

Mr. GRAVEL. You say the Russian trade mission was there talking about tractors but it is really missiles they were negotiating?

Mr. HATCH. There may be some truth to that.

No. 2, they were there to build a hydroelectric powerplant.

Mr. GRAVEL. Would there be something wrong about the Russian financing a hydroelectric powerplant in Panama?

Mr. HATCH. There could be.

Mr. GRAVEL. What?

Mr. HATCH. There could be.

Mr. GRAVEL. I would like to know what it could be.

Mr. HATCH. Because I do not want a Russian presence established in the center of our intelligence-gathering activities in this hemisphere, as you know and everybody else knows.

Mr. GRAVEL. You are telling me that if the Soviets want to help the Panamanians build a hydroelectric dam to make some electricity, and they are prepared to give them more favorable economic benefits than the United States is prepared to, you object to their taking economic advantage in principle?

Mr. HATCH. That is right.

No. 3—

Mr. GRAVEL. How would you feel—

Mr. HATCH. Do you not object to the Russians being there and establishing a presence?

Mr. GRAVEL. I do not object to the Russians being there, any more than when they were in the U.S. Senate.

Mr. HATCH. But establishing a presence there.

Mr. GRAVEL. Wait a minute. What are you trying to do, pin me as a Communist or something?

Mr. HATCH. No.

Mr. GRAVEL. The Russians were here. I met with them in meetings, and so did the leadership of the Senate, and you are saying there is something wrong with talking to the Russians. The only way we are going to get world peace is talking to them.

Why would you be against a Panamanian citizen being able to buy electricity cheaper because it is from a Russian-made generator rather than if it were an American-made generator?

Mr. HATCH. I would not have any objection to that.

Mr. GRAVEL. How would you feel if another country said that you cannot trade in principal with another country because of their ideology and you cannot take economic advantage? How do you stand here and talk about the fact that we get chrome from

the Soviet Union that goes on the bumpers of your car, and it does not bother you at all?

Mr. HATCH. And they get what from us.

Mr. GRAVEL. And you will not let the Panamanian citizens buy cheap electricity from a Russian generator. Shame all over you. Now you see why we get a reputation of Yankee imperialists. We cannot even let these poor people buy economic goods wherever they want to.

Mr. HATCH. Will you let me give you the six reasons? Then we can argue them.

Mr. GRAVEL. You only got to two reasons.

Mr. HATCH. Let me go through the reasons, and then we will debate them. I think that, as a composite, they have a lot to do with what is going on in Panama today.

I might mention that everybody knows that détente means we give the Russians wheat and they give us the Russian flu. That is about the way things work.

Let me go through all six reasons.

Mr. GRAVEL. But, besides, there is one thing that my colleague has molded into his reasoning which I think has to be cleared up before he finishes his six reasons.

Would you think the Panamanians would be entitled to the same rights and relationships that we Americans have with the Soviet Union?

Mr. HATCH. We can assume so.

Mr. GRAVEL. Then having a mission go there like a mission coming to the United States is about the same thing.

Mr. HATCH. Is it?

Mr. GRAVEL. Well, my colleague also——

Mr. HATCH. How can the Senator argue that?

Mr. GRAVEL. I wonder if the American people know that there is not even a diplomatic relationship between those two countries, between Panama and the Soviet Union. They do not exchange embassies, I mean they are not even at the level we are of contact with the Communists.

Mr. HATCH. Let me get it straight.

Mr. GRAVEL. So when the Senator said a minute ago that he thinks it is OK for the Panamanians to have the same level of contact that we have, they do not have the same level, and so I do not know the point the Senator is making with his six points over this trade delegation, which is clearly a trade delegation.

Mr. HATCH. Let me make the six points.

Mr. GRAVEL. I would like to hear the rest of the points the Senator wants to make.

Mr. HATCH. I thank the Senator. Let me make the six points and then we will be glad to debate them. Let me start from the beginning again and make all of the points without interruption, if we can, and then I shall be happy to discuss them.

No. 1 was to establish a heavy duty equipment plant; No. 2 was to establish a hydroelectric plant; No. 3 was to establish a Russian bank; No. 4——

Mr. GRAVEL. What was No. 3?

Mr. HATCH. To establish a Russian bank.

No. 4 was to acquire the right——

[Mr. Hodges assumed the chair.]

Mr. DECONCINI. Mr. President, will the Senator yield?

Mr. HATCH. I yield.

Mr. DECONCINI. Mr. President, I ask unanimous consent that Romano Romani and Larry Ritt, of my staff, be permitted the privileges of the floor during debate and votes on this matter.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DECONCINI. I thank the Senator from Utah for yielding.

Mr. HATCH. The Senator is welcome.

No. 4 was to acquire the rights to the old France World War I Air Force base right outside of the city of Colon. No. 5 was to establish a——

Mr. GRAVEL. Wait a second. France had a——

Mr. HATCH. No.

Mr. GRAVEL. First World War air base?

Mr. HATCH. The Senator is not aware of the old France World War I Air Force base we established there?

Mr. GRAVEL. No.

Mr. HATCH. I am surprised. Might I add I am not surprised. No. 5.

Mr. GRAVEL. Wait a second, please. I am not aware that France had an air field.

Mr. HATCH. They did not.

Mr. GRAVEL. What is the Senator saying?

Mr. HATCH. It was called the old France World War I Air Force base.

Mr. GRAVEL. And the Russians want it?

Mr. HATCH. They want to acquire that.

No. 5, they want to establish a propaganda network.

Mr. GRAVEL. What?

Mr. HATCH. Establish a propaganda network, with their top propagandists.

Mr. GRAVEL. Does the Senator have the biography so that he knows he is the top one?

Mr. HATCH. Wait until I finish and then make the debate. I wish to make these points and the Senator can then ask questions.

Mr. GRAVEL. I am having great difficulty controlling my zeal, and I think my colleague shares the same zeal I do.

Mr. HATCH. I understand.

Let me just say this. We are both on opposite sides of this thing, but off the floor we are good friends and we are both very zealous for our respective causes.

No. 6, they want to purchase 50,000 metric tons of raw sugar at double the world price, at two times the world price. I have to ask why are they doing these things? Why would they want to pay double the world price during a sugar glut for Panamanian sugar?

Mr. GRAVEL. Look.

Mr. HATCH. Let me finish.

What I would like to say is this: Anybody who believes that the Russians do not want to establish a presence down there, do not want to interfere with our use of the Panama Canal, and have not backed up the Cubans in building the biggest embassy down there, has not been studying this particular problem. Anybody who says

that the Russians should have all the rights in the world to do what I have suggested I think is wrong.

I must leave the floor, but let me just say this in conclusion.

Mr. GRAVEL. Do not leave until I have a chance to respond.

Mr. HATCH. I will be happy to have the Senator respond, and I said this earlier in the debate. Frankly, since the distinguished Senator from Alaska has not heard about the Russian delegation in Panama, I wonder how widely disseminated these facts really are. But those of use who studied it know this is what is happening. The State Department knows this. They have admitted it to me. The ambassadors have admitted it. Even the President has admitted it except in public. I cannot understand why these things are not brought up publicly. I cannot understand why the distinguished Senator from Alaska, who made such a thorough study of this has not heard of these things.

Mr. GRAVEL. If I could just respond, first off, I do not monitor the trips of foreign delegations all over the world, much less Panama.

We had a delegation of the leadership of the Soviet Union come to the Senate of the United States, and less than 100 feet from this spot in that other room there we sat and negotiated with these people about human rights, about economic matters, and about defense matters. Does this mean we are un-American? Does that mean we are not to be trusted? But, of course, if a Panamanian talks to a Communist, it is going to close the canal. I mean, what kind of convoluted logic brings the Senator to that kind of conclusion? I would even go so far as to say this—

Mr. HATCH. Study of world affairs.

Mr. GRAVEL. If the Soviet Union sent a delegation to Panama to buy sugar at two times the world price, I will pay the psychiatric bill of the idiot who will not sell it to him.

Mr. HATCH. Who are the idiots who are allowing it to be done?

Mr. GRAVEL. I do not know where the Senator got the figure that the Soviets are prepared to pay the Panamanians twice the world price.

Mr. HATCH. Right out of the Panamanian Embassy.

Mr. GRAVEL. I do not want to insult some of my Russian acquaintances by dignifying it too much. But if the Senator is right—and I do not know where he got his information—I hope he will bring it forth and put it in the Record, and I hope if there was an agreement made down there he will bring that forward and put it in the Record so that we can see what the price of sugar is for people who are dumb enough to pay.

There is a world price of sugar, and I do not think the Soviet Union went to Panama and offered twice the world price, particularly when Panama has an overproduction and there is an overproduction of sugar in the world today. In fact, the market is extremely depressed.

Maybe my colleague from Hawaii, who has just come on the floor, might tell us a little bit about the market situation of sugar. I do not know. I am not very knowledgeable. We do not grow much sugar in Alaska. But I do know that there is an overabundance of it. And my colleague links the possible closure of the Panama Canal with the fact that the Soviet Union is prepared, or at least he says is prepared, to pay twice the world price of sugar. That is

the way he presents it here, the way it is presented to us and to the American public over these airways. It is suggested that because the Panamanians entertained a trade delegation from the Soviet Union that this makes them suspect, that we cannot trust them, there is something wrong with these people, and obviously these people cannot be trusted to give them back their proper due operation of the Panama Canal.

That is a very, very convoluted reasoning because we deal with the Soviet Union all the time. We deal a lot more with the Soviet Union than do ever the Panamanians and will ever the Panamanians deal with the Soviet Union.

So does that mean that our Government, the President of the United States, the Senate of the United States, the Members of the House of Representatives, who have traveled to the Soviet Union, cannot be trusted? Can one imagine what the Senator from Utah would be saying here on the floor of the U.S. Senate had Gen. Omar Torrijos had the temerity to go to Moscow? The general traveled around Europe. He went to visit the Arab world. He went to visit Israel. Just imagine had General Torrijos been to Moscow. We would be hearing on the floor of the U.S. Senate right now that obviously he has concluded some secret deal with the Communists that are going to bring him in.

This is preposterous, absolutely preposterous, and when the American people can perceptively wade through a lot of the garbage that is put out, they will be able to realize that, so what? So there has been a trade negotiation between the Government of Panama, a sovereign nation, and the Government of the Soviet Union, a sovereign people. There is nothing wrong with that.

I hope they have a lot of trade delegations go down there. I hope they have a lot of these trade delegations from the Soviet Union come to the United States.

There is only one way we are going to have world peace. It is by living together and working together, and there is only one way we are going to live together and work together and that is by talking to each other, start trading with each other. If the Soviet Union can go to Panama and built a heavy equipment repair facility cheaper than we Americans can do it then, boy, let them go do it, and maybe next time our private area will shape up.

But I do not think that is the case. I do not think that the Soviet Union can beat us economically in any one place in the world. Our free enterprise system is the most successful system in the world, and we can overpower anybody at will with our economic might. All we have to do is focus on the problem and so if we have a problem in Panama I submit it is not because a trade delegation from the Soviet Union went there. It is a problem of our own making and that problem perpetuates itself in the kind of debate we have here.

That problem perpetuates itself in the kind of debate, we have here, because it is implied that there is something wrong with a Panamanian talking to some foreign nation.

We can talk to anybody in the world; why cannot they? Who do we think we are? Who do we think we are, that we can say that because Mr. Torrijos, the head of the government, talks to a Com-

munist talks to a Russian, that that is something wrong with him. We do it all the time.

When people make that kind of argument, I think they do us a disservice, a great disservice, and the inference, of course, is that these people of Panama cannot act like normal citizens, like anyone else.

That is what is so characteristic of the problem as we perceive the Panama Canal situation, that we have some unique situation there where these people in Panama are not entitled to realize their normal human aspirations, that they should not be able to enjoy their sovereignty like anyone else; that because we are in bed with them, there is something wrong in that.

Mr. MATSUNAGA. Mr. President, will the Senator yield?

Mr. GRAVEL. Yes, I am happy to yield.

Mr. MATSUNAGA. I wish to commend the Senator from Alaska for the keen observation he has made relative to human relations, which form the basis of international relations.

Inasmuch as the Senator mentioned Hawaii and sugar, I would like to state that if the Soviet Union is willing to pay double the market price for sugar, Hawaii will be more than willing to sell that sugar to the Soviet Union.

When I was in Panama with the distinguished majority leader (Mr. Robert C. Byrd) and five other Senators, I had occasion to discuss the matter of sugar with General Torrijos, and he was very much concerned about the surplus of sugar he had in his country. I think, if I recall the figure correctly, he said that he was running to as much as 200,000 tons of expected surplus by the end of this year, if the price of sugar did not go up and if the surplus did not go down.

Heavens, we are trying to help Panama now to be able to stand up economically on its own feet. If the Soviet Union is willing to pay double the market price to Panama for that surplus sugar, let the Soviet Union do it.

Mr. GRAVEL. But—

Mr. MATSUNAGA. It would not only help Panama, it would help us to get rid of some of that surplus sugar from the world market, and it would definitely help Hawaii.

Mr. GRAVEL. But the inference here of our colleague from Utah (Mr. Hatch) was that if the Panamanian people dare sell sugar to the Soviet Union for twice the world market price, that could cause them to not be qualified to handle the Panama Canal, because obviously that would make them fellow Communists, and therefore we should oppose the Panama Canal treaties and ruin their communism.

Mr. MATSUNAGA. Will the Senator yield further?

Mr. GRAVEL. I am happy to.

Mr. MATSUNAGA. I was very much concerned about the allegation that General Torrijos, the recognized leader of Panama, was a Communist. Well, last November, the seven of us, Members of the Senate who were there, made this a major inquiry on our part. When we put the question directly to General Torrijos whether he was a Communist or not, he was very much disturbed, in fact insulted, to the point where he said he felt as though we had asked

him the question whether he was a fairy, realizing how much he and his people think of manhood there.

Then I myself put the question to him, "It is said by the opponents," I said to him, "that if the U.S. Senate should ratify the treaties, you will then turn over control of the canal, after you get control of it, to the Cubans or the Russians or some other Communist nation."

His response was, "I don't want Panamanian waters infested by Communist sharks."

We went further, and pointedly made an issue of this question of whether he was a Communist or not, and he said, "If I tried to lead my people to communism, they would oust me from office," or words to that effect. "And if, despite my leadership," he said, "my people would take up communism, I would then leave this country."

That is how strongly he feels. I am convinced that if anything, he is pro-American. He is American-educated, as the Senator from Alaska well knows.

When we talked to Americans living both in the zone and outside of the zone in Panama proper, and when we questioned them about what they thought about Torrijos' political leanings, and we talked to Panamanians as well, those who voted for the treaty and those who voted against the treaty, to college students and to Panamanian leaders in business and in government, not a single one—I repeat, not a single one of them—thought that Torrijos was a Communist.

Now, how can we insist on this floor, after all that testimony—President Demetrio Lakas of Panama went so far as to say that he would stake his life on it that Torrijos was not a Communist—now, how can the opponents keep insinuating on this floor that we cannot deal with Panama because its leader now is a Communist or has Communist leanings, or he may well turn to the Soviet Union or Cuba for leadership upon the United States Senate ratifying the treaties now pending in this body?

That, to me, is beyond comprehension, unless, of course, they are just trying to convince themselves that they ought to stand pat against the ratification of the treaties.

I thank the Senator from Alaska (Mr. Gravel) for yielding. I have been listening to the radio also, and I must commend him for the tremendous job that he did this morning and is now continuing to do to rebut the statements being made by the opposition.

Mr. GRAVEL. I thank my good friend from Hawaii (Mr. Matsunaga). We share a lot of unique problems, since both our States are noncontiguous.

Mr. HELMS. Mr. President, will the Senator yield?

Mr. GRAVEL. I will be happy to yield in one moment.

Mr. HELMS. I wanted to ask the Senator from Hawaii one question.

Mr. GRAVEL. Fine, but I just want to place something in the Record. It is a statement by Ambassador Jorden on the Panama Canal treaties before the Foreign Relations Committee. It is on page 286. I quote Ambassador Jorden.

In the first place, I have come to know General Torrijos very well—

This is on the subject of Torrijos and the Communists, and I am quoting Ambassador Jorden:

In the first place, I have come to know General Torrijos very well over the last 3½ years. I have spent a lot of time with him traveling around the country and in the capital.

I guess at this point I know him about as well as any American. I can assure you that he is not a Communist. He is a man deeply dedicated to his country and to the improvement of his people's conditions. He has insisted on great improvements in education, health care, and particularly for those people in the countryside who in the past have never had much opportunity for an education or for much health."

To continue, this is the American Ambassador.

Just as a footnote, let me point out that as captain in the national guard he was rounding up a group of left-wing guerrillas and was shot by the Communists. It is very hard for me to believe that a man who has been shot by the Communists can become a convinced member of the organization. In any case, all one needs to do is to talk to the man at great length, see what he has done, see what the impulse is in his government to quickly recognize that he is not a Communist and does not approve of the Communist system.

I would only add to that, in our great American tradition, and in normal human experience, we judge people by their friends. We may not know a guy. We may say, "Well, I do not know him very well. I only met him once or twice, but who are his friends? Who does he associate with?"

That is a key thing with Torrijos. Who are his friends? That is the question.

At the crucial moment of negotiating the treaties with the United States, just a week before the treaties were really completed in negotiations, what did he do? He asked for a meeting in Bogota—this was in July—he asked for a meeting of his friends, the people from whom he takes counsel. He asked to sit down with them and show them what was going on in negotiations so he could get their views.

Who were his friends? Who showed up at the meeting in Bogota? The President of Jamaica, an official elected by the people. Mr. Carlos Andres Perez, the President of Venezuela. Then we have Mr. Lopez Michelsen, duly elected by the people of Columbia, and we have Mr. Daniel Oduber, duly elected by the people of Costa Rica, a great little democracy.

These are the people he sat down with at a table and said, "Friends, let us talk about this treaty I am negotiating with the United States. Give me your advice so I can decide if this is the right thing I am doing." Those were his friends.

After that meeting is when the treaty was concluded.

I think Americans can understand that. If there is someone you do not know very well, you can ask simply, "Who are his friends in a crunch? Who does he rely upon?"

In the case of Omar Torrijos, the person who has been vilified extensively on this floor, unfortunately, his friends are all the leaders of the great democracies of Central and South America.

That is how you judge the man.

I am happy to yield to my colleagues from North Carolina.

Mr. HELMS. I do not want to go into solitudes for Torrijos. I will leave that to others.

Mr. GRAVEL. I was only giving facts.

Mr. HELMS. Well, maybe the Senator was.

I was intrigued by the statement of the Senator from Hawaii, who said something to the effect that, as the distinguished Senator from Alaska well knows, Torrijos was educated in the United States. Will the Senator tell me where he was educated in the United States?

Mr. MATSUNAGA. I will be happy to, if the Senator will yield.

Mr. GRAVEL. I would be happy to yield.

Mr. MATSUNAGA. In December 1959, General Torrijos attended the Junior War College, Fort Sherman, Canal Zone. In June of 1962 he attended the Counter-Insurgency Orientation Course at the U.S. Army Caribbean School, Fort Gulick, Canal Zone. In July 1964 he was a student, Senior Officer Preventative Maintenance Course at the U.S. Army School of the Americas, Fort Gulick, Canal Zone. From March to December of 1966 he was again a student of the Army Command and General Staff Course, School of the Americas, Fort Gulick, Canal Zone, which, as the Senator from South Carolina said, claims to be American territory.

Mr. HELMS. General Torrijos will be dismayed to hear the Senator from Hawaii describing that as U.S. territory. I thank the Senator.

Mr. GRAVEL. I again want to point out to my distinguished colleague from Hawaii (Mr. Matsunaga), I would be very distressed as a taxpayer that we would spend all of this money educating a person who was a Communist. It would bother me no end. I am glad he has great proximity to the views of the American military.

Obviously, friends in life are made in military institutions. I would hope that the benefit would be that General Torrijos would be affected that way. The military people I have talked with in the Panama Canal Zone, General McAuliffe and others, feel he is very close. General Brown considers him a friend. Imagine that. The chairman of the Joint Chiefs of Staff has a personal and high regard for General Torrijos. That is not the Soviet Union chief of staff but the American Chief of Staff. He went to school with him and he taught him.

Mr. GOLDWATER. Will the Senator yield?

Mr. GRAVEL. I am happy to yield.

Mr. GOLDWATER. Mr. President, I do not associate General Torrijos with the Communist Party. That has no bearing on my decision. However, as a U.S. Senator, I would not be surprised even if he were a Communist if my Government would be interested in doing business with him. We recognize Russia and we want to recognize Red China. We recognize as many Communist countries as we recognize free countries. If Torrijos were a Communist, and I do not think he is, it would not surprise me that my Government would like to get in bed with another Communist. We bundle very well.

Mr. GRAVEL. If I might comment, my colleague should have been here debating the Senator from Utah rather than I. I am sure he could answer much better than I.

I will ask my colleague from Arizona, why is he convinced that Torrijos is not a Communist? Many allegations have been made and inferences made that he is, by people on this floor.

Mr. GOLDWATER. I think that there are Communists in his organization, just as there are such people in our own Government. But

the fact that he has graduated from our military courses and graduated from the War College, all of which require the same attention as when we entered military service, he may or may not have been interested. He did not impress me as being a Communist. I did not feel it necessary to question him about it. He is a gentleman who is interested in the welfare of his country. I do not doubt that. Those are not my reasons for opposing the treaty at all.

Mr. ALLEN. Will the Senator yield?

Mr. GRAVEL. I would be happy to yield.

I thank my colleague from Arizona and I yield to my colleague from Alabama.

Mr. ALLEN. I thank my colleague.

I would only like to present a few comments. The Senator has been making a very forceful and effective speech. I could not help but take note of the naivete of Senators who give words of praise to a dictator in charge of a dictatorial regime which does not respect human rights. I wonder if the distinguished Senator would see any parallel between this praise of dictator Torrijos and the praise and adulation heaped on Fidel Castro when he was seeking to overthrow Batista in Cuba, the great praise that was heaped upon him as a land reformer, and the support which was given to him by the media in this country, when all the while he was a Communist at heart as he showed very soon after he came into office.

I am wondering, too, if the distinguished Senator sees any parallel in the praise that he heaps on Torrijos and the fact that—

Mr. GRAVEL. Will my colleague let me correct him? I do not recall in the last hour that I have had the floor heaping any praise on Torrijos.

Mr. ALLEN. The Senator can be judged whether he praised him or not, but that was the effect of the Senator's comments as I heard them.

Mr. GRAVEL. If praise is saying that a person is not a Communist, then, of course, we have heaped such praise on Mr. Torrijos. And perhaps the Senator from Arizona, the distinguished Senator (Mr. Goldwater), has been heaping praise on him.

Mr. ALLEN. I have not phrased my question. I was going to ask the Senator if he saw any parallel between the praise which is or is not being heaped upon him by the distinguished Senator with the support that the industrialists gave that dictator in the early days of his seeking to come to power.

I am somewhat taken back by the naivete of the distinguished Senator from Alaska and the distinguished Senator from Hawaii.

Mr. MATSUNAGA. Will the Senator from Alaska (Mr. Gravel) yield, inasmuch as the Senator from Hawaii has been mentioned and been accused of heaping praise upon a dictator?

Mr. GRAVEL. I am happy to yield.

Mr. MATSUNAGA. I want to make it clear to the Senator from Alabama (Mr. Allen) that I am as much opposed to dictators as he is. The issue which was brought up was whether or not General Torrijos is a Communist. I joined the Senator from Alaska, and the Senator from Arizona even joined us, in stating that, in our view, General Torrijos is not a Communist. I spent, as the Senator from Alabama well knows, 4 days in Panama with the distinguished majority leader and five other Senators in personal contact, not

only with the general himself but with people who know him, people who live in Panama. Through interviews with these people who know him, people who ought to know whether or not General Torrijos is a Communist, I personally became convinced that General Torrijos is not a Communist.

If that be heaping praise upon the general, I say, I am convinced to the very end of my life that the Senator from Alabama is not a Communist. That is only a statement, not praise.

Mr. ALLEN. I thank the Senator for that remark.

Mr. MATSUNAGA. I do not even know whether the Senator from Alabama is concerned that I heap praise upon him, but I have admired the way he has held the fort here for the opposition, although I think he is misguided in offering his latest amendments. I am sure the majority of the Members of this body will go along with the distinguished majority leader and the rest of us in voting down his amendment, because that amendment which the Senator from Alabama has offered goes to the very heart of the treaty. If his amendment is accepted, then there will be no treaty. For that reason, I am opposing the Senator's amendment.

I thank the Senator from Alaska for yielding.

Mr. GRAVEL. I shall be happy to yield additionally.

I do want to pick up on the statement made by my distinguished colleague from Alabama. He is very clever in how he presents his logic—first, that we are praising Torrijos. That is not the case. I think there may be areas, and I know of areas, where he should be praised. That is not what we are talking about here.

What we were talking about was the opening of the colloquy that started with Senator Hatch, of Utah, about communism in Panama and the inference that Omar Torrijos is a Communist and, for that reason, we should stop the treaties and take the position that my colleague from Alabama holds and some other colleagues hold.

None other than the Senator from Arizona (Mr. Goldwater), who is knowledgeable in this area, stepped forward to say that, in his best judgment, Mr. Torrijos is not a Communist.

Mr. GOLDWATER. Will the Senator yield?

Mr. GRAVEL. I am happy to yield.

Mr. GOLDWATER. I was forced to make my statement, because I very well recall both the senior and junior Senators from New York very eloquently explaining to the Senate that whatever a dictator or a leader of the country is is not the issue. They feel that it makes no difference if Torrijos is in the narcotics business. I assume it would make no difference to them if he were a Communist; the treaty has to be judged on the merits of the treaty.

I wish I had been here when the Senator from Utah started to speak, because I feel that both Senators from New York have made a very good point, that we have done business throughout our history, since the days of Thomas Jefferson, with countries of ill repute, with leaders of ill repute, and they have done business with the United States, at times when our heads could not be held high.

I still repeat that I am a rather old-fashioned fellow. I like to know with whom I am doing business. If it is proven that he is a Communist, that will just make more strong my opposition to this worthless treaty.

Mr. GRAVEL. Another person who joins the Senator from Arizona is John Wayne. I would like to quote from his statement.

There will always be accusations and counteraccusations in this area. General Torrijos has never followed the Marxist line.

That is John Wayne.

I would like to add to this bevy of gentlemen William Buckley, from an article in the Star of December 4, 1977, quoting the last paragraph:

The desire of the Panamanians for sovereignty over the spinal column of their country is as genuine whether they are tyrannized over by Torrijos or led gently by Pericles. If we are determined to mistrust everyone—the President, the military, the Senate—what use is a canal to us?

Mr. GOLDWATER. Will the Senator yield at that point?

Mr. GRAVEL. I am happy to yield.

Mr. GOLDWATER. This is just a little comment.

I well recall, during the Presidential campaign 2 years ago, when I chastised my old and dear friend, Ronald Reagan, for, in effect, declaring war against Panama in many of his statements prior to his seeking the nomination, I received a 6-page letter from my very, very old friend, John Wayne, giving me pluperfect hell. In fact, he typed it himself and he is a worse typewriter operator than I am.

A little while ago, he came out for the treaty, so I mailed the 6-page letter back and asked him to explain it. I have since spoken to him. He has good reasons.

Strangely, just today, I have a letter from Bill Buckley, and we have not talked about this treaty at all. He complained that we had not had time. Two of the major points I had been making he agrees with. However, he disagrees with what I call the banking issue, or how much do the big banks of this country really have to do with the treaty? I intend to go back to my office, if I have time, and either write him or call him and explain that.

I think the big thing about the Buckley switchover was that the Archbishop of Panama was one of the most persuasive men I have ever run into, a very attractive fellow, and I had to sit there with my armor fully well developed in order to keep from yielding to him.

I am glad the Senator brought the subject up, because it gave me an opportunity to make that comment.

Mr. GRAVEL. The Senator from Alabama, in his statement, raised the question of human rights. I would like to pose a question to my good friend from Alabama.

There is one organization that I know of, called Amnesty International, that generally goes around the world investigating human rights. The other in this hemisphere is the OAS, the Organization of American States. Does my colleague know of any report in which Panama has been chastised or been reported by these two organizations about its civil rights abuse since General Torrijos has been in office?

Mr. ALLEN. I know nothing of the organizations to which the Senator referred, as to their rating of Dictator Torrijos and his regime. I do know that Dictator Torrijos came to power as a result

of a coup d'etat, that they have not had a free election in Panama in almost 10 years.

I do know that civil rights there are not respected. I do know that there are numerous political prisoners in the jails in Panama.

I do know that free expression is not permitted there and that strict censorship is maintained.

One organization, possibly it was one of the very ones to which the distinguished Senator from Alaska referred, rating various countries around the globe on their record on human rights on a scale of from one to seven—one being the best and seven being the worst—rated Panama six in that category.

I hope the distinguished Senator is not suggesting that the dictator has a good track record on civil rights or human rights. Possibly, he has been taken in, shall I say, or deluded by Dictator Torrijos' agreement, which he announced to a number of the 50-odd Senators who went down to Panama to visit the dictator, that he is going to start doing better.

I do not know in what way he promised to do better, but anyone that would believe that, I believe, would believe anything.

I hope I have properly and accurately answered the Senator.

Mr. GRAVEL. I thank my colleague from Alabama who just made some remarks. Let us put up a little bit of proof here.

He says there was no free election. They had one last October when they had a plebiscite on the treaties.

Mr. ALLEN. That was hardly an election. That was a referendum or a plebiscite.

An election is a decision of the people as to the public officials who shall represent them. That is what an election is.

A plebiscite or a referendum is not an election.

Now, when they start having elections to choose their duly chosen representatives in government, then they will start having free elections, if, in fact, they are free.

Mr. GRAVEL. Does my colleague know what percentage of countries in the world do not have free election as he defines them?

Mr. ALLEN. No, I do not know that.

Mr. GRAVEL. A close guess?

Mr. ALLEN. I do not know that is important to this issue. I do not have that statistic.

If the Senator has it, it might be interesting to put it in the Record. I do not have anything.

I thank the Senator.

Mr. GRAVEL. My colleague also made the statement of human rights, abolishing human rights.

What organization is he quoting—from whose figures? I do not know if he went down there and visited all the jails and can ascertain that directly. If he has not, he has to be relying on hearsay or what somebody told him.

Mr. ALLEN. I do not have any actual knowledge of it because I have not been to Panama since 1943 when I went through the canal on a Navy vessel, an APA attack transport, as a member of the U.S. Navy. And I have not made any personal checks on the human rights conditions there at any time. Only, necessarily, I have to rely on research and information furnished by others.

The distinguished Senator from Alaska, having recently been in Panama, possibly could give the Senate more accurate information, or fuller information, about the dictator's denial of human rights there in Panama.

Mr. GRAVEL. I think the people within earshot of our voice expect a little more of us than to stand here and make gross statements of fact, and they expect us to back up our statements a little bit.

I just said earlier that Amnesty International, since Torrijos has been in power, has not rendered a negative report on him, nor has the OAS, the Organization of American States.

My colleague is saying there are gross violations of human rights by Mr. Torrijos. All I am asking for is somebody to put up a piece of paper that says some organization looked at it, and ask at least for a name to give the American people as to where this charge comes from.

Mr. ALLEN. Do I understand the distinguished Senator is saying that Dictator Torrijos has a good record on human rights in his dictatorial regime, is that the Senator's statement?

Mr. GRAVEL. I am sorry, I did not hear.

Mr. ALLEN. I just asked the Senator if he is stating to the Senate that Dictator Torrijos in his dictatorial regime there does, in fact, have a good record on human rights?

Mr. GRAVEL. Now, I think people can understand the English language the way we are talking about it right now.

I did not say that, I do not—

Mr. ALLEN. I am asking the Senator.

Mr. GRAVEL. [continuing]. Accept the twist in the colloquy like that.

My colleague stated very clearly there was gross violation of human rights. All I am asking is to put up a little bit of proof, just a little bit. Do not turn the question around saying I am giving the affirmative. I made my statements very clear. When I used a figure, I used it very precisely.

All I am asking is for my good friend from Alabama, if he says there is gross violation of human rights, we do not know if he picked it up down the corridor or in the men's room. All I want to say is that we are talking to the American public and somebody ought to put on paper here that Amnesty International has found anything gross. The Organization of American States has not found anything gross. The United Nations had an observer at the last election, or referendum, whichever you want to call it, and they found it a fair, open, democratic election.

If you want to make statements to the American people, some of us are going to stand up here and hold you accountable.

Now, put up the name of the organization that did the studies on human rights in Panama so that we can examine it.

Mr. ALLEN. I am asking the Senator to state if he states that Torrijos has a good record on human rights.

Mr. GRAVEL. Well, I would say that the Organization of American States and Amnesty International, particularly Amnesty International which—

Mr. ALLEN. What do they say? Put it in the Record.

Mr. GRAVEL. Amnesty International looked at Panama and did not come up with the accusations of gross civil rights.

Mr. ALLEN. What did they say?

Mr. GRAVEL. I do not have the report in front of me, but I am using—mind now, my colleague, what I am doing is using Amnesty International, if he wants to match me.

Mr. ALLEN. What is that?

Mr. GRAVEL. Come up with the name of an organization and then we will send our staffs out, researching what each other has said, and then come back tomorrow and assault each other with it.

I have put my stuff on the table; put up yours.

Mr. ALLEN. What have you put up?

Mr. GRAVEL. Where do you get your information of the gross human rights violations in Panama?

Mr. ALLEN. It is a matter of record. It is a matter of record.

Mr. GRAVEL. Give me the name of what the record is.

Mr. ALLEN. Well, if the Senator is arguing this dictator has a good record on human rights, I will certainly ask him to show that.

Mr. GRAVEL. That is not—

Mr. ALLEN. It does not show what they say. What do they say?

Mr. GRAVEL. What I am arguing, I am taking the Senator at his word. I know my colleague from Alabama is a man of his word. He just a few moments ago, said there were gross human rights violations in Panama by this Dictator Torrijos. All I am saying is, put up, put up your proof.

I would like to read a quote, just a quote from somebody who is close to the situation, Ambassador Jorden. This is on the human rights question during the hearings before the Foreign Relations Committee:

Ambassador JORDEN. I think that human rights is an issue that is a serious one in every country in Latin America. I think that the performance on human rights in Panama has been far better than most. There is no system of massive arrests or you don't have cases of people being picked up and disappearing. There is no calculated program of torture and inhumane treatment, although let me say candidly that there sometimes occurs rough treatment in jail but rough treatment in jail at the hands of an overenthusiastic policeman has been known to happen in a lot of places.

Sometimes in Alaska, and sometimes in Alabama also.

Mr. ALLEN. Very well. I hope the Senator will put that—

Mr. GRAVEL. I just did. I read it very clearly into the record.

So I go back to my original point, my colleague asked me to yield so that he could ask me a question. In the phrasing of the question he made the statement that there is gross violation of human rights by the Dictator Torrijos.

Mr. ALLEN. That is correct.

Mr. GRAVEL. All I am asking is for him to put up a little bit of proof for the American people, because they have been led down the primrose path on this thing—just a little.

Mr. ALLEN. I quoted the finding of an international body. I am not able to supply the name right now. I will do so before the day is over.

Mr. GRAVEL. I will accept it.

Mr. ALLEN. They gave Torrijos a rating of 6 on a scale from 1 to 7, 1 being a good record, 7 being a bad record.

If the distinguished Senator is saying that Torrijos has a good record on civil rights and human rights, I would like him to show us where any organization says that is correct, that they do have a good record in observing human rights.

Mr. GRAVEL. Do you know of any organization that has rated our treatment of the canal? Do you know of any organization that has done that—rated us?

Let me read a quotation that has been handed to me.

In 1977, Freedom House listed Panama as not free. Incidentally, Freedom House is for the treaties. They support the treaties. They listed Panama as not free and gave the Torrijos government a rating equal to Cuba in the suppression of—

Mr. ALLEN. Wait a minute. What the Senator says is the Panama is rated equal to Cuba in human rights?

Mr. GRAVEL. I did not say that.

Mr. ALLEN. What did the Senator say?

Mr. GRAVEL. I am reading from a document that is talking about Freedom House.

Mr. ALLEN. I see.

Mr. GRAVEL. I am not familiar with Freedom House. But this is the closest thing I could find to give you any kind of umbrage with respect to your statement.

Mr. ALLEN. Will the Senator read that again, for the edification of the Senate?

Mr. GRAVEL. I think I read clearly enough. I am not a great reader, but I think I read clearly enough.

Does my colleague know who Freedom House is? I do not. Do you know who they are? I know who Amnesty International is. I know who the Organization of American States is. I know who the United Nations is. But I do not know who Freedom House is. I am prepared to give you a little help.

Mr. ALLEN. Yet, you are reading from it.

Mr. GRAVEL. That is right. I will take my chances.

Mr. ALLEN. Go ahead with it.

Mr. LAXALT. Mr. President, will the Senator yield?

Mr. GRAVEL. I yield.

Mr. LAXALT. I think you will find out that one of our colleagues, Senator Javits, I believe, is a member of the board of directors of Freedom House.

Mr. ALLEN. So the Senator says that Freedom House equates human rights in Panama with human rights in Cuba.

Mr. GRAVEL. In Cuba. On a scale of 1 being most free and 7 the least free, Panama was given a rating of 7 on political rights and 6 on civil rights.

Mr. ALLEN. Yes.

Mr. GRAVEL. Chile has a rating of 7 and 5; Argentina, 6 and 5. In the rating of territories and dependencies, the Canal Zone is given a 5 and 3, the worst of any U.S. dependency or territory. I could go on.

If your staff wants to bother to look, I think you will find one of your sources is Freedom House and they back you up, but they also have rated the Canal Zone, and I do not think we have anything to be proud of.

If you want to be accusatory of Torrijos on one ground, you have to be accusatory to our conduct in the canal on the same ground.

So I say we should agree to the treaties so we can have a change in the situation.

Mr. ALLEN. I thank the Senator for providing the evidence that the Senator from Alabama did not have beforehand.

From what he states, this organization, Freedom House—on which, according to the distinguished Senator from Nevada (Mr. Laxalt) the distinguished Senator from New York (Mr. Javits) serves as a board member—in rating Mr. Torrijos' regime in Panama on political rights, I believe they say 6—or was that 7? On civil rights it is 6 and on political rights it is 7. Is that correct?

Mr. GRAVEL. Yes.

Mr. ALLEN. If 7 is the bottom and Torrijos rates 7, would you not say that is a pretty bad record for political rights, and would you not think that 6 on a scale of 1 to 7 is a pretty bad record on civil rights?

The Senator has been kind enough to supply the omission that existed as to naming an organization that has been critical of human rights in Panama. I thank the Senator for supplying this information.

Mr. GRAVEL. I wanted to hasten and avoid having the Senator from Alabama do any undue research to find out what is backing up his statement.

Mr. ALLEN. I appreciate that.

Mr. GRAVEL. So often we stand on the floor and make statements that are not backed up.

Mr. President, I ask unanimous consent to have printed in the Record a release from Freedom House Organization, the same one that gave this rating, that urges passage of the treaties.

There being no objection, the material was ordered to be printed in the Record, as follows:

FREEDOM HOUSE URGES APPROVAL OF CANAL TREATIES DESPITE PANAMA'S
"DEPLORABLE" HUMAN RIGHTS RECORD

NEW YORK, November 17.—John Richardson, Jr., president of Freedom House, today released a board advisory calling upon the United States Senate to ratify the Panama Canal treaties, despite "the deplorable record on human rights of the present regime in Panama." Ratification, said the human rights group, "would best protect American interests and maintain the security of the Canal."

The organization released a 1,000-word analysis and advisory on the treaties. "This advisory was approved by the Board of Trustees of Freedom House after extensive study and review, and an overwhelmingly favorable vote," declared Mr. Richardson. "Expressing their views to their colleagues on our board were some of the principal supporters and an opponent of the treaties," said Mr. Richardson, until January an assistant secretary of state.

"Zbigniew Brzezinski, national security advisor to President Carter, on leave from our board, expressed his views to us, as did Gale McGee, U.S. ambassador to the Organization of American States. Both supported the treaties. We also received an extensive opposition memorandum from our colleague, Karl R. Bendtsen, former under secretary of the army and chairman of the Panama Canal Company, which presently controls the canal zone," Mr. Richardson added.

The advisory said that if the treaties are not ratified, "the immediate winners will be the communist parties of Latin America and the Caribbean, and Marxist regimes throughout the Third World." The cry of "Yankee imperialism" would be raised again, Freedom House predicted. It noted that "South American communists as well as North American conservatives oppose the treaties."

The organization declared that the "proclaimed U.S. concern for human rights will have been disavowed by our refusing to restore rights in the canal area to the sovereign."

Freedom House acknowledged that it is supporting the treaties despite the organization's "frequent analyses and reporting of the deplorable record on human rights of the present regime in Panama." The organization conducts year-round surveys of human rights in every country. Its latest finding reveals a "recent improvement attributable to the national referendum on the treaties." Freedom House concluded, however, that "the level of political rights and civil liberties in Panama is still low."

The advisory added that "most Panamanian governments, however, regardless of ideology or political or civil practices, have sought a new treaty with the United States." In considering ratification, the United States does not now face "a real choice," if it is "to recognize the severe losses we would almost certainly suffer from rejecting thirteen years of responsible negotiations by both Panama and the United States."

The advisory said that by ratifying the treaties "we will demonstrate that we not only support a higher world order based on the advancement of human rights and collaborative international agreements, but that we act on those moral commitments."

This action, the statement continued, would "also demonstrate that a major power can negotiate as an equal with a smaller nation, yield to the latter those rights which were inherently its own, and yet retain for the large power the fundamental advantages which it is in their mutual interest to reinforce."

The treaties, signed by President Carter and Brig. Gen. Omar Torrijos, have been approved by a national referendum in Panama but must be ratified, presumably in January, by two-thirds of the U.S. Senate.

Under the treaties, Panama would immediately share control of Canal Zone facilities and services. The U.S. would have primary responsibility to protect the Canal until the year 2000. After that, the U.S. would indefinitely have the right to defend the Canal's neutrality, with "expeditious" use of the waterway assured.

The organization maintained that the United States "is not yielding what it owns, as would be the case with Alaska or Louisiana." The government of Panama "has been the sovereign over the Canal and the surrounding zone" since 1903, said the statement.

A FREEDOM HOUSE ADVISORY—IN SUPPORT OF PROMPT RATIFICATION OF THE TREATIES RELATING TO THE PANAMA CANAL

THE RELEVANT HISTORY

Since the United States built the Panama Canal in 1903 the government of Panama has been the sovereign—over the Canal and the surrounding zone. Under terms of the earlier treaty, the Canal Zone and the waterway became "territory of the Republic of Panama under the jurisdiction of the United States." The U.S. Supreme Court in 1948 described the Canal Zone as "territory over which we do not have sovereignty."

The United States, therefore, is not yielding what it owns—as would be the case with Alaska or Louisiana. Instead, this country in a mature, indeed wise decision in 1964—since renewed by three successive administrations—recognized that policies acceptable for a major power at the turn of the century were no longer defensible, morally or even militarily.

THE SECURITY OF THE CANAL

The present status of the Canal increasingly has generated disapproval throughout Latin America and the Caribbean. The Canal has become the focal point of political attacks and, fourteen years ago, anti-U.S. riots which resulted in the death of 20 Panamanians and four Americans. Negotiations culminating in the present treaties began shortly thereafter, and there has been relative calm since the treaty talks opened. Some attacks on the American presence may have been exacerbated and exploited by foreign or domestic communists. Antipathy to the American presence, however, was rooted in incontrovertible facts:

1. Panamanians long resented the splitting of their country in two, and the carving out of 550 square miles on which to maintain a foreign enclave.

2. No Panamanian ever signed the 1903 treaty.

3. Under that treaty, in exercising U.S. jurisdiction in the Canal Zone, the U.S. operates the schools, courts, prisons, and police force.

4. Though the tide of anti-U.S. feeling has ebbed and flowed throughout Latin America and the Caribbean, the Canal has always been a symbol of North American intrusion into the sovereignty and affairs of southern America.

By the manner in which the U.S. secured and retained control of the area, the considerable technological and medical achievements of the U.S. in constructing and operating the Canal have been overshadowed. We continue to perform a great service to the international maritime and trading communities. That service should not be diminished by anachronistic political arrangements.

For indeed the old political arrangements, continuing into this era, serve to undermine rather than bolster the security essential to the protection of the Canal.

There have been negotiated two agreements. The Panama Canal Treaty sets forth the terms for a new political relationship between Panama and the United States, and describes new operating procedures. For the remainder of this century, the U.S. shall have primary responsibility to protect and defend the Canal. After the year 2000, the second treaty—on the Permanent Neutrality and Operation of the Panama Canal—will give the U.S. the right to continue to defend indefinitely the Canal's neutrality. The treaty also guarantees U.S. warships "expeditious" use of the waterway. Neutrality of the Canal—certainly in the best interest of America and of all maritime nations—is explicitly defined in the treaty. No limit is set on the means the U.S. can use to guarantee the Canal's neutrality. We are free to interpret unilaterally when the Canal's neutrality is violated or threatened.

WILL THE CANAL FUNCTION AS EFFICIENTLY?

The basic treaty provides for the training of Panamanian specialists and administrators. They would move into responsible positions and ultimately operate Canal installations. If both countries agree, a new sea-level canal or a third lane of locks may be constructed to expand the present facilities. Approximately \$60-\$70 million in revenues will be paid Panama at the onset. The proper, uninterrupted operation of the Canal is patently in Panama's national interest. Revenues from the Canal will become a mainstay of Panama's economy.

THE DANGERS OF NONRATIFICATION

Without question, if the present Canal treaties are not ratified by the U.S. Senate the immediate winners will be the communist parties of Latin America and the Caribbean, and the Marxist regimes throughout the Third World. The cry of "Yankee imperialism!" will once again be raised. Curiously, South American communists as well as North American conservatives oppose the treaties. The proclaimed U.S. concern for human rights will have been disavowed by our refusing to restore rights in the Canal area to the sovereign.

We support the ratification of the treaties despite Freedom House's frequent analysis and reporting of the deplorable record on human rights of the present regime in Panama. Despite a recent improvement attributable to the national referendum on these treaties, the level of political rights and civil liberties in Panama is still low. Most Panamanian governments, however, regardless of ideology or political or civil practices, have sought a new treaty with the United States.

DOES THE UNITED STATES FACE A REAL CHOICE?

If we are to recognize the severe losses we would almost certainly suffer from rejecting thirteen years of responsible negotiation by both Panama and the United States, we do not now face a real choice.

The gains in ratifying the treaties promptly are, we believe, apparent:

We will demonstrate that we not only support a higher world order based on the advancement of human rights and collaborative international agreements—but that we act on those moral commitments.

We will also demonstrate that a major power can negotiate as an equal with a smaller nation, yield to the latter those rights which were inherently its own, and yet retain for the large power the fundamental advantages which it is in their mutual interest to reinforce.

Because we are convinced that these treaties would best protect American interests and maintain the security of the Canal, we warn against any Senatorial recommendations that would force the reopening of negotiations, a return to an uncertain status quo, and thereby fuel political and paramilitary attacks on the American presence in the Canal area.

Freedom House believes that the U.S. Senate, after full and careful study of the history of the Panama Canal, the extensive negotiating process, and the texts of the agreements already signed, should act promptly to ratify the Panama Canal treaties now before it.

Mr. GRAVEL. Mr. President, I ask unanimous consent to have printed in the Record a statement by the leadership of the religious community of Panama, also endorsing these treaties.

There being no objection, the material was ordered to be printed in the Record, as follows:

PANAMANIAN ARCHBISHOP ON TREATIES

Canal Zone-born Archbishop Marcos McGrath of Panama is the son of a Trenton, N.J., laborer who worked on the construction of the waterway and is the principal spiritual leader of the nation's large Catholic population. He was interviewed by Washington Star Staff Writer Jeremiah O'Leary.

Question. In a real sense, how much influence does the Catholic Church have with the people of Panama on any subject?

McGRATH. Well, they're much more influenced, obviously, on a strictly doctrinal subject or a matter of strict interpretation of morals or liturgy or something that is directly related to religious concerns. When we're talking about social matters, then what we're really doing is interpreting the application of the gospel to the situations. When we talk about problems of poor housing and slum areas and bad distribution of health, lack of civil liberties in Panama, we're not speaking in a strictly dogmatic fashion, but we're pointing out that these things are not consonant with our gospel concept of the dignity of man, the equality of opportunities that all should have. And I suppose this would be true in the matter of the treaties.

Q. Have you spoken out on the subject of the ratification of the Panama Canal treaties?

A. The church has always identified with the preoccupation of the people with the Panama Canal issue. This goes back to my predecessors. For instance, I remember back in 1955 when President Ramon came up to the United States to visit with President Eisenhower. The archbishop of Panama went to the airport with the crowd and then received him when he came back. It's an expression of solidarity on the part of the church with the government as representing the cause of the people. When the riots took place in 1964, I was temporarily in charge of the archdiocese. And myself and the bishops and the clergy had a mass for the solidarity of the people for peace with justice. And since that time, 1964, the matter has been constantly on the frying pan. One of our main efforts is to bring to bear on this question a kind of thinking which is Christian, which is looking for the ethical underpinning of this whole question so this will not be a cause of extremists.

Q. Hasn't this matter come under attack from both the extreme left and the extreme right in Panama?

A. You have to distinguish, I think, in Panama, whether these are independent lefts and rights or whether they are linked to some dogmatic party position. If they're linked to some party position, you ask yourself, "when this party says this, what does Moscow have to say?" Then there is an obedience to be followed which we do not consider to be in the interest of Panama. It's an international obedience. But you do have nationalists in Panama—on the left and on the right and in the center—who feel that these treaties have given too many concessions to the United States and therefore are opposed. There are some who, although they object to the treaties, would nevertheless vote for them because they say it's not what Panama would like to have but it's the best that Panama can get. And probably a good number of people on the plebiscite who voted for the treaties voted in that sense. They were also preoccupied with the treaties that conceded a great deal to the United States, but felt that it's far better to do this than to go back to 10 more years of negotiations.

Q. Did the plebiscite have some element also of a popularity contest for the Torrijos regime involved?

A. After the plebiscite there were several commentators on the radio and television, newspapers, who said that Torrijos should pay a great amount of attention to that plebiscite because it was a statement from the Panamanian public that they want some changes in the government and they want more democratic participation, and so forth and so on. I think this is true now. To what extent that accounts for the 30 percent vote against the treaties, I think this is a combination of both things. There was a number, certainly, that were going to vote against the treaties on the merits of the treaties themselves and a number who did not want these treaties to be approved for this government in power, and the one-third vote is a combination of those two factors. I think we all felt that these two elements of opposition would show themselves. And, honestly, many people who voted in favor of the treaties, they didn't necessarily approve of the Torrijos government, nor did

they necessarily like the treaties, but they felt this was the best thing available. The most eloquent case was the little vote in San Blas. San Blas actually voted against the treaties. San Blas are just sick and tired of the government not paying any attention to them. Not only this government, but all the governments.

Q. What position did you take on the plebiscite?

A. We did not know the exact details of the treaties until 7th of September, 1977. Until then we just had rumors of what they were going to be. Before those treaties came to be, we had stressed the necessity of a new treaty, or, as we put it in Spanish, *un nuevo tratamiento*, a new treatment of Panama, because we have felt for a long time that the 1903 treaty is untenable—not only in the way it came to be, which we know historically, but also because over the years there has developed in the consciousness of nations the right of self-determination of peoples. Nations which had held colonies as their own territory have released those colonies, which have become independent nations. Panama has never been a colony, legally, and I think now sufficiently demonstrated to the American public, that Panama has always been Panamanian territory, including the Canal Zone under U.S. administration and jurisdiction. So with greater reason Panama has a right to its own self-determination. Panama has become over the last generation, particularly, more conscious of itself as a people and a nation. And so this situation of subservience, which the canal has signified—having the heart of a nation, another nation—has become every day more difficult, more uncomfortable.

Q. Was there any change or hardening of your attitude once the details of the treaties became known?

A. Well, I'll tell you. When these treaties were signed on Sept. 7, I was among the many who experienced some surprise. There were some concessions in there that I thought Panama was going to make. I can see now in the course of the debates how hard the negotiators fought for those things and I can see that if they hadn't fought for them the treaties would have had hardly any chance with the Senate today. But it's interesting that they did achieve these things. The very treaty of neutrality is a shocker for most Panamanians. It means that after the year 2000, as far as Panamanians are concerned, the United States will still have the power that can come in there whenever it wants to. And it's precisely what the Senate insists upon for the security and the safe defense and operation of the canal.

Q. How did this affect your attitude during the plebiscite?

A. The churches in Panama—Catholic, Protestant and Jewish communities— withheld our opinions on the treaty until the plebiscite had taken place. And we made it quite clear that everyone should vote and vote as he or she thought best and that the church having supported the necessity for new *tratamiento* was not necessarily for the treaties. We didn't want to incline or bring pressure on public opinion. Once the plebiscite had been taken—and I think honestly taken—and once it can be said that the Panamanian people supported this, then we are also supporting it because we believe that this is a manifestation of what the Panamanian people accepts that these concessions granted. Therefore we accept them also because what we are fundamentally interested in is this new treatment, which we think is very much for the best for all concerned—United States, Panama and Latin America.

Q. The situation must be resolved.

A. This clause of perpetuity is simply untenable, morally and in terms of international law, in terms of United Nations declarations, self-determination, decolonization, and in terms of the United States' attitude toward the rest of the world, which has to be applied logically also in this case. For everyone concerned, it has to be resolved. The longer it is not resolved, the more serious the problems are for all concerned and we feel that this is the crux of the problem. The other elements—economic, military—have their solution. The solutions have to be sought for the initial purpose of the safe and effective passage through the canal, the defense of the canal and sufficient economic compensation—all this is important. But the fundamental thing really is the sense of a people that has to exercise its national character without jingoism, without exaggerating the nationality of a very small nation. But in order to be a part of a community of nations it has to feel itself as a nation. And this is, I think, what we all agree upon.

Mr. GRAVEL. Mr. President, I ask unanimous consent to have printed in the Record a statement about the OAS rights group. There being no objection, the material was ordered to be printed in the Record, as follows:

PANAMA INVITES PROBE BY OAS RIGHTS GROUP

(By Lewis H. Diuguid)

Panama announced yesterday that it has invited the Inter-American Commission on Human Rights to make an on-site inspection of alleged infractions.

Gen. Omar Torrijos, the Panamanian strongman who was here last week to sign the Panama Canal treaties negotiated with the United States, declared in a cable to the commission:

"I will give you the keys to the jails. If you find any political prisoners, I will set them free."

U.S. opponents of the canal treaties, along with several Panamanians exiled by Torrijos, have charged that the human rights of Torrijos' opponents are being violated. They say further that the Carter administration, with its stress on human rights, is inconsistent in negotiating with Torrijos, the dictator that they hold responsible for the alleged abuses. Several international monitors of human rights have reported that Panama is relatively free of major abuses.

Torrijos' invitation, read to the council of the Organization of American States here yesterday, said the seven-member rights commission will be allowed to go anywhere in Panama and will be free to talk with anyone.

A state Department spokesman declared: "We feel this visit by an objective international body will be helpful in arriving at a clear definition of the status of human rights in Panama."

The U.S. government has sought to strengthen the rights commission as a means of policing rights in the hemisphere. In June President Carter signed a long-standing OAS convention that will result in formation of an inter-American human-rights courts as soon as 11 nations have ratified the pact.

In another attempt to disarm U.S. opponents of Senate ratification of the canal treaties, Panama has invited U.N. observers to oversee a plebiscite on Oct. 28. Panama's form of ratifying the treaties.

The plebiscite is expected to produce an overwhelming vote for ratification. Conservative U.S. critics—who oppose the treaties' stipulation that the canal will pass to Panama's control in the year 2000—have declared that the plebiscite will be rigged by Torrijos.

The rights commission also received an invitation yesterday from El Salvador to make an on-scene investigation in that Central American nation. Several priests working with the peasants in El Salvador have been killed by terrorists. Critics charge that the military government there condones the terrorism.

Meetings last week between President Carter and Latin presidents here for the treaties's signing appear to be a factor in the renewed activity of the rights commission. Earlier this year both Uruguay and Paraguay refused requests for inspection visits and Chile, after permitting an inspection shortly after the coup there in 1974, has refused to allow a return visit.

OAS Secretary General Alejandro Orfila recently named a Chilean exile, Edmundo Vargas Carenno, as executive secretary of the rights commission. Its members are elected by the OAS council from nominations made by member states.

Mr. GRAVEL. Mr. President, the point I am trying to make right here, with all these inclusions in the Record, is that there is a large body of knowledge that is reasonable on this subject. Nobody quarrels with the fact that they have not had elections. That is a fact.

Mr. ALLEN. I quarrel with it.

Mr. GRAVEL. Wait a second. Do you want to quarrel with most of the nations of the world? Do you want to go to war right now with most of the nations of the world? We take the world as it is. We take the human race as it is. We are in a forward plunge toward greater maturity. It is going to take time to mature. It is going to take time for everybody in the world to enjoy the same degree of freedom.

If there is a real, sincere desire to see the Panamanians free, to see them realize the aspirations and the hopes that we think are important, the best way to do it is to improve their economy, to improve their economic well-being, and that, per se, will bring a

great deal of freedom with it. The best way to do that is to give some justice to the Panamanians.

Is it not odd that those who, out of hand, oppose any change of the status quo, which is so unjust to these most unfortunate people, really oppose the first opportunity these people have had to regain their birthright and to maximize the economic benefits from their birthright? There is nothing wrong with that. It is just proper and fair.

If there is anything the American people have, it is a sense of fair play. So I do not understand the logic that says they are under a dictatorship. They are not free; and, my God, we are not only going to make sure they are not free, but also, we are going to make sure they are poor. That is what we are going to do.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. GRAVEL. I am happy to yield.

Mr. ALLEN. Does not this publication by Freedom House, which gives the Torrijos regime a 7 rating on political rights, also give Russia the same 7 rating? Would that not equate the conditions in Panama with the conditions in Russia on political rights?

Mr. GRAVEL. First off, I do not know.

Mr. ALLEN. The Senator had it in his hand a moment ago.

Mr. GRAVEL. All I had in my hand was the evaluation of Panama.

Mr. ALLEN. I say to the Senator that it does.

Mr. GRAVEL. I do not know, and I would say that I do not know how they define their 7. I would say that they probably would evaluate a 7 in any country that does not have free elections. That is a big spectrum in this world. Any country that does not have free elections is a 7. The other is civil rights. So there is a big difference.

As Ambassador Jorden stated in the quotation I read, there is nobody being arrested off the streets; there is nobody being tortured. We had Amnesty International go down and look at it. They do not find a gross problem like you are trying to intimate. We had the Organization of American States go into it. We are a member of that organization, as a government. We have an ambassador to that organization. They do not find any gross violations.

You have a scenario of playing with little numbers and saying the Soviet Union has a 7. They do not have free elections in the Soviet Union—I will stipulate that right now—and they have not had any elections for political officials in the leadership of Panama since—

Mr. ALLEN. Does the Senator think a rating of 6 on a scale of 1 to 7 is very good in civil rights?

Mr. GRAVEL. For this organization's rating, no, I do not think it is very good; but I do not know the individuals and I have not talked with them, whoever did the rating. It is the first I have heard of Freedom House.

I do not claim to know all the organizations. I have heard of Amnesty International, and I think they do good work. In fact, I believe they got a Nobel prize a couple of years ago. They are highly recognized, and I stand to be corrected in this regard. If they got a Nobel prize, they are a pretty heavy organization. They looked, and they did not find anything.

Mr. ALLEN. Is Amnesty International an organization—I am not familiar with it myself—is it an organization that has recommended general amnesty for draft dodgers and deserters? Is that the thrust of its work?

Mr. GRAVEL. I do not know. I do not know if the president of the Amnesty International beats his wife. I do not know.

Mr. ALLEN. I see.

Mr. GRAVEL. The Senator thinks it is a prodraft dodger organization; is that what the Senator thinks it is?

Mr. ALLEN. I do not know. I am just asking the Senator.

Mr. GRAVEL. I do not know.

Mr. ALLEN. I thought the Senator was vouching for them and now he does not know about them.

Mr. GRAVEL. I do not know.

Mr. ALLEN. I thank the Senator.

Mr. GRAVEL. I do not know if the president of Amnesty International has been beating his wife or children or if he has a draft dodger in his family or if he is housing draft dodgers.

Mr. ALLEN. The Senator a moment ago was praising the organization as an organization to be trusted.

Mr. GRAVEL. I think they won a Nobel prize.

Mr. ALLEN. Is that right? For what?

Mr. GRAVEL. For going out doing good work.

Mr. ALLEN. Oh, I see. I did not know they awarded Nobel prizes for that. I thank the Senator.

Mr. GRAVEL. I thank my colleague from Alabama. He is a most enjoyable person to have a colloquy with. I think that we deal with a little bit of levity on this subject, but I do not think that the American people are going to be pulled off target here because so often in this whole debate and in the information that pours out of Congress on this issue, and not only out of Congress, out of the extreme right wing of the United States, pours out about what all this treaty is going to do, how terrible it is, the world is going to come to an end. I am just chagrined that we are spending so much time on it. This treaty is not worth this kind of recognition. The only reason it is getting this recognition is because it is a highly emotional issue. It goes to our guts. It goes to the American pride. It appeals to the best of our jingoism. It calls up our greatest degree of chauvinism—that we built this canal, a lot of big macho, and we own this canal. The Senator knows we euchred these poor people out of it—I mean euchred them out of it, and my colleague from Alabama knows that.

I am not the last person in the world to accept good Yankee trading. I think we are good Yankee traders, but I just think it is gross when we take advantage of poor little countries and set upon them and then take this money that rightfully belongs to them and then give them a job, throw them a few coins, and tell them that we are doing them a favor. That is a little strong for me.

Mr. ALLEN. Mr. President, will the Senator yield?

Mr. GRAVEL. I am happy to yield.

Mr. ALLEN. As I understand it, the Senator has been to Panama and in conference with the dictator of that country; is that correct?

Mr. GRAVEL. Why did the Senator not say I had met with the chief of state of Panama?

Mr. ALLEN. Use any words the Senator wishes.

Mr. GRAVEL. Why does he like that word "dictator," as if I went down there and sat down with some guy who had a 45 on the shoulder and had a bullwhip in the other hand, and then I talked to him? No. I went down.

Mr. ALLEN. The Senator talked with Mr. Torrijos.

Mr. GRAVEL. I met with him on three occasions. The first time I met Mr. Torrijos was here in Washington. Does the Senator know where I met him? It was at that patriotic beautiful Blair House right across from the White House, and I met him on an American shrine, and Mr. Torrijos was in civilian clothes.

Mr. ALLEN. That was not the Sting White House apartment?

Mr. GRAVEL. He did not have any armed guards around except our people.

Mr. ALLEN. I see. I just asked the Senator a few questions.

Mr. GRAVEL. I briefed him on what I thought was important to this country, and that is the fact that the present Panama Canal is not as economically as important as it used to be and it is becoming very unimportant and that by the year 2000 it could almost be worthless, which is my particular view.

Mr. ALLEN. I understand.

Mr. GRAVEL. That is why I get a little disturbed sometime when the Senator prepares an amendment that insists that we unilaterally have the power to station troops in Panama in perpetuity.

The canal might not last in perpetuity. It might not even be worth a darn in the year 2000. The Senator wants the right in his amendment, he wants the right to be able to have troops in Panama in perpetuity.

Mr. ALLEN. The President can withdraw them any time.

Mr. GRAVEL. Is that not a bit too much?

Mr. ALLEN. No, I think not.

Mr. GRAVEL. Why? Suppose we are not using the Panama Canal in the year 2000. The Senator still wants to be able to put troops there.

Mr. ALLEN. No. To be able to but not mandatory.

Mr. GRAVEL. Does the Senator want to be able to let any other country put troops in the United States unilaterally? Does he?

Mr. ALLEN. Do I what?

Mr. GRAVEL. Does the Senator want to be able to let foreign countries put troops in the United States unilaterally?

Mr. ALLEN. Of course, that is not the situation here.

Mr. GRAVEL. It is not? It is exactly the situation the Senator is asking the Panamanians to put up with.

Mr. ALLEN. The Senator is absolutely wrong. What we are trying to do is provide for the defense of the canal.

Mr. GRAVEL. Say the canal is useless, and closed.

Mr. ALLEN. We would not have to do it. It is up to the President.

Mr. GRAVEL. Then I ask the Senator again. Would he want the President of France to be able to put troops in the United States unilaterally? Take them to Alabama. How would he like it to be able to wake up one day and there are some French troops in Mobile, Ala., at the will of the President of France?

Mr. ALLEN. We have had troops in the Panama Canal Zone for almost 70 years.

Mr. GRAVEL. Wait a second.

Mr. ALLEN. Let me finish.

Mr. GRAVEL. The scenario is the canal is closed.

Mr. ALLEN. We do not have to do that. It is up to the President.

Mr. GRAVEL. Why does the Senator insist on having that right?

Mr. ALLEN. Because it is necessary for the proper defense of the canal, because under the leadership amendment all of the troops will have been withdrawn from Panama, and the only way that under the leadership amendment we could defend the canal would be to invade Panama. But the Senator strayed from the question I asked him. I asked him if he had conferred with, shall I say, Mr. Torrijos, in Panama. That is what I asked the Senator.

Mr. GRAVEL. And I stated yes, in Washington, but before we do that we have a lot of time this afternoon—it is only 5 minutes after 2—we have a lot of time. Let us just stick to what the Senator thinks the amendment does.

Mr. ALLEN. I want to ask the Senator——

Mr. GRAVEL. I will be happy to answer.

Mr. ALLEN. [continuing]. If, in his conference with Mr. Torrijos in Panama, if he and other Senators questioned Mr. Torrijos about his poor human rights position and record and if he did not, in fact, promise to do better? Was it the group of Senators the Senator was in, or was it another group of Senators to whom Torrijos promised that he would do better in the field of human rights?

Mr. GRAVEL. I did not bring up the subject with him.

Mr. ALLEN. Was it brought up?

Mr. GRAVEL. I presume maybe some Senators did. If they did, they can speak to it.

Mr. ALLEN. I see.

Mr. GRAVEL. OK. So the Senator is asking me if I brought it up. I say no, I did not bring it up.

Mr. ALLEN. I did not ask the Senator. I asked if in the group of Senators that he accompanied, if it was brought up.

Mr. GRAVEL. No; I was not there with a group of Senators. I was alone with him.

Mr. ALLEN. I see.

Mr. GRAVEL. I did not bring up that subject. I brought up economic matters.

Mr. ALLEN. Did he promise to do better? It was not the Senator, then, who he made that promise to; is that correct?

Mr. GRAVEL. No; but that would be a funny conversation with me. I am talking to him about a sea level canal and all of a sudden he jumps up and says, "Senator, I promise to do better." It does not make any sense. We are talking about economic matters, the obsolescence rate of the present Panama Canal.

Mr. ALLEN. The Senator knows he made that promise to the delegates of the U.S. Senate.

The distinguished Senator from Idaho (Mr. Church) nods his head.

It must have had a pretty bad record if he is promising to do better. Why would he have to do better if he had a good record in that regard?

Mr. GRAVEL. Going back to the Senator's amendment, why would he insist on having something from the Panamanians that he

would not let anybody have here; that is, he does not want to let the President of France have the right to unilaterally send troops to Mobile, Ala.? Why does he want to have the President of the United States to be able to send troops to Panama in the year 2050 or the year 5010?

Mr. ALLEN. Because we have a tremendous asset there, that I would think the Senator from Alaska would want to see defended, and that is the very function and purpose supposedly of the leadership amendment that we would be able to defend the canal. My amendment does not destroy the leadership's amendment. It accepts that as a good provision, that we could come back into Panama after having withdraw all of our troops by the year 2000 and defend the canal. What I am suggesting be done by this amendment is not pull all of our troops out prior to the year 2000, if the condition in Panama indicates that troops are needed for the defense of the canal, because we do not know what the situation is going to be in Panama in the year 2000. We should not close out all of our options, close all of our doors on the right to properly defend the canal.

It does not make that mandatory. If the President of the United States thinks it is necessary for the defense of the canal and for maintaining neutrality of the canal, to continue our military presence there beyond the year 2000, then we would have a right to do so. It just implements, adds to, and makes stronger the administration, the leadership, amendment.

Mr. LEAHY. Mr. President, will the Senator from Alaska yield?

Mr. GRAVEL. If I could respond briefly to this one point. Again, I want to quote the Commandant of the Marines, who might have some experience in this area. He states:

I do not believe, however, that successful defense of the canal is dependent upon continued U.S. military presence in Panama.

So that takes care of that, Now, in the year 5000——

Mr. ALLEN. Well, I disagree with the Senator that that takes care of it.

Mr. GRAVEL. It does. For the year 5000, why do we need the right for the President of the United States to send troops to Panama?

Mr. ALLEN. That is not within the contemplation of the amendment. It says they can be maintained there beyond the year 2000.

Mr. GRAVEL. Do you not think that could also extend to the year 5000?

Mr. ALLEN. He does not have to do it, and it would be up to him whether he did that.

Furthermore, under these side agreements, we have provisions made for our pulling our troops out long before the year 2000, and I would not be surprised if that does not take place.

I just want it understood that I do not agree that a statement by the distinguished commandant of the Marine Corps——

Mr. GRAVEL. The commandant of the Marine Corps.

Mr. ALLEN. That that takes care of the matter. I do not care how much prestige and ability General Wilson has, even if he had the military prowess of Napoleon, anyone knows it is easier to defend the canal with the presence of troops there in the Canal Zone than it is to send in an invading force; you have already got a beachhead

there, and I do not care what any military man says who is serving at the pleasure of the President, I do not contend that is at all conclusive of the military situation.

Mr. LEAHY. Mr. President, will the Senator from Alaska yield?

Mr. GRAVEL. I am happy to yield.

Mr. LEAHY. I discussed precisely the same issue with our military commanders in Panama, with members of the Joint Chiefs of Staff here in Washington, and with others.

Certainly I agree to one extent with the Senator from Alabama, that as far as defending an area is concerned, in most cases having a military base already there is preferable. Not in every case, of course, because sometimes the military bases themselves will limit your freedom of action.

But is it not a fact—I ask this question of my friend the Senator from Alaska—that if we maintain military bases after the year 2000 there, what that means is, of course, that we are causing a constant drain of American tax dollars in maintaining bases for a remotely possible contingency?

Mr. GRAVEL. Very possibly so, yes. We do not know what the situation would be in the year 2000, but under the treaties, if the canal needs defending, we have an obligation to defend the canal, and so does the nation of Panama. Maybe their defense effort will be sufficient to defend the canal, and we will not have to spend any of our tax money to defend the canal.

But what we are talking about in this amendment of the Senator from Alabama is something very different from that.

Mr. LEAHY. That was going to be my next question, or my next point of commentary.

Mr. GRAVEL. We are talking about something, essentially, that the Senator does not want to have happen to the people of Alabama, but he is darn well willing to have it happen to the people of Panama, and I just get torn a little bit by that.

Mr. ALLEN. There is no parallel between Panama and Alabama.

Mr. GRAVEL. There is very much of a parallel.

Mr. LEAHY. If I could finish what I was saying, it occurs to me, in listening to my friend from Alaska and my friend from Alabama, and it occurs to me in looking around the world where we have very real interests, very strong interests, if we take a look at it—I think we have to take a look first at our NATO commitments and our commitments to the North American Continent. I know of no countries where we have NATO commitments and where we are presently spending billions of dollars a year, where we have a right to maintain American bases in perpetuity.

With that in mind, and considering the fact that our military presence is so far more vital in these NATO areas, by trying to put on this amendment to the treaties, are we not saying, in actuality, that the United States will talk a good game in rejecting questions of imperialism and rejecting questions of colonialism, but we will not follow through with it?

I happen to feel, looking at what is happening in the horn of Africa and other parts of the world, that the one imperialist country today is the Soviet Union; and I hate to see us in a situation where we allow the United States to be tagged with a tag of imperialism.

So I look back again at the fact that, from a military standpoint, we consider not only the military security of the United States, but the military security of our allies, and that our strongest commitments and our most expensive ones, you might say, are within our NATO commitments.

In none of those do we have rights in perpetuity. In none of those do we have the right of the American people, even now, in the year 2000, in the year 2050, in the year 3000, or anywhere down the line, to say, "If we decide we want a base, if we decide we want a beachhead, or we just want to move in, not because you call on us at this time or any other time, we come, because we have always had tucked away this little ace up our sleeve."

That is precisely what we are saying to Panama. We are saying, "All right, we will give you a treaty, and we will say, on the one hand, that we are really withdrawing, that we are withdrawing a presence that more and more is seen as either a colonial presence or an imperialist presence, but at the same time we are telling you, you may or may not like it, but any time, if we feel like it, we will come back in there."

I cannot imagine any sovereign country accepting that. There is no question in my mind that with such an amendment on the treaty, the Panamanians would reject the treaty; I think they would reject it no matter what else we put in there, no matter what economic considerations might be given them, no matter what plans are made for any other withdrawals, if they knew we reserved that right, and knowing that the U.S. Government, from past performance, would not mind spending the tens of millions of dollars it would cost to keep those bases after the year 2000, I cannot imagine them possibly accepting it; and I think we ought to consider that for what it is.

I have no objection to our State Department or our Executive sitting down and talking, separate from this treaty, with the Panamanians on questions of mutual defense, or questions of aid of their own defense, or their aid of our defense, of the neutrality of the treaty, but I ask my friend from Alaska, does it not appear to you that putting this amendment on the treaty, albeit it might sound very nice, it might be well-worded, is the surest way possible to guarantee the rejection of any treaty by the Panamanians?

Mr. GRAVEL. I am positive that the Panamanians would reject it, just as I am positive that the citizens of Mobile, the citizens of Alabama, or the citizens of Alaska would reject such a treaty.

Mr. LEAHY. Or the citizens of Vermont, I can assure my good friend from Alaska.

Mr. GRAVEL. Or the citizens of Vermont. No American would stand still and permit a right of another country to station in perpetuity troops in their land. I mean you just do not give those rights. So when a Senator puts forth an amendment like this, what is it for? It is obviously to destroy. This is not a credible amendment; it is just a tactical way of trying to destroy the treaty. But I do not think it is a very good one, for the very simple reason that when you go to the issue of defense, there has been ample testimony in the Armed Services Committee and in the Foreign Relations Committee that our colleague from Alabama is approaching the defense argument all wrong.

You can defend the canal. We are a superpower; we can defend the canal from anybody. But what are we going to have then? We are going to have a ditch of water that is not usable, that you cannot get commercial vessels through, and the record is really complete on this.

I would just like to give a statement from General McAuliffe, our head of the command down there:

However even with the sizeable force or a larger one I would say that unless extraordinary measures are prevented such as moving across the national boundaries, there is no way that I could see that I could prevent the interruption of the canal.

Then I go to a colloquy between Senator Nunn and General McAuliffe. Senator Nunn on page 81 of the Armed Services hearings states:

With that kind of force, could you keep the canal from being closed?

General McAULIFFE. I don't think so. Senator, I think I could assure that the canal is not destroyed, that is, rendered useless, where you couldn't do anything with it; but I think that it would be virtually impossible to keep transiting ships from being stopped . . .

And then it goes on.

The point I am making here, which is what the Senator from Vermont alludes to, is that we can send in all the troops we want, but the whole purpose of the exercise of either defense or of these treaties, or I would think of anything—otherwise we are standing here being ridiculous—the whole purpose of the exercise is to be able to commercially use the canal and to use it in time of war for our war vessels when needed.

Our military people tell us that regardless of what military capability we have, sure, we can keep possession of it, but it is keeping possession of something that cannot work. So what is the point? What is the point of insulting the Panamanian people, telling them, "We are going to go for a treaty, but you have to let us be able to station our military on your soil in the year 2000, in the year 5000, the year 10,000, even if there is not a canal in operation. You have to give us inherently that right."

That is a little much.

Mr. LEAHY. Would it be possible to look at countries where our military presence is far more vital to the security of the world, such as Germany, France, Italy, England, countries like that, where we do not have such rights, where we could not have such rights if we asked for them?

Mr. GRAVEL. And, as the Senator well knows, where we have a little presence, we pay. I wonder why the Senator from Alabama does not want to pay them for these rights. He just wants to tell them, "We are going to be there in perpetuity whether you like it or not." We pay every other place in the world. We pay for our defense, for the collective defense of the world, but not in Panama.

Mr. ALLEN. Will the Senator yield?

Mr. GRAVEL. I will be happy to.

Mr. ALLEN. The Senator loses sight of the fact that at the present time we own the entire Canal Zone. All this would do would be to allow the President, if he thought it was necessary to defend the canal, to retain a military presence there. That would not occupy

but just mighty little space out of the 500-square-mile area of the canal.

I am wondering, too, since the Senator is so disturbed about keeping troops in Panama, why he has not raised any objection to the fact that under the Panama Canal Treaty we will keep troops there for 22 years. He seems to be raising no objection to that.

The historical parallel between a State in the United States and Panama is an entirely different situation. No foreign government owns any property in Alabama, and certainly they have no reason to come there and defend Alabama. But where we have such a tremendous national asset as the Panama Canal, and as the thrust of the leadership amendment is to provide a way whereby we may unilaterally defend the canal, allowing us to maintain a presence there, it does not violate the present situation that exists. It merely aids the leadership amendment, which is deficient on this point.

Mr. LEAHY. Will the Senator yield?

Mr. ALLEN. I might state also to the distinguished Senator from Alaska, so he will quit talking about the year 5000, I am sending a modification to the desk.

Mr. President, I ask that it be stated.

The PRESIDING OFFICER (Mr. Sasser). The modification will be stated.

The legislative clerk read as follows:

The Senator from Alabama (Mr. Allen) proposes a modification to his amendment No. 40.

On page 2, line 2, after "1999" insert "but not beyond December 31, 2019.

The PRESIDING OFFICER. The amendment will be so modified. The amendment, as modified, is as follows:

Strike article I, and insert in lieu thereof the following:

ARTICLE I

The Republic of Panama declares that the Canal, as an international transit waterway, shall be permanently neutral in accordance with the regime established in this Treaty. The same regime of neutrality shall apply to any other international waterway that may be built either partially or wholly in the territory of the Republic of Panama: *Provided*, That the military presence of the United States in what was the Panama Canal Zone on September 7, 1977, shall be continued beyond December 31, 1999, but not beyond December 31, 2019, if the President of the United States deems it necessary for the defense of the Canal or the maintenance of the neutrality thereof and shall prior to December 31, 1999, so certify to the Government of Panama.

Mr. GRAVEL. How long would that be?

Mr. ALLEN. It is 20 years. I just did not want the Senator to be talking about the year 5000. We do not have to worry about that. If he wants to talk about 2019 he can do it. The Panama Canal Treaty gives the United States the primary responsibility for the next 22 years of maintaining troops there in the Panama Canal Zone, defending the canal and maintaining its neutrality.

What this amendment would do would be to tell the President, if he thinks it is necessary to continue a military presence in the Panama Canal Zone for an additional 20 years, he shall have that right. I hope the Senator will not be talking about the year 5000.

Mr. GRAVEL. No, but I will bring up the year 2020. Why would the Senator capriciously cut off this unusual right he wants and not keep it for the year 2020?

Mr. ALLEN. Because the Senator from Alaska would object to that even more than he would object to 2019. Inasmuch as the Panama Canal Treaty gives us 22 years, this would merely add an additional 20 years, during which we would have the right, if the President at that time deems it necessary to protect the canal, for an additional 20 years to maintain troops there for the defense of the canal.

Panama ought to be just as glad as the United States to defend the canal because it is a profitmaking operation for them as soon as we ratify these treaties. They are going to skim off around \$100 million a year to be used in the operation of their government, whereas the United States operates the canal on a nonprofit basis. This would allow defense of the canal for an additional 20 years without cost, I might say, to Panama.

Mr. GRAVEL. Does the Senator think we have not skimmed off anything in the last 60 years?

Mr. ALLEN. No, sir.

Mr. GRAVEL. We have not?

Mr. ALLEN. No, sir, except the same benefit as all nations of the world who have waterway commerce have had. We have operated it on a nonprofit basis.

I might say also that we still owe \$319 million on the canal, unpaid capital investments. We are going to write that \$319 million off, giving it to Panama as well. We are going to forego the interest payment of some \$16 million or \$17 million a year. Certainly, the United States has operated it on a nonprofit basis and have not even paid for the original investment as yet.

Mr. GRAVEL. Could I address myself to that one point? Here we subsidized the maritime interests of the world for the last 60 years. And we have an illusion that the Panamanians, now that they are going to get their birthright back, are going to skim it off, and we do not get into the skimming. How really tragic. Here we euchre them out of it. We built a canal that cost \$319 million. We collect \$20 million a year interest on the money, subsidize our people. Presently, today, it is more than 50 percent obsolete. By the year 2000, it will probably be over 90 percent obsolete. And we have the crust to turn around and tell them, be happy with what we have done for you, go in peace.

What a terrible tragedy.

Mr. ALLEN. How much of an investment did Panama make in the canal?

Mr. GRAVEL. It is as if the Senator said, How much did the landowner of Rockefeller Center, the fellow who owns the land, what has his investment been? Was the investment in building the building or was the investment in the land?

They invested the land. We suckered them out of it, and we did it with a straight face.

Mr. ALLEN. I am under the impression that if we owe anything to anybody, it would be Colombia, not Panama.

Mr. LEAHY. Will the Senator yield on that?

Mr. GRAVEL. We shall get to Colombia in a minute.

Yes, I yield.

Mr. LEAHY. There is a point everybody seems to overlook. We talk about the canal being 10 miles by 50 miles, approximately. It

occurs to the Senator from Vermont that if we look at a map of the area, we see a very large area that juts out from there. That is what surrounds Gatun Lake.

If we look at the fact that it takes somewhere between, I believe it is 52 or 58 million gallons of fresh water from Gatun Lake for one transit, for whatever is going to use the locks in one transit; whether that is one big ship or a couple of big ships, it is that many million gallons of fresh water washed out to sea every time.

If we want to get truly technical on that and claim that we own everything down through that Canal Zone and that is ours, we are not in any way interfering with a national asset, what would we do if the watershed started being diverted off from Gatun Lake? I tell you what we would do. During a very large part of the year, we would not have any transiting of ships. Or we would have ships that would have to be so unloaded to transit—and they would have to pay the same amount for their bulk, whether they are loaded or unloaded—that they just would not even use it.

That is certainly a national asset. Certainly, the geographical location of it is a national asset, just as I consider, in my own State of Vermont—a State that I feel is one of the most beautiful in the country—

Mr. ROBERT C. BYRD. Will the Senator yield to me?

Mr. LEAHY. Yes.

Mr. ROBERT C. BYRD. Mr. President, I ask for the yeas and nays on the pending amendment as modified.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. LEAHY. I shall just finish by saying that every country can determine to some extent internally what they consider to be a national asset but, certainly, an objective standard could be made as far as the Panama Canal is concerned. The national asset to Panama is the location, is the isthmus, is the watershed, and the inclusive parts of Lake Gatun which feed the canal, and without which the canal would not even operate.

I yield back to the Senator from Alaska.

Mr. GRAVEL. The Senator from Alabama touched on history a little bit. I think it might be enlightening to the American people to delve into history.

When I talked about the birthright of Panama, he responded, what about Colombia? All I can tell him about Colombia is that when we cut a deal with them, they turned it down unanimously, and it was not as bad as the deal we foisted on Panama.

What about Colombia?

Mr. ALLEN. We made a deal with Colombia. In 1924, we paid them \$25 million and, at the same time, we paid Panama \$10 million, plus an annuity of a quarter of a million dollars a year, which is now up to \$2.3 million a year.

I state to the Senator from Alaska that I have no objection to raising the amount we pay to Panama, providing we keep the ownership and control and the maintenance and the right to defend it. It is not just a dollars-and-cents proposition.

By these treaties, we change the whole nature of the operation. The United States operates it as a nonprofit venture. It realizes no

profit from the enterprise. Yet, according to Economic Minister Barletta, by his own statement in Panama, in the 22 years of the existence or the life of the Panama Canal Treaty, Panama received \$2,262 million in revenues. That is not counting the more than \$1 billion in assets turned over to Panama immediately; not counting the Panama Canal Railroad; not counting the tremendous value of the Panama Canal, which is estimated to have a replacement cost of around \$10 billion. They are going to skim off, to use the words that the distinguished Senator quoted me as using, \$100 million a year, which will be charged against the tolls on the ships transiting the canal. That changes the entire operation, changing it from a nonprofit operation that the United States has to a \$100 million-a-year profit for Panama.

Well, you say, maybe that comes out of the tolls. Well, even if it came out of the tolls, it would be a burden on shipping. The United States has a very large percentage of that shipping. This seems to me, I shall say halfway facetiously, as an anticonsumer treaty, because the added tolls are going to have to be charged up against the ultimate price of the goods being transported.

So, that is the vast difference in the situation that will exist after the treaties from the situation that exists now.

Oh, you say, it has to come out of the toll. Well, there is just a little bit of a joker there, I say to the distinguished Senator from Alaska. It is provided that, at the end of the life of the first treaty, which will end with this century, whatever debts the Panama Canal Commission has—which is the successor to the Panama Canal Company—will have to be paid by the American taxpayer, because we have to deliver the canal to Panama free of all debts and liens of any sort. So it seems to me that we are giving the canal away and we are, in fact, paying the Panamanians to take it.

Mr. GRAVEL. First, we are not paying the Panamanians to take it. Two, we are not giving the canal away.

We have made a ton of money off the canal. What we have done with all this money that we have made is subsidize our maritime interests. The Senator is right, we have subsidized the consumers of the world at the expense of Panama. Since we are one of the greatest consumers in the world, we fed ourselves first; we stood in line first.

That is exactly what has happened. It has been operated as a nonprofit public utility. What is wrong with somebody owning an asset and getting a profit from it? We expect that in our economic society. There is something wrong if that does not happen.

Mr. GARN. Will the Senator yield for a question?

Mr. GRAVEL. Let me finish this one point and I shall be happy to yield.

We have a double standard. It is great for the United States of America to make a profit off our industriousness, off our capital, off our oil, whatever we have. But if we have the might and we can force some other little country to heel, what we do is not let that little country get the same benefits that we have for our citizens.

That is essentially what has gone on in Panama. We fixed it through our might to get the canal—we built it. We are proud of this technical accomplishment. But over the years, we have taken their heritage and seen that it has been operated on a nonprofit

basis, meaning that they got little or nothing for it. So, when we talk about what now the Panamanians will be able to receive for this obsolete canal, because we are giving them back the canal after it has all been used up, we are giving them the rind after we have sucked it dry. I quote from another authority, John Wayne again, that the United Nations—he is quoting from another source:

The United Nations Economic Commission made a survey of the value of the canal. Over the past 50 years it has been a saving to the American consumer—

And, of course, to consumers of the world, anybody who goes through the canal—

and producers, a direct savings of \$12 billion.

The canal only cost \$319 million, but we were able to save \$12 billion by operating it as a nonprofit public utility for the world.

I do not mind that. I do not mind ripping off a little bit. I do not mind taking a little bit of advantage. But let us be fair. We do not permit that to happen in this country. When we have a public utility in the United States, we are allowed to make 15 percent, that is the conventional figure now for return on investment.

What is so wrong with letting the Panamanians make that kind of money?

Also, now that times have changed, it is the last cry of colonialism, "Well, we will give them a little more money."

The French said that when they left Algeria. The British said that when they left Suez. That will not wash any more. We are going to have to give it up. Times have changed.

These are people that are sovereign and entitled to the same justice and equality as ourselves in the world community, and not an ounce less.

If they do not make that demand, I, as an American citizen, would make that demand for them because I cherish that freedom as an American citizen. I cherish that equality. And I want them as a citizen of the world to enjoy the same freedom as I do.

I know that the only way they can realize that freedom is through their economic birthright, and their birthright is the fact that their land is not wealthy like Alaska, or not populated like Alabama, with an economy like Alabama, but that their land has a characteristic that is most unusual in the world; it is the narrowest part between the entire lands of the hemisphere. It is the narrowest part between the two oceans. So their economic advantage is that path between the seas.

To not permit the people who are citizens of that land to enjoy that economic birthright is just unfair. I do not think in the final analysis the American people will stand for that unfairness.

I am happy to yield to my colleague from Utah (Mr. Garn).

Mr. GARN. I thank the Senator from Alaska.

I am a little bit puzzled by his talk about profit. That is what I want to ask him a question about.

Far be it from me to disagree with somebody making a profit. I think profits make this country run. But when the Senator talks about allowing them a profit, then I would like him to respond to the testimony of the Comptroller General of the United States and the Governor of the Canal Zone. They come out in their testimony before the Armed Services Committee and say that there will be a

profit next year, in fiscal 1979, with no treaty, of \$9.3 million, but as soon as the treaties are signed we will have a \$36.7 million loss, or a \$46 million difference the first year. This will rise to a \$58 million difference by 1984, and that beyond 1984 we better be aware that tolls may not be able to be raised sufficiently to cover the guaranteed payments to Panama.

Now, if we just want to turn it over to them, why do we not just give it to them and say, "Fine, you run it as a utility and charge what tolls you think you can get without diminishing traffic," and we hope the oil from Alaska continues to flow through the canal, which it probably will not.

Mr. GRAVEL. Why not?

Mr. GARN. Because they are talking about building pipelines through the United States so it will not have to go down there any more.

Mr. GRAVEL. All right.

Mr. GARN. This is testimony of the Comptroller General of the United States, not the Senator from Utah.

So that disturbs me. The Senator's thesis of profit is fine. Let them run it as a business enterprise if they can, but tell me why we guarantee those annuities to them, even if the tolls are not sufficient? Why should we guarantee annuities to them? That is the cost to the American taxpayer, and the taxpayer had better listen and be aware. The IRA study shows a point of diminishing returns. The Panamanians will get their cut. But that is not free enterprise or profit, that is the American taxpayer guaranteeing that Panama is not going to take any risks.

A debt-free canal, guaranteed annuities, regardless of what the hell happens to the tolls or the sensitivity or the—

Mr. GRAVEL. Could I respond to my colleague?

First, when he says guarantee annuities, the only guarantee we have in this treaty is to pay them \$10 million. That is the only guarantee that is a flat statement. The rest is tied to tolls and profit.

Mr. GARN. OK, 30 cents per ton.

Mr. GRAVEL. No. Let me say it again so it is very clear to the Senator.

The only thing we are committed to pay is \$10 million a year. OK?

So there is no other open-ended obligation, so to speak. That is a guaranteed payment if there is not 1 ton of cargo that goes through the canal. Under these treaties we have got to pay \$10 million a year. That is the right for being there.

Now, the revenues—

Mr. GARN. But we are not there any more, that is my question, why should we guarantee anything?

Mr. GRAVEL. Can the Senator not read the English language? The treaties say very clearly we will be there until the year 2000.

Why does the Senator keep making the public statement that everybody can hear that we will not be there any more? Read me a line now, read me a single line in these two treaties that throws us out before the year 2000.

Mr. GARN. OK, quoting the Governor—

Mr. GRAVEL. Forget the Governor. I am talking about the treaties before us. Read me one line that speaks of where we have to get out before 2000.

We operate the canal until the year 2000. So please do not make contrary statements.

Mr. GARN. If the Senator will let me respond, I will tell him, and the Governor of the Canal Zone is important. He happens to run it. I think he knows a little bit more about it than the Senator and I, a lot more about it. He happens to have the responsibility to run it.

Mr. GRAVEL. He loses his job if these treaties go through, so I can understand his concern.

Mr. GARN. But let us not let the American people misunderstand. Most of the American people think we are there until the year 2000, that nothing important changes, and I will quote the Governor of the Canal Zone whether the Senator likes it or not.

Mr. GRAVEL. Quote the treaties. Quote the treaties. Why not quote the treaties?

We are getting off into an argument that does not make any sense.

The Senator is saying he wants to quote the statement of the head of the Canal Zone when really what we are debating is not what the heck he thinks but what has been signed by the two Governments, the Government of Panama and the Government of the United States.

If the Senator wants to quote something, quote that, not his opinion, my opinion, or Charlie's opinion.

Mr. GARN. I am not quoting my own——

Mr. GRAVEL. Quote the treaties. They say very clearly, and I quote:

ARTICLE III

CANAL OPERATION AND MANAGEMENT

1. The Republic of Panama, as territorial sovereign, grants to the United States of America the rights to manage, operate, and maintain the Panama Canal, its complementary works, installations and equipment and to provide for the orderly transit of vessels through the Panama Canal.

That is the language of the treaty.

How can the Senator stand there and tell the American people over a public radio that we are giving up the canal as soon as these treaties are signed? How can the Senator do that?

Mr. GARN. It is very easy, because that is exactly what takes place.

We continue to operate it under a new Canal Zone Commission composed of five Americans and four Panamanians, is that correct?

Mr. GRAVEL. All appointed——

Mr. GARN. Is that correct?

Mr. GRAVEL. Yes.

Mr. GARN. Yes or no?

Mr. GRAVEL. Yes, all appointed by the United States.

I mean, we are so great on this treaty that we appoint the Panamanians to serve on the Commission. Can you imagine that?

Can you imagine my going into your State and saying, "We'll have a joint commission of operation, but I'm going to pick your guys."

Mr. ALLEN. Wait a minute, will the Senator yield for a question?
Mr. GARN. May I finish this?

Mr. GRAVEL. I would like the Senator from Utah's cooperation.

Mr. GARN. The fact, immediately upon ratification of these treaties, the Canal Zone Government is done away with and all sovereignty of the Canal Zone is returned to the Republic of Panama.

Mr. GRAVEL. Thank God it is, because we can more efficiently operate the canal and get rid of socialism.

Mr. GARN. Not maintain any governmental function——

Mr. GRAVEL. Why do we need a governmental function, or why do we need a government, or why do we need a vessel?

We have a vessel that is owned by the Government of the United States, by the Panama Canal Company, which is literally the Government of the United States, that picks up goods in New Orleans and ships them down to the zone. Here is the Panama Canal, which has thousands of ships a year going through. Do you think we could rely on free enterprise to bring down some goods for the commissary? Heck, no. We have a vessel that is owned—we used to have five. Do you know who cut them down? That great Republican free enterpriser, President Dwight Eisenhower, and I salute him on this occasion for what he did.

They had five vessels that used to pick up goods in New Orleans, take it to Panama, and unload it there so the people in the zone could have it. They did not want to use the free enterprise system.

Now you are saying how terrible it is that we are going to lose the government of the Panama Canal Zone. It has been a millstone around our neck for 60 years. We cannot tell what is efficient operation of the Panama Canal today, because all the money slides in. The tolls were never raised, but expenses of the canal were always equal to what the growing traffic became. Is that not an interesting phenomenon? For 60 years, the needs of the canal always measured up to the totally ascending amount of the traffic. I just am struck by that phenomenon. I think it is a lot of socialism, that whatever you put on the table, that is what it costs you, and that is the way we have been operating the canal, within the zone.

I hope we will do away with that stuff, so that we can let the people operate a canal—not operate a government, not operate a PX, not operate the movies, not operate the cleaners. Stop all that stuff. Just let them operate the canal, and let them go to the cleaners downtown.

Mr. GARN. Mr. President, will the Senator yield?

Mr. GRAVEL. I yield.

Mr. GARN. The Senator is very articulate and persuasive and rhetorical, editorializing on what I am saying.

Let me summarize so the people know the facts. The Canal Zone Government is replaced. Without arguing whether it should be, let us talk about facts. It is replaced. The Canal Zone Company is done away with, and the Republic of Panama does take over all governmental functions within that area. It is a fact that it goes from a \$9.7 million profit for fiscal 1979 to a \$30.67 million loss. It is a fact that through 1984 it will go up——

Mr. GRAVEL. But——

Mr. GARN. Let me finish.

Mr. GRAVEL. You are talking about the future. How can you say those are facts? We do not know what they are going to make next year. Somebody told you that.

Mr. GARN. We are probably conservative, and they probably will be higher losses.

Mr. GRAVEL. I do not know that we are being conservative. It depends on how much oil from Alaska is going to go through there at those uneconomic prices. We cannot tell.

Mr. GARN. In the finish, we are guaranteeing the annuity, whether the canal revenues are sufficient to take care of it or not. Those are facts. Those are in the treaty. I do not care to get into as rhetorical a battle as you have been carrying on.

Mr. GRAVEL. I do not know that. People give me testimony when their livelihood is involved.

Mr. GARN. The livelihood of the Comptroller General of the United States is not dependent upon this treaty.

Mr. GRAVEL. I would like you to produce for the record the testimony by the Comptroller General.

Mr. BAYH. Mr. President, would the Senator like to have a reiteration of testimony by the Governor of the Canal Zone that was given to the Subcommittee on Transportation of the Committee on Appropriations no later than yesterday?

Mr. GRAVEL. I think we need that information at this time.

Mr. BAYH. I do not want to interject myself unnecessarily. The discussion by my friend from Alaska and my friend from Utah has been stimulating and interesting. But inasmuch as we are talking about economics, and my friend from Utah talks about the Governor of the Canal Zone, I do not know whether he has had a chance to talk to the Governor.

Coincidentally, it was sort of accidental that yesterday, as I sat down to preside over the first session for this year's budget of the Department of Transportation—in other words, that part of our appropriation bill that includes all the money that goes into all the areas of transportation—I found myself face to face with the man who is the Governor of the Canal Zone right now.

I say to my friend from Alaska that when they were carving up the jurisdiction of the appropriations subcommittee, how the Panama Canal got in with transportation, I do not know. But it has been my good fortune to chair that subcommittee and to look at the canal revenues and operations from the dollar standpoint over the last several years.

It might be relevant to let the Senate know what the Governor of the Canal Zone said. There was a discussion about deficits. What the Senator from Alaska said over the long haul is technically true about our being able to spend all the money we raise, to suggest that the Panama Canal has always been an in-the-black operation is to deny the facts. As the Governor of the Canal Zone pointed out, this year we are in the black; next year we are going to be in the black; but we ran into a couple of years prior to this time in which we were in the red.

So to suggest that this deficit problem is a new and novel one is not based on the facts as presented by the Governor of the Canal Zone.

The fact of the matter is that the Senator from Utah is accurate. We are going to give up governmental functions. We are no longer going to provide certain specified public services in canal operating and housing areas. But if one talks to the Governor, his primary emphasis is not whether we tell both the Panamanians and the American citizens who are living in the Panama Canal Zone what to do and how to perform the governmental function. If we are concerned about the economics of the situation, the Governor will tell you that that is a losing proposition, that the running of the Government of the Canal Zone costs us money. The revenue comes in from the canal company, which will be maintained in the Commission.

So if you are concerned about how you are going to balance the budget down there, we are getting rid of that part of the operation which has cost us somewhere between \$10 and \$20 million a year. It is hard to nail that down, because we are going to shift some of those services off to the Department of Defense, and other factors of that nature.

Mr. GARN. Is it not correct, though, that we are going to pay them \$10 million a year, at least the first year, to provide those services? You are correct. So that offsets the costs you are talking about. We guarantee them, for 3 years to pay them \$10 million. The Comptroller General testified it would only cost \$4.4 million, and we are going to subsidize them an additional \$5.6 million. That is in the testimony as well.

Mr. BAYH. I was going to deal with that, not from the standpoint of what the Comptroller General said, but from the standpoint of what the Governor of the Canal Zone said, since he appeared before us as a credible witness, and I think that is an accurate assessment. I think he is.

It is important, and I do not say this in a critical sense. If you look through that budget, you see where that money is coming from and where it is going and how we are going to base tolls, and it is very complicated. You need a computer and a crystal ball of some kind.

The Senator from Utah is accurate—we do not know what the long-range view is. Realistically, we can only project to about the year 1984. The Senator from Alaska could suddenly find that all that water and all that land is oil, the likes of which he has been telling me it is going to have, so that we will have more toll revenue from Alaskan oil instead of less.

The Governor was quick to point out that one of the reasons the picture looks more rosy now than it had for the last couple of years is that the revenues have significantly exceeded expectations—by several million dollars. They did that despite the fact that pumping station No. 8 has not been operating, so the Alaskan pipeline has not been providing as much oil by any means as we anticipate in the next several years.

But let me not get involved in that. Let us try to divide what we are talking about, so that at least I can understand it. I do not have a magic formula for understanding it.

As I understand it, we are talking about two entities. We are talking about a governmental operation in which the United States has undertaken, over the past decades, to actually run the govern-

mental functions, the utilities—the water, the electricity, the fire, the police, the garbage collection, providing schools—all those kinds of things that we would normally say are the functions. My good friend from Utah was the mayor of Salt Lake City. He was running the government there. That is what we are doing in the Canal Zone.

The second part is the canal company.

Mr. RIEGLE. Mr. President, will the Senator yield?

Mr. BAYH. I yield.

Mr. RIEGLE. If I understand correctly these municipal services that the Senator from Indiana speaks about, the estimate I was given as to the cost to the United States is about \$18 million a year. So that, in effect, we transfer these functions from the United States carrying them out, at a cost of about \$18 million a year, to the Panamanians doing it for the payment that was referred to earlier, of \$10 million. That actually is a saving to the American Government.

Obviously, it may cost the Panamanians more to do it than they would pay by using their own pay rates, and so forth, because there are going to be a certain number of mixed details, and the American pay scales in the zone have been higher than what would normally be Panamanian pay scales outside the zone.

It is important to note that there is information indicating that we have been paying more for the same functions.

Mr. BAYH. I think that I pretty well said about the same thing here just a few moments ago, and I appreciate the Senator adding enforcement to that logic.

Here again I am just relating what was given to us as testimony from the Governor of the Canal Zone yesterday.

If one divides these operations into the governmental operations and the canal operation he will find that the governmental operations are costing us—the Senator from Michigan used the figure of \$18 million—we estimated and the Governor estimated yesterday it costs us about \$20 million.

Inasmuch as some of those are going to be laid off and will be assumed by the Government of Panama and by the Department of Defense, let me say, the loss will be less than \$20 million, but it is somewhere greater than \$10 million of losses that the United States has had to pick up every year that we will no longer have to pick up. All right.

Let us look at the other part of the operation, because it is awfully easy to confuse this. The Senator from Utah accurately talks about the annuities. The United States has agreed to pay these annuities. The Government of the United States has agreed to pay Panama for services that they will pick up and provide which are now financed by the United States.

But to suggest that that is going to lead to a loss is to ignore the fact that all of those costs are the basis for determining what the tolls are.

In other words, whatever we have to pay the Panamanians in annuities, \$10 million for services, \$10 million in fixed annuity, and the other things that are on that list that we have all seen, all of those things are not losses; all of those things are computed and they are charged into whatever the toll revenue shall be.

And I must say I have never run a canal, and I do not want to start now, but it was rather comforting to the Senator from Indiana yesterday to hear the Governor of the Canal Zone say that for the predictable future the Canal Zone will be financially self-sufficient.

It is not going to cost us money, at least so says the Governor of the Canal Zone.

I do not know what the Senator from Utah was referring to, but I here again think it is important for us to understand what we are talking about as to the Government's total outflow to the United States running that government down there. We are going to give that up and give it to the Panamanians, so we are going to save money in that regard.

The question is whether we save \$20 or \$10 million, or somewhere in between there. We are going to have to pay Panama for assuming some of those services, right, but that cost is not borne by the taxpayers of America. That cost goes into figuring out what the basis for the tolls are and that money will be recouped and recovered every time a ship goes through the canal.

I appreciate the tolerance of my distinguished colleague from Alaska and my friend from Utah. I only yielded to temptation, because of the close proximity and it seems to me the relevance of the testimony of the Panama Canal Zone Governor.

Mr. GARN. Mr. President, if I could respond to the Senator, I am sorry the Senator from Alaska has left because he was asking for direct quotes, and I am sorry he is not here, but I would like to at least put in the Record what he was asking for, and again I do not know whether the Governor of the Canal Zone has changed some of his opinions yesterday, but this is his official testimony before the Armed Services Committee so I will quote directly rather than my statements before, paraphrasing what he said:

Now I would like to turn to the proposed Panama Canal treaty. The dominant and all-encompassing change under the treaty is immediate recognition of Panamanian sovereignty and general territorial jurisdiction over the present Canal Zone

• • • More specifically, the treaty would eliminate the Canal Zone Government and the Panama Canal Company and substitute therefor the Panama Canal Commission. This agency will have no authority to perform most governmental or commercial functions.

He goes on on the reduction in facilities:

As of June 30, 1977, the net book value of property, plant, and equipment of the canal enterprise was \$567 million.

And I want to emphasize net book value is a bookkeeping term for depreciated assets. It has no relationship to replacement value or to fair market value:

On the effective date of the treaty, an estimated \$92 million of these assets will be transferred to Panama and \$30 million to other U.S. Government agencies. An additional \$4 million in assets will be transferred to Panama during early phases of the treaty. Our current estimate is that the net book value of such property at termination date would amount to \$522 million, making the total value of transfers to Panama \$618 million.

Then he outlines what has been discussed many times in this Chamber:

The 30-cent per Panama Canal net ton of shipping transiting the canal, the fixed annuity of \$10 million, the \$10 million for certain specified public services, the additional \$10 million that will come out of surplus if there is one.

The point that I wanted to make, and the Senator is correct, if the tolls are sufficient to cover these costs he is talking about, fine. There would be no cost to the American taxpayer, but again I want to quote from the Governor of the Canal Zone:

Summary results for fiscal year 1979 are shown here * * *. Using the most recent estimate of tolls (\$195 million), it is projected that there would be \$9.3 million earnings without a treaty and a \$86.7 million loss with a treaty.

Our analysis has also covered the period fiscal year 1979 through fiscal year 1984 in order to include the total transitional impact as well as the first year effect—in fiscal year 1984—of indexing the payment to Panama for each Panama Canal ton of shipping transiting the Canal. The predicted shortfalls in revenues range from \$36.2 million to \$58.9 million and are shown on this chart.

That is his conclusion.

Mr. BAYH. Let us go ahead and read the rest of that statement which points out the fact and although I do not think he would tell that committee one thing and our committee another, and that is they do not continue to operate business as usual. They anticipate a 19-percent increase in the tolls which will balance the budget.

Mr. GARN. I was going to go ahead with that.

Mr. BAYH. All right. Fine.

Mr. GARN. That is exactly what he said.

Mr. BAYH. I do not want to tell the Senator from Utah how to debate.

Mr. GARN. Nevertheless, the probability is very high that toll rates will have to be increased often during the next 23 years if the canal is to continue on a self-supporting basis.

Over the longer term, if revenues and costs develop as projected, it appears that periodic toll rate increases will be required, treaty or no.

But here is the difference:

With a treaty, the need is sooner and greater.

That is what he talks about and what the Comptroller General was talking about.

Because of these new financial guarantees of the U.S. tolls will go up more rapidly and sooner.

And let me quote his last statement in his official testimony until 1984 he has no doubts that the toll rates can cover it. But he said:

Nevertheless, I believe you should be alert to the possibility that the Canal operation may not be self-sustaining in the out years.

If I could just follow up with what the Comptroller General says about the same thing where he is talking about the IRA study. He says:

Unfortunately—

This is Elmer Staats testifying—

the IRA study does not analyze the sensitivity of traffic to a two-stage or multistage toll rate increase.

In other words, what he is talking about is some place you reach a point of diminishing returns and he said:

Who would bear the ultimate burden of fulfilling the Treaty obligations to Panama? Since the Treaty calls for Panama to receive benefits from the Canal's existence that it isn't receiving presently, someone or some group would be paying more. U.S. citizens could potentially be affected in two roles: as taxpayers of the country that operates the Canal and guarantees payments to Panama, and as producers and consumers of products shipped through the Canal.

He goes on to point out in dollar terms to be fair this amount is negligible when compared with our total import bill, but nevertheless what the toll rate increases are 30 percent of that increase is going to be paid by U.S. consumers.

His final statement is very similar to the statement of the Governor of the Canal Zone. He says:

If canal transits fall short of what is currently estimated, it is possible that toll revenues will be insufficient to cover the costs of the Commission, including the scheduled payments to Panama. In this eventuality, the U.S. Government is likely to be required to provide financial assistance either through congressional appropriations or by allowing the Commission to borrow from the Treasury.

The whole thing that started this particular debate was the talk about profits and guarantees.

Forgetting the issue of sovereignty, and whether we should or should not turn our backs, just dealing with the economic questions here, I ask the Senator from Indiana why, even if we agree that it should be turned back to them, is it not sufficient to give them a \$9.7 billion asset and a lot of other related assets that would go with the canal and its operation? Why is it not fair to say, "We have decided to give it back to you"—again, I do not agree with that, but using that assumption—"but you are going to have to run it as a utility; you make the decisions, you set the tolls, and you run it"?

Why say we are going to give them all that, and then say we are going to give them all this in addition if the tolls do reach a point of diminishing returns, as the Comptroller General and the Governor of the Canal Zone warn us we had better watch out for, beyond 1985?

It is just like owning a house, and then deciding, after so many years, you are going to give it back to the original owner of the land, and you say, "Fine, I am giving it to you, but I am going to guarantee certain payments to you; if the rents are not sufficient, I will guarantee the rents, I will guarantee the taxes, and I will guarantee that, after the year 2000, the mortgage will be paid off."

Why? Why is it not enough to give it to them? Why do we need the guarantee? Why do they not work it like a business or utility, to sink or swim, and take the risk of whether those tolls will be sufficient? Why should the American taxpayer have to pick up those payments?

Mr. BAYH. May I just make one other observation, or perhaps try to reiterate what I have said earlier?

I think that neither the proponents nor the opponents of the canal would be doing justice to the traditional debate process of the U.S. Senate if we did not recognize that there are limits to our ability to predict what actually is going to happen, particularly in the long-range forecasts.

Indeed, the Comptroller General and the Governor of the Canal Zone have said there are certain features that could arise in the

future, that could cause, in time, the decreasing use of the canal and the toll problems just suggested by my good friend from Utah.

By the same token, I have not talked with the Comptroller General, but the Governor yesterday said:

There are also other factors that could have a positive impact.

So I would suggest that perhaps the course of wisdom would be to try to examine that timeframe in which we have a reasonable opportunity to determine what is going to happen, and not go looking for the ultimate extremes, either positively or negatively. The Governor of the Canal Zone said yesterday—and I would be glad to have my friend from Utah have a copy of the Record, and perhaps I should ask unanimous consent that significant relevant portions of it be put into the Record as soon as it is available, if there are no objections.

The PRESIDING OFFICER (Mr. Stone). Without objection, it is so ordered.

Mr. BAYH. But I was very concerned about the economics and so we zeroed in on it. The Senator from New Jersey was there and contributed to this dialog—our distinguished colleague who is the ranking Republican member of this committee. The Governor said repeatedly that in the time frame in which one could predict, between now and 1982, the canal could be made self-sufficient and the taxpayers of the United States would not have to be paying for it.

I just want to go back here again to what we are really talking about; hopefully we are not confusing apples and oranges, because the fact of the annuities has come up two or three times.

We are talking about an agreement in the treaties that would provide for a \$10 million flat use payment to Panama. We are talking about payment for services, and we are talking about a number of other cost factors which are not now decided but which will be decided as a result of a legislative program that will be given to us by the President, which will consider other factors that will be written off against tolls.

One factor that I think is important to get in there is the right kind of depreciation on assets. The Senator was concerned about that, and I think it only makes sense that those assets are there, they are in the Canal Zone, let us depreciate those so that the depreciation of the assets goes into the toll base, so that when a lock suddenly needs to be repaired, for example, you have the money there, through the actuarial process, to restore that.

All of those factors are present, and I think it is important for Congress to stand up and make sure those factors are defined in a way that is fair to the United States, and I think the dialog with the Governor yesterday took that into consideration.

All those factors should go into the cost of running the canal, which would then be prorated against each ton that is going to go through there. Now, if there is a surplus—first let me say, the toll basis, the toll fee is supposed to be, and efforts will be made to try to set it, at a level so we come out at zero, so we do not have any losses or we do not have any surpluses.

If there is a surplus, as we have now—this year there was a surplus, where the revenues were greater than had been anticipat-

ed—if that condition exists, then there is another payment that goes to Panama, not to exceed \$10 million. I think it is important for us not to confuse that payment, which only exists if there is a surplus, with the other \$10 million, which is a basis for determining what the total value would be.

I am sure I have said more—I know I have said more than I intended to, but let me just say a couple more words? Because if we are looking at the economics, and to me the economics are important, I suggest perhaps—

Mr. GARN. Could I just ask the Senator one question?

Mr. BAYH. Please.

Mr. GARN. The Senator brought up the implementing legislation, and I think he is absolutely right; we ought to see that implementing legislation. As a matter of fact, regardless of who is on which side of this issue, it seems to me that we should not have even started considering the treaties until we had that implementing legislation before us, so that we would not be arguing about some of these possibilities that we do not yet know.

I think it is important to note that the State Department told us that they would have the implementing legislation before us in October, and we had the chief counsel, Mr. Hansell, before us in Armed Services, and he said they would continue to rush, but there were so many things that were difficult to interpret in the treaties that it was difficult for them to write the implementing legislation.

Comptroller General Staats said he could not estimate all the treaty-related costs; he does not really know how much it is going to cost the American taxpayer in total treaty-related costs, because that information is not available.

I agree with you; we are going to take a look at that implementing legislation. I think it would have been helpful to this debate if we had actually had that legislation, to know what it is going to contain and what the cost associated with it are, before we had this debate on the treaty.

Mr. BAYH. Let me say I am going to join with my friend from Utah. We are not going to let the Comptroller General write that legislation. Let us look at what we have to do here in the Senate.

Mr. GARN. It is the State Department that is going to send it up, not the Comptroller General.

Mr. BAYH. I understand. But there is nothing in the treaties that tells us what we have to do in that implementing legislation. The two stand on their own legs; and once the treaty is ratified, when you and I and other Senators have voted for the treaty or against the treaty, then we will have the responsibility of looking at this and saying, "OK, this is what the treaty says and this is what we envision as being financially true, so that our taxpayers do not have to bear the burden and we in Congress, together with the people of the United States, can write that implementing legislation, and I assume that both the proponents and the opponents will be able to do a good job.

Mr. GARN. The only problem with that—I agree with the Senator from Indiana that we will have to write it. The only thing is, there are a lot of things that will have to be done, that we will have no discretion on. For example, the transfer of 2,100 employees to the Department of Defense payroll. There is a prediction here that 20

or 25 percent of all Canal Zone employees will have to be taken out of the Canal Zone within 5 years. There are some phases of that implementing legislation that will greatly affect the cost. We are going to have to take care of that 20 percent of American employees, one way or the other. We will have to take care of the American school teachers, and so on. That is where we get this estimate of about \$1 billion over the 22 years: the cost for these indirect treaty-related items.

But I still have not received an answer from the distinguished Senator from South Dakota or Indiana to the question which started this whole colloquy. I am seeking an answer. Hypothetically, I agree if they are entitled to this money why should they not bear the risk of the sensitivity of the zone.

The Senator is correct. These are estimates. The traffic may not drop off. The toll rate increases may not reach the point of diminishing returns. It may be self-sustaining to the year 2000. But the financial experts say beyond the year 1984 they are concerned about that. I am sure the Governor told the Senators that. Beyond 1984 they are not sure.

After giving this \$9.7 billion asset to them, why should not the taxpayers of Panama bear the risk of the tolls dropping off? That is the question that started it off. Why should the American taxpayers take that risk and Panama have no risk at all?

I would like someone to give me a business and say, "Mr. Garn, we are going to give it to you debt free, no mortgage, no interest to be paid, and you can charge whatever you want for your products. If you charge too much and your sales drop off, we are going to guarantee you a payment anyway."

I do not understand the economics of that, that we have to bear the burden of a possible future risk, rather than the people we are giving this asset to. I cannot comprehend why it is placed on the American taxpayer rather than Torrijos.

Mr. McGOVERN. Will the Senator let me attempt to answer?

Mr. GARN. I would like someone to attempt to.

Mr. BAYH. Let me complete one thought, if I may I want to get back to the fact that got me involved in this debate. We talked about what the Governor of the Canal Zone said. He said that in the short-range it would be made self-sustaining. We all know that there can be things that happen, good or bad, that would change that equation in the future.

Let me suggest, before I yield the floor, that one of the reasons I determined to support this treaty after a great deal of thinking and struggling in my own mind was—because if I had my druthers, it would be why change things, it has worked pretty well—one of the things which compelled me was just as we right now are discussing the unpredictability of costs for running the canal under a treaty.

I think we can understand that there are some significantly higher unpredictable costs of greater dimensions of continuing to run the Panama Canal as it is right now. Some say it is fair to say, "Well, suppose you do not ship as much oil through there? It is not going to make it possible to get higher tolls in the treaty." I think it is just as fair and responsible for us to say, "If we do not get a treaty, we better figure out how much it will cost to have 100,000 American boys down there, some of whom will not come back."

That is one of the costs that we hope we will not have to confront, and that is one of the major concerns to the Senator from Indiana.

Mr. GARN. If I may respond to the Senator, I have said here on the floor, though maybe not in his presence, that those people should not assume that those of us who oppose this treaty oppose any treaty. I am not one who believes we should continue on with the status quo. I do not believe many of my colleagues do, either. We believe there should be significant modifications in the 1903 treaty. To avoid the kind of a situation the Senator was talking about, I will not get involved in the military side today as it will take too long. I will address at some other time how vulnerable the canal is. Nevertheless, whatever the military implications are, suppose we defeat this treaty in the Senate? Why does everyone assume that this is the end, that it is over, that there is a big confrontation and no place to go? I would certainly hope that if we are successful in defeating this treaty—

Mr. BAYH. Does the Senator know how long we have been negotiating this treaty?

Mr. GARN. Yes; off and on for 13 or 14 years. But I would hope that after having been down there and recognizing how badly Torrijos needs a treaty for his own political survival, and how important politically it is to the President of the United States and this country, that we would go back and say, "Hey, this is not the end. We are still willing to talk. Let us start immediately and work on something that is fair to both countries."

I think it is interesting that a lot of people, citizens who were in favor of the treaty, of the principle of returning sovereignty, when they found out these details of economics and defense told me:

Although we are in favor of giving it back, we had no idea these were the terms for giving it back. We think you ought to go back and negotiate something that is fair to both sides.

Mr. RIEGLE. Will the Senator yield?

Mr. GARN. In a moment.

Let us not assume that if we defeat it we have an armed conflict. As reasonable people, we would say, "We did not make it on the first round, let us go back and talk some more and see what we can work out."

That would be a more responsible position than to say, "Well, it is dead. Let us have a war."

Mr. RIEGLE. Will the Senator from Utah yield?

Mr. GARN. I will be happy to yield.

Mr. RIEGLE. I think the question of what happens if the treaties are turned down is a really powerful and important question. It involves trying to look into the future, and that is not an easy thing to do. Having been to Panama and having talked to opposition groups in Panama, those to the left of Torrijos and those to the right of Torrijos, I have not talked to anybody in Panama who said if there had to be a new negotiation they would not insist on a better deal from the Panamanian point of view.

It seems to me that if we listen to what the Senator is saying, if the United States turns down these treaties and the United States goes back for however long, 6 months, 6 years, 12 years, and negotiates a new treaty, that should not cause us to assume that

we would come back at a later time with a package more favorable to the United States. I would assume just the reverse of that.

Frankly, I do not think if we went back and negotiated we would necessarily get the Panamanian people, 66 percent of them as in the referendum, to agree to a transition period as long as 22 years.

On what basis does the Senator think we would not be facing a worse situation after those negotiations?

(Mr. Allen assumed the chair.)

Mr. GARN. I would be happy to respond. I was there for 5 days and I made it a point to talk to a lot of private citizens. I thought the reactions were rather interesting.

We have heard about all this anti-American, antigringo talk, and yet almost every Panamanian citizen I talked to on the streets of Colon, Panama City, and Balboa wanted to assure me that they were not anti-American, not to fear any great uprising, they liked us, they appreciated what we had done for them, they appreciated what had been done for their economy as a result of the canal being down there.

I said, "OK, did you vote for or against it?"

Everyone I talked to had voted for it. I am not talking about large numbers—between 20 and 25. I do not know exactly.

They said:

We voted for the treaty because we are Panamanians. We believe in our country as you believe in yours, and we would like to have the canal back in our jurisdiction.

It was amazing how they said:

We are afraid of our operation under the dictatorship. We would prefer to work out some kind of a lease arrangement, some way that you would run it for us.

I was surprised. I am not arguing that none of them said they did not want it back. They did, but they were seeking some guarantees that it would be run efficiently and well.

Those who voted against it, interestingly enough, said the same thing, that they wanted the canal back. They did not vote against it because of not being patriotic or nationalistic, but they did not want it back under Torrijos. If they had it back under a democratic government, where they would have control as voters over the operations of the canal and their public officials, then they would have voted for the treaty.

Mr. RIEGLE. That is exactly my point, if the Senator will yield. If these treaties are turned down and this causes an uprising in Panama, if Torrijos is ousted and somebody else takes power and we then undertake to start negotiating again with whoever the new government is, it seems to me the Senator just made the very arguments which were the ones I heard. That is, that the rest of the people in Panama, if they have to negotiate a new deal, want to negotiate an even better one from their point of view than the one we are considering here now. I should think that they would advance that as an argument to say, why should there be a 22-year phased transition; why not make it 5 years? Why not make it 7 or 8 years?

I heard a number of Panamanians say that, and I suspect the Senator may have, too, if one assumes Torrijos is out of the picture.

Mr. GARN. I make the point, or the assumption, just the opposite way, to refute the Senator's point. I believe they would be willing to reconsider, because the paramount issue for them was getting the canal back under their control. As far as the operation and maintenance and everything, that is not what they were fighting about. So I would not assume, when they are getting sovereignty back immediately—that is what I tried to point out earlier about this 22-year period: All they are doing is trying to operate the canal for 22 years. They take over the whole canal zone, under their police, under their courts, under their government. That was the overriding issue, not the individual terms of the treaty.

If we went back and said, we are going to renegotiate all of these, I am not convinced that they would ask for a better deal on those terms.

Mr. RIEGLE. I might just say that I do not believe it is completely correct to say that is all that is involved. We, in fact, as the Senator says, manage to run the canal for 22 years. We also keep our military bases there, too. That is an enormous additional part of the bargain.

In terms of running the canal, 80 percent of the jobs on the canal today are manned by Panamanians. So if we were to have 100 percent of the employees operating the canal being Panamanian, we would only have to have them move into the additional 20 percent of the jobs that they do not already have.

I heard many Panamanians say to me, regardless of where they were philosophically, that they felt they were ready to assume control of this canal much sooner than 22 years. Quite frankly, I think our negotiators were very effective, from the point of view of the United States, in persuading Panama to accept a transition period that is that long when, right today, 80 percent of the jobs in the canal are held and carried on by Panamanian citizens.

Mr. GARN. Did the Senator ask the Panamanian employees how they felt about the treaty? The ones I talked to, 12 or 13—and I picked them out at random—each said that they voted against the treaties, they were opposed to the treaties, because they trusted our Government; they do not trust their own.

The point I am trying to make is that I do not have any doubts that the Panamanians can run it from an operational standpoint. There are some very bright people down there. Torrijos, as low level as he is in intelligence, has cabinet ministers who are very smart fellows. I talked to Mr. Barletta at great length. He has a Ph. D., University of Chicago, is minister of finance. I spent a lot of time talking to the minister of finance and the education minister.

I do not argue that they cannot run the canal. Their problem is political interference. That is what the Panamanian citizens were telling me, not that they were not ready to operate it or run it from a mechanical, physical standpoint. They do not trust their Government. They have a dictator who overthrew an elected established government.

Let me give an example. I told Torrijos this personally.

For \$65 million a year are used for operation and maintenance of the canal, for slides, locks, et cetera. I said to Torrijos, "Do you think that whoever is around in the year 2000, with all the social

and economic problems in this country, will be able to keep their hands out of that maintenance fund?"

It does not have to be a dictatorship where you have absolute total dictatorship. He can do what he wants. He cut the equation fund for students in half on the streets of Colon because somebody complained. He did it by snapping his fingers. There are no checks and balances from Congress. His education minister was aghast.

When I was mayor of Salt Lake City, we had a general fund. It came out of property tax revenues. We had an airport facility that ran out of its landing fees. We had a water facility that was self-sufficient, totally run by taxpayers' money from water revenues. The point I make is that every single year, we were required by the State constitution to balance the budget. The mayor has always balanced the budget in Salt Lake City, because mayors go to jail if they do not. It is that specific. So every year, we balanced the budget.

But there was always the pressure from our city council, the city commissioners because, with inflation, we always had more expenditures than we were going to have revenue. The first suggestion was always, let us be politically popular and not raise the property tax, but how about another million or two out of the water facility or the airport fund? Let us rob Peter to pay Paul. I was able successfully to keep that down and say, no. Let us keep those separate.

If there is that temptation in a well-run American city with democratically elected officials who are required by a constitution to balance the budget, do you think that a dictator who has severe housing problems, severe economic problems in his country, will not be tempted to say, "Let me take \$10 million of that \$65 million next year; we will defer fixing this lock or repairing this water line and use it to buy housing."? That is a worthy purpose.

So I do not doubt the Panamanians' ability to run the canal. I doubt the political ability of that Government to run it properly. Both opponents and proponents among Panamanian citizens told me they were worried about that fact.

Mr. RIEGLE. I think the maintenance question is an important factor, one that has to be looked at. But it has to be looked at in the context of the fact that it is going to be the United States that makes the maintenance decisions for the next 22 years.

We are talking about what kind of government, who will head it, and whether it will be Torrijos or somebody else. It really is beyond my imagination to expect that in the year 2000, 22 years from now, when the United States stops running the canal and making the maintenance decisions, Torrijos is going to be around. I do not think any of us can forecast what the domestic situation is going to be in Panama at that time in terms of what the pressures might be or the form of that government or who will be in it or what have you. I do not think we can use that issue today to say that that rules out the wisdom of passing the treaties at this time. So I think that question of who is around in the year 2000 is one that no one has the answer to.

Mr. GARN. It might be Colonel Noriega, and he would be worse than Torrijos.

Mr. RIEGLE. I think the key point that we have to look at here is the question, from the point of view of Panama, that their whole reputation internationally will depend upon the degree to which they can demonstrate a capacity to accept the responsibility for managing and operating the canal. Let us take ourselves forward to the year 2000.

It would seem to me that the one way that Panama will be measured by every other nation—their immediate neighbors, the rest of the countries in South America, the United States, the rest of the world—will be on the basis on which they responsibly, ably, and wisely manage the canal. I think they understand it. I think they understand it today, let alone having 22 more years elapse.

It would be my thought that, knowing that, and having the canal be something that all the nations of the world use, Panama would put premier attention and emphasis and talent to work to make sure that if they did one thing right, they would manage the canal right.

As the Senator himself said, he has every confidence that the Panamanians have the capacity, even today, to run the canal. They run 80 percent of the canal at the moment, in terms of the on-line jobs there. I think they possess those talents.

Twenty-two years' time, it seems to me, is certainly more than enough, in terms of a reasonable transition time, for them to be able to assume the full management and operation and control of this facility.

I thank the Senator for yielding.

Mr. GARN. I hope the Senator is correct in that feeling. I do not share his optimism that that will take place.

We have been on this a long time. The Senator from South Dakota has been patiently waiting. I yield to him at this time.

Mr. MCGOVERN. I thank the Senator from Utah.

Mr. President, I want to talk about a different matter.

I have been listening to this discussion with regard to the possible dollar cost to the American taxpayer if we miscalculate how high the tolls should be over the next 22 years while we continue to operate this canal. As I understand Senator Garn's argument, what he is saying is that, under the terms of the treaty, between now and the year 2000, during which time the United States will continue to operate the canal and will continue to set the toll rates which provide the revenues for the canal, if through some miscalculation, the cost of operating that canal during this period while the United States is operating it turns out to be higher than the revenue from the tolls, we have to make up the difference at the end of the 22-year period so that we do not give Panama, at that point, a canal with encumbrances against it. That in fact, is what the treaty says. The Senator is right about that.

The PRESIDING OFFICER. If the Senator from South Dakota (Mr. McGovern) will indulge the Chair for just a moment, Mr. Gravel had the floor at the time he left the Chamber and the Chair has not subsequently recognized the Senator, even though the distinguished Senator from Utah did take the floor, and—

Mr. MCGOVERN. Will the Chair now recognize me?

The PRESIDING OFFICER [continuing]. A moment ago yielded to the distinguished Senator from South Dakota.

The Chair at this time would like to recognize the distinguished Senator from South Dakota in his own right, and he does so recognize the Senator.

Mr. McGOVERN. I thank the Chair, and I do prefer, as a matter of fact, to speak in my own right.

The point that the Senator from Utah makes, as I said, is correct.

But I presume that even under the present operation of the canal, with or without this treaty, if we have people running it who are not sufficiently capable to evaluate the cost of that operation and then set the tolls accordingly, that somebody is going to have to make up the difference, and that would have to be the U.S. Government as matters now stand.

So I do not really see what we are arguing here as far as the next 22-year period is concerned. The only question is whether we have enough confidence in the Americans who are going to continue to operate this canal for the next 22 years to assume they will continue to do a reasonably responsible job and will know enough to set the tolls at a level where we do not lose money on the canal.

We are not sacrificing until the year 2000 our authority to set the toll rates. That is an American right. It is in American hands.

Now, I grant that there is always a human possibility of error. It is always possible that whoever is managing this canal may not set the rates exactly right. That is true with other businesses. Every once in a while a business will estimate its income at a higher level than it turns out to be and it has a shortfall. But I presume we are talking here, even at worst, of a few million dollars.

What I was hopeful we could do here for a little while this afternoon is to look at some of the costs that might fall on the United States and on the——

Mr. GARN. Will the Senator yield?

Mr. McGOVERN. If I could finish first.

What I want to think about for a few minutes is what it might cost, since we are dealing with speculative matters here today, I think the Senator from Utah would agree that the case he has posed is something that might happen, a possibility that there might be a miscalculation involving a few million dollars, some year, that would have to be made up.

But while we are in that frame of mind, I want us to think about the potential costs to the United States of rejecting these treaties.

In other words, why is it that the last six Presidents of the United States, three Democrats and three Republicans, have thought it was in the national interest of the United States to negotiate a new treaty?

Why have the Joint Chiefs of Staff who are responsible for the defense of the canal both under the present treaty and under the one we are now debating—and they will be in perpetuity as long as this new treaty we are now debating is in effect, we have a joint responsibility with Panama for the defense of that canal—why is it that our Joint Chiefs unanimously say that their job of keeping that canal open and operating peacefully is better under the treaty we are now debating than it is under the old 1903 treaty?

I think it is because these men have looked ahead to what the potential costs are, and I am talking about financial costs, I am

talking about foreign policy costs, I am talking about political costs, I am talking about the possible loss of life on which it is very difficult to put a dollar sign.

Can we think for a moment about those costs?

Now, before I proceed any further, since the Senator yielded to me, I want to show him the courtesy of yielding to him.

Mr. GARN. I thank the Senator. I want to respond very briefly.

The Senator posed the question, he did not see much difference because the taxpayers were involved now if there were losses.

That is correct, if we did not have a treaty change.

The reason it is more likely to fall back under the new treaty is because of these enormously increased payments to Panama. That is the essence of the testimony, that the first year we would have a \$9.3 million profit under the present operation, but we would go to a \$36.7 million loss.

That is the question I really posed, and under the financial terms of the treaty, and the Governor testifies, the tolls would have to go up, in any event, but higher and more rapidly under the terms of the treaty.

That is my question.

Why does the United States have to assume that new risk rather than the Panamanians?

Mr. McGOVERN. My understanding is that it is in payment for services that will derive to the American personnel and to the United States during that 22-year period when we continue to operate the canal.

Mr. GARN. Part of it is, but not all.

Mr. McGOVERN. And on the Senator's point here earlier about wishing we had the implementing legislation before us and that the State Department would hurry this legislation to the Capitol, I am not all that sure that that is the kind of doctrine we want to be expounding here on the Senate floor.

After all, we are the legislative branch. We do not have to depend on the State Department to draft implementing legislation, or legislation of any other kind.

I realize that, as a practical matter, when we mark up a foreign aid bill, or a State Department authorization bill of some kind, we usually do, in fact, sit back and wait until they have drafted a bill and persuaded some Senator to introduce it.

But that is not the way the Constitution intended it. The Constitution designates us as the lawmaking branch of the Government, and in the final analysis we cannot pass off on the State Department the terms of this implementing legislation. That is our obligation.

So I will join with the Senator when the time comes in offering my input along with his and other Senators as to how these implementing laws are to be discussed and what they ought to contain.

But, for the moment, what we are debating here is whether or not it is in the interest of the United States to move ahead with the ratification of these treaties. Since there has been so much discussion on this floor the last few days, most of which I have listened to either here on the floor or over the radio, it strikes me that the time has come for us to have a little more consideration of what the cost might be to us if we reject these treaties.

Mr. CURTIS. Will the Senator yield for a question?

Mr. MCGOVERN. Yes.

Mr. CURTIS. I thank my distinguished friend.

A little bit earlier he made reference to the opinion expressed by the members of the Joint Staff of the various branches of the military, and that opinion indicated that they favored the treaties and that it would be better down the road for our country.

Here is a problem that bothers the Senator from Nebraska. I have observed that many high-ranking officers in our Armed Forces, all branches, who are still on active duty, subject to the commands of their Commander in Chief, some of them perhaps having hopes in their breasts of further promotions and further office, for the most part have supported the treaty and made optimistic predictions about the future if the treaties are adopted. On the other hand, the number of high-ranking officers who have retired and who have expressed grave concern about the wisdom of ratifying the treaties are legion. Why has all that happened?

Mr. MCGOVERN. I say to the Senator, first of all, that I would tend to place more reliability on the testimony of military commanders who are in office and have the responsibility for defending this country than I would an ex-military officer who has no obligation at all for the defense of this country. He has his right to speak out as a private citizen. However, it is my judgment, and I think the Senator would have to agree with this, that these retired officers have not been in the same position, have not had the same opportunity, as have our Joint Chiefs, who have followed these negotiations from the beginning.

I think that Senator is aware of the fact that some of the provisions of this treaty actually were drafted in the Pentagon. They were cleared, of course, by our negotiators.

The implication of the Senator's question is a very serious one, which is that the highest military commanders in this Government would deliberately slant their answers in order to keep open the possibilities for promotion.

Let me read the answer of General Brown, the Chairman of the Joint Chiefs of Staff, to that question, in testimony before the Foreign Relations Committee on September 26. Senator Clark raised the very point that the Senator from Nebraska has now raised. I quote Senator Clark, speaking to the Joint Chiefs. He said:

Gentlemen, some of the most bitter critics of the treaty say that those of you in the Joint Chiefs of Staff and the higher ranks of the military commander are supporting this treaty in fear of maintaining or enhancing your positions. They say that you are being intimidated. What is your response to these accusations?

This is what General Brown had to say—Chairman of the Joint Chiefs:

Senator, I just turned to Secretary Brown to ask if he would mind if I made an unsolicited statement at some point to get this on the record. I thank you for your question. The rules are quite clear and I think understood by all of us that nobody, no senior officer in uniform will remain on active duty and publicly be critical of a Presidential decision. I, in my role as chairman, and other members of the Joint Chiefs of Staff will articulate as forcefully and as logically as we can the view the Joint Chiefs of Staff hold on issues of national security, but if the judgment goes against us as it does in many cases, there is nothing in the law that says the President has to accept our advice, but we have to give it.

We don't go public without leaving active duty first in doing so. However, the rules are also quite clear that in response to interrogation before a congressional

committee that we answer fully and factually. The public record is quite clear where we have been in opposition to a Presidential decision. I can cite two cases. One, and I am sure this comes as no surprise, was the B-1.

I think the Senator will recall that military commanders spoke out in favor of the B-1 even at a time when the President of the United States was on the other side of the issue.

I continue reading:

The second was in January, the Joint Chiefs of Staff urged that the President not plan to withdraw the 2nd U.S. Division from Korea unless three things were made part of that program. One was that the drawdown be done in such a manner that the military balance on the peninsula not be disturbed. Second, that we make public a pledge of our continued support of the Mutual Security Treaty with the Republic of Korea, and third, that we remain a Pacific power. Those three conditions the President accepted, and it became part of his program, at which point the Joint Chiefs of Staff endorsed the program.

He goes on to say that they were overruled on that point. Then he concludes:

So, it is wrong to say that in the case of the Panama Canal we are doing this only because a decision has been made. I have personally worked very diligently for 4 years to achieve these treaties with Ambassador Bunker and subsequently with Ambassador Linowitz.

At that point, Secretary Brown entered the dialog, and he said:

Senators, there is nothing that is more offensive or insulting to military commanders than to imply that they would lie as to their real feelings to a congressional committee in order to buck for a promotion.

I believe that to be the case. If these men are honorable in retirement, they are just as honorable on active duty, in my judgment, and more so at a time when the only oath they take is to uphold the Constitution and the well-being of the United States.

Mr. CURTIS. If the Senator will yield further—and I appreciate his indulgence very much—perhaps I spoke unwisely when I made reference to a desire for promotion. Certainly, I would not want to intimate at all that officers in any position, retired or active, would tell untruths, would lie to us. But I believe this is a true statement of the facts.

Mr. McGOVERN. On that point, I think the Senator is aware that General Brown cannot be promoted any higher, so he cannot buck for any more promotions.

Mr. CURTIS. That is what I say. Perhaps I was even unwise in referring to promotions. But I think this is true. I think it is the nature of a soldier on duty to obey the higher commands. It is in the tradition in the military that after a decision is arrived at as to national policy, they go along.

I also believe that once someone is retired, they perhaps, for the first time in their lives, become free to speak as they see, and these individuals are some of the most dedicated, patriotic people. They have nothing to gain but to promote the welfare of the country they have served so long. Yet, they are absolutely free to speak, because they are not a part of a great military that, by tradition, by practice, and oftentimes for very good reason, goes along with a policy after it is made.

Many of those officers have served in the Canal Zone, many are familiar with all the matters in the countries south of the border, and many of them have strong and deep feelings that this treaty is a mistake.

So, without impugning anybody's motives and without charging that some are trying to advance themselves—and I withdraw anything I said that implied that—and without implying that anyone is telling an untruth, I think we are faced with a real fact here: that the vast majority of knowledgeable, dedicated, patriotic military leaders who are now retired, and thus free to express an opinion of deep feeling as they see the welfare of this country, are greatly opposed to the treaties.

I believe that we, as legislators and as the Senate considering this treaty, must take that into account and give great weight to the opinion of these dedicated men, who feel that we are making a misposited to these treaties.

Mr. McGOVERN. I do not disagree with the Senator from Nebraska that they have a right to be heard, that their opinions should be evaluated, and they have been. These retired officers have been given every chance to testify, both before the Armed Services Committee and before the Foreign Relations Committee. They are free to go public with their statements. They can lecture across the country, as they have.

However, in the final analysis, when we make decisions that affect the security of this country, I think we are better advised to go to the officers who have responsibility today, the ones who are charged with the defense of this country, rather than to turn to those who are out of Government service, who are away from the exposure of the negotiations that are now going on, who obviously have not been taken in on all the discussions that have led to these treaties.

There is not the slightest doubt in my mind that these officers—the Chief of Naval Operations; the Army Chief of Staff; the Air Force Chief of Staff; General McAuliffe, who is currently in command of the Southern Command, which includes Panama—are speaking what they honestly believe to be in the best interests of this country.

I yield to the Senator from Idaho.

Mr. CURTIS. I thank the Senator.

[Mr. Zorinsky assumed the chair.]

Mr. CHURCH. I thank the distinguished Senator, my good friend from South Dakota.

I just must take issue with the statement made by the Senator from Nebraska which gives the impression that all retired generals and admirals are opposed to the treaty and only those who are on active duty support it.

That is not the case. I am quite certain that we can call upon a roster of retired generals and admirals who have spoken up for the treaties that is every bit as impressive as the roster that could be presented on the other side.

Let me give you a few examples of those distinguished military leaders now retired who could not possibly be under any kind of restraint who have vigorously endorsed the treaties. They include Gen-Maxwell D. Taylor, who was formerly a Chief of Staff of our Armed Forces; Gen. M. B. Ridgway, who commanded American Forces in Korea during the Korean War; Adm. E. R. Zumwalt, former Chief of Naval Operations; Gen. W. C. Westmoreland, the commanding officer of the American Army in Vietnam; Gen.

Lucius D. Clay, a renowned American general in charge of American Forces in Italy during the Second World War; Gen. Lauris Norstad, of the Air Force, who was not only the commanding general of our Air Force but went on to be the commanding general of NATO forces in Europe.

I cannot think of a more impressive list of retired generals and admirals than those who I have just named, all of whom vigorously support these treaties.

So, I thought that we ought not to let the record stand in a form that would suggest that only active generals and admirals endorse the treaty while those who have retired do not.

Mr. McGOVERN. I thank the Senator from Idaho for that very helpful intervention because he has very properly reminded us that a number of distinguished retired generals and admirals have supported these proposed treaties.

In that connection, I ask unanimous consent that a letter from General Ridgway, the Army Chief of Staff during the Korean War, dated August 13, 1977, to Senator Sparkman, be printed in the Record, together with the supporting statement by General Ridgway.

There being no objection, the letters and statement were ordered to be printed in the Record, as follows:

PITTSBURGH, PA., January 3, 1977.

HON. JOHN J. SPARKMAN,
U.S. Senate,
Washington, D.C.

MY DEAR SENATOR SPARKMAN: Because of my fifty years of participation in high-level US-Latin American relations, I hope you will read the enclosure. It sets forth my Latin-American experience, my reasons for strongly supporting ratification of the Panama Canal Treaties, and my hope that after full debate, with such clarifications as the Senate may deem essential, it will approve and advise ratification.

With kindest personal regards and my highest respect,

Sincerely,

M. B. RIDGWAY.

JANUARY 10, 1978.

Gen. M. B. RIDGWAY,
Waldheim Road W., Fox Chapel,
Pittsburgh, Pa.

DEAR GENERAL RIDGWAY: Many thanks for your letter and enclosures of January 3 in support of the proposed Panama Canal treaties.

I very much appreciate having your views on this very controversial matter and you may be sure that I intend to share your letter with my colleagues on the Committee and in the Senate as a whole.

When the Committee gets around to reaching a final decision on the pending treaties, I will be sure to keep your thoughts and comments in mind.

Sincerely,

JOHN SPARKMAN,
Chairman.

MEMO—PANAMA CANAL TREATIES

1. FACTS BEARING ON THE SUBJECT AS I SEE THEM

a. During WW I we had the full cooperation of all of Latin-America, except for the Argentine.

b. During WW II we had complete political, military, and economic cooperation from all of Latin-America, except initially from the Argentine, and this we retained throughout a decade and more following the war.

c. If we should become involved in another major war, then the importance of a friendly cooperative Latin-America would be of vital strategic importance to us, and to secure and retain it should be a major objective of our foreign policy.

d. Currently, our relations with Latin-America have become marred by serious disagreements, such as those with Brazil (our oldest and firmest friend in the Hemisphere), Chile, Colombia, Ecuador, Panama, and Peru, with some knotty problems with Mexico, while Cuba remains strongly aligned with the USSR.

e. The governments of the Latin-American Republics are unanimously in support of Panama on the Canal issue.

f. The situation in Panama is one made to order for demagogues and all those elements inherently hostile to the United States.

g. Panama itself has the potential for arousing strong anti-U.S. feelings; of facing us with dangerous rioting; and, depending on how such a situation were handled, of turning much, if not all of Latin-America from friendly allies to neutrals, or worse.

h. It therefore becomes of major importance to us to defuse this potential time-bomb, and ratification of the treaties would, I think, be most effective in doing this.

i. The vulnerability of the Canal to sabotage is greater today than ever with the availability of nuclear explosives, but even breaching the earth fill at Caño Saddle would drain Gatun Lake, rendering the Canal useless for at least the three years it would take Nature to refill it after the break were replaced.

j. The U.S. Senate will give full consideration to reconciling the divergence of views on the two provisions dealing with our "rights" of priority of passage in war or emergencies, and of our use of armed force for its protection. I believe these obstacles can and will be surmounted.

2. CONCLUSIONS

I fully recognize the great weight and divisive nature of the arguments of those who oppose ratification, but I firmly believe that these arguments are outweighed by our long range vital strategic interests, and when the U.S. Senate has thoroughly debated the issues, I would strongly urge and hope that it would approve and advise ratification.

See Attachment hereto.

M. B. RIDGWAY,
General, U.S. Army, Retired.

ATTACHMENT TO MY MEMO OF SAME DATE—PANAMA CANAL TREATIES

My judgment on the issue of ratification derives from fifty years of experience involving high-level U.S.-Latin American relations, as listed below:

1. 1927-28, Asst Secretary, Nicaraguan National Board of Elections.
2. 1930, Secretary of that Board.
3. 1932, lecturer in Spanish to the Panamanian Police, Balboa.
4. 1939, with General George C. Marshall on his mission to Brazil, negotiating an agreement for establishing our line of communications across the South Atlantic from Natal via Ascension Island to Accra and Dakar.
5. 1940, Organized the U.S. Staff of the Mexican-United States Military Commission.
6. 1940-41, under State Department supervision, organized US Army officer teams to negotiate with all of the Latin-American governments for their military cooperation, and personally conducted those negotiations with Colombia and Venezuela.
7. 1941-42, Chief, Latin-American Section, War Plans Division, Army General Staff.
8. 1947, member of the U.S. Delegation to the Rio Conference.
9. 1948, member of the U.S. Delegation to the Bogota Conference.
10. 1946-48, Chairman of the Inter-American Defense Board, consisting of the military representatives of all 21 American Republics.
11. 1948-49, Commander-in-Chief, Caribbean Command, when the Governor of the Canal Zone was under the military commander, and this command was responsible for most of U.S. military activities throughout Latin America.
12. 1949-50, again Chairman of the Inter-American Defense Board until ordered to take command of the US Eighth Army and the ROK Army in Korea.
13. Have traveled extensively throughout those fifty years in South and Central America and the Caribbean.
14. Have been decorated in years past by the Governments of Argentina, Brazil, Chile, Colombia, Cuba, Ecuador, Guatemala, Mexico, Panama, and Peru. Acceptance and retention of all these decorations was authorized by our Government.

M. B. RIDGWAY,
U.S. Army, Retired.

Mr. McGOVERN. I think General Ridgway's arguments always carry special weight with me because he is the general way back in 1954 who, at a time when it had been proposed by some in the administration that we intervene in Vietnam militarily, advised President Eisenhower against that with such force that he thought he had carried the day, and General Ridgway writes in his memoirs that when he faces his Maker some day the thing he will be proudest of is that he persuaded the United States not to send American forces into Vietnam. Unfortunately, the general wrote those memoirs in 1956 and, of course, we all know what happened after he left as Army Chief of Staff and others took over and we went right down the road that he warned us in 1954 would lead to disaster.

And it is that disastrous road that I want to talk about here momentarily. But I yield to Senator Garn at his request.

Mr. GARN. I thank the distinguished Senator from South Dakota for being so patient. He has tried for a half-hour now to get his statement out. The Senator from Idaho is correct. There are some very distinguished retired military officers who do support this treaty. He stated it accurately, and there are some distinguished officers.

I would just point out, though, that in a poll, and it is not current—it was some 3 weeks ago, so I do not know what has come in since—but a poll was conducted of over 300 retired general and flag officers, and at that point there were about 307 opposed and 6 in favor.

When Admiral Holloway was testifying before the Armed Services Committee I questioned him on this and he said much as the proponents have said that, well, the Joint Chiefs of Staff had the responsibility, and therefore that would make some difference. So I want to be fair about the testimony. But I asked him. I said: "Admiral, what do you think a poll of active duty flag and general officers would show, not reservists who are off, if it were held secretly?" And he commented that he thought it would be about the same. However, he wanted to put in one caveat, again to be fair so that I am not taking something out of context, that the others did not have the direct responsibility and access to the same information that he and the Joint Chiefs of Staff did. So he did put those caveats in.

Mr. CHURCH. Which are very important caveats.

Mr. GARN. They are and, that is why I want to be fair and not quote something out of context, but nevertheless he said that if it were held in secret he would expect the ratio would be about the same of active duty general and flag officers.

I thank the Senator.

Mr. CHURCH. Mr. President, will the Senator yield?

Mr. McGOVERN. I yield.

Mr. CHURCH. I know the Senator from Utah wants to be wholly objective and fair. He has referred to a poll and the results of a poll. I presume that it was the poll taken by the Retired Reserve Officers Association of the United States. Is that correct?

Mr. GARN. Yes.

Mr. CHURCH. My presumption, the Senator nods, is correct.

Let me read the question that was asked to these Reserve officers just to give you some flavor of how this poll was tilted.

The question that was asked, a solicitation really for opposition to the treaty, which is hardly the form that an objective and fair poll normally takes, solicitation reads as follows:

I concur with your opposition to the treaty concerning the Canal Zone to be brought before the U.S. Senate for ratification at an early date. I am willing to join Admirals Moorer, Burke, and a great many other senior members of the Reserve Officers Association in publicly expressing my disapproval of the treaty in the belief it is not in the best interest of the people of the United States.

That is the poll. It is kind of like a Russian election. You get to put your signature down in opposition. I do not see a place here for expressing your approval.

Moreover, just in order to be wholly objective and fair in the presentation of these figures, I think something needs to be added that the distinguished Senator from Utah omitted when he referred to the results of the poll.

The ROA requested some 800 general and flag officer members to join in opposition to the canal treaties by signing the statement to which I have just referred.

Of this group only 347 officers responded to the request. A total of 340 officers signed the statement, 7 indicated their support of the treaties—they must have had to write separate letters to accomplish that—and 453 failed to respond. Incidentally, the total ROA membership is about 107,000. What a poll.

The most significant part of it, once all the facts concerning it are placed in the Record, is the number of generals and admirals who would not sign such a statement.

That, I think, puts this poll into a fairer and more objective frame of reference.

Mr. GARN. I just want to briefly respond. I do not think we can assume that as to people who did not respond what their position was one way or another. I would not like that impression left.

I get mail at home all the time that asks my opinion, and I throw most of it in the waste basket.

I may agree or disagree with that poll. But the Senator did not bother to respond to Admiral Holloway's testimony of what he thought active duty general and flag officers would do. Furthermore, to say there are 107,000, they were seeking the opinions of general and flag officers and not all the lower ranking officers. Do not believe that impression.

Mr. CHURCH. Indeed, they were. I left no impression but a factual statement of the case. It seems to me rather extraordinary for the Senator from Utah first to present this poll with an overwhelming vote against the treaty, which was nothing but a solicitation for opposition to the treaty, to which half or more of the generals and admirals refused to respond. And then say, oh, they just threw it in the waste paper basket. I suggest to the Senator that admirals and generals who are retired would have a sufficient interest in this case that they would not simply just discard it out of hand. They knew it for what it was. It was a solicitation for opposition, and

those who refrained from singing did so because they did not want to be counted a part of this opposition.

Mr. GARN. I would simply say that that is a fairly high percentage of the poll, from the polls I have been used to.

If we are talking about slanting polls, that is being done with the Byrd-Baker amendment. The answers are being turned around, in public opinion polls, because of the way the questions are being slanted there.

Mr. CHURCH. If the Senator is concerned about the slanting of polls, he has given us a straight illustration on the Senate floor about how to do it.

I will put the rest of the facts in the Record, and yield the floor.

Mr. GARN. I agree the question is slanted to get the kind of answer desired, but I will also say it does not take very many people. The overwhelming proportion of active duty military people, and retired, are opposed to this. I ask the American people to ask officers that they know, and enlisted men, and see what kind of responses they would get from the American military.

Mr. MCGOVERN. Mr. President, just one final word. I really had not intended to get into the discussion here today, primarily, of military opinion, on a matter that is essentially diplomatic and political. I would just hasten to add again that the overwhelming percentage of the testimony of our military officers who now have the obligation to defend this country is in support of the treaties.

I somehow missed one interesting observation that Admiral Holloway, the Chief of Naval Operations, made in testimony before the Armed Services Committee, but it is a rather interesting statement, and I would like to read it into the Record. It was a brief exchange involving Senator Stennis and Admiral Holloway, on January 24, just a month ago today.

The admiral said:

If I can give my view which I think is representative of the Chiefs, we had two choices: one essentially was no new treaties, which could cause us to withdraw from the canal in the next 5 years under adverse conditions.

That is a very serious thought, that the Chief of Naval Operations and the Joint Chiefs are seriously considering that as the kind of option they might face then, if we had to labor under the 1903 treaty, that within 5 years time they might be forced to withdraw under adverse conditions.

"or"—

Said Admiral Holloway—

we could, with new treaties, provide for the future security of the canal. Mr. Chairman, I would like to make one point; I think that there was no member of the JCS with a stronger conviction than myself of the national need for the use of the canal for our defense purposes in the future, and I was seeking the best solution to give us the highest assurance that we would be able to use the canal in the future.

It was on that basis, he went on to say, that he came down squarely on behalf of these new treaties.

Now, Mr. President, to get back to what I started to say here about an hour ago, our distinguished new colleague, Senator Muriel Humphrey, delivered her maiden speech in the Senate of the United States today, on the very theme that I had intended to discuss this afternoon.

What she, in effect, is calling on the Senate to do is to consider costs that are even greater than any we have talked about here today: that is, the potential cost to the standing of the United States in Latin America and throughout the third world, indeed throughout the world, indeed throughout the world, if we were to reject these treaties that had been negotiated in good faith.

Just to quote a couple of passages from this eloquent address on the Senate floor earlier today by Senator Humphrey:

The Panama Canal Treaties symbolize the pivotal point in U.S. policy towards Latin America and the nations of the developing world.

Then she went on to warn:

But let us be mindful of the fact that our greatness depends as much on our tradition of dedication to justice and fairness, the Founding Fathers' ideals and dreams of liberty, and our healthy political and economic base at home, as upon military power.

She went on to say:

We are a world power. But do we have to prove it by flexing our muscles against little Panama? I think this would be the most preposterous position in which we could place ourselves.

Mr. President, I think that is an eloquent statement from the new Senator Humphrey, and one that her late beloved husband, Hubert Humphrey, would be very proud to see her underscore in her maiden address to the Senate.

I must say that same thought has come to my mind as I have read some of the mail that has come in to my office from all over the country saying, "Why can't we stand up to Panama?" As though somehow our manhood, our patriotism as a nation, was under attack in these treaties.

I do not think anybody is so foolish as to think the United States is going to impress either ourselves or anybody else simply by showing that we have the power to stand up to Panama. Of course, we do. We demonstrated that in 1903, when we negotiated this treaty that has caused so much trouble over the last 75 years. It is not a question of whether the United States is as strong as Panama, or strong enough to rebuff them diplomatically or militarily or any other way we see fit. Obviously we have the power to quash Panama any afternoon. The question is what is just, what is fair, what will best enhance the standing of the United States in the world?

I just want to commend, in the strongest possible terms, Mrs. Humphrey's reminder to us here earlier today that the power and greatness of this country are not measured by how we flex our muscles toward a little country like Panama, but whether or not we are true to the ideals of self-determination, dignity, and justice that have brought this country to a position of power, influence, and greatness in the world.

I have listened with some care to the heated public debate that has gone on since these treaties were signed last summer, and I must say that after all that time I am still left wondering what the opponents of the treaty expect to happen should they prevail. What are the results they are so anxious to achieve?

A number of results have been implied. We are told, for example, that if we junk these agreements, we will then be free to negotiate

with some other country in Central America for a new sea level canal, and we will not need Panama any more. But, Mr. President, in that connection, the most careful studies have been made of alternative canal routes in Central America, and these studies have without exception come down very decisively on the conclusion that the only feasible route for a canal in Central America is in Panama.

Back in January of this year, when we had the former executive director of the sea level canal study before the Senate Committee on Foreign Relations, the man who had participated in some 5 years of study of alternative routes, speaking for that whole committee, he said:

I assure you that there are no foreseeable circumstances in which the United States would be likely to consider building a new canal outside Panama. The only feasible routes are in Panama.

Mr. President, we spent \$22 million for that study, and it contains some of the most distinguished Americans on the study: Milton S. Eisenhower, Robert Storey, Kenneth Field, Raymond A. Hill, and the chairman, Robert B. Anderson. After some 5 years of study, they came to this conclusion:

Limiting the choice to Panama costs the United States nothing, and in return, we get the commitment that other powers cannot meddle in this matter. The theoretically feasible routes across Nicaragua and Costa Rica are 140 miles and 100 miles in length, in comparison with the Panamanian route.

It goes on to point out that what they proved after the expenditure of \$22 million and 5 years of study, "is that we could not build a canal outside Panama."

I think the argument which has been made here that because, during the next 22 years, we sign an agreement not to build a sea level canal elsewhere in Central America other than Panama, means we have given away nothing. We have given away something we would not consider anyway. That is the possibility of a canal in Nicaragua or someplace else our experts' studies have ruled out as not being feasible.

Mr. CHURCH. Will the Senator yield for a question?

Mr. McGOVERN. Yes, I yield to the Senator from Idaho.

Mr. CHURCH. I think the Senator is unquestionably right. He has said that we yielded nothing. We did not want to preserve the option to build a canal outside of Panama when our studies have already shown us that only a canal within Panama would be economically feasible. So we gave up nothing.

The other side of the coin is that we got something from the Panamanians that was rather valuable.

This is why our negotiators sought to insert this provision in the treaty. It is not the Panamanians who urged it upon us, but it was the American negotiators who sought to insert the provision.

What we got back was a commitment on the part of Panama not to permit any other country during the life of the agreement to build a sea level canal in Panama, a matter of the greatest consequence to the United States and our future security interests.

So we have a provision which weights heavily in favor of the United States, securing a commitment from Panama of enormous value to us in return for a commitment on our part of little value

at all. It may be the most one-sided provision in our favor in the treaty before us.

Mr. MCGOVERN. I believe the point is well taken.

In addition to this argument that I regard as a specious argument about forfeiting the right to build a canal outside of Panama, a right that we are not about to exercise with or without this treaty, there has also been another argument expressed about the concern for human rights, the implication being that the present government in Panama is of an authoritarian character.

It is interesting to me that some of the same people who would argue that it is perfectly proper for us to maintain forces in South Korea to back the regime of General Park, which, if anything, is an authoritarian regime, are so concerned about the authoritarianism of Panama. I wish that government was somewhat more democratic than it is, too, but I do not see how we could carry on diplomatic relations with the rest of the world if we are going to limit those relations only to those countries which have a parliamentary democracy. That is going to eliminate a lot of allies and alleged friends of ours around the globe.

It has also been said that we could better defend the canal under the old treaty, that we could have more assurance that the canal would remain secure and operational if it is in American hands.

There was also some point that was to be drawn from the secret session. As I suggested before, I found it very hard to discover the relevance between the treaties and the disclosures we heard earlier this week. I suppose the implication was that if we turned the treaties down it is going to somehow help solve the drug problem in Latin America. Upon closer examination these claims all tend to crumble.

Even setting aside the feasibility problem and the billions in cost, there is, for example, no reason at all to believe that we can negotiate a better deal with Nicaragua than with Panama. Nor is there reason to believe that the human rights of the Panamanians will improve in the slightest should these treaties be scrapped. It is likely the opposite will happen, that all Panamanians will suffer both the injury of oppression and the continued insult of a foreign zone dividing their nation.

Similarly, the matter of defending the canal should have been long since settled, both by the explicit testimony of our top military commanders and by simple logic.

Most deeply of all we can set aside the notion that there is somehow a relation between these treaties and the international traffic in narcotics. Whether we support or oppose the treaties, I think most of us have come to the view that the secret session proved to be irrelevant and a waste of our time. It is quite safe to predict that rejecting the treaties will have no impact at all on the problem of narcotics.

So what we will really have if we reject these treaties, after weighing all the claims, is it seems to me we come down to only one indisputable result. It will be the right, if we reject these treaties, to throw out our chests and say that the Panama Canal is still ours. In the final analysis, that is what we are really talking about, the prize of claimed ownership. It is a sort of collective

possessiveness over a thing to which we have, over the years, become strongly attached.

I must say, Mr. President, that the strength of that emotion is surprising. People who never thought about the canal are discovering now they cannot live without it.

I do not suggest that that feeling can or should be ignored. I do not want to ridicule it or minimize it. We simply cannot set aside the strong feelings that many of our fellow citizens have. I have tried to answer every letter which has come to my office on this subject.

Mr. ALLEN. Will the Senator yield?

Mr. McGOVERN. Yes, I will yield.

Mr. ALLEN. The Senator mentioned if the Senate in its wisdom should reject the treaties. Would not the Governments of the United States and Panama have the additional option of having their negotiators return to the negotiating table and negotiate further treaties which could then be submitted to the U.S. Senate for its advice and consent?

Mr. McGOVERN. That is right. It means we might get another treaty back here about the year 2000.

Mr. ALLEN. Yes; but the Senator must realize that the 13 years of negotiating finally resulted in a treaty which was signed. Then if the U.S. Senate, by the amendment process, has an opportunity to show what it would agree to, and finally would reject these treaties, would that not serve as a blueprint for the possible work by the negotiators in arriving at an earlier agreement on the treaties?

Mr. McGOVERN. I will say to the Senator that is what this debate is all about. If these treaties are not in the interest of the United States they ought to be rejected.

The argument I would make here today, which I have made before, is that the treaties are clearly in our interest; that they have been in the process of negotiation now ever since 1965; that our negotiators have done a good job; that we have been able to suggest certain changes. Recommendations which came out of the Foreign Relations Committee by a vote of 14 to 1 I am confident will be overwhelmingly adopted here on the floor of the Senate which will strengthen the treaties.

I think the time has come now not to negotiate another treaty, but to face up to these very carefully drafted documents before us. That is what we are in the process of doing.

Mr. ALLEN. Yes; but the Senator is supposing a situation where the treaties are defeated. But would not the debate here, in the U.S. Senate, point out the shortcomings that would serve as guidelines for the negotiators to come up with a treaty to which the Senate would give its advice and, finally, its consent?

Mr. McGOVERN. I can only say to the Senator that it is my own judgment, having sat through all of the discussions on this matter and the hearings before the Committee on Foreign Relations, that I do not anticipate at all that we could negotiate in the next 25 years a substantially better treaty than the one we now have.

What I fear is that if we reject this treaty, we would set off the kind of reaction in Panama that would lead to a hardening of lines, that we might get a more extremist type of government replacing

the one that is already in power. I think we are walking a very fine line politically with Panama right now.

General Torrijos, for all of his faults, has made a number of concessions to the sensibilities of the U.S. Senate. He spent hours and hours hosting Senators who went down there with questions. He tried, I think, the best that any political leader could to modify the treaties from time to time and accept language that was important, to consider the sensibilities of Americans, and particularly the Senate.

Maybe the time has come for us to consider some of the sensibilities in Panama. They have political problems as well. This canal may be an important issue to us, but it is the issue in Panama. I think one would be hard pressed to put this on a list of the top three or four problems before America today, but it is No. 1 in Panama. It is the issue.

I think they have been remarkably flexible in the way they have approached these negotiations over the years, but I would shudder at the thought of going through that whole process again. I am not sure what we would come up with.

I might say to the Senator, there was a draft treaty back in 1967 that the Panamanians tentatively agreed to that permitted us to stay there until the year 2004. Now we have come back, 10 years later, with a treaty where they are asking us to get out 4 years earlier. Maybe if we go back still a third time, they may say, "Get out today; that is all we will settle for."

Mr. ALLEN. Yes; and there was a draft of the treaties, I believe, in July of last year that was changed drastically in the last few days before the expiration of the 6-month period of service of Ambassador Linowitz.

I might say further that if the defeat of the treaties would result in the toppling of the Torrijos regime down there and the return of a democratic form of government to Panama. I would think that would be one further reason why we should defeat these treaties.

Mr. MCGOVERN. For whatever it is worth, I would like to give the Senator not only my judgment, but the judgment of some of our top diplomats who have been in that part of the world that, if General Torrijos is toppled because of the rejection of this treaty, it will not be to bring in a greater measure of democracy. It will be because the left wing and some of the Communist-tinged groups down there who are saying that this treaty is too generous to the United States will be the ones who will take over. Then we will be faced with a much tougher and more rigid situation than we are today.

I might also add that at least one of the witnesses—I think it was the Secretary of State—who testified before the Committee on Foreign Relations said that the more democratic government there is in Panama, the more they are going to insist on Panamanian national interests being represented in this treaty. So we may face a much tougher situation if this treaty is rejected than we do today.

Mr. ALLEN. In other words, the Senator takes the position that it is to our interest, then, to perpetuate in office the Torrijos dictatorial regime; is that correct?

Mr. MCGOVERN. I think it is in our interest to negotiate a treaty that we have hammered out with the Panamanian Government under which, I think, major concessions have been made to the United States. I think it is in the interest of this country, and it is really not up to us to try to dictate the kind of government they have in Panama. Obviously, it is not the kind of ideal democracy we would like, but the Senator from Alabama and I could think of a good many other countries around the world that we negotiate with, that we sell arms to, where we even have American forces stationed, that also leave something to be desired in the way of democratic institutions.

Mr. ALLEN. I am sure that is true. I thank the distinguished Senator.

Mr. MCGOVERN. What I do suggest here today, Mr. President, is that all the considerations be weighed, because I think the job of the Senate is not simply to reflect transitory popular emotions, but, as the majority leader reminded us a few days ago, to apply some measure of judgment to consider what is in the long-term interests of the country, even if it means losing some popularity now.

On one side of the balance, we have this matter of national pride in the history of the canal and the claim of present ownership, what is referred to as rights in the zone as if we were sovereign. If we reject the treaties, it will be essentially for the sake of those values. Now the question is, What are some of the potential costs of rejecting the treaty?

First, it is not hard to forecast the impact on our relations with Panama. Two-thirds of that country's voters supported the treaties in the plebiscite and there is scant reason to expect that either they or the other third would feel more kindly toward the United States if the treaties were killed.

I think the evidence is very strong that the one-third of the Panamanians who voted against the treaties in the present form did so because they wanted treaties that were slanted more in the direction of Panamanian interests. Some of them did not like the idea that we were going to stay there until the year 2000. That became one of the rallying cries against the treaties. Nevertheless, they were adopted by a 2-to-1 margin in the Panamanian plebiscite.

We have only to recall the situation in the aftermath of the tragic rioting in 1964 to envision the shattering effect that failure to ratify the treaties can have on United States-Panamanian relations. At that time, diplomatic relations were broken between the two countries. An atmosphere of hostility surrounded the American community in Panama and there was uncertainty concerning the operation of the canal, whether it could, in fact, remain in operation. Should the treaties now be voted down, I think Panamanian leaders would be hard put to restrain radical elements and other groups, who could point to rejection of the treaties as vindication of their position that violence was the only way to achieve Panama's objectives.

I suspect that is what Admiral Holloway, the Chief of Naval Operations, meant when he told the Armed Services Committee that they were considering an option in the event of the rejection of these treaties, that they might have to withdraw under adverse conditions within a 5-year timespan. Indeed, Panamanian leaders

would have little incentive or reason for restraint. Escalation of demands against the United States would be the order of the day. Since rejection of the treaties would presumably result from demands for tougher terms, these demands from the U.S. side would exacerbate further our relationship with Panama.

In these circumstances, we would have lost, possibly permanently, the opportunity to negotiate a treaty on terms as reasonable as those the Senate is now being asked to approve.

Even if some future Panamanian Government had the strength and the popular support to reopen negotiations, it would almost certainly insist on terms less favorable to us than the present treaty.

Along with these political impacts, a failure of the treaties would deal a severe setback to the Panamanian economy and to our economic relations with Panama.

Mr. President, one of the things that I learned on a trip to Panama in December, a trip I was not sure would produce any new insights, but I went primarily because I thought as a member of the Foreign Relations Committee I ought to at least familiarize myself with attitudes there, and one of the first things I learned on that trip was that investment is paralyzed at the present time. That is, both Panamanian and foreign investment coming in from outside is virtually paralyzed while the investors wait to see what the outcome of the treaty debate here in the Senate is going to be.

I talked with a group of American business men one morning over breakfast who said that the reason for that is that a great many people in the business community and in the investment community fear a condition of instability and agitation if these treaties were to be rejected businessmen one morning over breakfast that would make business investment very uncertain, indeed.

So that with each passing month, the opportunity for economic growth and economic investment in Panama is being hampered by the delay of these treaties.

I do not cite that to stampede Senators into a quick ratification of these treaties. I know better than to think that would work, in any event. But simply to indicate it is another factor we ought to keep in mind, that Panama is a little country with economic problems of its own. It does need whatever investment it can secure to provide jobs and opportunities for its people, and the indefinite delay of action on these treaties is paralyzing that investment process.

On the basis of a booming economy in the 1960's, the present Panamanian Government has undertaken development programs designed to spread this wealth to its rural population. But the uncertainty about the canal treaties on top of a worldwide economic recession has caused Panama's economy to falter. Rejection of the treaties and the further uncertainty that would follow would certainly dampen hopes for renewed economic development.

I think radical groups could then point to the failure of free enterprise in Panama and would be encouraged to offer authoritarian or Communist models in its place.

I think it would be ironic, indeed, if rejection of the treaties helped bring to power the very groups that treaty opponents say they most fear and wish to frustrate.

Perhaps the greatest loss in this relationship would be the disillusionment of tens of thousands of Panamanians who count themselves friends of the United States and share our beliefs in what it stands for.

It is interesting, Mr. President, that the top officials in the Torrijos government and their negotiators very discreetly avoided any threats of what they were going to do if we do not ratify these treaties. They warn us about what some of the more radical and extreme elements in the country might do, but, to the best of my knowledge, there is no Panamanian official in office today, no one of their negotiators, who has said, "Either you ratify these treaties or there is going to be military trouble, there is going to be a tax on the canal, there is going to be sabotage from us."

They imply that may happen from some of the people they cannot control, but it has not been a policy that their government has pursued in a heavy-handed way as a threat over our negotiators or over the U.S. Senate.

Despite the publicity about anti-American feeling in Panama, that country probably has closer ties to the United States than any other in Central America because of the presence of the canal and the many ties that have developed between us. Thousands of Panamanian citizens have attended our colleges and technical schools. They have come to know us and our way of life and to develop a respect for our freedom and fairness. This has led them to accept the present treaties, even though they will not achieve many of their cherished national aspirations for nearly a generation.

So if we dash these hopes, this country will have lost its most valuable asset in Panama, and that is the confidence of its people in what we stand for as a nation.

Panama, of course, is only one country. Strong feelings on that same issue spread throughout Latin America and in much of the Third World.

Traveling through other countries in Central America and Latin America in December, in Peru, in Venezuela, in Costa Rica, in Puerto Rico, and elsewhere, every political figure I talked with in those countries said that the rejection of these treaties would be an enormous setback for the influence and prestige of the United States throughout Latin America.

While we do not consider our presence in Panama as colonial, Latin Americans frankly do regard our arrangements in the Canal Zone under the 1903 Treaty as a colonial vestige of the past, and at sharp odds with all we say about national independence and freedom from colonial domination.

In December I visited three friendly countries in Latin America—Costa Rica, Venezuela, and Peru—to seek candid expressions on the treaties. In each case I heard that rejection would severely damage our standing in Latin America. By the same token I heard that the signing of the treaties brought this country enhanced respect and support. They are viewed not as a retreat, but as a reaffirmation of American greatness. This is an issue on which Panama has the full support of all the member states of the Organization of American States.

We find ourselves similarly isolated, not only in Latin America, but the United Nations, on this contention that we should be allowed to continue under the 1903 treaty.

If the treaties are now rejected, it is highly likely that we would, once again, come under criticism and attack in the United Nations and other international bodies. And we could hardly look even to our closest allies in Western Europe for support. Since the end of World War II, we have been pressing the British, the French, the Dutch, the Spanish, and the Portuguese to give up their colonial position around the world and we can hardly expect their sympathy for any effort on our part to hang on to a colonial vestige of our own.

Meanwhile, by our own action, we would hand the Communists a ready made issue with which to embarrass and divide us from those who would be our friends. There is understandable exasperation in this country at the political double standard that is sometimes displayed in the United Nations. But if we are to succeed in our efforts to eliminate these abuses, surely we cannot practice what is regarded by so many as a double standard of our own.

But let me put this in a more positive way. I submit that our own history—our own origins, traditions, and principles of independence—are among our greatest assets in international affairs. I think one of the great tragedies of our recent history has been our tendency to underestimate the power of these traditional American values, while we have overestimated what might be accomplished by force of arms.

Why, then, should it seem strange to us that smaller countries are more and more resentful of outside interference, and that they are demanding a greater say over their own destinies? Those are precisely the aspirations that founded our own country. Two centuries ago the British had a claim to sovereignty over America which was, by the lights of that time, every bit as valid as our claim to the Canal Zone is today. And now it would be especially valuable to our international standing if, less than 2 years after our Bicentennial Celebration, we could remember our own history as well as others do. There are systems in the world who believe, to their shame, that they have a right to control other nations. We should be proud to say that America is not such a country, and to say that democracy is not such a system. That is exactly what these treaties say. And that is why I not only accept them but enthusiastically embrace them. It is why I have so much trouble understanding those who would give up this precious international asset these treaties represent simply to be able to proclaim, "the Canal is still ours."

The political cost of refusing these treaties ought to be reason enough to endorse them, indeed, to welcome them. But there is another cost which troubles me still more.

Over the past several months there has been a great deal of discussion over the question whether the United States has retained a right to intervene militarily in Panama should we conclude that the canal is endangered or that our access to it might be limited or denied. I must confess that all of this talk gave me an eerie feeling. Here we were, just a few years after young Americans had stopped being killed and maimed as a consequence of our

intervention in Vietnam, nonetheless demanding a guaranteed right to intervene somewhere else.

Of course, it is not my contention that those who wanted the treaties clarified on this score were spoiling for another jungle war. I support the amendments recommended by the Foreign Relations Committee, to incorporate the Carter-Torrijos understanding into the treaty language itself.

It is my contention, however, that another consequence of treaty rejection will be a heightened risk that our "right" to fight over the canal will have to be exercised. And that prospect, too, must be weighed on the scales.

Too much of the debate has operated on the apparent assumption that a war over the Panama Canal will be a nice, sterile sort of exercise in which we will show the flag and the adversary will fade away. The terms used are "right to intervene" and "right to defend." No one ever talks about the "right to send young Americans to be killed" in another guerrilla war.

The Joint Chiefs of Staff have told us that the defense of the canal will be much easier if the United States and Panama are in a partnership rather than in a relationship of antagonism. One reason why that is true is that a military or terrorist threat to the canal is far less likely with the treaties than without them. Moreover, without the treaties, the kind of conflict which might happen would be more deadly—not isolated terrorism, but an insurgency from among the indigenous population, with the continuous threat of death from an adversary that cannot even be seen.

Again, I make no charge that anyone here would welcome such a conflict. But we are dealing with conditions bearing directly on the risk. And as we do that, we should always bear in mind that for all of our talking, not one of us here has to fear that we will be required to go down and take part in the fighting.

These, then, are some of the consequences we should expect if the treaties are defeated. Secretary of State Vance summarized similar results in his testimony before the Foreign Relations Committee last September:

Our relations with Panama would be shattered, our standing in Latin America damaged immeasurably, and the security of the canal itself placed in jeopardy.

To that I would add what would be for some Americans the gravest result of all—a measurable increase in the danger of a war resulting in death or injury.

And for what?

There might be some international causes that would warrant all of these costs. No one should ever doubt our willingness to sacrifice when our own security is at stake or when our friends are under attack.

But let us also show the world and ourselves that we have a sense of proportion. Let us declare that we will not squander our values or our credentials for the sake of misplaced national pride. Let us ratify these treaties, as our best assurance both that we will have continuous access to the Panama Canal and that lives that might someday be needlessly spent will be spared.

In conclusion, Mr. President, I would like to insert in the Record an excellent editorial from one of the major newspapers in my State, the Sioux Falls Argus Leader.

The Argus Leader makes the unassailable point that we need not repudiate the past in order to recognize the need for new arrangements with Panama. The editors endorse the treaties now pending in the Senate with this concluding thought:

The world has changed greatly since the 1903 treaty between Panama and the United States. To insist on staying with the status quo in Panama is to disregard history and the emerging nationalism of the world's smaller nations.

A change of course in 1978, by ratification of the treaties, is a positive step that the world's free superpower can take without fear of its security or vital interests. Both will be served by ratification of the treaties by the U.S. Senate.

Mr. President, I heartily agree with that editorial. I ask unanimous consent that this editorial of Sunday February 19, together with an editorial published in the Washington Post of February 1, entitled "Remember Panama?" be printed in the Record.

There being no objection, the editorials were printed in the Record, as follows:

[From the Sioux Falls (S. Dak.), Argus-Leader, Feb. 19, 1978]

SENATE SHOULD RATIFY TREATIES

"Truly there is a tide in the affairs of men, but there is no gulf stream setting forever in one direction."—James Russell Lowell, *Literary Essays* (1870–1890), New England Two Centuries ago.

This quotation from the 19th century is pertinent to the great national debate over the Panama Canal Treaties. They represent a different direction for the United States in its relationship to the canal and with Panama in the future. It is a direction we think this country should take.

The debate has polarized many elements of the citizenry, and particularly the conservative wing, with dire predictions of what will happen if the United States Senate gives its advice and consent for ratification. The predictions see the United States retreating and giving up a vital part of its defense.

Liberals have been ready with equally grim propaganda, chastizing the United States for using gunboat diplomacy in aiding Panama in its break from Colombia and stuffing a favorable treaty down the throats of the newly free Panamanians in 1903. Liberals should mute their call for an end to colonialism. The United States record refutes this contention. Similarly, critics of the treaties should stop wailing about Uncle Sam caving in under pressure. This country didn't.

We see a different scenario. Our construction of the canal and U.S. presence in Panama have helped that country greatly, both in an economic way and in the general well-being of Panamanians. We need make no apologies for the past in taking a different course for the future. It is time, however, to recognize the Panamanians' nationalism, and their desire for a place in the sun.

No country, large or small, wants its territory bisected by a zone controlled by another nation. The Egyptians in the 1950s demonstrated this in nationalizing the Suez Canal. Panama has an American enclave—10 miles wide—bisecting its middle. Panamanians want to control their own, operate the canal and get a piece of the action. They are demonstrating the same yearnings American colonists had in another era.

The treaties which President Jimmy Carter has sent to the U.S. Senate for its advice and consent represent the work of four presidents. The initiative for a new treaty started with President Lyndon B. Johnson, following the strains arising from deepseated Panamanian dissatisfaction which culminated in riots along the Canal Zone border in January 1964. The riots killed 20 Panamanians and four Americans and injured 500 persons.

In December 1964, Johnson, after consulting with former Presidents Truman and Eisenhower and with bipartisan support, made a commitment to negotiate a wholly new, fixed term canal treaty.

Presidents Richard Nixon and Gerald Ford continued that commitment. Carter concluded the negotiations with Panama and signed the treaty in Washington last September.

The first of the two new treaties—the Panama Canal Treaty—terminates previous treaties and spells out ways in which the canal is to be operated and defended until 2000. The United States retains primary responsibility for canal operations and defense until the end of the century, but with increasing Panamanian participation. The Canal Zone ceases to exist and Panama assumes general jurisdiction over the area.

The United States retains bases until 2000. The canal will be operated by a U.S. government agency called the Panama Canal Commission, with five American and four Panamanian directors. The United States will set tolls until the end of the century. Increased economic benefits to Panama under the treaty will come from a share of canal tolls, not from the U.S. taxpayer.

The second treaty is entitled "Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal." The canal is to remain open to merchant and naval vessels of all nations indefinitely, without discrimination as to conditions or tolls. The treaty does not give the United States the right to intervene in the internal affairs of Panama. It gives the United States and Panama responsibility to insure that the canal remains open at all times. This country retains the right to defend the canal against external attack and to use the canal for its warships.

A clarifying memo issued by President Carter and Gen. Torrijos, after the treaties were signed, specified that the United States would have a right of priority passage in wartime and could take whatever action it saw fit to protect the waterway, including use of military force. In our opinion, there's no question about the right of this country to defend the canal.

We think the future defense of the canal will be in sea and air lanes on its approaches. This country's military, in time of war, would destroy any enemy vessel outside either end of the canal if it ever gained neutral passage.

Giving up military bases in the present Canal Zone after 2000 is a drawback, but cooperation between this country and Panama should diminish any future ground threat against the canal. Panamanian operation should also decrease the threat of terrorism from within. It will be to Panama's national interest to keep the canal operating. This seems preferable to the possibility of jungle guerrilla operations if the Yanks stayed beyond 2000.

There has been criticism of Gen. Torrijos as a strong man and a Marxist. His strength has brought some stability to Panama; the claims that he is a Communist are so much bunk. He's a nationalist. His people have approved the treaties in a referendum.

The world has changed greatly since the 1903 treaty between Panama and the United States. To insist on staying with the status quo in Panama is to disregard history and the emerging nationalism of the world's smaller nations.

A change of course in 1978, by ratification of the treaties, is a positive step that the world's free superpower can take without fear of its security or vital interests. Both will be served by ratification of the treaties by the U.S. Senate.

REMEMBER PANAMA?

[From the Washington Post, Feb. 1, 1978]

It's all too typical of the self-indulgence with which the Panama issue has been debated that so little consideration was initially given to Panama's likely and legitimate objections to treaty changes being wrought in Washington. With State Department approval, the Senate Foreign Relations Committee voted 14 to 1 last Friday to incorporate as a new article in the treaties the earlier Carter-Torrijos executive language spelling out American defense and transit rights after 2000. Only when Gen. Omar Torrijos raised the question with visiting senators did it dawn on Americans that adding a new article would compel Panama to go the risky route of submitting the treaties to another plebiscite.

It is interesting to see why the treaties, which won 66 per cent of the vote last October, would probably not survive a second plebiscite, or so the best judge, Gen. Torrijos, believes. Part of the explanation lies in discontents of other sorts with the general—discontents that surface quite easily in the freer atmosphere he has allowed to flourish to persuade Americans he's no dictator. Another part lies in growing nationalistic resentment against the very concessions he's accepted to make the treaties acceptable to the United States. Can Americans envisage, for instance, granting a foreign country the right of military intervention, or hosting wave after wave of Panamanian legislators come to check out whether the United States was fit for their diplomatic company?

Strongman Torrijos has even felt it necessary to say that if the treaties are approved he'll step down. By this offer he evidently means to disarm Americans who complain of having to do business with a dictator, and to win support for the treaties from Panamanians who object to his personal rule. If he were in fact a dictator, of course, he would have engineered a larger margin in the first plebiscite, and the treaties would not be facing rejection in the second, and he would not be considering stepping down. Some pro-treaty Americans privately wish he were a dictator!

On Monday the Foreign Relations Committee corrected its Friday error and agreed to work the Torrijos-Carter language into existing treaty articles, rather than write a new one. Although the practical effect would presumably be the same, Panamanian authorities apparently have concluded that this formulation would avoid the need for a second plebiscite. That's a determination—however difficult it may be for some senators to comprehend—that is up to the Panamanian government to make, according to its own reading of what is politically tolerable in Panama. As it heads into floor debate, however, the Senate must keep in mind that no further assaults on Panamanian nationalism can be condoned. The substance of the American demands has been met. It is thoughtful of the majority and minority leaders to offer their distinguished colleagues the opportunity to strut and posture and show their constituents how forceful and vigilant they can be in stiffening the treaties. But this opportunity must be exercised within narrow limits. It cannot be taken as license for the sort of further arm-twisting that would put the treaties back into jeopardy in Panama.

Mr. GARN. Mr. President, I suggest the absence of a quorum.
The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. ALLEN. Mr. President, earlier this afternoon, when I made the statement that the Torrijos regime had a poor record in the field of human rights, the distinguished Senator from Alaska (Mr. Gravel) asked me to document that statement. He stated that he wished to have some sort of documentation of this statement, inasmuch as he did not feel that this accusation was correct.

I did not have in my file with me at the time a documentation of that accusation, though the distinguished Senator from Alaska (Mr. Gravel) did produce a survey or an analysis by Freedom House, touching on the human rights record of many countries throughout the world.

I had stated that there had been a survey by an international organization rating various countries on a scale of 1 to 7, as to their record on human rights, and that this survey rated Panama 6 in the area of civil rights and 7 in the area of political rights.

Mr. CURTIS. Mr. President, will the Senator yield for a question?

Mr. ALLEN. I yield.

Mr. CURTIS. Perhaps the Senator from Alabama has covered it, but I did not follow to the point I would like to understand it. What does a 6 and a 7 mean? Is that a high score or a low score? What is it?

Mr. ALLEN. I should have stated that it is a scale of 1 to 7, with 1 being the highest and best rating and 7 being the lowest and worst rating.

Panama scored a 6 on civil rights and a 7, which is the lowest possible rate, on political rights.

The distinguished Senator from Alaska produced the document or the analysis from Freedom House, and the distinguished Senator from Nevada (Mr. Laxalt) volunteered the information that the

distinguished Senator from New York (Mr. Javits) was a member of the board of directors of this organization.

Mr. CURTIS. Who made this rating the distinguished Senator from Alabama is talking about? Whose rating is that?

Mr. ALLEN. I have not gotten to that. I have some documentation here I wanted to insert at this point.

Mr. CURTIS. I see.

Mr. ALLEN. I have it here with me. I am getting ready to insert it.

Mr. CURTIS. Whose rating is the Senator talking about that gave Panama a 6 on a 1-to-7 scale?

Mr. ALLEN. That was Freedom House I just referred to.

Mr. CURTIS. I see.

Mr. MCGOVERN. Mr. President, will the Senator yield on that point?

Mr. ALLEN. I yield.

Mr. MCGOVERN. Does the Senator value the judgment of Freedom House?

Mr. ALLEN. In this particular area I do, yes.

Mr. MCGOVERN. Is the Senator aware that they endorsed the Panama Canal treaties?

Mr. ALLEN. We are not talking about that. We are talking about their rating in regards to their human rights record. That is what we are talking about.

Mr. MCGOVERN. I thought if the Senator thought highly of their judgment on some issues he might also think highly on others.

Mr. ALLEN. I said this particular area. I do not agree with the distinguished Senator from South Dakota on all of his positions and I do not agree necessarily with Freedom House on their analyses.

But the distinguished Senator from Alaska was wanting some sort of documentation, and I furnished it, and if I would be allowed to I want to furnish some additional documentation.

Mr. MCGOVERN. I make one more intervention here and just observe to the Senator that if his point is that we should be careful about entering into treaties with countries that do not have a high record on human rights I remind him that we already have a treaty with Panama and have had since 1903 so it seems to me that if the point is—

Mr. ALLEN. We did not know at that time that a dictatorial regime was going to come in about 60 years later.

Mr. MCGOVERN. That is a chance I think the Senator would agree that one has to take in dealing with Latin America, that sometimes over a 60-year period the chances are fairly good you are going to have something other than a constitutional democracy.

Mr. ALLEN. I understand that. I am making these remarks in connection with the national policy of the administration to seek to achieve human rights throughout the world, and if we do have a government that is guilty of not observing human rights, I think that is very pertinent on the issue involved.

But the reason the Senator from Alabama is furnishing this information at this time is that he was requested to do so by the distinguished Senator from Alaska.

Mr. MCGOVERN. Just one more observation. I remind the Senator that to whatever extent we have a government in Panama today that is somewhat below where the Senator would like on the human rights scale, I will remind him that is despite the fact that we had Americans living down there in the Panama Canal Zone under the existing treaty which I think the Senator from Alabama prefers to the new treaty. So apparently even with this long American presence there, we have not been able to lift the human rights standards to where the Senator would like them.

Maybe with a new treaty where Panama is given more control over its own destiny instead of having a foreign presence 10 miles wide right across the center of their country it might be that you would have a more unified government, one with a greater sense of national pride and perhaps they would even pay greater attention to such things as human rights.

Mr. ALLEN. The Senator may draw this conclusion, but I do not feel that just because Panama is going to receive approximately \$100 million a year out of this Panama Canal Treaty during the next 22 years that would necessarily result in a better record on human rights. Nor do I put any credence whatsoever in Mr. Torrijos' assurances to a number of Senators who went to Panama to interview Mr. Torrijos, he was going to do better in the area of human rights. I do not put a bit of credence in that and with an additional \$100 million a year in his pocket I think he would be much more independent, and what we are doing here is to help perpetuate in office this dictatorial regime there in Panama; whereas, if we were able to defeat the treaties the Senator suggested it might result in an overthrow of the government down there which I think would be a step in the right direction.

Mr. GARN. Mr. President, will the Senator yield?

Mr. ALLEN. Mr. President, if I could be allowed to print these two documents I would appreciate it and then I will yield for a question.

Mr. GARN. All right.

Mr. ALLEN. I ask unanimous consent to have printed in the Record a booklet prepared by the Council for International Security, the chairman of which is Mr. Ronald F. Docksai, Georgetown University, Graduate School of Government, here in the Nation's Capital.

This booklet, some dozen pages or so, is entitled "Violation of Human Rights and Civil Liberties in Panama." I am not going to discuss every item here but appendix B has a partial list of persons reported exiled by the Torrijos government and there are three pages of political exiles by the Torrijos regime. I did not know we had political exiles anywhere in the world since the days of the Roman Empire but apparently there are three pages of people who have been exiled from Panama by dictator Torrijos.

There being no objection, the booklet was ordered to be printed in the Record, as follows:

VIOLATION OF HUMAN RIGHTS AND CIVIL LIBERTIES IN PANAMA

(By Dr. Gustave Anguizola)

INTRODUCTION

General Omar Torrijos seized power in Panama on October 11, 1968, through action of the Panamanian National Guard. The successful military *coup* ousted the populist Dr. Arnulfo Arias who had been in office only eleven days.¹

Since that time, charges of corruption and repression have been leveled against the Torrijos government. Torrijos has presented himself as a nationalist revolutionary leader. It has been suggested that his personal style, similar to the of Fidel Castro, has been developed by Torrijos to help him legitimize and stabilize his own position.

The record of repression, human rights violations, and corruption since October, 1968 is not consistent. These activities seem to vary according to the government's perception of its own stability and short-term objectives.

Though the Torrijos government has received military equipment² and training from the United States, it would be a mistake to seriously contemplate conclusion of major political agreements with this regime. In particular, to conclude a settlement changing the status of the Panama Canal would sanction the Torrijos government in its present form. It would also endanger the safety of the citizens of the Canal Zone.

President Carter has stirred world opinion through his focus on the issue of human rights.³ If the United States is to hold to its own historic principles of human dignity and freedom, this moral position must remain at the base of his diplomacy. To conclude in haste a major agreement with the present government of Panama would call into question the credibility of the Administration's advocacy of human rights. A Canal treaty with Torrijos could undermine U.S. foreign policy as well as do a grave injustice to the people of Panama.

The following charges raise serious questions as to the advisability of concluding major agreements with the Torrijos government. They also raise important questions about the character of the Torrijos regime.

MISUSE OF POLITICAL POWER

Omar Torrijos has exercised power in a highly personal way. In fact his government has been called a "personality cult." His powers are so broad and ill-defined as to permit regular misuse of executive authority. Only in Haiti, in fact, does a national constitution grant such absolute powers to one man by name.⁴

Article 277 of the Panamanian constitution, promulgated in 1972, refers to General Omar Torrijos, Commander-in-Chief of the National Guard, as the "recognized Maximum Leader of the Panamanian Revolution." In order to insure the fulfillment of this revolution, he is formally granted the power to:

1. Appoint commanders and officers of the armed forces and military hierarchy.
2. Appoint, with Cabinet approval, all Supreme Court magistrates, Attorney General, Attorney of the Administration, and their alternates.
3. Approve all government contracts, negotiate all government debts, and direct foreign relations.
4. Appoint the Comptroller General and Sub-Comptroller General, Director of the Autonomous and Semi-Autonomous institutions and Magistrates of the Electoral Tribunal which are to be named by the executive branch according to the Constitution and laws.
5. Coordinate all the work of public administration.
6. Participate with voting rights in all Cabinet meetings, meetings of the Legislative Commission, National Assembly of Representatives, Provincial Councils of Coordination, and the Communal Committees.⁵

Torrijos's enumerated powers extend beyond the executive sector, and vest both judicial and legislative functions in the hands of one man. Legislation in Panama, since 1968, has been both vague and abundant. Almost 4,000 new laws have been issued during the years 1968-1976. It has not been uncommon for new laws to be voided soon after passage. Contrary to Constitutional guarantees prohibiting such

¹ Panama, *La Estrella de Panama*, Oct. 11, 1968, p. 1, cc 1-6.

² On October 2, 1976, the first of a group of 16 tanks, armed with 50 caliber machine guns, arrived in Panama via Miami. (See "Canal Protection Division Activity Report No. 2205", Oct. 2, 1976.)

³ See *New York Times*, June 20, 1977, p. 3, cc 4-6; and June 25, 1977, p. 1, c5, p. 6, c5.

⁴ Haitian Constitution, 1964, revised 1970.

⁵ See Constitution of the Republic of Panama, (Panama City, 1977), article 277.

practice, retroactive law has also been enforced. Also, as will be detailed later, Torrijos only permits one political party to operate.

I—VIOLATION OF FUNDAMENTAL HUMAN RIGHTS AND CIVIL LIBERTIES

VIOLATION OF THE RIGHT TO LIFE

Since the coming to power of Torrijos' regime, not only arbitrary arrest, but also torture and murder at the hands of the powerful G-2 State Security Police have become increasingly more frequent. The accusation is frequently made that arrested parties have evidenced opposition to the regime, or have associated with those considered opponents.

One of the most notable recorded cases constituting abuse involves a combination of human rights violations: the case of Roman Catholic Priest Hector Gallego.

In the summer of 1968, Father Gallego was appointed "Parroco" of the Santa Fe parish, located in Veraguas Province of Panama. His subsequent work, organizing agricultural cooperatives in his parish, was found damaging to the commercial interests of some powerful local relatives of Omar Torrijos. On June 9, 1971, G-2 agents entered Father Gallego's home while he slept and arrested him. There has been no word of him since that date, and the government has forbidden the Catholic Church to employ private investigators.⁷ The regime has also failed to carry out the full public investigation which had been promised. It was widely conjectured, however, that Father Gallego was tortured and murdered.⁸ Father Pedro Hernandez Robal stated on August 21, 1972 that "The Colombia priest, Father Hector Gallego, 30 years of age, was thrown into the sea from an airplane on June 9, 1971 by order of General Omar Torrijos, head of the Panamanian National Guard.

During September of 1976, a number of women related or married to known critics of the government were victimized by the National Guard:

Mrs. Blanca de Marchosky, wife of lawyer Eusebio Marchosky.

Mrs. Alma Robles de Samos, sister of Ivan and Winston Robles, lawyers in exile in Miami.

Mrs. Fulvia Morales.

These women were arrested and held incommunicado. Deprived of food and water, they were subjected to long periods of interrogation. G-2 agents and some Cuban interrogators who assist in G-2 training were involved in the questioning. The subsequent jailings included depriving the accused of beds, change of clothing, and contact with relatives.

During this period, a list of women who were married to reputed dissidents was published in the government-controlled newspapers. These same women, accused of "collaborating" with the women previously jailed, were also threatened with arrest. Arrest of persons by the government's special G-2 National Guard section is reportedly often carried out without either formal charges or warrant. The authorities may refuse to acknowledge the arrest, and may prohibit arrested persons from contacting friends or family members.

The list of persons murdered by the G-2 police is a lengthy one, (see Appendix A), and attempts by relatives or associates to investigate are reportedly usually squelched.¹⁰

In addition to the reported murder of Father Gallego, a more recent case of notes is that of Miss Marlene Mendizabal and her fiancé, Jorge E. Falconet. Both young people were members of student groups which opposed communists-oriented organizations at the University of Panama. These revolutionary leftist organizations openly supported General Torrijos.

Mr. Falconet, a student at the National University of Panama, simply disappeared, but Miss Mendizabal's body was found. The National Guard prevented an autopsy from being performed. Several student organizations at the *Instituto Nacional*, Miss Mendizabal's high school, sent letters to the Attorney General which accused the authorities of covering up the incident and of intimidating the victims' family members. Miss Mendizabal's mother, for example, was allegedly so badly beaten by government agents during her attempt to investigate her daughter's May, 1976, murder, that a considerable period of hospitalization was required. It is also said that the tombstone, purchased by some of Miss Mendizabal's relatives, was destroyed two days after it was placed over her grave.

* Parish Priest.

⁷ Agence France Presse, Aug. 21, 1972, *El Sol* de Mexico.

⁸ Ibid. Statement by Reverend Pedro Hernandez Robandal.

¹⁰ Report of Panamanian Committee on Human Rights, Sept. 15, 1976.

It has been found that torture is widely employed by G-2 guards. Bodies which have been discovered and examined show evidence of various types of corporal abuse such as the body of Ruben Miro, a lawyer, who was tortured and murdered after his arrest.

Eduardo White died of injuries to stomach and chest inflicted by a rubber hose during his arrest.

Miss Dorita Moreno, a University of Panama medical student and member of a group opposing deposition of Arnulfo Arias, was sexually assaulted by members of the National Guard.

Three persons, Nat Mendes, Jr., Fernando Ayala, and Francisco Mata, were tortured for condemning the unexplained disappearance of Father Gallego.

Sammy Sitton was tortured by National Guard members for speaking out against the Torrijos government.

Enrique Moreno, after torture, was able to leave Panama to reside in Miami.

Father Luis Medrano was forced to wear a black hood while being driven to his execution. However, because one of the directors of "Radio Hogar" recognized the G-2 chief as one of the priest's abductors, Father Medrano was not murdered.

Antonio Poole, a British national born in Argentina, experienced during imprisonment beatings, clubbings, and prodding in "sensitive" body areas with a stick. He also underwent electric shocks administered by a 12-volt car battery attached to two cables. Mr. Poole has also related a mock execution during which he was driven with his eyes taped shut to a location away from his place of incarceration. Here he was put through a thorough pre-execution preparation, only to discover that the ritual was only a hoax.¹¹

Methods of torture have reportedly included the following:

1. Sexual abuse by sexual deviants placed in prisoner's cells.
2. Insertion of prisoners' hands in bone crushing machines.
3. Beating with a rubber hose which leaves no scars.
4. Blows with the fist.
5. Long periods of interrogation without recesses for sleep, under strong lights, and without clothing.
6. Bathing of prisoners in *ice water*.
7. Electric shocks applied to sensitive body parts.
8. Simulated execution, a psychological torture, usually accompanied by physical abuse.
9. Forcing prisoners to stand for long periods away from a wall with legs spread, hands on the neck, and forehead touching the wall. Any movement results in beating with a rubber hose.¹²

DENIAL OF FREEDOM OF ASSEMBLY AND ASSOCIATION

When the military seized power in Panama in 1968, ten political parties were dissolved.¹³ Though parties are allowed to exist, according to the 1972 Constitution, only the *People's Party* (The Communist Party) is sanctioned by the Torrijos regime. This party alone, headed by Secretary General Ruben Dario Sousa, operates freely and openly. In addition to Omar Torrijos, other prominent *People's Party* members include: Romulo Escobar Bethencourt, Chairman of the National Information Commission; Juan Materno Vasquez, President of the Supreme Court; and Marcelino Jaen, President of the National Legislative Assembly.

Various other political organizations have reportedly been forced underground. The Social Democratic Movement, begun in February, 1976; the Movement of Independent Lawyers; the Odontologist Association; the Engineers and Architects Society; and other professional and political groups are said to be constantly faced with G-2 repression. For example:

Several of the organizations' directors have been removed from their positions by Torrijos.

According to sources, two former Chamber of Commerce Presidents, the President-elect, and one of its directors were exiled.¹⁴

The headquarters and records of the Panama Business Executive Association were confiscated in January, 1976.

¹¹ Notarized statement from Antonio Poole to Ruben D. Carles, Jr., Sept. 15, 1976, Miami. Panamanian Committee on Human Rights.

¹² Ibid.

¹³ Political parties include: Christian Democratic Party (PDC), Panamenista Party (PR), Republican Party (PR), National Patriotic Coalition (CPN), Democratic Action (AD), Third National Party (TPN), Liberal Party (PLN), Agrarian Labor Party (PAL), National Liberation Movement (MLNP), Progressive Party (PPN).

¹⁴ Two former Presidents of the Chambers of Commerce, Guillermo Ford and Roberto Eisenmann, Sr.

For criticizing at a public meeting the government's economic policies, corruption, and repression, the presidents of the Cattlemen's Association and the Rice-growers of Panama were also exiled.

In addition to coercing enlistment of government employees into a state-controlled political organization, G-2 squads have been known to take more violent actions against labor unions. It has been disclosed that during September, 1976, the offices of the Christian Democrat-associated labor unions were broken into and ravaged. All the leaders were arrested.

Labor unions of all types are expected to join the *Federacion Sindical*, a communist-dominated labor federation through which organized labor could be controlled by the government. The leaders of the *Federacion Sindical* include long-time Communist Party members Domingo Barrio and Marta Matamoros.

The unions which have managed to maintain an independent status have faced extreme difficulties in seeking benefits from the Labor Ministry. It has been revealed that in government institutions where labor has traditionally been well represented, these groups are not allowed a voice. The pressures to which the Christian Democratic-associated groups have been subjected are said to be increasingly felt by other non-*Sindical* members.

When students gathered in September, 1976, for a march protesting the government's increase of milk and rice prices, and the continued lack of basic freedoms, the Torrijos government reacted swiftly. First, the state-controlled Student Federation (FZP), made up largely of non-student government agents, was sent to foment an "inter-student clash". However, what followed was a seven-day protest, resulting in disruption of Panama City's main traffic artery and damage to a large portion of the commercial sector.¹⁵

When the regime's initial attempt to place blame for the disruptions on U.S. agencies collapsed, protest became widespread. Finally, sections of the Army were deployed with tear gas, rubber hoses, anti-riot pellets, and dogs.¹⁶

At least two students died, one of whom reportedly "disappeared" from a government hospital. Three hundred to five hundred students, including some non-involved bystanders, were said to have been arrested and given the option of attending indoctrination classes at the City Jail, or of being sent to the penal colony at Coiba. It is reported that some of the imprisoned youths were tortured by electric shock. A number of those arrested were forced to stand outdoors from 13-15 hours, deprived of food, in a stationary position. After finally being given breakfast, the youths were made to attend a political awareness seminar.

This major disruptive incident compromises the regime's credibility. Especially noteworthy was the apparent absence of border crossings, anti-American demonstrations, posters, etc. which typically accompany student upheavals. Instead, the primary grievances this time were over Panama's internal problems.

VIOLETIONS OF FREEDOMS OF PRESS AND SPEECH

Both the press and radio are controlled in Panama by the Torrijos government. Media expressing opinions considered hostile to the regime are faced with the prospects of censorship or confiscation. Prominent media personnel may receive harsh sanctions.

Five radio stations, "La Voz de Colon," "Ondas Instmenas," "Radio Aeropuerto," "Radio Soberna," and "Radio Impacto" have been confiscated by the government since the 1968 *coup*.

Great pressure has reportedly been exerted on privately owned newspapers to bring them in line with the official press bureau, *Editora Renovacion*. This agency is owned by the government and managed by Rodrigo Gonzales, a close Torrijos assistant. It has been disclosed that two new private papers, "Quibo" and "La Opinion Publica" were squelched even before full-scale publication could begin, *Editora La Verdad*, which was to publish "La Opinion Publica," was closed down for having previously printed subversive materials. Resolution "099" of March 6, 1975, which decreed suspension of publication was, it is reported, signed by the Minister of Justice, and was authorized by Torrijos. When the Movement of Independent Lawyers published a bulletin exposing in detail the "Quibo" and "La Opinion Publica" confiscations, its directors were threatened with release of a press decree which would label their actions a crime.¹⁷

Such violations have reportedly become so flagrant that the Inter-American Press Society (SIP) at its March, 1975 meeting in San Salvador, El Salvador, published a

¹⁵ The Dallas Morning News, Jan. 24, 1976, p. 30E, c4, and New York Times, Sept. 23, 1976, p. 48A, c8.

¹⁶ *ibid*.

¹⁷ Editorial Miami Herald, Jan. 19, 1974.

resolution (No. 6) which exposed and condemned the Torrijos regime for acts of censorship and other violations of free speech and press:

"Considering that the regime of Panama, which has the Press under direct or indirect control, has again censored the publication of a weekly newspaper which would have been called "La Opinion Publica" (Public Opinion) even before it appeared; considering that all the measures pursued by the SIP to the government of Panama to revoke the measure as to allow the publication of "La Opinion Publica" have failed; considering that this measure is the culmination of a series of arbitrary acts against the Free Press that have been carried out by the regime of dictator Omar Torrijos, the Board of Directors has determined to condemn the arbitrary resolution that prevented the publication of "La Opinion Publica" and to renew its efforts to promote a Forum of World Opinion where the repressive methods of the regime of dictator Omar Torrijos are exposed."¹⁸

EXILE AND PERSECUTION OF NATIONALISTS

It is widely known that the right to live in one's own country without fear of arbitrary deportation or expatriation has been consistently violated by the Torrijos government. (See Appendix B).

Exiled persons have told of being accused of anti-government subversion. For example, three lawyers involved in the Movement of Independent Lawyers were exiled in January, 1969, and a fourth entered Miami after a period of physical and mental torture. Altogether, in the eight years from 1968-1976, at least 1,300 Panamanian professionals, businessmen, students, and labor union members have been exiled.¹⁹

The public record shows that Dr. Reuben D. Carles, Jr. was exiled in January, 1976, after attending a public meeting in Chiriqui Province, Panama. Open public meetings were called by community leaders in David, Chiriqui Province, to discuss grievances against the Torrijos regime. Public officials and representatives of both public and private organizations were invited to attend. Soon after attending this meeting, Dr. Carles and fourteen other businessmen and professionals (see Appendix B) were arrested and exiled.

After his arrest, Carles was transported to a National Guard headquarters where he encountered several other men who had attended the Chiriqui meeting. The prisoners were searched; and personal documents, identification cards, and family photographs were confiscated. They were then ordered to remove all clothing and watch while their billfolds were searched. Most of the group were allowed to retain only their identification cards.

Following questioning, Carles and his associates were ordered into a DC-3, and flown to Guayaquil, Ecuador. The Panamanian government explained the deportations, it is reported, as its response to an alleged conspiracy which had sought to promote class struggle. According to Dr. Carles, the Panamanian government tried to prevent the exiles from obtaining visas from other countries by pressuring officials in Ecuador to prohibit their departure. Ecuadorian authorities also informed them that two Panamanian agents had been assigned to spy on them in Guayaquil.²⁰

The *first American citizen* and a legal resident of Panama who was deported by the Torrijos government is David Dale Mendelson. On the afternoon of April 3, 1977, Mr. Mendelson was taken against his will by the Panamanian secret police. He was not only denied his rights as an American citizen and Panamanian resident, but was also brutally beaten. His beating resulted in a contusion of the kidney, causing blood in the urine, and requiring hospitalization. He was held incommunicado and prohibited from making telephone calls to an attorney or to the American Consulate. On April 4, 1977, he was deported, via Braniff Flight 948, to the United States. In his subsequent letter of April 29, 1977, to two Panamanian lawyers, Mr. Mendelson sought assistance in suing the Panamanian government for violation of human rights, beating, defamation of character, loss of business and personal property, and denial of contact with an attorney or the American Consulate.²¹

It has also been discovered that the Torrijos regime has sent G-2 agents to other South, Central, and North American countries to arrest and intimidate Panamanian exiles. Often posing as officials of consulates and embassies, G-2 agents are able to seek out and persecute former Panamanian citizens. Mr. Ruben Carles has also discussed the awareness and fear of Panamanian agents which he and his associates felt while in Ecuador.

¹⁸ See Panamanian Committee for Human Rights, Document, Sept. 1976, Vol. 1.

¹⁹ Ibid.

²⁰ Ruben D. Carles, Jr., "The Constitution of Panama, Article 29", (Washington, D.C., Library of Congress Research Service, 1976), pp. 48-50.

²¹ David D. Mendelson reported these happenings in conversations with Phillip Harman.

Leopoldo Aragon, then in exile in Costa Rica (presently in Sweden), was actually arrested by Panamanian agents. It is also suspected that in Costa Rica, Panamanian National Guards have murdered several opponents of the Torrijos regime who sought refuge there. Agents have reportedly been extremely active in Venezuela, Colombia, Miami, New York, and Washington, D.C. A portion of a 1975 G-2 payroll sheet lists Edgardo Lopez, now the Panamanian Consul in Miami. Although Lopez is called a "guardia" (common soldier) by occupation, he receives a salary comparable to that of the highly-paid G-2 chief, Manuel Noriega.

DENIAL OF THE RIGHT TO COUNSEL

Officials of the Torrijos government have written laws which deny the accused the right to defense, if such person has allegedly engaged in subversive activities directed against the Panamanian state. In fact, some feel that the situation has become so serious that in November, 1969, the Panamanian National Bar Association published a statement concerning the new relationship between the individual and the law:

"With the implementation of this system, the power the Judiciary enjoys is such as to exercise both the legislative and the judicial functions. For this reason, the National Bar Association, when protesting the fact that power was given to the executive branch to sanction a crime, following the procedure of a police indictment, it does so, convinced that the defendant has no access to the guarantees of the due process of law. For this reason, the National Bar Association considers the re-establishment of the constitutional guarantees a mere formality since the decrees that have been issued consider that the practice of the citizen's inherent rights is a crime."²²

VIOLATION OF THE RIGHT TO PRIVACY AND FREEDOM FROM UNWARRANTED SEARCHES AND SEIZURES

As previously noted, unwarranted entry into private homes has reportedly occurred repeatedly under the Torrijos regime. The unwarranted search of domiciles is known to be a frequent violation of privacy of individuals and their personal effects.

Both wiretapping and interference with private correspondence by the military police are reportedly routinely carried out by the military police. The Movement of Independent Lawyers was initially formed after fourteen Panamanian nationals had all their property confiscated before they were exiled to Ecuador.

II—CORRUPTION

NEPOTISM

Over forty members of Omar Torrijos' extended family hold high governmental positions. Family members so favored include three brothers and their wives, six sisters and their husbands, three nephews, and at least twelve cousins. Among Torrijos' cousins is Panama's Vice-President, Gerardo Gonzales. Other powerful positions into which Torrijos' relations have been placed are those of Director of the National Lottery and Director of the government-owned gambling casinos. Torrijos' older brother, Hugo Torrijos, Director of the gambling casinos, is also involved in "Juliano Internacional" This establishment sells and rents gambling machines. Hugo Torrijos also controls the prostitution business for Panama and Latin America and the white slave market through his company "Espectaculos Nacionales, S.A."²³

Roberto Diaz Herrera, Torrijos' first cousin, was recently promoted to lieutenant colonel in the Panamanian National Guard. Diaz Herrera's brothers are Efebo Diaz Herrera, Panamanian Ambassador to Cuba, Nitido Diaz Herrera, Chief of Customs in the Republic of Panama, and Edison Diaz Herrera, Municipal Treasurer. Marcelino Jaen is married to Omar Torrijos' sister, Toya Torrijos Herrera, and serves as president of the National Legislative Committee.

INVOLVEMENTS OF OMAR TORRIJOS OUTSIDE PANAMA

Omar Torrijos is reportedly compiling vast holdings both in Panama, Spain and Belize. His brother Moises Monchi is Panamanian Ambassador to Spain, and is said to be engaged in procuring large real estate holdings. The Torrijos government has also changed Panamanian banking laws to permit special Euro-dollar accounts.

²² Panama, *La Estrella de Panama*, No. 13, 1969, p. 1, cc 1-4.

²³ *Ibid.* Also Martin C. Needler, "Omar Torrijos: The Panamanian Enigma, in *Intellect*, Feb. 1977, pp. 242-243.

Since Fidel Castro came to power in Cuba on January 1, 1959, only three heads of State have visited him. Omar Torrijos is one of these three leaders. He arrived in Cuba on January 10, 1976.²⁴

INVOLVEMENT IN NARCOTICS TRAFFIC

In spite of public concern about international narcotics traffic, it has been found that members of Torrijos' family and other national officials are deeply involved in Mafia-connected narcotics trade. Though not a diplomatic official, Rafael Richard, Jr. was awarded a diplomatic passport under orders of the Panamanian Minister of Foreign Affairs. Richard entered New York, under diplomatic immunity, with 70 kilos of heroin given to him by the then Panamanian Ambassador to Argentina, Moises Torrijos. When arrested, Richard was in the company of Guillermo Gonzales and Nicolas Polanco, who are closely related to Torrijos' brother, Moises.²⁵

Joaquin Him Gonzales, chief of the control two of Panama City's Tocumen International Airport, was reportedly arrested in the Canal Zone for involvement in the smuggling of drugs into Dallas, Texas. As tower chief, this Torrijos confidant was in a position to prevent searches of air cargo by the Immigration Department. Altogether, from 1971 to 1972, 641 pounds of heroin were intercepted enroute from Panama to the United States, according to the Draft Report of the Panama Canal Subcommittee of the Merchant Marine and Fisheries Committee, March 8, 1972.²⁶

III—POPULAR ORGANIZED PROTEST: PROFESSIONAL, LABOR, AND STUDENT GROUPS

Several civic groups of various types have been formed in Panama to articulate grievances and to work for reform. One of the largest is the *Movimiento Civico Nacional*, formed on December 11, 1973. The original Declaration of Principles was signed by 35 organizations, including the Kiwanis Club, Lions Club, Housewife's Association, and National Medical Association. The organization claimed that its members were "concerned for the restless and unsure climate in which all the classes are living in this country, and because of the absence of public and individual liberties."

The objective of the organization is the pursuit of basic freedoms which are considered lacking in Panama. Among these are: freedom of information, freedom of expression, complete independence of the judiciary, freedom to form political parties and to see political liberties recognized. Also, the group calls for permanent and complete information on Canal negotiations in order to guarantee effective sovereignty.

In a speech given before the organization by (Rotarian) Dr. Osvaldo Velasquez, the speaker suggested that the call for total Canal Zone sovereignty is used as proof of popular support for the Torrijos government. Dr. Velasquez stated that because Panamanians lack civil liberties, any new draft document on the Canal submitted to the plebiscite, as constitutionally required, undoubtedly would have been approved in advance by the Foreign Office. Because any opposition to a draft treaty would likely be met with reprisals, the plebiscite "would be nothing more than a pseudo-democratic subterfuge." Furthermore, he questioned whether the U.S. Senate would consider approval of a treaty imposed in such a fashion.²⁷

Among others in Panama who were concerned about a Torrijos-imposed agreement was Jerry Dodson, who said in his letter of resignation from his consular post (to Secretary of State William Rogers, June 5, 1969): "American citizens have been arrested on a large scale for no apparent reason. In a large number of cases, the National Guard has denied consular access to the citizens. There have been numerous cases of mistreatment as well."²⁸

CONCLUSION

General Omar Torrijos, since assuming power in 1968, has, as evidence illustrates, repeatedly violated the rights of Panamanian citizens. He has rewritten the Panamanian constitution to give himself extraordinary powers and he has supplemented these powers with arbitrary arrests, torture, and murders. While the principal targets of his oppression are political opponents, even non-political individuals like Father Gallego fall victim.

²⁴ The other two are Salvador Allende and Luis Escheverria.

²⁵ Panamanian Committee For Human Rights, Document, Sept. 1976.

²⁶ See U.S. House of Representatives, Panama Canal Sub-Committee on Merchant Marine and Fishing, "Draft Report", (Washington, D.C. March 8, 1972.)

²⁷ Address by Osvaldo Velasquez before the "Movimiento Civico Nacional", Nov. 4, 1976.

²⁸ Dodson to Secretary William Rogers, June 5, 1969.

These reported violations of human rights have stirred protests in Panama. Along with evidence of profiteering by Torrijos and his family, they have led groups like the *Movimiento Civico Nacional* to reject Torrijos' legitimacy and his right to negotiate a new Panama Canal settlement.

In light of this, it seems that the best course for the United States is not to conclude a treaty which could augment and perpetuate Torrijos' power over Panamanians and extend it to Canal Zone residents.

APPENDIX A: PARTIAL LIST OF PERSONS REPORTED MURDERED BY THE TORRIJOS GOVERNMENT

Arrieta, Abdiel, Britton, Floyd, Cadeno, Anibal, Cubas Perez, Hipolito, Cubas Perez, Narciso, Cruz, Mojica, Cruz, Ramon, Falconnet, Jorge, Fistonich, Andres, Frederic, Jaime Alberto, Gallego, Hector (Rev.), Generoso, Elisondro, Gonzales, Encarnacion, Gonzales, Felix, Ganzales, Elias, Gonzales, Ariosto, Gantez, Belisario.

Medrano, Jore Tulio, Moreno, Dorita, Mendizabal, Marlene, Monterosa, Luis Carlos, Miro, Ruben, Manson, Hildebrando, Osorio, Waldemedo, Palacios, Teodoro, Portugal, Heliodoro, Quintanar, Herbert, Rivera, Basilio, Sanchez, Ubaldo, Sarmiento, Cesar, Sarmiento, Genaro, Tejada, Cesareo, Tunon, Jose del C., White, Eduardo.

APPENDIX B: PARTIAL LIST OF PERSONS REPORTED EXILED BY THE TORRIJOS GOVERNMENT

Abood, Tito, Achurra, Serafin (Major of the National Guard), Aizpurua, Jaime (Agronomist Engineer)*, Alvarado, Osvaldo (Lt. of the National Guard), Alvarez, Antonio*, Aragon, Leopoldo, Arauz, Angel, Arias, Gilberto, Arias, Madrid, Dr. Arnulfo (former President of Panama, M.D.), Arias, Tomas, Avila, Victor, Beecher, Clarence (Professor), Bernal, Dr. Miguel Antonio (Lawyer, University Professor)*, Berriiman, Felipe (Priest), Boyd, Federico (Lt. Col. of the National Guard), Boyd, Dr. Julio (D.D.S.).

Britton, Federico (Brother of Floyd who was murdered by the National Guard), Calamari, Humberto (Lawyer), Carles, Querube S. de (Civic Leader), Carles, Ruben Dario (Economist, University Professor)*, Chen, Demetrio, Crespo, Bolivar, Crocamo, Abraham (Captain of the National Guard), De Arco, Gilberto, De Arco, Juan Manuel, De Arco, Tare, De La Guardia, Rodolfo, Diaz, Duque Luis Carlos (Lt. Col. of the National Guard), Dominiguez, Antonio (Business and Civic Leader)*, Domini-guaz, Domingo, Dominiguez, Julio, Dubois, Cesar, Eisenmann, Jr., I. Roberto (Businessman, Former President of the Chamber of Commerce, Banker)*.

Ford, Guillermo (Businessman, Banker, Former President of the Chamber of Commerce)*, Francheschi, Adolfo, Gonzales, Gabriel, Gonzales de la Lastra, Carlos Ernesto (Former President of the APEDE and Executive Secretary of the Social Democratic Movement), Guevara, Guillermo (University Student), Harris, Humberto, Huertematte, Max, Jimenez, Humberto (Major of the National Guard), Jurado, Dr. Alonso (M.D.), King, Thelma, Lecuona, Julian (Priest), Lekas, Juan, Lopez, Eudoro, Lopez, Humberto (Law Student, Member of the Executive Committee of the Social Democratic Movement).

Mandura, Eduardo, Marchosky, Eusebio (Lawyer), Martinez, Boris (Colonel of the National Guard), Martinez, Luis, Martinez, Jr., Luis, Mayo, Jesus, Menendez Franco, Gonzalo (Lawyer), Medrano, Rev. Luis (Catholic Priest), Miller, Luis Carlos (Lt. in the National Guard), Miranda, Sergio (Lawyer), Miro Jr., Ruben, Mong, Enrique, Morales, Marcos, Moran, Diana (Lawyer), Moreno, Quico, Nicosisia, Hildebrando, Niede, Harmodio, Perez del Rosario, Juan, Pitti, Jorge, Quiros Guardia, Alberto (Newsmen, University Professor)*, Richard, Jose Alexis.

Robinson, Carlos (Newsmen), Robles, Ivan (Lawyer)*, Robles, Dr. Winston (Lawyer, University Professor)*, Rodriguez, Bolivar, Rodriguez, Felix, Rolla, Pimentel, Dr. Guillermo (M.D.), Romero, Buenaventura, Romero, Maximo, Saavedra, Canilo (Lt. Col. of the National Guard), Sagel, Diogenes (Newsmen), Salas, Jacobo, Samudio, David, Sanchez, Pascual, Sanjur, Amando (Col. of the National Guard).

Sanjur, Fidencio, Sanjur, Ruben, Silvera, Ramiro (Col. of the National Guard), Solis Palma, Manuel, Turner, David, Turner, Domingo, Turner, Jorge, Velasquez, Gilberto, Weeden, Alvin (Lawyer)*, Weeden, George (Businessman, Director of the Chamber of Commerce)*, Wilson, Carlos, Yanez, Victor, Young Adams, Dr. Carlos (M.D.), Zappi, Humberto.

*Exiled in January and February, 1976, to Ecuador.

Mr. ALLEN. I ask unanimous consent, also, inasmuch as I was asked to document by statement, to print in the Record a situation report and position paper by the U.S. Civil Council, the Canal Zone, February 1977.

There being no objection, the material was ordered to be printed in the Record, as follows:

A SITUATION REPORT AND POSITION PAPER BY U.S. CIVIC COUNCILS, CANAL ZONE, FEBRUARY 1977

For the past 3½ years, the U.S. Civic Councils in the Canal Zone have been preparing position papers and formal statements of community opinion for submission to Congressmen, Canal Zone officials, Department of Army representatives, treaty negotiators and State Department officials. We have tried to maintain an attitude of rationality, calmness, and sensible perspective on the subject of a new Panama Canal treaty with the Republic of Panama. One of the points we have tried to make so often, so much so that we feel like "broken records," is that the U.S. citizen in the Canal Zone feels very apprehensive about living under the type of "legal system" now in force in the Republic of Panama.

What exists now in the Canal Zone, after 3½ years of our trying to send out warning signals and indications of problems to come, is a "siege mentality" and crisis atmosphere. Now that one of the Civic Council presidents whose signature appears at the conclusion of this paper has had experience with arbitrary detention, arrest, interrogation and search in the Republic, we are having real difficulty in maintaining an attitude of composure and calm rationality. (Attached are copies of newspaper clippings describing two recent incidents of U.S. citizens being arrested at Tocumen Airport.)

Two major concerns we have stressed to government officials during the past 3½ years has been the lack of adequate information about the treaty and the need of job assurances and transfer rights for employees who might choose not to continue their government service in the Canal Zone. All we have received in response from government officials is empty rhetoric and promises of "as soon as we know something definite we'll tell you. We must maintain confidentiality, but trust us; your employee interests will be taken care of."

Now, added to job insecurity and apprehension caused by lack of information, our people feel threatened physically because of September riots in Panama, October bombings in the Canal Zone, numerous bomb threats in the Canal Zone, and now arrests of U.S. citizens at Tocumen Airport who were not involved in breaking a law of either the Republic of Panama or the United States. It is no wonder that a "let me out of here" mentality has stimulated a constant, ever-increasing exodus of needed skilled talent out of the Canal Zone.

Our qualifications to speak out on the new Canal treaty matter include being elected representatives of the U.S. citizens living in Panama Canal communities, being year-round residents in the area whose future is being negotiated, and having a constant awareness of activities in Panama. Treaty negotiators and State Department officials have little at stake themselves personally, other than to successfully negotiate a treaty which will, in their minds, ease hemisphere tensions and get rid of chronic problems in our relations with Panama. When they finish their assignment, they will move on to other missions, leaving us to live with what they have arranged in treaty form. Generally, the treaty negotiators come to Panama for short periods of time, followed by journalists who become experts after a three-day tour that includes standard briefings by the Panamanian and Canal Zone governments. These negotiators for the most part stay in isolation on the island of Contadora and when they have consented to meet with Canal Zone labor and civic representatives, they have said relatively nothing of any significance on the treaty issue.

Let us make clear that we are American citizens deeply concerned with the present and future well-being of our nation. Our opinions on what the U.S. has at stake in the negotiation of a new Canal treaty are affected by our conversations with Panamanian friends, our reading of Spanish-language and English-language newspapers in Panama, and our understanding of the behavioral traits of the Panamanian government (something which one does not arrive at overnight or even in three days). Because of the present situation in the Republic of Panama, many of us do not "cross the border" as often, as freely, or even as nonchalantly as we used to. Fear, apprehension, and deep concern for our personal safety brought by a succession of events in Panama, have given us an increasing "locked-in" feeling in the Canal Zone. When Panamanian businessmen are deported for expressing opposi-

tion to the current government, when Panamanian citizens are arrested, tortured and even killed for having dissident opinions, and now when even our own people are subject to arrest in an airport to which we thought we had free access—the average U.S. citizen in the Canal Zone is not at all enthusiastic about submitting to the legal jurisdiction of such a repressive government. As an additional item of evidence, we have had numerous conversations with many Panamanians that you will never be able to meet. Our impression from these conversations is that when the Panamanian government officials speak today, they are NOT speaking for all the people. The people are silent because they have no effective means that they can see with which to fight back.

What effect does all this have on the operation of the Canal? Right now, it is having a disastrous effect on the quality of work being performed because workers are "uptight" constantly about physical and economic security. The pride in working on the Panama Canal that has been a part of our history, is now giving way to constant preoccupation with one's personal welfare. Many of our people are now weighing whether they want to continue working here or to escape the pressure-cooker atmosphere that is now an accepted part of our way of life in the Canal Zone.

After 3½ years of being told by our own government that they can tell us nothing yet about the treaty, imagine the shock waves that went through our workforce February 7, 1977 when we learned that Brigadier General Omar Torrijos had invited some of our labor leaders to a conference on treaty matters. In that meeting, General Torrijos told the leaders that his country could pass legislation guaranteeing the U.S. employee rights if "only you will stop all anti-treaty activity." His persuasive ability has been reduced to zero since that time as a result of the arrest of William Drummond, a local labor union official, and the detention and arrest of some other labor union officials accompanying Drummond when he attempted a second time to board a flight to Washington, D.C. on labor union business.

In defense of our Canal Zone Governor, Harold R. Parfitt, we must say that he has indicated to us many times that he has wanted to release information on the status of negotiations but that higher officials in Washington have prevented him from doing so. At this point, we will not comment on the irony that General Torrijos wanted to set up a high-level commission in his own government to keep OUR labor leaders informed.

The U.S. and foreign press have given the world the impression that any opposition to the treaty that exists here in the Canal Zone is due to overwhelming desire to preserve a status quo that resembles a "tropical paradise." We would like to correct that misconception and explain reasons for many of the ambivalent feelings that our people have toward the proposed treaty.

The average U.S. citizen working for the Panama Canal Company/Canal Zone Government is a middle-class American who wants to do his job, provide for his family and live in relative peace and tranquility. He wants to live under a system of laws that makes his rights clear and that gives him opportunity for redress of grievances. He does not believe that this atmosphere exists under the current Panamanian government. Rather, Panamanian policemen make generous interpretations of the law forbidding "disrespect to a police officer" and arrest people for offenses they didn't even know they committed. Panamanian policemen fire their pistols freely in pursuing suspects; the defendant may be dead before he's arrested.

If Panama's police force does not give its own people fair and just treatment consistently, we are not naive enough to believe that we will have "special privileges" under the "sovereignty" of Panama. Many, many of our constituents have told us that "when the Canal Zone Police go, I go." When those people leave the Canal operation, there will be real problems in recruiting qualified help from the U.S. to replace these people until the time that Panama is able to provide skilled and trained workers for all the jobs needed in the Canal operation.

During the past three to four years, our people have been receiving an "education" from the State Department concerning the treaty. By means of briefings, newspaper articles, and informal discussions, they make clear these basic premises for their argument that a new treaty is needed:

1. A Canal Zone is not necessary for the successful operation of the Canal. (They tell us that we wouldn't WANT to live in the Canal Zone if Panama didn't get the treaty it desires.)

2. The countries of Latin America give full support to Panama's claims for sovereignty over the Canal Zone and eventual control of the Canal operation.

3. The turnover of the Canal to Panama is in the best interests of the United States because not to do so would possibly involve our country in another Viet Nam-style guerrilla war.

4. Panama has a sincere interest in keeping the Canal open and would not do anything to jeopardize the efficient operation of the Canal.

5. The Canal Zone is an anachronism; it is a source of irritation. Once the U.S. citizens are scattered throughout Panama City and Colon, they will no longer be identified as "Zonians", thus easing tensions and frictions between the U.S. and Panama.

6. The economic growth of Panama depends on acquiring the lands in the Canal Zone so that Panama City and Colon can expand their business interests.

7. The denial of basic human rights within the Republic of Panama is not a matter that needs to be brought into the treaty negotiations. After all, Panama is one of the "developing countries of the world," and such behavior is quite normal for such countries.

8. The State Department would not negotiate a treaty which the U.S. Congress would not ratify.

The above concepts might be plausible to someone who has not lived here, to someone who has little or no dealings with the Panamanian government and its officials. They make the negotiation of a new treaty with Panama under the Kissinger-Tack conceptual principles as the most logical course to follow. Permit us to provide some responses to these concepts we have listed.

1. When the Canal Zone U.S.-based legal system ceases to exist, many U.S. employees will leave, creating a problem for Canal administrators in finding qualified replacements for the short-term, at least.

2. The countries of Latin America say one thing in public and another privately. In the newspapers they pledge full support for Panama's claims to the Canal. In private, to people such as former Under Secretary of State William Rogers that they are satisfied with the course that the U.S. is following in the Canal treaty negotiations. From observation of the political behavior and egocentrism of Latin American governments, one can safely say that Omar Torrijos could not depend on his Latin American neighbors for monetary or military support in an open conflict with the United States. Those other countries wish to preserve their own ties to the United States in foreign aid allotments and commercial ventures. They would not sacrifice their own interests for the sake of Torrijos' "just aspirations" concerning the Panama Canal. Rhetorical support is about all that General Torrijos can expect from Central and South America.

3. Turning over the Canal is NOT in the best interests of the United States because:

a. Construction of enough warships to provide a "two-ocean navy" would be necessary in case Panama became whimsical in permitting us access to the Canal for military vessels.

b. The Moscow-Havana axis has been casting lustful eyes for a long time toward our Canal as well as at other straits and waterways of the world. Panama does not have the military strength to withstand an assault from ANY country that would choose to invade and occupy it. The Panamanian people are not "fighters" by tradition; they have never fought a war of liberation. The average campesino reasons in this way: "Why should I get myself killed for the sake of a dictator? What will it gain me or my family? Absolutely nothing. Therefore I will simply adjust to whoever is in power. One ruler is as bad as another."

c. The flow of Alaskan oil through the Panama Canal en route to eastern ports in the United States will be in serious jeopardy when Panama has control over access to the Canal and over the setting of tolls.

d. Our first line of defense in the western hemisphere would suddenly become Harlingen or McAllen, Texas (or perhaps Key West, Florida.)

4. The Panamanian government is not noted for rational, logical behavior, nor for extensive attention toward preventive maintenance of government equipment. At this point, the government, which is nearly bankrupt, needs money desperately. This government has already indicated an interest in increasing the tolls 13-fold when they gain control of the Canal. This would seriously jeopardize the economic health of the Canal, and the government's lackadaisical attitude toward repairs and maintenance would contribute to the mechanical breakdown of the Canal (unless the United States agreed to continue supplying parts and maintenance indefinitely.)

5. The "gringo" as he is often called here in Panama will continue to receive harassment, whether he lives in Panama or the present Canal Zone. The United States has been a rather convenient whipping-boy for the Republic of Panama for years and years. Criticism of the U.S. has always been used to distract the Panamanian public's attention from the incompetence, graft, corruption, and poor judgment of the Panamanian government. Besides, the average Panamanian, (when he permits himself to talk freely), does NOT want a treaty signed under the regime of

Omar Torrijos. Such a treaty would reinforce the already crushing power of the Torrijos government on the Panamanian people.

6. The economic growth of Panama will need more than a Canal to restore it to health. The repressive atmosphere has inhibited consumers from visiting stores and businesses; it has inhibited investors from putting their money to work in Panamanian enterprises. The acquisition of Canal Zone lands for use by Panamanian commercial interests still requires the intelligent use and exploitation of those lands by competent businessmen. Such people are not the ones in control in the Panamanian government today. The ones in power are military men without adequate training in economics and business management.

7. The denial of basic human rights within the Republic of Panama IS a matter that should be considered in the treaty negotiations. President Carter has expressed repeated interest in the matter of human rights. If our country is to participate in a metaphorical "marriage" by means of a treaty with another country, we should know just who that "spouse" is. Denial of human rights is bound to make further problems for Canal employees later on, no matter WHAT nationality they are. Rather than taking an amoral stance, our country should apply its influence on the Panamanian government, to the extent that U.S. citizens (who do come under the legitimate concern of our federal government) will not be permitted to live under such repression. We cannot rightfully interfere in the domestic policies of another nation, but we can let them know that they will not receive what they want so desperately from us until they make some changes in those policies.

8. The State Department is negotiating a treaty which it is willing to ratify. They make the assumption that they know what is "in the best interest of the United States" and that all other opinions are to be considered ill-informed, unenlightened, and out of step with modern times. It is our sincere hope that the U.S. Congress will give long and hard consideration to all the factors of a new treaty with the Republic of Panama. The very unstable condition of the Torrijos regime condemns this proposed "marriage" to eventual separation or divorce in a very short time.

For ourselves as U.S. citizens living and working thousands of miles from our homeland, we can say, "Pack up tomorrow. We're ready to go." But for the sake of U.S. commerce and of U.S. national interests in general in the hemisphere, we urge you to examine the proposed treaty (whenever it is announced) thoroughly. We urge you to visit here for more than three days, to observe the situation with your own eyes and not to depend solely on briefings by U.S. or Panamanian government officials. The new treaty with Panama will have long-range repercussions that coming generations will have to live with; we urge you not to ratify a new treaty solely because the State Department says that it is the cure-all to problems with Panama. Russia and Cuba are waiting to see which way the treaty issue goes. A hasty decision on the part of our Congressmen without giving deep and thoughtful study to the question would please them very much.

Mr. ALLEN. I am now delighted to yield to the distinguished Senator.

Mr. GARN. Just for a brief comment. Earlier today when Senator Gravel was discussing human rights and saying there was nothing really going on, people were not being arrested on the streets down there, he is correct right now. Senator Baker and I met with five members of the Panmesta Party, some of them part of the Arias' government that was overthrown just after it was legally elected in 1969. I asked them why do they dare to meet with us. They said, "Oh, because we are on a holiday. Since the treaties were signed, Torrijos is being very nice and we enjoy it. So discuss those treaties for a long, long time. He is trying to impress you Senators."

Each one of them had been imprisoned at various times, one of them as many as seven times in solitary confinement with no charges made ever, just picked up off the street, and political parties were outlawed by Torrijos. They do not exist legally at all. But it was rather interesting. They were enjoying the whole process. "The first time we had freedom from being picked up on the streets and arrested, held incommunicado, and not charged, since September 7." What they said is that "We are afraid whether you

sign the treaties or not, or ratify them, that as soon as it is decided then we are going to be in trouble again."

So they described it very accurately as "We are enjoying a holiday from human rights violations right now."

Mr. ALLEN. I thank the Senator for this most interesting information.

The PRESIDING OFFICER. The Senator from Louisiana (Mr. Johnston).

Mr. JOHNSTON. Mr. President, I rise today to express my opposition to both Panama Canal Treaties. I commend the distinguished majority leader for offering two clarifying amendments concerning our right to intervene unilaterally to defend the canal and our right to priority passage for our vessels during emergencies, but I do not believe these rights will be unequivocally secure without a continued American military presence in Panama and they will not change my vote. Second, I do not believe that the treaties assure that the canal will remain open, secure, and well run during the proposed transitional period. Finally, I believe the financial aspects of the treaties are unacceptable and I simply cannot justify voting for huge expenditures, which could amount to as much as \$10 billion by December 31, 1999, according to the State Department, without having all the implications clearly spelled out.

Militarily, I do not believe that we can be assured, under the current treaties or clarifying amendments, that we can defend the canal at a reasonable price, keep the canal in operation, and protect our strategic interests. Numerous military officials have testified that a continuing American presence in Panama, after the year 2000, is both necessary and desirable. For example, Adm. Thomas H. Moorer, USN, retired, stated before the Armed Services Committee:

I believe a permanent U.S. presence in the Panama Canal Zone to be the only feasible and safe posture for all of the nations of this hemisphere.

Maj. Gen. George L. Mabry Jr., USA, retired, stated that the United States "should retain the right to operate some bases and remain in the canal under a status of forces type agreement" and that these bases "would enhance our ability to operate and defend the canal on a unilateral basis if the United States deems such action as necessary." He also pointed out that a continued American military presence would give the United States leverage over Panama during a major dispute and would enable our Government to "apply levels of pressure against Panama to encourage better cooperation."

Even some of those officials who support the treaties admit, by implication, that a continued American presence would make it easier and less costly—in terms of lives as well as dollars—for the United States to defend the canal after the year 2000.

Should the treaties be ratified, there remains the possibility of internal civil strife in Panama that would disrupt the operation of the canal. As Lt. Gen. Gordon Sumner, Jr., commented, many of our OAS allies see the possibility of Communist subversion as real and all members of the Inter-American Defense Board have "expressed reservation about the fact that the United States will no

longer be in Panama. * * * Once we do not have the bases there, then the entire area becomes destabilized."

The treaty is also inadequate over the transitional period. With the disappearance of Canal Zone institutions like the police and the courts, it should come as no surprise that many polls indicate many skilled American workers in the zone will leave. While actual operators may well remain, it is likely that many—if not a majority—of company administrators will depart. I believe that Panama, boasting a commendable 80-percent literacy rate, can find skilled operators, who can successfully maintain the canal's daily technical operations. But I do have serious doubts about the Panamanian Government's commitment to managing the canal professionally and efficiently, to replace the current administrators without so politicizing these jobs that the efficiency of the canal is jeopardized.

Let me state that this is a very serious concern, and not simply a justification of my position. General Torrijos already has more than 3 dozen relatives on the government payroll and the Government of Panama has a bleak record in managing other public enterprises—to wit, the phone and power companies, the new airport, the new convention center, the Bayamo hydroelectric project. The overriding reason for these failures is bad, dishonest, corrupt management—not lack of skilled or trained technicians. This track record certainly does not give one much hope for responsible management of the canal. And, since the canal's economic situation is fragile, as we saw in the deficits incurred from 1973 to 1976, there is little margin for covering poor judgment or graft. The upshot, as I see it, is an unacceptably high risk of inefficient management and permanent U.S. subsidies to keep the canal open, not a guarantee for continued access to an open, free and secure canal.

Financially, I believe that those costs which we can estimate are too high, based on information we have at hand. Gov. Harold R. Parfitt outlined the various kinds of cost impacts the treaties could have. The figures he noted are as follows:

Early retirements—\$165 million.

Defense construction costs—\$43 million.

Payments to Panama out of Commission revenues—\$2 billion.

Current value of the Panama Canal Company and Canal Zone assets—\$4.6 billion.

Value of all assets, at current prices—\$10 billion.

Furthermore, there are other costs we cannot estimate—partly because of the lack of implementing legislation and partly because of ambiguities in the treaty. These costs would push the bill for the American taxpayer up even higher. This is unacceptable to me and the majority of the citizens I represent. A number of my colleagues have already raised this issue and I do not wish to belabor the point. Nonetheless, I am constrained to join these voices and state that it is absolutely vital that we know—and that those people whom we represent know—precisely what we are voting on.

Elmer Staats, Comptroller General of the United States, made this point clear in his testimony before the Armed Services Committee, stating that there will be other treaty related costs we cannot estimate that will be born by U.S. Government agencies,

but we do not know what these will be since "only sketchy details are available at this time." Mr. Staats stated further:

That the treaty implementing legislation is the key determinant of the financial viability of the proposed Panama Canal Commission.

And—

We did make an effort to obtain that implementing legislation, even in draft form, because we thought it would be helpful to us, but we were unable to obtain it.

He further noted:

If I were a Senator, I would want to see the legislation before I voted.

Well, I am a Senator, and I do want to see that before I vote. That is only fair to the American taxpayer and we should not ramrod down the taxpayer's throat future obligations which we cannot put a price tag on.

One example of our uncertainty is the disposition of possible surpluses over actual costs of services during the first 3 years of the treaty—which could theoretically be as much as \$15 million. Will this be applied to reducing the annual \$10 million payment during the following 3-year period, will it be returned to the commission, or will it become a hidden subsidy to the Panamanian Government? Another question concerns the annual interest payment to the U.S. Treasury from canal revenues on the U.S. investment in the canal. Amounting to some \$20 million annually, the discontinuance of the interest payment would be a considerable revenue loss for our Government and I understand that the administration intends that this be stopped. This would mean a loss of \$450 million in revenues to our Treasury over the 23-year life of the treaty. There is also the large question of whether the United States—directly or indirectly—will be asked to make up deficits if there are inadequate revenues to cover debts incurred by the proposed canal commission when the canal is turned over to Panama in the year 2000. With the canal's track record of operating deficits from 1973 to 1976 and the projections for deficits after 1984, this is a legitimate and serious issue which should be brought out in the open.

Before we in the Senate are asked to vote, these matters need to be resolved. Given the strong possibility—or at least toleration—of corruption and graft in the current Panamanian regime which we all heard about during the closed sessions of the Senate, I do not believe such loose financial arrangements are in the interests of our Nation and our taxpayers. And given the statement issued by various Panamanian officials concerning the amount of money they expect to receive directly and indirectly as a result of the treaties, the economic question becomes of great importance to that Nation as well. For if these expectations are dashed, there is a greater likelihood of instability in that country, with a resultant potential for threats to the continued efficient operation of the canal through subversive activities.

I can only conclude that the treaties were hastily negotiated, poorly negotiated and should be rejected. We in the Senate are to give advice and consent to treaties on the basis of full knowledge. We do not have that and this alone is reason for rejecting these documents. But, based on what I have seen so far, I believe the treaties should be rejected, and I intend to so vote.

Mr. ALLEN. Mr. President, will the distinguished Senator from Louisiana yield?

Mr. JOHNSTON. Yes, I yield to our distinguished colleague from Alabama.

Mr. ALLEN. I congratulate and commend the distinguished Senator from Louisiana (Mr. Johnston), not only for his eloquence but for his sagacity and for his ability to put so much wisdom and such a devastating analysis of these treaties into so few words. He has summed up in about 5 or 6 minutes what some of us have spent several days in trying to point out to the Senate, and I commend him for this very fine analysis of the treaties, and for his statement that while he feels that the leadership amendments might possibly improve the treaties, it will not be sufficient to justify his casting his vote in favor of the treaties.

I would like to ask a further question of the distinguished Senator. Is this the first time that the Senator has stated a definite position with regard to his attitude on the treaties?

Mr. JOHNSTON. First of all, I would like to thank my distinguished friend for his kind comments.

I have spoken out on the treaties, though not on the floor of the Senate. I have spoken out at home and in various other ways. This is the first time I have spoken on the floor of the Senate. Frankly, my distinguished friend from Alabama, and other colleagues in opposition, have been doing such a splendid job I could not find much to add to what he has said. This is, indeed, however, the first time I have spoken on the floor of the Senate.

I think in the final analysis we have to look at these treaties from the standpoint of the United States and our basic interest. No one that I know of is contending that the 1903 treaty should remain intact, that the \$2.3 million a year, as I recall the figure, that we pay to Panama is the last word, that we should hold them to that figure; that there are not other modifications in our arrangements with Panama that should perhaps be made.

What we are dealing with here is a finished document, finished in that it is complete in terms of what we are going to vote on here in the Senate, but which leaves large, gaping holes as to the implications of that financially, and as to the implications of it in terms of our right to use that canal.

It may be temporarily unpopular in Panama if we turn down these treaties. I am mindful of that. Frankly, I am disturbed about it. But when we get right down to it, if we approve these treaties there is no more guarantee that this treaty that we approve, if we do, would be the final word than there is that the 1903 treaty would be the final word.

Suppose we get to 3 or 4 years after ratification, if we should ratify, and the Panamaians say it is not enough; that continued American presence and membership on the commission is colonial; that the rest of the Americans have to get out? What do we then do? Then not only are we faced with the same situation, but we do not have control of the zone and we do not have an American military presence. Then we do not have that ability to defend the canal. That disturbs me greatly.

I do not see how these treaties, as written, are in the basic interests of the United States, and I do not think we should ratify these treaties.

I think what we ought to do is to go back to the negotiating table and address some of these considerations the Senator from Alabama has talked about and those that I have talked about. Let us try to get a treaty that is fair to the Panamanians, which gives them a bigger slice of the pie. This does not do that. It is a model of ambiguity, and it seems to me it is a treaty which does not protect the basic rights that we ought to have in the use of that canal.

It may breed much more trouble than we presently have, though it is designed to avoid that trouble.

We were continually told that American presence, the so-called colonial presence, in the Panama Canal Zone breeds contempt, hatred, and ridicule on the part of the Panamanians; that in this year of 1978 that is unacceptable.

Perhaps that arrangement can be modified somewhat.

Simply because there are some objections to the present treaty does not mean that we should be asked to swallow these treaties, which, in my view, do not give stability, economic predictability, nor the continued security and our right to use that canal, which I think are basic elements that any treaty should have with respect to Panama.

Mr. ALLEN. I thank the distinguished Senator for a very compelling statement.

I would like to ask one further question. I know the distinguished Senator from Louisiana (Mr. Johnston) makes frequent trips back home to Louisiana, and that he consults there with his constituents. He appears before many groups of citizens in all walks of life.

I wonder if he has had the opportunity to touch base with them on the issue of the Panama Canal treaties.

What reaction has the distinguished Senator had from his constituents back in Louisiana?

Mr. JOHNSTON. I have in fact had vast opportunity to touch base on this issue. Indeed, even when I did not seek to touch base, even when I was doing other things, they were touching base, they were sliding in, one might say, on this issue. The reaction of the people of Louisiana is that they feel very strongly in my State, and I think by an overwhelming margin, perhaps by a margin of 2½ or 3 to 1. This is not an issue which is mysterious to the people of my State or this country. It is not an issue which the average citizen can fail to comprehend or have an understanding of.

I would guess that almost everybody in this country knows what the Panama Canal is and knows its general history. They may not have read "The Path Between The Seas," as I have. They may not have attended the hearings. But it does not take a huge amount of study, it does not take years of training, it does not take a doctor's degree to understand basically what we are doing in these canal treaties.

I think my people understand it fairly well. They feel by overwhelming numbers, 2½ or 3 to 1, that these treaties are not in our interest.

I think there is something to be said for the collective judgment of the people of this country. I think we can tend to trust the collective judgment on an issue of this kind.

Mr. Allen. I certainly agree.

[Mr. DeConcini assumed the chair.]

Mr. JOHNSTON. This is not an issue of a complicated weapons system where the American people are to decide whether the AWACS control airplane should be sold to Iran, whether we ought to have cruise missiles or B-1 bombers. Those are technical questions which need great study.

This is a very simple, straightforward issue, and people of the country, I believe, understand the issue.

I am frank to say that I have no special knowledge that this is of such an esoteric nature, of such a difficult or technical nature, that my constituency cannot understand it. They understand it, and they feel the treaties ought to be rejected. I think people across this land feel the same way.

Mr. ALLEN. If they are rejected, would that not then still leave the opportunity for the negotiators representing the two governments to get together and work together on a treaty which, if it were drafted along the lines debate here in the Senate would indicate it should be drafted, might well be approved the next time it is submitted to the Senate?

Mr. JOHNSTON. I would hope so. I am not unmindful of the risk of turning this treaty down. I do not laugh that off. I do not say it is an inconsequential concern.

I have heard fears range all the way from riots in Panama to a new Vietnam war.

I do not think that will happen. I hope and pray it will not happen if we should reject these treaties.

But I do not think we can run American policy based on the shrillest voices of concern about what happens if the treaties are turned down. I have talked to some South American officials of other governments about how they feel about this treaty, and they are all united—not all of them; most of them are united in their official comments. Privately, they are not nearly so enthusiastic about the treaty as the signing ceremony would indicate.

More than that, I do not know that we have a whole proliferation of countries in South America that have a really, truly democratic system. If we did, then we might have a better idea about how the people down there feel. I do not know whether there is any way to satisfy any American presence against the most extreme voices of the so-called anticolonialism movement.

It is not colonial, in my view, for us to have a presence in Panama based upon a treaty, based upon our investment, our work, our blood, sweat, and tears. In my view, that is not colonial. It is according to the norms of international law. There is not a country in the world that does not recognize that treaty and that treaty has been recognized for over 75 years. So we are not there by force of arms.

We are not insisting that that treaty remain unabridged and unmodified. But if we are going to change that, if we are going to give up internationally recognized American rights, then I say let

us do it in a manner consistent with our basic interests. These treaties do not recognize that basic American interest, in my view.

Mr. ALLEN. Again, I thank the distinguished Senator from Louisiana (Mr. Johnston). I assure him of my deep sense of gratification and reassurance that the distinguished Senator from Louisiana has reached this decision, because I know the time and thought, the serious consideration that he gives to his positions on the issues that confront the people of Louisiana and the people of the United States, that come before us here in the U.S. Senate. I know how highly regarded the distinguished Senator from Louisiana is among his colleagues in the Senate, many of whom lean heavily upon the advice of the distinguished Senator from Louisiana.

I know of his closeness to the leadership. I know that he has served with distinction as chairman of the Democratic Senatorial Campaign Committee, and I know that he is close to the Senate powers who are seeking to obtain Senate advice and consent to these treaties. So may respect and admiration for the distinguished Senator from Louisiana, already very high indeed, has greatly increased, I might say escalated, as a result of this independent decision that the distinguished Senator from Louisiana has reached.

I believe it might well be the turning point in this body, because there are a number of uncommitted Senators, I read in the press and here on the electronic media. I might say I have not asked a single Senator how he is going to vote on the treaties. I feel it is my responsibility to take a position that I believe in and that I believe the people of Alabama believe in, but I do not believe it is my responsibility to solicit votes among Senators. I do know that many Senators regard the distinguished Senator from Louisiana so highly that it is bound to affect the ultimate decision that they make on this issue.

Again, I commend and congratulate the distinguished Senator from Louisiana.

Mr. JOHNSTON. I thank my distinguished colleague from Alabama for those kind and overly generous remarks.

ADDITIONAL STATEMENT SUBMITTED

Mr. DOMENICI. Mr. President, I would like to take this opportunity to make a few brief comments on several statements of concern raised by two of my distinguished colleagues, Senator Brooke and Senator Stennis. Both of these able statesmen chose to draw attention to the financial issues embodied in these treaties.

Mr. President, on September 30, 1977, I wrote the Comptroller General of the United States. In my letter I told him, and I quote:

After careful analysis of available data on the Panama Canal Company, I am unable to conclude with any degree of confidence that the proposed treaty assures sufficient revenues to fulfill the obligations and services of running such an operation.

We requested a statement of projected annual costs and revenues. We wanted a breakdown on costs running the gamut from police and fire protection to commitments on maintenance and repairs on the channels, harbors and locks.

It was immediately apparent to me that we might be promising the Panamanian people one thing, but what we were eventually delivering would bear little resemblance to their expectations. I cannot duplicate any thought more than the succinct comment by my distinguished colleague, Senator Brooke, when he said:

Indeed, it is not inconceivable that passage of the treaties, with gross ambiguities regarding likely financial outcomes, could lead to an exacerbation of tensions rather than a lessening of the same in a relatively short period of time.

I would like to mention that I have not received a statement of projected annual costs and revenues from the General Accounting Office. However, I have carefully reviewed Mr. Staats' comments delivered before the Senate Armed Services Committee on this crucial topic. The distinguished chairman of the Armed Services Committee, Mr. Stennis, has now presented these financial concerns before this body. I commend his committee and him personally for this excellent review and analysis. And, I join with him in urging all of my colleagues to read both the committee staff study and the State Department comments. When Mr. Stennis tells us that this treaty could cost the American taxpayer upward of \$2 billion, then this issue is certainly worthy of our attention.

Additionally, we have only received general observations on a complete estimate of the budget impact of the treaties from the Congressional Budget Office. Apparently, as has been mentioned innumerable times before my fellow colleagues, we cannot make an accurate assessment of costs and revenues, partially because implementing legislation which has been promised us months ago, has not been forthcoming.

Now, I recognize that there are many contingencies involved in an assessment of this magnitude. However, I find it very difficult to believe that after some 13 or 14 years of negotiations, we do not have an indepth financial analysis of projected deficits, or profits, if any.

Mr. President, last year the State Department assured me there would be no need for appropriations to cover any possible deficits—that toll increases would sufficiently cover any expenses. After reexamination, the administration admitted that there would possibly be cause for appropriations of additional funds to meet the requirements of the treaties. And, now, we are looking at figures which suggest enormous appropriations may be needed. I would like to respectfully suggest that when the administration tells us it will not cost the taxpayers any money, they are assuming the American taxpayer is not intelligent enough to know that we are not going to be writing out checks to the Government of Panama. They must underestimate our citizens. The average citizen in this country does know that his tax dollars, in one form or another, will be expended to meet the obligations the United States has promised in these treaties.

Mr. President, I received a letter signed by the President of the Panamanian Association of Business Executives urging my support of these treaties. I would like to quote a few sentences from that letter.

One can objectively state in regards to Panama that few countries have given you so much in return for so little.

They further tell me:

We have to tell you frankly that there is a lot in that Treaty (that) is objectionable and even humiliating from our standpoint.

While I do not agree with these views, these are private businessmen in Panama that want these treaties because they believe they are in the best interests of their country. I understand their patriotism. But, I worry when they tell me that unless these treaties are ratified they could not stop violent means such as terrorism and sabotage against the canal. And, I believe them when they tell me that should radical actions take place—

Panama will welcome all the help it could get from any country in the world.

I cannot help but believe that they will be even more distressed and frustrated when they find that services they have become accustomed to may deteriorate or disappear, and promises they believe have been made, may not be forthcoming.

I totally agree with Senators Brooke and Stennis, and others who have spoken out on this issue, that we must all know, once and for all, what financial obligations the United States must assume to carry forth the terms of these treaties.

We must not be faced with a situation in 2, or 5, or 10 years, when we are asked to appropriate vast sums of money to meet these treaty obligations, and take a chance on the appropriations being reduced or denied. If we are worried about sabotage and rebellion in Panama now, while they have many financial benefits, then we must surely consider the possible future repercussions that will exist when the financial stability of this enterprise is in jeopardy.

To conclude, Mr. President, I am very pleased to hear the concerns raised before this body on the financial aspects of these treaties. I cannot be party to any instrument which raises the hopes and dreams of both Americans and Panamanians, and then dashes these expectations to pieces. If Panama does not believe we were honest in 1903, then let us at least be honest in 1978.

Thank you.

Mr. President, I ask unanimous consent that the letter of September 30, 1977, to the Comptroller General be printed in the Record.

There being no objection, the letter was ordered to be printed in the Record, as follows:

SEPTEMBER 30, 1977.

COMPTROLLER GENERAL OF THE UNITED STATES,
General Accounting Office,
Washington, D.C.

DEAR SIR: After careful analysis of available data on the Panama Canal Company, I am unable to conclude with any degree of confidence that the proposed treaty assures sufficient revenues to fulfill the obligations and services of running such an operation.

As I understand the financial aspects of the Canal operation, the negotiations were conducted on the premise that any entity established to operate the canal would be self-financing over the life of the treaty. Therefore, we would like to request a statement of projected annual costs and revenues under the proposed treaty—a statement reflecting the expected annual expenditures required to meet the treaty obligations. We would appreciate a breakdown on costs running the gamut from police and fire protection costs, wages, etc., to commitments on maintenance and repairs of channels, harbors and locks.

At this point in time we are unable to determine what annual costs may be recovered, how the present assets will be depreciated and whether these assets will reduce any costs, or how deferred payments will be managed. Accordingly, I would hope that you would employ the resources of your office to conduct a thorough review of the financial condition of the Panama Canal Company (and Canal Zone Government), and furnish me with a breakdown of anticipated costs and revenues under the proposed Panama Canal Treaties. Thank you for your assistance and cooperation.

Sincerely,

PETE V. DOMENICI,
U.S. Senator.

TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL

The Senate continued with the consideration of the treaty.

Mr. ALLEN. Will the Senator yield?

Mr. ROBERT C. BYRD. Yes.

Mr. ALLEN. Inasmuch as many Senators who are not on the floor will doubtless read the Record tomorrow, I would like to state that the modification of amendment No. 40, which is pending before the Senate, to which the distinguished majority leader referred is as follows: That whereas the amendment authorizes that the President, if he deems it necessary for the defense of the canal or for maintaining its neutrality, may continue the military presence of the United States beyond December 31, 1999.

Now, the criticism has been offered here on the floor today that this amendment just would confer this right in perpetuity, just like the neutrality amendment is in perpetuity. To answer that criticism, the modification provides that the military presence, if the President deems it necessary for the defense of the canal, preserving its neutrality, to continue the military presence beyond December 31, 1999, he can do so, until December 31, 2019, which would add 20 years into the next century rather than a grant of this right in perpetuity.

So it would be 22 years under the Panama Canal Treaty and then the President could extend that time under my amendment for 20 years into the next century which, as I see it, would supply an omission in the leadership amendment, since under the leadership amendment the right to defend beyond the year 2000 would be a defense after all of our troops had been moved out of the Panama Canal Zone as required by the treaty.

Mr. ROBERT C. BYRD. Mr. President, of course, I do not know how the magic figure of 20 years came about. But, in any event, it would have the purpose of extending the military presence in the Canal Zone which is there now and which, under the Panama Canal Treaty, would remain there until December 31, 1999.

So, in effect, the Allen amendment, as modified, and I say this with all due respect to my friend from Alabama, the effect would simply be to kill both of the treaties, for that matter.

It would certainly require renegotiation of the Panama Canal Treaty which requires the cessation of U.S. control of the zone by December 31, 1999, and it would also negate or, at least, it would require a renegotiation of the Neutrality Treaty as well, which provides, when the leadership amendment is adopted, for the guar-

antee by the United States of access and use of the canal after December 31, 1999, and for the expeditious transit of military vessels of the United States after December 31, 1999.

So I hope Senators will see that although the amendment, as modified, which has been offered by the very distinguished, very able, very skillful, Senator from Alabama, looks good on its face and it sounds good, is indeed a killer amendment.

We have heard of killer satellites. This is a killer amendment, and Senators ought to know that before they vote on it.

It will have the effect of killing both of these treaties and requiring the complete renegotiation of both of them.

So it would be for that purpose that I shall move to table the amendment. So let the Senators read the Record, as Mr. Allen says, and also be fully knowledgeable of the impact and the result and the effect of the amendment, as modified, by Mr. Allen were it to carry.

Mr. ALLEN. May I have the floor?

Mr. ROBERT C. BYRD. I will be glad to yield to the distinguished Senator.

Mr. ALLEN. I thank the distinguished majority leader.

Mr. President, I do not foresee the dire effect that the distinguished majority leader is picturing if this amendment should be agreed to. When it was first discussed here on the floor the distinguished Senator from Idaho (Mr. Church) branded the amendment as superfluous and unnecessary, and he stated at that time that whatever could be done under the amendment could be done under the leadership amendment.

I recognize he has changed his view on that and he says now that it might have the dire results that the distinguished majority leader has outlined. I do not see it that way. I think it might well be that Panama might be willing to allow the President in his discretion—it does not make it necessary that he do so, mandatory that he do so—I think the Panamanians might well welcome continued defense by the United States on the scene of the canal, and I do not feel that it would result in the defeat of the treaties.

Besides, whose interests are we looking out for? Are we looking out for the interests of the United States in defending the canal, or are we trying to shape this treaty in a manner that would be acceptable to Dictator Torrijos?

Mr. ROBERT C. BYRD. Mr. President, I have the floor, and I have heard that song sung and sung and sung by the distinguished Senator from Alabama.

Mr. ALLEN. The Senator is going to hear it some more, too.

Mr. ROBERT C. BYRD. The Senator undoubtedly will, but I refute every word of it.

I am acting in the interests of the United States just as much, in my viewpoint, as the distinguished Senator from Alabama.

Mr. ALLEN. I am sure the Senator is.

Mr. ROBERT C. BYRD. For him to repeatedly stand on this floor and say what we ought to do is to look out after the interests of the United States—

Mr. ALLEN. That is correct.

Mr. ROBERT C. BYRD [continuing]. And not after the interests of the Dictator Torrijos—I could not care less about Torrijos. I could not care less about him.

Mr. ALLEN. I know you could not care less about him.

Mr. ROBERT C. BYRD. And I could not care less about his interests.

I am just as dedicated to the interests of these United States as is the Senator from Alabama or any other Senator whoever came from the State of Alabama.

Mr. ALLEN. I do not dispute that.

Mr. ROBERT C. BYRD. So this business of trying to paint, with a broad brush, that anybody who opposes the Allen amendment is not looking out after the interests of the United States, that he is looking out after the interests of Dictator Torrijos, is pure “BS,” pure “BS.” And I think it is about time somebody just stated it exactly for what it is.

The Senator has said time and time again—I have heard that same old theme—that we ought to be looking out for the interests of the United States.

Mr. ALLEN. I will say it again.

Mr. ROBERT C. BYRD. The Senator from Alabama is looking out for the interests of the United States, but so is the Senator from West Virginia, and so is every Senator who supports these treaties. I am not going to question by implication the patriotism of any Senator in this body, whether he is for these treaties or against them.

To stand here and say that any Senator in this body puts the interests of Dictator Torrijos ahead of the interests of the United States—the Senator knows that that is a false charge. He knows that that is a false charge, either explicit or by implication, and he knows the only inference that can be drawn from that is exactly as I have stated. He knows that is an unfair and unjust charge to make.

Mr. ALLEN. I have not impugned the Senator’s patriotism or the patriotism of any Senator.

But when the attitude is expressed by Senators to whom I have talked that no amendment, no matter how constructive or beneficial to the interests of the United States, will be accepted if it calls for a plebiscite, another plebiscite, down in Panama, then it is time to start worrying about whether the treaty is being shaped by the dictator from Panama or whether it is being shaped here by the U.S. Senate.

Mr. ROBERT C. BYRD. Can the Senator from Alabama name one Senator who has said that, who has said that, regardless of the interests of the United States——

Mr. ALLEN. No; I am not saying, “Regardless of the interests of the United States.”

I asked a leading Senator if he would be willing to consider and possibly vote for constructive, substantive amendments, to the treaty, and the response was that he would vote for no amendment that would call for a new plebiscite.

Mr. ROBERT C. BYRD. The Senator has changed his statement.

Mr. ALLEN. No; I have not.

Mr. ROBERT C. BYRD. I bet him my shirt that these two statements that he has just made are not exact.

Mr. ALLEN. In what way?

Mr. ROBERT C. BYRD. In the earlier statement, if I recall, the Senator was portraying certain Senators here as saying to him that they would vote against any amendment to the treaty even if such amendment were in the best interests of the United States.

Mr. ALLEN. No; the Senator is misquoting me.

Mr. ROBERT C. BYRD. I do not mean to misquote the Senator.

Mr. ALLEN. I did not say that it was against the best interests of the United States.

Mr. ROBERT C. BYRD. I may have misunderstood the Senator.

Mr. ALLEN. I asked if he would support a constructive, substantive amendment, and he said only if it would not cause a new plebiscite in Panama.

Mr. ROBERT C. BYRD. Would the Senator allow the reporter to read back his entire statement, his first statement?

Mr. ALLEN. That is all right.

Mr. ROBERT C. BYRD. I do not want to misquote the Senator. If I have misquoted him, I would like to apologize on the Record.

Mr. ALLEN. While we are waiting for that, we will go on, if it is agreeable to the Senator.

I see an attitude here, and that is what I am trying to work against, that as soon as the leadership amendment is agreed to, it is going to be mighty hard to get another amendment adopted, no matter how constructive that amendment is.

Mr. ROBERT C. BYRD. The majority leader has never said to the Senator from Alabama or to anybody else that his mind was closed to any and all amendments other than leadership amendments.

Mr. ALLEN. We will see what will take place.

Mr. ROBERT C. BYRD. We will see, yes. But no Senator can claim a monopoly on patriotism and service to the interests of the United States.

Mr. ALLEN. The Senator is twisting my words, and he is not stating my attitude with regard to the distinguished Senator from West Virginia, who unquestionably is a great patriot. I do not charge a lack of patriotism to any Senator in the Chamber.

Mr. ROBERT C. BYRD. I would hope not.

Mr. ALLEN. I have never done that.

Mr. ROBERT C. BYRD. We hear this thing over and over again, and I think I heard the Senator say the same thing in essence on television yesterday morning. Maybe I am wrong. I have heard him so much on this floor make the charge that certain Senators seem to be more interested in serving the interests of Dictator Torrijos than the good interests of the United States.

Mr. ALLEN. I did not say "serving the interests," but I have said making the treaty acceptable to Mr. Torrijos, Dictator Torrijos.

Mr. ROBERT C. BYRD. Perhaps we are talking in semantics, but I think the Record will show that the Senator has from time to time—

Mr. ALLEN. I also pointed out an example of how Torrijos has influenced the shaping of the treaty; and if the Senator would like me to recount that, I would be glad to do so.

Mr. ROBERT C. BYRD. The Senator will say that the Foreign Relations Committee heard from Torrijos that if it did not put these amendments after articles IV and VI, respectively, and provided a new article, such and such would happen. And he has then sought to leave the implication that the Foreign Relations Committee acted at the dictation of or in the interests of General Torrijos. Well, these are statements that simply do not stand up.

The Senator has a perfect right to vote against the treaty and offer all the amendments he wants to and to speak against the leadership amendment, deride the leadership amendment, point to flaws in the leadership amendment. That is perfectly all right. I would never question the patriotism of the Senator from Alabama. He is acting in what he thinks is the best interests of the United States. But, by the same token, those of us who support these treaties and those of us who are opposed to the amendment by the Senator from Alabama are just as patriotic. We love our country as much as he does.

Mr. ALLEN. I know that.

Mr. ROBERT C. BYRD. And we are not a bit more beholden to Dictator Torrijos than the Senator from Alabama.

Mr. ALLEN. Would the Senator, instead of telling what I was going to say about the action of the Foreign Relations Committee, let this Senator explain what was stated here on the floor of the U.S. Senate by a member of that committee, the Senator from Michigan (Mr. Griffin)?

Mr. ROBERT C. BYRD. Yes; who voted against the treaties.

Mr. ALLEN. Yes, he did, but I do not believe that the fact that he voted against the treaties would cause him to utter an untruth on the floor.

Mr. ROBERT C. BYRD. No.

Mr. ALLEN. I hope the Senator is not implying that.

Mr. ROBERT C. BYRD. Oh, no, indeed; a hundred times no; a thousand times no; a million times no. Never let it be said. [Laughter.]

I just want to say for the record that he——

Mr. ALLEN. That would make him a fabricator.

Mr. ROBERT C. BYRD. No.

Mr. ALLEN. I just wonder why the Senator made that statement.

Mr. ROBERT C. BYRD. I certainly did not mean to imply that. What good does it do to have a vocabulary of 10,000 words, if we cannot say "No"? And I say, "No, a thousand times no."

I did not mean to interrupt.

Mr. ALLEN. I thank the Senator.

What the distinguished Senator from Michigan (Mr. Griffin), who was the one Senator who voted against the treaties in the Foreign Relations Committee, said was that the Foreign Relations Committee approved the leadership amendment, the substance of the leadership amendment, in the form of a new article or articles; that after that action was taken by the Foreign Relations Committee, the State Department complained to the Foreign Relations Committee, stating that they did not feel that that would be acceptable to the Panamanians; that adding a new article would be different from merely amending the treaties; that amendment of the treaty would not call for a new plebiscite; whereas, the Panamanians felt

that the addition of new articles would result in a new plebiscite which for some reason the Panamanians do not want.

Therefore, they asked the Foreign Relations Committee to retrace their steps and to revoke the action that they had taken before to report out the leadership amendments in the form of a new article or articles and go back and amend articles IV and VI which the committee proceeded to do.

So that is one evidence, as I see it, that the Panamanians are having great influence as the Senate gives its advice and consent to the treaties. That is one illustration.

Mr. ROBERT C. BYRD. Mr. President, I yield to the distinguished whip.

Mr. CRANSTON. Mr. President, I would like to comment on this particular discussion since I was in Panama at the time that all of this occurred.

I was in a meeting with the maximum leader, General Torrijos, with other members of the Senate delegation. This was down there at the time the Foreign Relations Committee took its action which was on a Friday. On a Saturday our delegation met with General Torrijos and the two negotiators who had negotiated with the United States and with his foreign minister. They stated that the substance of what had been done by the Foreign Relations Committee which was to incorporate into the treaty the exact terms and language of the Carter-Torrijos joint statement which gives us the right to protect the neutrality of the canal forever, forever, and that gives us the right to have our ships go through first at the head of the line in times of emergency from our point of view, that all—

Mr. ALLEN. It does not say from our point of view. It says in the event of an emergency. That is one of the defects in the amendment.

Mr. CRANSTON. That is fine. In the event of an emergency. I think we would decide—I know that we would decide.

Mr. ALLEN. That is not stated in the amendment.

Mr. CRANSTON. Anyway—

Mr. ALLEN. Excuse me for interrupting.

Mr. ROBERT C. BYRD. There is plenty of time for an understanding to be written into the resolution for ratification.

Mr. CRANSTON. Absolutely, and I expect that will be done.

The exact substance of the language was acceptable to them. They stated they felt that if it was added as a new article under their Constitution and practices they would have to have a new plebiscite down there. They said they would like to avoid that. They explained various reasons why they would like to avoid it. Among the reasons are that it would be confusing to come back with a second plebiscite. It would be unnecessary since it had been clearly understood by the people and explained by the general before the vote that this was part of the treaty, and it was understood to mean that and he had made this joint statement with Carter and they had great expense involved in a plebiscite which they felt unnecessary, and they also having been through one plebiscite and coming back with another, they were not sure precisely what the outcome would be. If they had to go back it would have been very confusing.

Mr. ALLEN. Yes.

Mr. CRANSTON. Senator Stafford, from Vermont, the Republican coleader of our delegation, and I thereupon communicated, I to Senator Byrd, Senator Stafford to Senator Baker, the minority leader of the Senate, that this was the view of Panama. We stated that in our view since the substance would remain in the amendment it would be advisable to cooperate to this extent and avoid imposing an unnecessary plebiscite on the people of Panama.

The Foreign Relations Committee decided by, I think, a 14-to-1 vote that that would be an equally sound course since it would not change the substance of the action nor the meaning of the action in any way; therefore, the Foreign Relations Committee also having similar advice from the State Department made that change, and that is now the form of the Byrd-Baker amendment that I am confident will be adopted by an overwhelming vote of the Senate.

I suspect even the Senator from Alabama will vote for the amendment.

Mr. ALLEN. I am a cosponsor of it if we get to it.

Mr. CRANSTON. That is fine.

I would like to say that I am one Senator who favors if we can the national interest of the United States to avoid imposing a plebiscite on the people of Panama by our actions in the Senate, that that is the wisest course in the interests of the United States.

I am concerned that if we adopt some amendment that the Panamanians felt is unacceptable and, therefore, they vote down the treaty that that will be adverse to the interests of the United States because I think this treaty mutually negotiated and hopefully mutually ratified and accepted is in the national interest of our country, and I share the patriotism of the Senator from Alabama and the Senator from West Virginia and all other 97 Senators in terms of—

Mr. ALLEN. I never said anything to the contrary.

Mr. CRANSTON [continuing]. In terms of that point. It is not the interest of Panama, it is not the interest of Torrijos, the dictator in Panama. It is not any interest except the best interest of the United States that I have in mind when I hope that we can ratify the treaty in a way that does not risk the ultimate defeat of the treaty by Panama by making it unacceptable to them which I think would do great harm to the national interest of my country.

Mr. ALLEN. May I inquire of the distinguished Senator if the account given by the Senator from Alabama, though not as complete, because he had no knowledge of the situation in Panama of which the Senator mentioned, was my account of the action of the Foreign Relations Committee at variance with the statement made by the distinguished Senator from California?

Mr. CRANSTON. I think the account of the Senator from Alabama was accurate. I think the implications that he read into those facts was quite different than what the facts justified.

Mr. ALLEN. I see. What the Senator from Alabama said is correct; is that right?

Mr. CRANSTON. Insofar as the factual account of what the Foreign Relations Committee did, yes.

Mr. ALLEN. Yes, they did back up at the behest of the Panamanians conveyed through the State Department.

Mr. CRANSTON. They did not back up. They kept the entire substance of the Carter-Torrijos statement that gives us the right to protect the neutrality of the canal and the right to have our ships go through first.

Mr. ALLEN. Yes.

Mr. CRANSTON. That was kept intact. There was no compromise on substance.

Mr. ALLEN. I understand that there was a question whether there was a new article which might cause a new plebiscite or whether it was language added to an existing article which would not be a cause for it.

Mr. CRANSTON. That is right, and a new plebiscite is to be avoided if possible because a new plebiscite——

Mr. ALLEN. I am sure of that.

Mr. CRANSTON [continuing]. Might cause the defeat of the treaty and damage the national interests of our country.

Mr. ALLEN. I see, and damage the Torrijos regime as well.

Mr. CRANSTON. I am not concerned about that.

Mr. ROBERT C. BYRD. We are not concerned about that.

Mr. ALLEN. I see.

Mr. ROBERT C. BYRD. The distinguished Senator from Alabama likes to have his cake and eat it, too.

We are both, he and I both, and he and Senator Cranston—we all join hands in working for the best interests of the United States——

Mr. ALLEN. I am sure of this.

Mr. ROBERT C. BYRD [continuing]. In this instance.

Mr. ALLEN. I am not saying anything to the contrary. I respect the Senator's patriotism.

Mr. ROBERT C. BYRD. Not only patriotism but dedication.

Mr. ALLEN. I recognize that.

Mr. ROBERT C. BYRD. To the interests of the United States.

Mr. ALLEN. I felt it, I say to the distinguished Senator.

Mr. ROBERT C. BYRD. I say we are both equally dedicated.

Mr. ALLEN. Hard-hitting, I might say.

Mr. ROBERT C. BYRD. Hard-hitting, hard-slugging, hard-slugging dedication to the interests of the United States.

Mr. ALLEN. I recognize that.

Mr. ROBERT C. BYRD. But we do have honest differences as to what actions may in the final analysis be in the best interest of the United States.

Mr. ALLEN. Yes.

Mr. ROBERT C. BYRD. And I do not fault the Senator from Alabama for differing with me on that. I simply must take issue when he leaves the implication, and I want the reporter to read because if I misconstrued the Senator's statement I want to apologize if I got the wrong impression, but I got the impression that he has been saying that there are Senators here who, in effect, are more interested in doing Mr. Torrijos' bidding than they are in doing what in their view is in the best interest of the United States.

Mr. ALLEN. If the Senator left that implication he would certainly be anxious to apologize. No such implication was intended.

Mr. ROBERT C. BYRD. Sure.

Mr. ALLEN. But I will accept the challenge of the distinguished Senator from West Virginia that the reporter might read the remarks of the Senator from Alabama.

Mr. ROBERT C. BYRD. It is not a challenge. I simply want to apologize if I have in any way misconstrued the Senator's statement.

Mr. ALLEN. I am ready.

Mr. CRANSTON. Mr. President, I would like to ask that one other thing be read. When the Senator from Alabama stated something to the effect that this was in the interest of the dictator of Panama, Mr. Torrijos, General Torrijos, and I said no, it was taken not in the interest of Panama or the dictator but in the interest of the United States, my country, did not the Senator from Alabama at that point, "Oh, I see," as if this was a surprising revelation to him that this action was taken in the interest of the United States and not in the interest of Panama.

Mr. ALLEN. I believe the Senator is kind of splitting a few hairs.

Mr. CRANSTON. Did the Senator say "Oh, I see," when I made that statement?

Mr. ALLEN. I rather believe I did.

Mr. CRANSTON. Then we do not have to have the Record read. It stands for itself.

Mr. ROBERT C. BYRD. Now, if we might have the reporter read.

Mr. ALLEN. I hate for the distinguished Senator from California to split hairs certainly.

Mr. CRANSTON. Oh, I never do that.

Mr. ROBERT C. BYRD. There has been a lot of hair splitting, just so long as it does not get down to hair pulling it will be all right.

Mr. CRANSTON. You cannot do that with me.

Mr. ROBERT C. BYRD. Now, Mr. President, if the reporter would read the words back.

The PRESIDING OFFICER. The official reporter will read the remarks of the Senator from Alabama to which the Senator from West Virginia has referred.

The Official Reporter of Debates (Mr. William D. Mohr) read as follows:

Besides, whose interests are we looking out for? Are we looking out for the interests of the United States in defending the canal, or are we trying to shape this treaty in a manner that would be acceptable to dictator Torrijos?

Mr. ROBERT C. BYRD. Who said that?

The OFFICIAL REPORTER. Mr. Allen.

Mr. ALLEN. Go ahead. Read on. I asked the question.

The Official Reporter of Debates (Mr. William D. Mohr) read further, as follows:

Then Mr. Byrd and Mr. Allen were in colloquy.

Mr. ROBERT C. BYRD. Mr. President, I have the floor, and I have heard that song sung and sung and sung by the distinguished Senator from Alabama.

Mr. ALLEN. The Senator is going to hear it some more, too.

Mr. ROBERT C. BYRD. The Senator undoubtedly will, but I refute every word of it. I am acting in the interests of the United States just as much, in my viewpoint, as the distinguished Senator from Alabama.

Mr. ROBERT C. BYRD. So the Senator did use the words.

Mr. ALLEN. The Senator, according to the record there, asked that question. If that is an implication that anyone is not trying to protect the interests of the United States as well, I would certainly withdraw the statement. But I certainly will not withdraw the statement that Mr. Torrijos, Dictator Torrijos, is having great influence in the shaping of this treaty, whether that be for the interests of Panama or the interests of the United States.

Mr. ROBERT C. BYRD. Well, that is an assumption of the Senator. No one can keep him from drawing that assumption. But certainly no one has to agree to that.

Mr. ALLEN. I think amendments are going to be weighed on the basis of, will this be acceptable to Mr. Torrijos? Will this call for another plebiscite?

Mr. CRANSTON. May I comment on that point?

Mr. ROBERT C. BYRD. Yes; I think it requires some comment.

Mr. CRANSTON. It is very interesting that we are dealing with a dictatorship, with a man called "maximum leader," General Torrijos; but it is not a question of what he will accept or not accept. He is total dictator, but the people, under this plebiscite, do have a right to vote, that is, a right to accept or reject the treaties.

He might say to us, "Fine, from my point of view," but he is worried about a vote of the people in a dictatorship. They apparently have a constitution where they have to ratify a treaty by a vote of the people. So it is how all the people of that tiny country will vote that is of concern to the dictator there, and becomes of interest to the Senate of the United States because we want a treaty that can be ratified, and can be ratified by the people of Panama, because then the national interests of our country, from our point of view, will be served.

Mr. ALLEN. May I ask the Senator if one of the factors he is going to consider as amendments come before the Senate is whether or not that amendment might possibly cause the calling of another plebiscite in Panama?

Mr. CRANSTON. I, of course, will consider that.

Mr. ALLEN. That is all I need to know.

Mr. CRANSTON. Because the effect of ratification or failure of ratification of a plebiscite there is a factor we must consider in this debate. We have had negotiated through four administrations, two Democratic and two Republican, a treaty that is basically what we began with at the beginning. Four administrations, two of each party, have approved the general thrust of this treaty, and the three of those Presidents now living, I think, support the basic thrust of this treaty. It is in the national interest of this country. It is not in our national interest if it is defeated by amendments designed to kill it.

Mr. ALLEN. I thank the Senator.

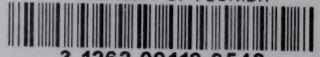
Mr. ROBERT C. BYRD. Mr. President, I thank all Senators.

Mr. President, has morning business been closed?

The PRESIDING OFFICER. No, it has not. Is there further morning business?



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